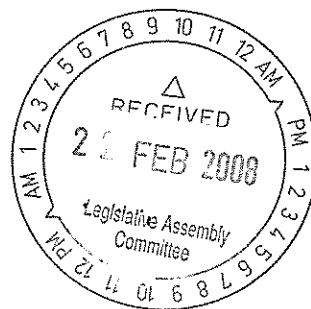


Department of the Attorney General
Government of Western Australia

Office of the Director General

JUG SUB 21



Dr Brian Gordon
Principal Research Officer
Community Development and Justice Standing Committee
Legislative Assembly
Parliament House
PERTH WA 6000

Dear Dr Gordon

Inquiry into collaborative approaches in Government.

Thank you for the opportunity to contribute to this inquiry. I am pleased to provide the attached submission from the Department of the Attorney General, which outlines the collaborative efforts involved in developing the innovative and inaugural Cross-border Justice Scheme.

The project to develop the Scheme provides an interesting case study as it has involved extensive collaboration at three levels. That is: collaboration between Government agencies within Western Australia; an alliance between the Governments of Western Australia, South Australia and the Northern Territory; and cooperation between these three jurisdictions and the Commonwealth Government.

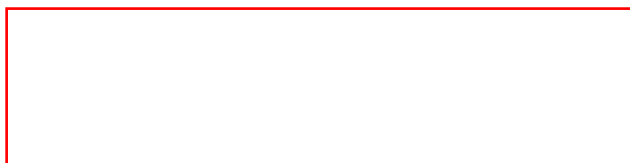
Please do not hesitate to contact me should you require any additional information.

I look forward to learning of the outcome of your inquiry.

Yours sincerely

Cheryl Gwilliam
DIRECTOR GENERAL

19 February 2008



DEPARTMENT OF THE ATTORNEY GENERAL

Submission to Community Development and Justice Standing Committee

Inquiry into Collaborative Approaches in Government.

1. Background

1.1 The Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) lands cover more than 476,000 square kilometres where the borders of Western Australia, South Australia and the Northern Territory meet. In 2003, a meeting was held in Alice Springs with representatives from justice agencies, the judiciary, police and community groups to discuss justice issues in this region. A local representative body, the NPY Women's Council, urged the governments of WA, SA and NT to solve the problem of offenders using the state/territory borders to evade police or the criminal justice system.

1.2 The NPY Women's Council highlighted the significant safety and security issues in this cross-border region,¹ including high levels of family violence, sexual abuse, substance misuse and relatively limited access to justice and other services. In response to these serious problems, and the obvious need for something to be done about them, the governments of the three jurisdictions initiated the Cross-border Justice (CBJ) Scheme.

1.3 The objective of the CBJ Scheme is to minimise the effect of borders in the cross-border region for the purposes of law enforcement and delivery of justice services. That is, to enable police, magistrates, fines enforcement agencies, community corrections officers and prisons of one jurisdiction to deal with offences that may have occurred in another of the participating jurisdictions.

1.4 This is a groundbreaking approach, and requires the development of complex, uniform legislation to be applied in each participating jurisdiction, as well as the implementation of agreements to facilitate the operational activities of all participating agencies. The CBJ scheme, therefore, will not officially commence until complementary legislation has been proclaimed in WA, SA and the NT. There is also a requirement that the Commonwealth amend one of its Acts to enable the State/Territory cross-border justice legislation to take effect. The necessary legislative elements of the scheme are expected to be completed in 2008. This submission is made to the Committee with the acknowledgement that the Scheme is still some time away from completion.

1.5 Notwithstanding that the Scheme is yet to receive final legislative sign-off, the project to develop the Scheme (the CBJ Project) has been an impressive exercise in collaboration, involving participation from more than 250 people across the three jurisdictions over its four-year (so far) lifetime. It provides an interesting case study as extensive collaboration has been required at three levels:

¹ The cross-border region comprises the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands in SA, the Ngaanyatjarra Lands in WA and the central east and south of the NT.

- alliance between the Governments of WA, SA and the NT;
- collaboration between government agencies within each jurisdiction; and
- cooperation between these three jurisdictions and the Commonwealth Government.

1.6 This submission presents some of the key challenges, successes and learnings from the CBJ Project and discusses the critical role that collaboration has played at each step in its development.

2. The Cross-border Justice Project

Alliance between the Governments of WA, SA and the NT

2.1 As mentioned above, the CBJ Scheme was established in response to a call from the women and children of the NPY lands to help reduce the prevalence of violence and abuse in their communities. In Alice Springs in 2003, the NPY Women's Council voiced these issues at a roundtable meeting that was held between community members and senior representatives from the Departments of Justice, Senior Magistrates, Indigenous Affairs and Police Services in the NT, SA and WA. As a result of the WA Government's Action Plan response to the Gordon Inquiry, a joint Police facility had been established at Kintore, on the border of WA and NT. This initiative highlighted the many practical, time consuming and expensive barriers to the delivery of justice services in the area, including the problem of offenders using the state/territory borders to evade police or the criminal justice system. There was a collective view that the legislative and operational barriers that were being experienced needed to, and could, be overcome.

2.2 The governments of WA, SA and the NT agreed that action was needed and, because the problem was a joint one, it was clear that a workable and sustainable solution would only be reached if the three governments implemented a collaborative response.

2.3 The CBJ Project is unlike many others in that it was borne from a need to collaborate, it required collaboration to find a solution, and the end goal was to provide a legislative foundation for improved collaboration between the three governments. In other words, in this project, collaboration was the means *and* the end.

2.4 Throughout its lifetime, the CBJ Project has maintained momentum because it was solving a common problem; all parties had a vested interest in seeing a successful outcome. The knowledge that the end result would be of common benefit encouraged a spirit of goodwill, fostered continuing enthusiasm for the important reform, and facilitated open channels of communication. In addition, officers working on the CBJ Project gleaned extra motivation from knowing that a successful outcome would have a real and positive impact on the lives of the women and children in the cross-border communities; communities that are known to be some of the most disadvantaged in the country. This gave all those involved a clear sense of purpose and became a useful reference point to which officers could return during the CBJ Project's more complex or challenging phases. Consultation revealed overwhelming support at all

levels for the CBJ Scheme which further enhanced the sense of purpose driving the project forward.

2.5 As a consequence of the shared benefits to be gained from the CBJ Scheme, and the impetus coming from the communities, any struggles for agency or jurisdiction 'ownership' of the CBJ Project were immediately nullified. The positive end goal of the CBJ Project, and that it was such a practical and sensible initiative, was enough to motivate strong champions of the Project and this kept each jurisdiction and agency pushing forward cooperatively.

2.6 In its early stages, the CBJ Scheme appeared on the agenda of the Standing Committee of Attorneys General (SCAG), the Corrective Services Ministerial Council (CSMC), the Australian Police Ministers Council (APMC) and national meetings of Solicitors General. The support that these senior bodies offered for the CBJ Scheme immediately raised the CBJ Project's profile and validity and prompted other States to monitor progress closely.

2.7 The CBJ Scheme is the first of its kind. When the decision was made to commence, there was no template, formula or existing model from which to draw. All involved knew that the problem needed an innovative, collaborative and creative solution and that they would have to be the inventors of that solution. The magnitude of the CBJ Project, which was potentially overwhelming, was mitigated by an early separation of the major tasks. Two key bodies of work were identified as needing to be progressed in parallel, but not necessarily by a single agency. These were:

- Legislation and high-level policy; and
- Operational issues across the five key agencies, community corrections, prisons, courts, police and juvenile justice.

2.8 A legislation team led by the Solicitors General of the three jurisdictions was established. The Solicitors General were given legal and policy support from relevant agencies in each jurisdiction and were responsible for the development of the legislation and the accompanying Inter-Governmental Memorandum of Agreement (MoA). The MoA is an over-arching agreement from the Attorneys General of each jurisdiction, which commits the three jurisdictions to work together to achieve the objectives of the CBJ Scheme, including the introduction, administration and implementation of necessary legislation. The support for the MoA demonstrated to all CBJ Project officers that there was unwavering commitment from the three governments to work together. Having this collaboration championed at the Ministerial level certainly provided important support for the agencies in their ongoing efforts to drive the CBJ Project. Although it was only officially signed late in the piece, the written Ministerial backing in the MoA has ensured that the impetus for the CBJ Project's continuation has been maintained and that a sense of common purpose has been sustained. This has been an essential element in keeping the momentum of such an involved, complex, long-term project.

2.9 One of the advantages of the legislation team was that it was multi-disciplinary and multi-faceted, comprising legal experts and policy officers from the three jurisdictions. Some of the legal officers had worked in more than one of the jurisdictions which proved useful in manoeuvring the CBJ Project through political or communication barriers. Western Australia undertook to draft the model legislation

for the CBJ Scheme. This process was also collaborative, with drafting instructions being endorsed by all three Solicitors General before drafting commenced.

2.10 As with most projects, particularly those that span several years and cross a wide range of agencies, the CBJ Project suffered from high personnel turnover in each jurisdiction. As mentioned above, it is estimated that more than 250 people have worked on the CBJ Project since its inception. While this turnover caused the usual disruptions, for the legislation team at least these were largely mitigated by the consistency of the three Solicitors General who have been involved from the Project's outset. This consistent leadership at the high level was invaluable in keeping the CBJ Project progressing on course throughout its lifetime.

2.11 The legislation was never intended to deal with the operational level detail of the CBJ Scheme in the cross-border regions. Instead, a series of Service Level Agreements (SLAs) to be signed at agency level, were to be developed. This called for a strong and committed alliance between agencies in NT, WA and SA so cross-jurisdiction groups were established. Each SLA group had a lead jurisdiction nominated for each operational area. These were:

- Police – WA
- Courts – WA
- Fines Enforcement - WA
- Community Corrections – NT
- Prisons - SA
- Juvenile Justice - SA

2.12 This structure was beneficial in that the operational areas were closely involved in assessing and determining those aspects of the CBJ Scheme that would directly affect them. It is a common error for a project to be dominated by high-level policy development that is only discussed with operational areas at the final stage. Almost inevitably this leads to practical issues that need to be resolved, strained relationships and delays. The establishment of the SLA teams avoided these issues: it gave ownership of operational issues to operational officers, and meant that the details of on-the-ground activities were worked through by the people with experience of those activities.

2.13 Having cross-jurisdiction membership on the SLA teams helped to ensure that CBJ Project developments complemented existing policies and evolving initiatives in each jurisdiction. As the CBJ Project was a relatively long-term project, various jurisdictions implemented new policies and programmes along the way, requiring the teams to continually monitor the CBJ Project's direction and ensure that it chimed with these new policy initiatives. The teams' representative composition ensured that members were always mindful of establishing clear *reasons* for doing things—simply ensuring uniformity across jurisdictions was not an accepted default strategy.

2.14 An example of this is the compromise reached in relation to fines enforcement. It was discovered early on in the Project that SA and WA have different existing policies/legislative approaches to imprisonment for fines: in WA a person can be imprisoned for non-payment of a fine without a matter having to go back to court, whereas in SA such imprisonment can only occur if the matter is referred back to the sentencing court and the offender is re-sentenced to a custodial sentence. It was

considered appropriate and necessary to find a solution for the CBJ scheme that would accommodate these different approaches—again, ensuring uniformity was not a priority over compromising where possible. After successful negotiation and collaboration, an effective and practical solution was reached that accommodates the different approaches for fines enforcement in these two jurisdictions.

2.15 At the cross-jurisdictional level, a Project Executive Group (PEG) was established in order to facilitate communication and progress on operational issues. The PEG comprised senior officers from WA, SA and the NT and was responsible for overseeing, supporting and monitoring the progress of the CBJ Project and, within that, the SLA teams. Members of the legislation team would often provide updates at the PEG meeting and, in this way, PEG proved to be a useful bridge between the legislation and operational teams.

2.16 At first, PEG was a critical part of the project but over time its efficacy began to wane due to the lack of a single project officer dedicated to overall project management. The absence of this position was keenly felt, as there was no one point of contact, and no one person coordinating the logistics, communication or progression of the PEG meetings or ensuing actions. Fortunately, certain individuals in each jurisdiction have been particularly strong champions of the CBJ Project and have kept it afloat during the periods when a project officer was not available.

2.17 One of the disadvantages of this structure was that, gradually, each SLA team tended to focus on its own specific area, interaction between the teams became infrequent, and overlapping issues were not dealt with as effectively as they could have been. PEG facilitated some cross-team communication but it was a cumbersome and irregular approach. A more effective strategy would have been to have the leaders of the SLA teams meet via teleconference every few months. However, again, the absence of a single project officer meant that this was difficult to coordinate.

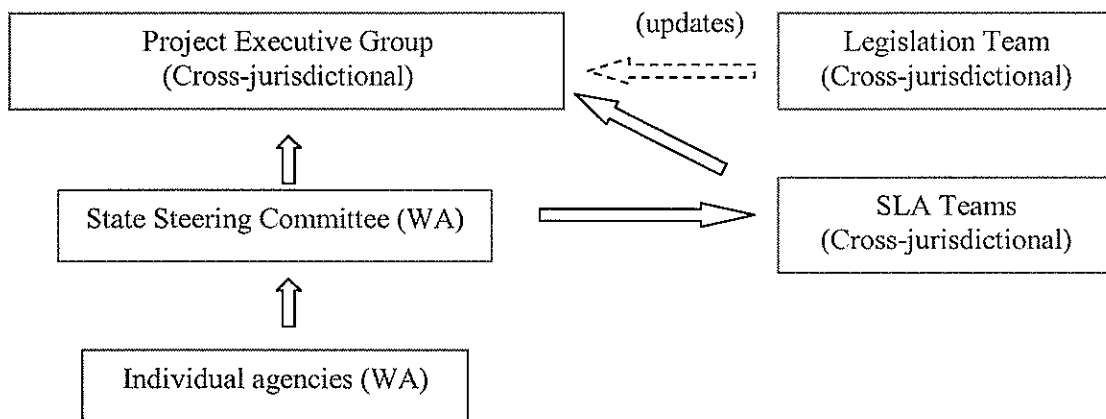
Collaboration between government agencies within Western Australia

2.18 Concurrent to the work being done at a cross-jurisdiction level, it was critical that agencies in Western Australia maintained open and ongoing communication about the Project's developments. To facilitate this, a WA State Steering Committee was established which comprised senior officers from each of the relevant agencies.

2.19 This Committee was chaired by a senior officer of the Department of the Attorney General and enabled the agencies to reach agreed WA positions that could then be discussed with other jurisdictions. This proved to be a valuable way to 'streamline' communications from the State. Importantly, the Shire of Ngaanyatjarra was also represented on the Committee which brought local government into the Project's governance.

2.20 Of course, each individual agency with a role in the CBJ Project had responsibility for assessing and representing its own needs. In most agencies, at least one staff member was dedicated to the CBJ Project and facilitated discussions within his/her own agency.

2.21 This governance structure aimed to promote communication, consultation and liaison, while ensuring that meetings were not swamped with ‘casts of thousands’. The diagram below shows the basic communication lines that were established in the governance structure (although in practice each team/committee was accessible by all others at any point in the Project).



Cooperation between the three jurisdictions and the Commonwealth Government

2.22 In addition to collaboration among agencies within the state, and cross-jurisdiction collaboration (via PEG and SLA teams), the jurisdictions had to form a united front for collaborating with the Commonwealth. This was because the effective operation of the CBJ Scheme relied on amendments to the Commonwealth’s *Service and Execution of Process Act 1992* (SEPA). As Commonwealth legislation, this element of the scheme was out of the control of the State and Territory governments. The Solicitors General and other members of the legislation team met with the Commonwealth AG’s Department in Canberra in 2003 and from this meeting the collaboration commenced. Later in the process, WA presented a paper to a meeting of the Solicitors General of all Australian jurisdictions (including the Commonwealth) on the extent of SEPA amendments that would be required. This was endorsed and there has since been on-going contact at officer level to action the amendments. The Commonwealth was sent a confidential draft copy of the Cross-border Justice Bill to assist it in developing its drafting instructions for the SEPA amendments, and a formal consultation copy of the Bill was sent from the WA Attorney General to the Commonwealth Attorney General who provided formal feedback.

2.23 The efficacy of this collaboration is best demonstrated by the proactive and useful suggestions that the Commonwealth made on how to make the CBJ Scheme work better from a legislative perspective. Having examined the legislative framework of the scheme, the Commonwealth identified the potential problem of magistrates having to choose which legislation to use—SEPA or the CBJ Act—in a cross-border justice matter. They suggested that a solution would be to give primacy to the CBJ Act in these cases, thereby disapplying their own SEPA. This was significant because the States/Territories could not give primacy to their own Acts; this had to be a move made by the Commonwealth. The fact that the Commonwealth identified this potential problem, proposed a solution and was willing to give primacy to State/Territory legislation clearly shows that the relationship was one of

cooperation and proactive assistance. The Commonwealth bought into the Project beyond the relatively passive role of making the basic amendments required to SEPA, and also considered the application of the total legislative package, its implications for those responsible for applying it, and suggested improvements.

3. Conclusion

3.1 The CBJ Project has been underway for four years and has been an impressive exercise in collaboration, involving participation from more than 250 people across the three jurisdictions.

3.2 Extensive collaboration has been required at three levels:

- an alliance between the Governments of WA, SA and the NT;
- collaboration between government agencies within each jurisdiction; and
- cooperation between these three jurisdictions and the Commonwealth Government.

3.3 The key elements to successful collaboration that has occurred throughout the lifetime of this project can be summarised as follows:

- ❖ The CBJ Project was established in response to a genuine community need and all involved were aware that a successful outcome would have a real and positive impact on the lives of the women and children in the cross-border communities.
- ❖ The CBJ Project maintained momentum because it was solving a common problem; all parties had a vested interest in seeing a successful outcome.
- ❖ The end goal of the Project was to reach formalised collaboration – the process, therefore, depended upon effective collaboration between the three jurisdictions and their agencies for its success.
- ❖ There was across-the-board support for the CBJ Scheme, and consistent support from Ministerial champions. The MoA demonstrated the political commitment to the Scheme from early in the piece.
- ❖ An early separation of the major tasks helped to distribute the work and make the Project manageable.
- ❖ Many of the work teams were multi-disciplinary and multi-faceted, which brought a diverse range of knowledge to the table and helped to manoeuvre the CBJ Project through political or communication barriers.
- ❖ Operational agencies were directly involved in the development of the Project's operational aspects. Therefore, the details of on-the-ground activities were worked through by the people with experience of those activities.
- ❖ A governance structure was established in order to facilitate communication across agencies/jurisdiction and progress operational issues. Although generally effective, this structure would have benefited from having one dedicated Project Manager.
- ❖ As with all successful projects, effective and regular communication across all agencies was key.

3.4 The Cross-border Justice Bill was introduced to the Western Australian Parliament in October 2007. It is anticipated that the NT and SA will introduce their Bills into their respective Parliaments in 2008.