



LEGAL NEEDS OF YOUNG PEOPLE IN WESTERN AUSTRALIA

Identifying factors that enable or disable young people
to exercise their legal rights and responsibilities

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Legal needs of young people in Western Australia: Identifying factors that enable or disable young people* to exercise their legal rights and responsibilities

Introduction

There is growing anecdotal evidence that young people living in Western Australia experience barriers with regard to accessing their justice needs in order to effectively participate in the legal system. These barriers are often compounded by social disadvantages experienced by many Indigenous Australian young people and young people from refugee and migrant backgrounds. However, the issue of access to justice for young people living in Western Australia has never been comprehensively investigated. In addition, the ways in which new legislative measures that have been introduced in Western Australia have affected the ability of young people to access their justice needs is not known. This includes legislation such as *Parental Responsibility Orders*, *Prohibited Behaviour Orders* and *Stop and Search Powers* and significant changes to Family Law and Child Protection state-wide. This information is essential to better inform government and non-government agencies about the specific legal needs of young people in Western Australia.

The study set out to investigate the particular needs of young people attempting to exercise their legal rights and responsibilities in Western Australia. Specifically, the study sought to find out the ability of young people in Western Australia to:

- Obtain legal assistance (information; basic legal advice; initial legal assistance; legal representation)
- Participate effectively in the legal system
- Obtain assistance/advice from non legal advocacy and support (including non legal early intervention)
- Participate effectively in law reform processes

The study involved a cross-sectional investigation into the particular legal and access to justice needs of youth in Western Australia. Through an exploration of (1) existing quantitative data and research and (2) a collection of qualitative data through (2a) the use of focus groups with service providers and other stakeholders (2b) focus groups and face-to-face in-depth interviews with 111 young people. Focus groups and face-to-face interviews were, as far as could be determined, representative of gender, age, cultural background and geographic location, ensuring that young people and service providers from urban, regional and remote communities were included. This ensured that a comprehensive picture emerged to identify:

- Legal problems encountered by youth
- What they knew about services and processes at play to deal with these problems
- Barriers that obstruct access
- Gaps in services and processes
- Useful services and processes that could fill these gaps
- Myths and facts: what young people know about their legal rights

The findings of this study are intended to provide meaningful information to government agencies, legal services and funding bodies to help better manage the justice system and better inform policy and practice in meeting the legal needs of young people in Western Australia.

* In this study the term 'young people' applies to anyone from 14 – 24 years inclusive.



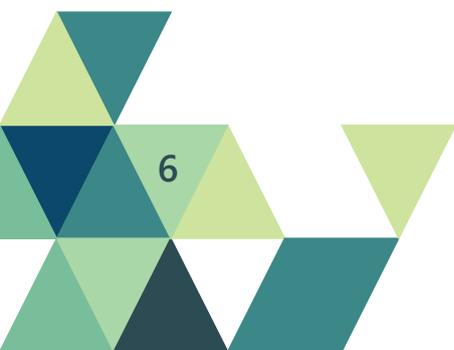
Background to study: previous studies

Young people aged between 14 and 24 years constitute around 20 per cent of the general Australian population. While most young people live in cities with their parents, almost one in every hundred young persons is homeless. Young people are a culturally and linguistically diverse population with a high proportion of Indigenous young people (compared to the total Indigenous population). Indeed, according to Zubrick et al (2004:25) almost half of Western Australia's Indigenous population are juveniles under the age of 18 years and, 'Indigenous children aged 0-17 years comprise 6.1 per cent of all Western Australians in this age group'. Significantly, the median age for the Australian Indigenous population is 21 years compared to the national overall median age of 37 years (www.abs.gov.au/census). Western Australia's population diversity also includes substantial numbers of young people who were born overseas and who speak a language other than English at home.

In Western Australia, there is a dearth of research that seeks to understand young Western Australians' personal experiences of seeking access to justice. However, the Joint Commonwealth and State Government Review of Community Legal Centres 2003 in Western Australia identified young people as a priority service group who were experiencing a lack of legal services, and an updated report compiled in 2009 confirmed that young people remained as a priority group yet still experienced significant disadvantage in accessing justice. Australia is a signatory to the *UN Convention on the Rights of the Child*, which sets a very high standard for the protection and nurture of children and youth – including access to justice. Despite this, there is

growing anecdotal evidence that young people across Australia experience significant barriers in accessing their justice needs, thus obstructing their effective participation in the legal system. Specifically in Western Australia, there has been no comprehensive study of the access to justice and legal needs of young Western Australians. Thus, this research will make an original contribution to the community by informing government, and non government agencies about the specifics of young people's legal needs, and the barriers young people encounter in accessing justice from the perspective of the young people themselves.

The *Doing Time – Time for Doing* report (June 2011: *House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs*) investigated the gross over-representation of Indigenous youth in Australia's criminal justice systems, noting that Indigenous juveniles are 28 times more likely than non-Indigenous juveniles to be incarcerated. The *Seen and Heard: Priority for Children in the Legal Process* report (1997 Australian Law Reform Commission, Report no. 84, Canberra, 1997) is in a similar vein. This report investigated the participation of children in the legal process, including child advocacy, representation and litigation, children's involvement in family law proceedings, the care and protection system, consumer issues, education related legal issues, criminal justice processes, sentencing and detention. The Inquiry embraced multiple methodologies to canvass and analyse all relevant issues. Apart from seeking submissions to the terms of reference and the issues papers, information was gathered from a variety of sources:



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- Public hearings throughout Australia to take oral submissions from interested persons, enabling the direct elicitation of the views of community members, including many young people, and organisations about their concerns regarding children and the legal process.
 - Forums with legal practitioners, medical professionals and youth workers, and direct consultation with individuals and organisations who had extensive dealings with children in different legal processes or who were experts in those processes.
 - Focus groups were conducted across Australia in which approximately 100 young people participated, furnishing information about children's impressions and experiences of legal processes.
 - Information from these focus groups was supplemented by a specialised survey of approximately 2,000 young people (from which 843 responses were received) in government and independent schools and in detention centres throughout Australia, seeking first-hand information about children's views on their experiences with the legal process and their suggestions regarding those processes.
 - The Inquiry was provided with statistical information on children's involvement with legal processes from judges, courts and tribunals, government agencies, education and juvenile justice departments, Directors of Public Prosecutions, legal aid commissions and the Australian Bureau of Statistics. The statistical information was used extensively in the report to inform and support the qualitative analyses.

In sum, this study sought to investigate the degree to which young people in Western Australia know and understand the following:

- their legal rights and responsibilities
- the capacity of young people to obtain legal services, including information, legal advice and representation
- the supply and demand aspects of legal assistance, ensuring that legal service providers are relevant to young peoples' needs
- the capacity of young people to participate in the legal system by accessing youth diversionary programs, courts, restorative justice programs, tribunals and alternate dispute resolution
- the capacity of young people to exercise their legal rights and responsibilities

Aboriginal young people and the criminal justice system

By any measure, Indigenous West Australians are over-represented within Western Australia's prison system. Indeed, Indigenous juveniles are grossly over-represented within Western Australia's juvenile detention system. For two decades '...rates of juveniles in detention in WA have been consistently higher than the national average (<http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi416.html>). At the end of May 2015 there were 148 juveniles in detention in WA, 102 or almost 70 per cent of these were Indigenous (Young People in Detention: Quick Reference Statistics, Department of Corrective Services WA). According to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011:2.2):

Tragically, Indigenous juveniles and young adults are more likely to be incarcerated today than at any other time since the release of the Royal Commission into Aboriginal Deaths in Custody final report in 1991. This rise has occurred despite increased funding and the concern and efforts of community members, government officials, non-government organisations and the judiciary around Australia.

The 2011 Census indicated that there are around 70,000 Indigenous people resident in Western Australia (www.abs.gov.au/census). This accounts for around 3.2 per cent of the total West Australian population. According to Zubrick et al (2004:25) almost half of these are juveniles under the age of 18 years and, 'Indigenous children aged 0-17 years comprise 6.1 per cent of all Western Australians in this age group'. Indeed, the median age for the Australian Indigenous population is 21 years compared to the national overall median age of 37 years (www.abs.gov.au/census).

In sum, by estimate there are around 35,000 Indigenous minors resident in Western Australia. It is estimated that around 7,000 of these children have experienced having one or both parents in prison (Quilty 2005).

An unintended effect of the high levels of Indigenous engagement with the criminal justice system has been the normalization of imprisonment and consequently the fostering of equally high levels of intergenerational offending. Research demonstrates that 'children of imprisoned parents have a much greater likelihood of coming into contact with the criminal Justice system. One American study found that children of prisoners are themselves up to six times more likely to become incarcerated' (Woodward 2003). This intergenerational offending factor compounds the problem with escalating Indigenous imprisonment rates adding to the intergenerational trauma.

Certainly, the legal needs of all young West Australians need to be met but there is a strong argument that a focus on culturally appropriate, Aboriginal driven, education and service provision surrounding legal issues ought to be considered as a matter of urgency to attempt to counteract the ever-increasing numbers of Aboriginal young people coming in contact with Western Australia's criminal justice system.



Research Design and Methodology

This largely qualitative study was based on fieldwork carried out within and around the Perth metropolitan area and in the Pilbara. It is ethnographic in nature, based in grounded research, utilised age/gender appropriate, Indigenous and narrative methodologies for the collection of primary source data (Bessarab & Ng'andy 2010; Hemming Rigney & Berg 2010). That is, the methodology used was bottom-up in nature, using Indigenous and age relevant methods such as 'yarning' or 'narrative' sessions to convey information about the study and drawing on the primary participants' opinions regarding appropriate ways to proceed. In short, the methodology used in the study involved in-depth conversations and focus groups with young people between the ages of 14 and 24 years.

In explanation, the primary participants in this study are the young people who agreed to take part. These young people come from diverse socioeconomic and cultural backgrounds. Most live in and around the Perth metropolitan area and, in order to include a regional perspective/experience, help was sought from several participants from regional towns and remote communities in the Pilbara area of northwest Australia. Conversely, the researcher is a mature woman with adult children and grandchildren. With this generational differential in mind it was appropriate for the researcher to adopt the position of 'learner' in recognition of the participants' capacity to teach her about their particular communication patterns – which were diverse and often grouped according to age, socio-economic and cultural factors.

Importantly, from the outset it was assumed that the primary participants, the young people themselves, should assist with the research process. In facilitation of this, the researcher initially met with two separate focus groups of young people to discuss the purpose of the study and to ask for their input. The young people

in these groups were assembled according to age: 14 – 17 years and 18 – 24 years. These groups provided advice on which questions they felt might be meaningful to them and made suggestions on how the questions should be phrased. Each of these young people also became primary participants.

Ethics clearance was obtained from Curtin University's Human Research Ethics Committee. Approved Participant Information and Informed Consent forms were given to each primary participant (see Appendices 1 and 2: original documents on Curtin University letterhead). All participants were asked to sign the informed consent forms. Several refused to sign but gave oral consent and were included in the study.

Data for the study was collected in several ways:

1. Review of previous research findings/ literature related to young people and the law
2. Review of pertinent policy and legislation already in place in western Australia
3. Discussions with focus groups of relevant industry professionals (lawyers, social workers, other service providers)
4. Focus groups of primary participants
5. In depth conversations with primary participants

The participants

Although the study also involved focus group discussions with industry professionals and key stakeholders, the main thrust of the study focused on the young people themselves. They were the primary participants and it is their engagement that was central to the study. The Research Reference Group consisted of representatives from Youth Legal Service, Department of the Attorney General (WA); Youth Affairs Council of WA; Legal Aid, Community Legal Centre Association, Law Society and the Commonwealth Attorney General Department. The main focus group of industry professionals and service providers was made up of the following:

- Senior Criminal Lawyer, Youth Legal Service
- Principal Solicitor, Youth Legal Service
- Criminal Lawyer, Youth Legal Service
- A representative from the City of Swan
- Youth Outreach Service, Swan
- Swan City Youth Service
- Live Works Program, Outcare, Bayswater, Armadale, Kwinana

Over a period of almost two years, one hundred and eleven young people participated in focus group conversations and/or face-to-face, in-depth conversations centred on various aspects of the legal system in Western Australia. Questions related to what they felt they knew about the law; what they did not know; what they wanted to know; how specific legislation impacted on some

of their lives; how they felt about the notion of legal rights and responsibilities; would they know what to do in order to access legal assistance/representation. There was no formal research instrument as such rather there was a list of issues to be covered to assist the researcher, simply to ensure she did not forget anything.

Initially, the researcher contacted several metropolitan based community legal services by phone in order to discuss the study and seek assistance from the centres' lawyers to enlist participants. However, it quickly became apparent that, because of very substantial cuts to their funding, community legal centres had already had to cut back on many services. For example, funding cuts meant that youth programs had been cut, there were long waiting lists for clients to see lawyers and, their legal practitioners were being overwhelmed with vastly increased workloads. The study, although of interest to them, was unlikely to be a priority within their ever-increasing workloads. In short, the original research plan stalled and the researcher had to formulate a different strategy. 'Plan B' needed to ensure an immediate start to the study and so the researcher elected to utilise snowball sampling.

Snowball sampling has its limitations, relying as it does upon the first few participants to provide other contacts. This can lead to homogeneity of social, economic and cultural experience and has the capacity to skew data. However, the researcher had a vast network of contacts across the metropolitan area as well as in the Pilbara and snowball sampling appeared to be

the best option. Also, several of the metropolitan service providers were able to provide contact details (with client permission) and those leads contributed significantly to the participant base. In the event, 111 young people contributed to the study as primary participants. Sixty-four of these were young men and boys and 47 were young women and girls. Fifty-one participants fell within the 14 – 17 year old group and 60 were aged between 18 and 24 years. Ninety-nine lived in and around the Perth metropolitan area and 12 lived in the Pilbara. Thirty-nine identified as Aboriginal Australians, 12 from the Pilbara and the remaining 27 from in and around Perth. Three participants were from African migrant families and spoke a language other than English at home. The remainder were non-Aboriginal Australians.

All participants were provided with information about the study and its purpose, confidentiality was assured and the strict code of ethics placed on the researcher was also explained. Participants were also assured that pseudonyms would be used in transcripts and in the final report and that all identifying information would be removed. Initially it was intended to record all in-depth face-to-face conversations and take notes at focus group discussions. However, several participants expressed concern and did not want to be recorded. When this occurred notes were taken instead. In order to keep an accurate account of the spirit of these conversations and focus group discussions, the researcher recorded her thoughts as soon as possible after the conversations took place. The focus groups, usually groups of 3 -5 young people who knew each other socially, took

place in public places such as cafes or parks. Two focus groups took place in the homes of the participants at their request and one focus group took place at the researcher's home, as she knew the participants.

Because the study engaged with legal issues, one of the major concerns was the possibility of participants divulging details of specific criminal offences. Given that research records can be subpoenaed, for the protection of participants and the researcher, consideration had to be given to any possible legal consequences. With this in mind, immediately prior to each interview or focus group session, the researcher informed all participants that for legal reasons she could not collect information that might lead to the identification of either victims or perpetrators of any crime reported or unreported. In any case, during several conversations hypothetical crimes related to specific questions were described but these were generally asked by participants as a tool to understand how the legal system worked in terms of criminal offences.

The secondary participant group was made up of various industry professionals. These professionals met twice during the timespan of the study and provided advice and guidance to the researcher.

The Issues

Legal needs surveys have repeatedly shown that legal problems of different types do not occur with equal frequency. Despite variation in the measurement of legal problems, there is some agreement across studies about the specific types of problems that are experienced frequently... surveys have typically found that consumer problems are very common, and that neighbours, employment and money/debt problems are also fairly common (Coumarelos et al 2012:13).

Although this study, as with previous legal needs surveys, also sought to gather information about legal issues across the board, including but not limited to family law, workplace law, criminal law, most of the participants' responses, questions and knowledge of or otherwise were largely focused on various aspects of criminal law. This phenomenon was not entirely unexpected as both initial focus groups expressed an intense

interest in criminal matters. In partial explanation, the general opinion of the focus groups was that contemporary electronic, print and social media outlets favoured by young people appear to focus much of their content on crime as entertainment, crime in the community and the politics of 'law and order'. Many of these young people said that what they knew about the law was often learned from watching television shows – mostly American shows such as CSI and Law and Order.

The face-to-face conversations and focus group discussions revealed a number of key issues. Outside of the interest in criminal matters, there was a distinct variation in focus according to age groups. That is, the 14 – 17 year old group spoke about family law matters, often relating to custody issues. Whereas the 18 – 24 year old group cited issues related to work and tenancy situations as well as issues related to stop and search legislation, violence restraining orders and prohibited behaviour orders. Both groups demonstrated a similar high level of interest in legal issues related to criminal law.



14 – 17 Year Old Group

Family Issues

Several issues directly relating to family matters were raised. These included custody matters, privacy relating to health/mental health issues (disclosure of medical information to parents) and parental responsibilities. Eleven participants spoke about their feelings of relative powerlessness in the wake of family breakdown with regard to custody decisions either by parental agreement or through the Family Court. Emily, who was 12 years old when her parents divorced, put it this way:

It just sucked. Because my mum had mental health problems I was told I had to live with my dad. I knew that would make my mum even sicker, you know, not having me with her and that. But no one would listen to what I wanted. Anyways, I'm living with her now I'm old enough to choose.

'No one listened to me' was a recurrent theme in terms of custody decisions whether court ordered or otherwise. The young people felt that they had little or no say in what happened to them and not one of them had any real knowledge regarding their legal rights to contribute to any decision making in these instances - instances that could impact greatly on their lives. As a group, they were aware that when a court made a parenting order that the main consideration was always the best interests of the child. However, by and large,

they questioned the ability of the court to actually know what were the best interests of the child.

Another recurring issue in the younger group was related to privacy of medical information. For example, at 15 years Jerry was diagnosed with a sexually transmitted disease. He claimed that his doctor informed his mother against his wishes and he felt that this was not legal. He said that *'all hell let loose when my mum wanted to know who I'd been sleeping with and wanted to tell her parents. I fucking freaked, man. She threatened to get the police and everything. He shouldn't of told her. That was my personal stuff'*. Several other young people mentioned this as a problem – girls of 14 and 15 years who wanted to be prescribed the contraceptive pill without parental knowledge and one young woman who was diagnosed with severe depression and did not want her parents to know because *'they would be on my case and that would depress me even more'*. There was little or no knowledge of their legal rights to privacy.

In terms of parental responsibilities, there was an across the board sense that the non-custodial parent did not always live up to his/her financial responsibilities. The main concern was that the custodial parent, often relying on sole parent benefits and maintenance payments, complained that maintenance payments were late or just did not happen. This often caused stress and hardship at home. The consensus was that child support agencies were ineffective in assuring that the non-custodial parent paid his/her dues. This concern also extended to issues related to abuse in the family.

It is difficult to gauge the number of children who are exposed to family/domestic violence although Indermaur (2001) found that up to 25 per cent of young people aged between 12 and 20 years of age had witnessed at least one incident of domestic violence against their mother or stepmother. Research suggests that children who live in an environment where they are exposed to domestic violence are more likely to be victims of child abuse than those who are not (English, Marshall & Stewart (2003). In this group three participants said they had been exposed to family violence, had been physically abused themselves by a violent parent or step parent and had subsequent dealings with the Department of Child Protection and Family Support (CPFS). There was a general sense of frustration amongst these young people, as each of them believed that they had not been listened to or taken seriously or even adequately protected by CPFS. Amy said that her father was violent towards her mother for as long as she could remember. As Amy grew older she said she tried to protect her mother. She went on to say:

I would jump on his back and punch him. One time I really hurt him and he turned on me and punched me. From that day when my mother got hit so did I. My teacher reported my bruises to Child Protection and they came to the house. I couldn't tell them what happened because my dad was there and I was terrified. The idiots actually asked me what happened in front of my abuser. What can I say? The abuse only finished when my mother got the balls to leave him but while it was happening I had nowhere to go and that's just wrong.

The other two participants who spoke of being abused had similar stories. They said that the police would arrive and try to sort things out by removing the abuser and they would be required to report the violent incident involving a child to CPFS. The main concern was that CPFS appeared not to use common sense and often did not interview the children away from the parents.

Criminal Issues

Fifty-one of the participants were between the ages of 14 and 17 years. More than 33 per cent of these had some level of engagement with the criminal justice system – from receiving police cautions through to juvenile detention. Of the twenty-two participants who acknowledged such engagement in this age group, fifteen said they had been given police cautions, three had been held for a short time under 'stop and search' legislation, two had minor convictions and two had served time in juvenile detention. This is a higher ratio of criminal justice engagement than within the general population but because of the participant group dynamic this was expected. According to the Australian Law Reform Commission's *Seen and Heard: Priority for Children in the Legal Process* report (1997):

At most only 2 per cent of young people aged from 10 – 17 years come into contact with the Children's Court. Even if this figure is increased to take into account contacts with other formal processes such as cautions and family group conferences it is unlikely to exceed 4 per cent.

Within this age group there was a general ignorance of their legal rights and there was a particular concern with regard to the use of technology, particularly mobile/smart phones. These concerns related to cyber bullying either via mobile phone or via social media (Facebook) and 'sexting'. Robbie expressed concern about some sexually explicit images he had sent to his then girlfriend. He said:

Okay I'm packing it coz I sent some photos to my ex. She was still my girlfriend when I sent them. They were – you know – my dick. We broke up last week and there's two things – she might tell her dad and he might go to the cops and she might send them to my mates. Is that a crime? We all do it but I don't know if it's a crime or not. I'm packing it.

Variations on this theme emerged with both age groups. It was a general concern that 'sexting' could be a crime and that it might emerge as a problem most often after relationships broke down. James (age 16) put it this way:

I'm not saying I've done this but I know some of my mates have and now that it's been brought up... say if I was to send a text to my girlfriend and she's 15 and I'm 16 and it's about us having sex and maybe saying how good it was and that... Okay, she's under age but she's up for it. And she maybe texts me about that too. Then we break up and she wants to put me in it to get back at me for

dumping her... or even if her olds get hold of her phone. Can I get charged as a sex offender? See we don't know any of that and you don't think about it at the time you're doing it – texting, sexting, whatever. I don't know where to find out whether that's a crime or not. Everyone's doing it.

Because this was a major concern for the majority of young people in this age group, the researcher encouraged discussion around the topic. She asked the focus groups what they thought might help to alleviate their concerns regarding the legal implications surrounding this issue. The general consensus was that more information should be provided through the education system, specifically in a practical fashion rather than with teachers using 'long words and legal shit'. Kirsty said:

We had some dude come to school to talk about legal rights and responsibilities. It was boring and I lost interest because I couldn't really understand what he was talking about. We all wanted to know about cyber bullying and sexting and there was a lot of questions about that but it wasn't clear. I think it would've been better if we could've had a video with an example of cyber bullying or something.

Three of the participants in this group said they had been stopped and searched by the police while they were out late at night. They were all male. None was strip-searched. They did not know

what their rights were regarding police powers to stop and search. John described their experience thus:

My mates and me were in Northbridge just wandering around before we went to get the train home. We were just walking along when the cops stopped us. They wanted to know if we'd been drinking. We had but we weren't drunk or nothing but we're under age. So they searched us to see if we had any alcohol or weapons. We'd already finished the booze but they knew we'd been drinking. They didn't arrest us, just took our names and that and told us to get home. We didn't want to get into any more trouble so we just stood there and let them search us but we didn't know what else to do.

Researcher: *How did they search you?*

John: *Just patted us down and checked our pockets.*

Four of the participants had registered convictions – two for minor offences such as shoplifting. These girls, who were both aged 14 years, had been arrested on separate occasions and had to appear in the Children's Court. Neither had legal representation before going to court and, on arrival at court, spoke to the duty lawyer. Both pleaded guilty to stealing charges. Neither girl knew that they could have applied for legal representation from Youth Legal Services, Aboriginal Legal Services or Legal Aid. Indeed, neither of the girls had heard of any of these legal services.

Both of the young people who had spent time in juvenile detention had multiple convictions and had faced Children's Court on several occasions. These young Aboriginal men spoke about their experiences and what they thought they knew about their legal rights. Brad said:

Look it's no big deal going to court. I usually got an ALS dude and pleaded guilty. I'm trying to keep out of trouble now because I'll be 18 soon and don't want to end up in jail. I got treated okay in juvy but I know it's harder in the adult system. I've got to be careful now because I'm known to the cops and get stopped all the time.

Alan, a young man from the Pilbara spoke about his experiences of the criminal justice system:

The last time I got caught I spent a couple of nights in the cells in Karratha then I got sent to Banksia. I didn't get a lawyer, just the duty lawyer before I fronted the judge. I got 6 months. I didn't like it in Banksia coz my mates are all up here. I didn't think they'd send me to Banksia coz I couldn't get visits, just phone calls.

Both Brad and Alan had minimal contact with their respective lawyers and then only immediately before appearing in court. When asked if they thought this was adequate representation both said that they thought that was all the legal assistance they were entitled to.

There is only one juvenile custodial facility in Western Australia, Banksia Hill. It is situated within the Perth metropolitan area. When Alan, who lives in the Pilbara, was held in custody he was more than 1500 kilometres from his family and his homelands. The age of criminal responsibility in WA is 10 years. At the end of May 2015, the last available statistics, there were no 10 year olds held in custody; 20 aged between 11 and 14 years; 65 aged 15 to 16 years and 63 aged 17 – 18 years. Young people of 18 years and over are held in adult prisons (Young People in detention: Quick Reference Statistics, 31 May 2015). As previously mentioned, almost 70 per cent of those held in juvenile custody were Aboriginal young people. Beresford and Omaji (1996) argue that:

The current practice of imprisoning significant numbers of these young people amounts to a de facto policy of criminalising the socially disadvantaged... we will see an even greater pool of alienated youth entrenched in a subculture of crime... the criminalisation of Aboriginal youth feeds directly into the over-representation of adult Aborigines in the prison system.



18 - 24 Year Old Group

Sixty of the primary participants in this group were aged between 18 and 24 years. Their socioeconomic and cultural backgrounds were diverse. This group consisted of Aboriginal young men and women from the Perth metropolitan area and the Pilbara, African migrants living in Perth and non-Aboriginal people also living in and around Perth. Some were in secure fulltime employment, some were employed on a casual basis, several were unemployed and some were students. Twenty-two of these had some level of engagement with the criminal justice system from receiving cautions as juveniles, through to experience of detention/imprisonment either as juveniles or in the adult system. The major issues identified in this group were: tenancy issues, employment issues, violence restraining orders as well as a high degree of interest in criminal legal matters from both experience and curiosity.

Tenancy issues

Several young men and women identified problems relating to tenancy. Basically all of these problems were with regard to share houses. Michelle's experience underpins the fundamental problem. She told her story like this:

I work in the hospitality industry and don't earn a lot so I couldn't afford to get a rental on my own so I rented a room in a share house. It worked out well for about 6 or 7 months then the guy who had the lease said he wasn't renewing it. So the rest of us talked to the agent to take over the lease but that didn't work out so we had to leave. There were four of us as well as the guy with the lease and two

of us were left virtually homeless... the main problem was that none of us earned enough to take over the lease individually and the landlord wouldn't negotiate with the four of us. We had no idea if we had any rights to fight our case so we just left.

There were several similar stories and two of the young people who experienced being evicted from a share house because the lessee did not renew their lease faced the prospect of chronic homelessness because they were unemployed and had no rental references. Lily described her experience thus:

The house we lived in was a bit of a dump but at least I could just about afford it... then when we got 2 weeks notice to get out I didn't know what to do. I've been unemployed for about 6 months so I live from week to week on New Start. I haven't found another place yet and I'm moving around all my friends, sleeping on the lounge. It's even making it harder to look for jobs because all my stuff's in bags.

Living arrangements were also an issue for the young Aboriginal men from the Pilbara as the resource boom generally determined rental prices, most reaching \$2,000 per week in Karratha and around \$1,200 - \$1,500 per week in Wickham and Roebourne. This meant that renting was not an option and most had to live with relatives in extremely overcrowded housing – up to fifteen person living in a basic 3 bedroom house is not uncommon. Seven of these young men were unemployed, exacerbating their already disadvantaged situation.

Employment issues

Four of the young men had grievances with regard to their employment situation. All of them were apprentices and were unable to complete their apprenticeships when their employers closed their businesses due to cut backs in the mining industry. As apprentices in the mining industry they had earned high wages, working on a fly-in-fly-out basis. Two had purchased houses based on their projected earning capacity and when they lost their jobs they also faced losing their houses. Two of the young men elected to do nothing about their apprenticeships and found employment elsewhere. Josh said, *'I didn't know what to do about the apprenticeship. I only had a year to go but I needed money so I just got another job but not as an apprentice'*. On the other hand, Aaron said that he made an official complaint to the Apprentice Board but got nowhere. He said:

I didn't know what else to do. I made a complaint, heard nothing for weeks. In the meantime I was unemployed and getting in the shit with my mortgage. When I did hear from them it was just like "there's nothing we can do blah, blah" so I've got into debt with my dad helping with the mortgage and now I'm going from casual job to casual job. It's basically fucked and I'd done nearly 3 years of my apprenticeship. I'll probably have to sell the house to break even and pay my dad back.

Violence restraining orders

Domestic and family violence is a significant social issue for the Australian community, highlighted recently by a large number of high profile spousal/partner homicides. Unsurprisingly, almost 70 per cent of applicants for Violence Restraining Orders (VRO) are women. Within this study seven young women spoke of personal experiences of partner or ex partner abuse. Another told of being stalked, bullied and generally harassed by her boyfriend's ex girlfriend. Five of these young women made application for VROs. 'The purpose of a VRO is to provide protection to an applicant from a respondent who has committed or is likely to commit a violent offence against the protected person or behave in a manner that will cause fear that they will commit such an offence' (Pearson, cited in Goulding 2007). First, the applicant must apply for an interim VRO and then progress to a final VRO, often having to face her abuser in a court setting. Everyone within the 18 – 24 year old group had heard of VROs and had a basic understanding of what they were. Most did not know how to go about obtaining a VRO or how effective or otherwise they might be.

Louise, the young woman who was stalked told of her experience:

My boyfriend's ex had it in for me. She threatened me with texts and got her brother and his mates to wait outside my work and follow me home... calling me a slut and stuff. I tried to ignore that. My boyfriend told her to cut it out but she was relentless. She started following me in her car and almost rear-ended my car. That really scared me. Once

she did it when my boyfriend was in the car and we nearly had an accident. My mum took me to the police station and we were advised to apply for a violence restraining order. We got an interim order and had to go to court and she was there with her mum. She wanted to fight it but, in the end, she agreed to stay away and stop all the harassment so we didn't get a final order but it was okay after that.

In Louise' case the VRO was successful in stopping the abuse but this is not always the case. Two of the women who successfully applied for both interim and final VROs both suggested that, in their cases, the VROs 'weren't worth the paper they were written on'. They were concerned that there was no other legal recourse as their respective ex partners had continued to breach the orders but had not been charged by police for those breaches.

Prohibited behaviour orders

Two young men and one young woman said that in the past they had been given Prohibited Behaviour Orders (PBO). The young woman had been convicted of shoplifting and had been on an order not to enter Midland Gate Shopping Centre. The two young men had PBOs – both for graffiti offences and they were not allowed to purchase or keep spray paint or any item that might be used to commit criminal damage. At the time, they had been concerned mainly because their photos had been published on a Prohibited Behaviour Order website.

Criminal issues

In sync with the younger group, the young men and women in this group had an acute interest in issues related to criminal activity. There was a better understanding amongst this group about what constituted a crime but a general ignorance with regard to how to go about getting legal advice or even what to do in order to get affordable legal representation. There were also misconceptions about what happens in court regarding plea bargains – another myth from US crime shows – and misconceptions about their legal rights and responsibilities.

During one focus group involving thirteen young men involved in a skills related program for young people who have engaged with the criminal justice system, it became apparent that there was an inability or an apathetic attitude towards getting timely and accurate legal advice before facing court. Eleven of these young men were Aboriginal, one was an African migrant, and one was a non-Aboriginal Australian. All had been engaged at various levels with the criminal justice system, some had community based service orders, some had been in juvenile detention and some had experience of imprisonment within the adult system. None of them had heard of Youth Legal Service (YLS). All of them had heard of Aboriginal Legal Service (ALS) and Legal Aid but none had ever used either of these services. When asked what he did for legal assistance when faced with criminal charges, Adam said:

I just front up at court and see the duty lawyer. I'm usually going to plead guilty anyway so the duty lawyer is okay. Anyway, ALS uses court officers so you're better off with a real lawyer even if he's only seeing you 5 minutes before you're fronting the magistrate.

The general consensus from this focus group of thirteen young men who were familiar with various aspects of the criminal justice system from first hand experience, was simply to front up at court and get the duty lawyer to represent them.

There was also some confusion about cyber related crime in this group. Once again no one knew what the line was that separated a risqué text from sexual harassment or a sex offence. This was a problematic issue and it was apparent that, for all of the primary participants as well as the researcher, there was no concrete knowledge of where the line between legal and illegal activity was crossed in this area. Indeed the internet and associated technology have transformed our lives. According to Horn, (cited in Lennon and Grabosky 2014) '...every minute about 168 million emails are sent, 695 Google search enquiries are made, more than 695,000 status updates are conducted on Facebook, 600 videos are uploaded on YouTube and more than 370,000 minutes of voice calls are made on Skype'. In other words, the internet and associated devices such as smart phones are commonplace and enjoy widespread everyday use. However, the downside to a reliance on technology is the inconvenience of cyber crime and the tardiness of legislation to decipher clearly exactly what is a criminal act and what is not. This was clearly reflected in the study which focused on the age group that is arguably most technologically savvy.

Findings

Awareness of the availability of affordable legal advice and representation is a crucial factor in enabling young people to access justice. With this in mind, the study sought to find out what were the legal problems they encountered, their overall level of knowledge of available services, what barriers did they encounter in their endeavours to seek assistance, what are the gaps in service provision, what service would be most useful and the myths and truths of what young people know about their legal rights and responsibilities.

Legal problems encountered by young people in Western Australia

Within the primary participant group forty-four of the one hundred and eleven young people, almost 40 per cent, had experienced some form of engagement with the criminal justice system. This engagement ranged from the less serious police cautions, stop and search processes, through arrest and court appearances to the most serious - juvenile detention and imprisonment in the adult prison system. The participants were also concerned with family law issues largely related to child custody issues, privacy issues, family violence issues including child abuse and problems associated with the Department of Child Protection and Family Support (CPFS). The older group of primary participants expressed concern with tenancy issues largely related to share house leasing and homelessness. This group also experienced problems associated with employment upon premature termination of apprenticeships through no fault of their own and the financial crises that this entailed. Finally several participants had applied for Violence Restraining Orders and had concerns with regard to their usefulness in terms of their personal safety.

What the participants knew about services and processes to deal with the problems

Each of the participants was asked if they were aware that they could access free legal advice from the following legal service providers.

- Aboriginal Legal Service – a service specifically designed to assist Aboriginal clients. Of the thirty-nine participants who identified as Aboriginal, thirty-one said they were aware that they could access free legal advice and representation from ALS.
- Youth Legal Service – a legal service established to provide legal assistance and education to young people up to the age of 24 years. Of the one hundred and one primary participants in the study only twelve knew of YLS and two of these had received advice and assistance from YLS lawyers. The remaining ten who had heard of YLS believed that the cut off age for legal assistance was 18 years.
- Community Legal Centres – Forty-one participants knew that CLCs provided free legal advice and assistance. Six of the participants had used a CLC as the starting point to find further assistance for legal problems.
- Legal Aid – Ninety participants were aware of Legal Aid but all of these felt that they were unlikely to be able to access a Legal Aid lawyer due to waiting lists and time constraints on court appearances.

Barriers that obstruct access to legal assistance

The consensus amongst the majority of participants was that they did not know where to start, where to go for help in the first instance. That was the major barrier and often meant that they would give up and just accept whatever happened. This was the case with both the tenancy issues and the terminated apprenticeships. Another barrier was the cost of legal advice, being largely unaware of the availability of free services, most participants believed that the cost of legal advice was prohibitive.

Gaps in services and processes

Basically, the biggest gap was the perception of no dedicated starting point. They felt that, without an obvious starting point for fundamental advice on where to go to obtain advice on A, B or C they floundered. This was described as both a gap and a barrier.

Useful services and processes that could fill these gaps

It was suggested by several participants in both age groups that a more practical form of education in high schools would be helpful in promoting a better understanding of both legal rights and responsibilities. Another suggestion was an App for mobile phones and tablets – a basic resource that could have links to different sites that would provide a set of resources and information on various aspects of the legal system. The notion of educational games related to legal issues was suggested as a resource that would attract the younger group.

What young people know about the law: myths and facts

Young people are aware that it is their responsibility to obey the law. They are also aware that they have certain rights. The major problematic factor is that they are not particularly well versed in what their rights are and they are not always aware that certain behaviours are illegal. When questioned about their rights with regard to being questioned by the police, about half of the participants in the 14 – 17 age group were aware that they had the right to have an independent adult present. However, ignorance of certain aspects of the law continue. This ignorance appears to be magnified in a society where technology continually outpaces society's ability to legislate appropriately. Cybercrime and issues such as cyber bullying and 'sexting' are cases in point and were an ongoing source of confusion for most participants with regard to the questions – at what point is the line crossed between what is legal and what is illegal? Will the consequence of 'sexting', a fairly common practice amongst teens, mean a conviction for a sexual offence?

Summary

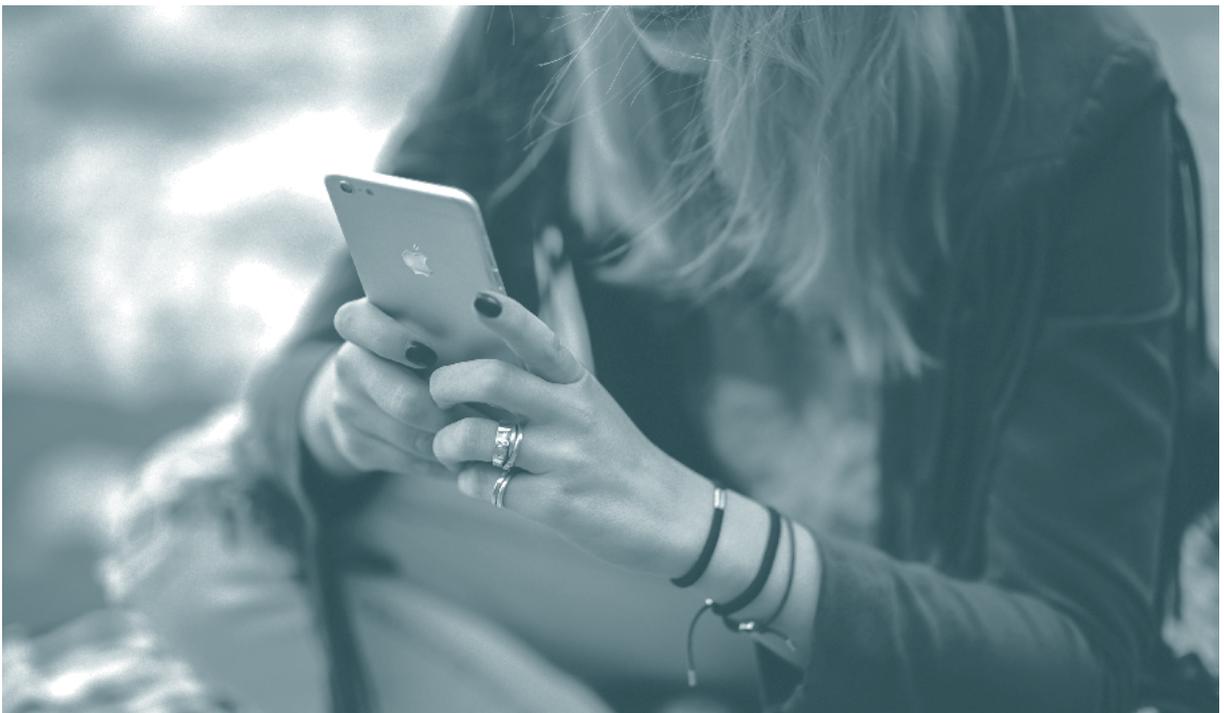
This study was carried out over a two-year timeframe. The primary participants were one hundred and eleven young West Australians between the ages of 14 and 24 years. The study was carried out in response to growing anecdotal evidence that this demographic experienced obstacles with regard to accessing their justice needs in order to participate effectively in the legal system. The underpinning purpose of the study was to provide a wider knowledge base on the legal needs of young people in Western Australia and their ability to access legal advice and/or representation. The problems faced by the participants are typical of those faced by

many young West Australians at a time when technological advances outpace society's ability to deal with their consequences.

The report makes no specific recommendations. Rather, it has given voice to the young people themselves, providing their thoughts on what they feel is needed to assist them to engage more effectively in the legal system.

Dot Goulding

30th September, 2015



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Appendix 1

Participant Information Sheet

Access to justice for young people in Western Australia: Identifying legal needs, pathways and factors that enable or disable young people to exercise their legal rights and responsibilities

Young people in Western Australia have been identified as a priority group who often experience a lack of legal services and, because of this lack, they experience significant disadvantage in accessing justice. Youth Legal Service (YLS) has acknowledged this shortfall and has initiated this research project in order to establish a knowledge base that will inform community legal centres and other organisations that provide legal assistance and advice to young people.

In short, this research project seeks to identify better ways for young West Australians to understand and exercise their legal rights and responsibilities. YLS believes that the young people themselves are the best people to identify their own needs. With this in mind YLS, together with Dr Dot Goulding from Curtin University, have developed a research project to find out exactly what legal and justice services young people need.

This project is unique in that it focuses on young people's opinions rather than assuming that the current service providers know all the answers. In order to gather this information I will ask you questions relating to legal/justice services. Your names will not be used in any report or document that results from this research and confidentiality is assured. No information that might identify participants will be used in the research and no one apart from the researcher, Dr Dot Goulding, and the CEO of YLS will have access to interview material. Information may be used for other purposes as held by Youth Legal Service. No information will be used to the detriment of any participant. The research will not have any impact on your program in relation to integration.

For ethical reasons I require a signed consent form. If you have any questions about the research I will answer them before we start any interviews/focus group discussions. If you need to contact me about the research I can be contacted on #####. Thank you for your help.

Yours sincerely,

Dot Goulding

This study has been approved by the Curtin University Human Research Ethics Committee (Approval Number HR xx). The Committee is comprised of members of the public, academics, lawyers, doctors and pastoral carers. If needed, verification of approval can be obtained either by writing to the Curtin University Human Research Ethics Committee, c/- Office of Research and Development, Curtin University, GPO Box U1987, Perth, 6845 or by telephoning 9266 2784 or by emailing hrec@curtin.edu.au

Appendix 2

Consent Form

Access to justice for young people in Western Australia: Identifying legal needs, pathways and factors that enable or disable young people to exercise their legal rights and responsibilities

This research project aims to identify better ways for young West Australians to understand and exercise their legal rights and responsibilities. Youth Legal Service (YLS) believes that the young people themselves are the best people to identify their own needs. With this in mind YLS, together with senior researcher Dr Dot Goulding from Curtin University, have developed a research project to find out exactly what legal and justice services young people need.

We would like to talk to you either in groups or individually to discuss things such as: (1) what you already know about how to get legal advice or help; (2) what other services you feel might better assist; (3) whether you know where to go for help; (4) whether you know what your rights and/or responsibilities are; (5) what sort of legal services are available to you.

In order to gather this information I will ask you questions relating to legal/justice services. Your names will not be used in any report or document that results from this research and confidentiality is assured. No information that might identify participants will be used in the research and no one apart from the researcher, Dr Dot Goulding, and the CEO of YLS will have access to interview material. Information may be used for other purposes as held by Youth Legal Service. No information will be used that might cause harm to any participant. The research will not have any impact on your program in relation to integration.

I, _____, have understood the information above and any questions I have asked have been answered to my satisfaction. I agree to participate in this research. I realize that I can withdraw at any time without prejudice. I agree that research data gathered for this project may be published provided my name or other identifying information is not used.

Participant _____

Date _____

Researcher _____

Date _____



