

LEGAL AID  
WESTERN AUSTRALIA

---

# **Blurred Borders**

## **NT Royal Commission Submission**

May 2017

## Document Details

Client name	
Project name	
Contract reference	
Document title	Blurred Borders
Document subtitle	NT Royal Commission Submission
Document number	
Document version	
Version date	May 2017
Document file name	DMS1074218v2
Template name	
Print date	Tuesday, 16 May 2017

## Document Authorisation

	Name	Signature	Date
Written by	Privacy		
Reviewed by	Blurred Borders Steering Committee		
Authorised by			

## Client Authorisation

(If Required)	Name	Signature	Date
Authorised by			

## Document History

Version	Date	Author	Description
0.1 draft			Initial draft

# Contents

<b>1</b>	<b>Executive Summary</b> .....	<b>1</b>
1.1	Use of Aboriginal interpreters .....	1
1.2	Critically competing priorities .....	1
1.3	Arbitrary divide .....	2
1.4	Lack of regionally specific solutions.....	3
<b>2</b>	<b>About Blurred Borders</b> .....	<b>4</b>
2.1	Background .....	4
2.2	Cross-border region .....	4
2.3	Target audience .....	4
2.4	Project objectives .....	4
2.5	Baseline survey .....	4
2.6	Consultation list.....	5
2.7	Legal topics .....	6
<b>3</b>	<b>Use of Aboriginal interpreters</b> .....	<b>7</b>
3.1	Lack of access to trained Aboriginal interpreters .....	7
3.2	Low levels of experience and understanding in using Aboriginal interpreters...7	
3.3	Routine use of untrained Aboriginal interpreters .....	8
<b>4</b>	<b>Critically competing priorities</b> .....	<b>8</b>
4.1	Culture vs court.....	8
<b>5</b>	<b>Arbitrary divide</b> .....	<b>10</b>
5.1	Many culturally connected communities span the border.....	10
5.2	The border can be a barrier in child protection matters .....	11
5.3	Difficulties moving legal matters across the border .....	12
5.4	Issues around going to school across the border .....	14
5.5	Lack of communication regarding people moving across the border .....	15
5.6	Lack of knowledge in providing legal assistance on other side of border .....	15
<b>6</b>	<b>Lack of regionally specific solutions</b> .....	<b>16</b>
6.1	No youth detention facilities in the cross-border region.....	16
6.2	No alternatives to detention in the northwest of WA.....	16
6.3	Tapping into diversion programs operating across the border .....	16
6.4	Reliance on individuals to make things work .....	16
6.5	Making better use of technology .....	17
6.6	Training for legal assistance service providers, other agencies and groups ...	18
<b>7</b>	<b>Contact us</b> .....	<b>19</b>

## 1 Executive Summary

Blurred Borders is a Commonwealth funded project that ultimately aims to assist Aboriginal people living in the cross-border region of WA and the NT. It is a partnership between frontline community service workers that is developing collaborative networks and creating community legal education resources for use by lawyers, paralegals, community workers, and other stakeholders.

The cross-border region is defined to include:

- ❑ In WA, communities between Kununurra and the NT border heading towards Timber Creek, the region between Halls Creek and the NT border, Balgo, Billiluna, Mulan and surrounding areas.
- ❑ In the NT, the Victoria River District (Timber Creek, Yarralin, Bulla) across to the WA border, Kalkarindji, Lajamanu, and surrounding areas.

The Blurred Borders project team (Blurred Borders) has consulted extensively with a wide range of agencies and individuals who are working on a daily basis in the cross-border region. Using this and other information gathered in the project, Blurred Borders has identified issues in four key areas that may be of relevance to the NT Royal Commission.

### 1.1 Use of Aboriginal interpreters

- 1.1.1 The Blurred Borders baseline survey clearly identifies lack of Aboriginal interpreters as a barrier to the provision of legal services in the cross-border region.
- 1.1.2 Anecdotal feedback also identifies concerns about the lack of use of Aboriginal interpreters in the wider judicial system. The feedback suggests that Aboriginal interpreters are not being routinely used in the cross-border region by court staff, police and community corrections officers to explain conditions and orders.
- 1.1.3 In addition to causing potential miscarriages of justice, lack of access to Aboriginal interpreters can result in an accused person spending more time in detention while waiting for an interpreter.
- 1.1.4 Blurred Borders feedback also identifies concerns about the routine use of untrained interpreters who are typically friends or relatives present in a support role. This has the potential to create miscarriages of justice and conflicts of interest.

### 1.2 Critically competing priorities

- 1.2.1 Important cultural requirements can create critically competing priorities for children caught up in the criminal justice system. Anecdotal evidence gathered by Blurred Borders indicates that these competing priorities can and do result in

children breaching bail conditions, community based orders and supervised release orders. This may result in children spending additional time in detention.

1.2.2 Common competing priorities include attending funerals and going back to country to learn about traditional 'law/lore'.

1.2.3 Many young people in the region do not understand their rights and responsibilities well under the law and so are further at risk of making uninformed choices and risk breaching bail conditions, failing to gain adequate representation, attending court or meet other requirements.

### **1.3 Arbitrary divide**

1.3.1 Many culturally connected Aboriginal communities span the NT/WA border which local Aboriginal people cross regularly. 88% (36/41) of respondents completing a Blurred Borders legal health check at the Kalkarindji Freedom Festival in August 2016, indicated that they moved across the border.

1.3.2 The border can be a barrier in child protection matters. Anecdotal evidence gathered by Blurred Borders strongly points towards a reluctance from both WA and NT 'Departments' to place children across the border. This is even where the correct cultural connections are maintained and the most suitable candidate is on the other side of the border.

1.3.3 Children and adults would spend less time in detention/custody if it was easier to move legal matters across the border. In particular, people need to be able to finalise existing criminal matters and continue with existing orders and/or conditions from either jurisdiction.

1.3.4 A similar scheme to the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Cross-Border Justice Scheme operating around the SA, WA and NT border area could be introduced into the Blurred Borders cross-border region. This would allow matters from across the NT/WA border to be finalised in either jurisdiction.

1.3.5 Many Aboriginal children in the cross-border region in WA go to school in the NT. This can create problems including:

- Being kept out of school to attend court.
- Being sent to school instead of going to court resulting in bench warrants, charges for breach of bail and possible time in detention.
- Disruption from established and often beneficial school routines by bringing children back to WA mid-term to attend court.

1.3.6 Anecdotal feedback gathered by Blurred Borders indicates a lack of exchange within the criminal justice system of sometimes crucial information regarding people who have crossed the border (particularly between courts and lawyers).

1.3.7 The Blurred Borders baseline survey identifies a distinct lack of knowledge on the part of legal service providers in relation to their ability to advise or assist

clients with particular legal problems (bail/warrants, DVOs/VROs) arising on the other side of the border.

#### **1.4 Lack of regionally specific solutions**

- 1.4.1 The lack of youth detention facilities in regional WA means that children from the cross-border region who are placed in detention often spend additional time in detention whilst being transferred to and from Perth. They are also less likely to receive visits from family members whilst being detained in Perth.
- 1.4.2 Anecdotal feedback gathered by Blurred Borders indicates that there are no available alternatives to detention for young people in the cross-border region.
- 1.4.3 WA children in the cross-border region could participate in NT diversion programs and maintain appropriate cultural connections, if funding was available.
- 1.4.4 Blurred Borders has identified some great local examples where things are working well in the cross-border region. These solutions are typically dependant on individuals such as the Magistrate, the police officer in charge, community corrections, or the community liaison officer to make them work.
- 1.4.5 Working video link facilities in the cross-border region help to reduce the amount of time children spend in detention. Anecdotal feedback gathered by Blurred Borders indicates that many remote video link facilities are unreliable and often don't work at all. Some remote courts don't have video link facilities at all.
- 1.4.6 Anecdotal feedback gathered by Blurred Borders identifies a clear need for regionally specific training for legal assistance service providers in the cross-border region. It is widely agreed that training opportunities in Darwin are far more likely to be useful for people based in Kununurra than the training available in Perth.

## **2 About Blurred Borders**

### **2.1 Background**

Blurred Borders is a two-year Commonwealth Government funded project which commenced in July 2016. Legal Aid WA is the lead agency working in partnership with the Northern Territory Legal Aid Commission. Other local legal services involved in the project include:

- North Australian Aboriginal Justice Agency (NAAJA), Katherine
- North Australian Aboriginal Family Legal Service (NAAFLS), Katherine
- Katherine Women's Information & Legal Service (KWILS), Katherine
- Aboriginal Legal Service of Western Australia (ALSWA), Kununurra
- Aboriginal Family Law service (AFLS), Kununurra
- Kimberley Community Legal Service (KCLS), Kununurra

### **2.2 Cross-border region**

- In WA, communities between Kununurra and the NT border heading towards Timber Creek, the region between Halls Creek and the NT border, Balgo, Billiluna, Mulan and surrounding areas.
- In the NT, the Victoria River District (Timber Creek, Yarralin, Bulla) across to the WA border, Kalkarindji, Lajamanu, and surrounding areas.

### **2.3 Target audience**

Lawyers, paralegals, community workers, and other stakeholders providing front line community services to Aboriginal people living in the cross-border region.

### **2.4 Project objectives**

- To develop a collaborative network between key legal and community stakeholders in the cross-border region. The aim is to improve connections between service providers on both sides of the border to enable more holistic services to be provided to community members.
- To identify and focus on two legal issues that create confusion and misunderstanding for Aboriginal people who are crossing, or who have connections across, the NT and WA Border.
- Drawing from the collective knowledge of the collaborative network, produce a resource kit, using visual artwork as a central focus, to help explain these key legal concepts in a culturally accessible way. The resource kit will contain a range of resources suitable for use by community workers, Community Legal Education workers, front-line service delivery lawyers and other stakeholders providing community services to Aboriginal people in the cross-border region.

### **2.5 Baseline survey**

In October/November 2016, Blurred Borders, as part of the baseline evaluation, conducted an online survey. There were 72 respondents:

- 42% (30/72) were from legal services respondents (lawyers, paralegals, community legal education workers) and 58% (42/72) were from other services respondents.

- 74% (53/72) were from services in WA (Kununurra, Halls Creek, Wyndham, Warmun) and 26% (19/72) were from services in the NT (Katherine, Darwin, Timber Creek, Lajamanu, Yarralin)

This survey is referred to on a number of occasion throughout this submission.

## 2.6 Consultation list

The Blurred Borders project team (Blurred Borders) has consulted extensively with a wide range of agencies and individuals who are working in the cross-border region. The anecdotal feedback referred to in this submission largely comes from this consultation process. The list of agencies that took part in the Baseline Survey is set out below.

**Table 1: Survey respondents by state, sector and agency**

State and sector	Agency	Respondents	
		N	%
NT – Legal services	Katherine Women's Information and Legal Service	1	1%
	North Australian Aboriginal Justice Agency	6	8%
	North Australian Aboriginal Family Legal Service	2	3%
	NT Legal Aid Commission	4	6%
<b>NT - Legal Total</b>		<b>13</b>	<b>18%</b>
NT - Other service	Aboriginal Interpreter Service	1	1%
	IS Australia	1	1%
	Kurdiji Law and Justice group	1	1%
	NT Police	2	3%
	The Smith Family	1	1%
<b>NT - Other service Total</b>		<b>6</b>	<b>8%</b>
<b>TOTAL NT</b>		<b>19</b>	<b>26%</b>
WA Legal services	Aboriginal Family Law Services	3	4%
	Aboriginal Legal Service WA	1	1%
	Kimberley Community Legal Services	6	8%
	Legal Aid WA	7	10%
<b>WA Legal Total</b>		<b>17</b>	<b>24%</b>
WA Other Services	Adult Community Corrections	1	1%
	Anglicare WA	2	3%
	Dept of Corrective Services	1	1%
	Dept Child Protection & Family Support	14	19%
	East Kimberley Job Pathways	2	3%
	Kimberley Mental Health & Drug Service	2	3%
	MG Corporation	1	1%
	Mirima Dawang Woorlab-gerring Language & Culture Centre	2	3%
	Ord Valley Aboriginal Health Service	5	7%
	Serco	2	3%
	WA Police	3	4%
	Wunan	1	1%
	<b>WA Other Service Total</b>		<b>36</b>
<b>Total WA</b>		<b>53</b>	<b>74%</b>
<b>Total NT &amp; WA</b>		<b>72</b>	<b>100%</b>

## **2.7 Legal topics**

The Blurred Borders baseline survey confirms existing anecdotal evidence regarding the most prominent cross-border legal issues affecting clients in the region. Survey respondents identified the top three legal issues as:

- Domestic violence 84% (53/63)
- Child protection 84% (53/63)
- Bail/warrants 54% (34/63)

Legal services and other services respondents generally identified the same issues as having an impact on their clients, though legal services respondents particularly noted the impact of child protection issues.

The two legal topics chosen for inclusion in the Blurred Borders resource kit are bail/warrants and Domestic Violence Orders/Violence Restraining Orders (DVOs/VROs).

Although child protection ranked highly in the survey, the level of complexity is beyond the scope of the Blurred Borders project. The child protection topic should be addressed if further funding becomes available. Feedback and case studies in the area of child protection have been included in this submission as information in this area was collected as part of the process of choosing the Blurred Borders legal topics.

### 3 Use of Aboriginal interpreters

#### 3.1 Lack of access to trained Aboriginal interpreters

In the Blurred Borders baseline survey, 88% (13/17) of WA respondents and 38% (5/13) of NT respondents identified lack of interpreters as a barrier to the provision of legal services.

Blurred Borders has also identified concerns about the lack of use of Aboriginal interpreters in the wider judicial system. Anecdotal feedback indicates that Aboriginal interpreters are not routinely used in the cross-border region by:

- Police and court staff to explain bail and DVO/VRO conditions
- Police to explain prohibitive behaviour orders
- Community Corrections to explain orders and supervised release conditions

Lack of access to Aboriginal interpreters can result in an accused person spending more time in custody/detention while waiting for an interpreter.

If the matter proceeds without an interpreter, bail may be refused due to lack of information or incorrect information being provided.

Lack of an interpreter may also contribute to a lack of understanding of bail conditions or orders. This may result in a breach and a possible return to custody or detention.

The lack of available interpreters is an issue that has been identified by but is beyond the scope of Blurred Borders.

#### 3.2 Low levels of experience and understanding in using Aboriginal interpreters.

In the Blurred Borders baseline survey:

- 62% (8/13) of NT legal service survey respondents reported that they had some or a lot of experience in using Aboriginal interpreters, compared to only 38% (5/17) of WA legal service respondents.
- 92% (11/13) of NT legal service respondents indicated that they had some or a high level of understanding of how best to work with Aboriginal interpreters, compared to 41% (7/17) WA legal service respondents.

The low levels of experience and understanding in using Aboriginal interpreters is of concern and is something Blurred Borders is looking to address.

Other contributing factors include:

- High staff turnover. The baseline survey indicates that:
  - 48% (14/29) of legal service respondents and 44% (18/41) of other services respondents had been in the cross-border region for less than 2 years.
  - 69% (20/29) of legal service respondents and 59% (24/41) of other services respondents had been in the region for less than 5 years.
- Fly in fly out service delivery.
- A lack of trained Aboriginal workers in the legal assistance sector.
- A shortage of trained interpreters, particularly in WA.

### 3.3 Routine use of untrained Aboriginal interpreters

Blurred Borders has also identified concerns about the routine use of untrained interpreters. These are typically friends or relatives present in a support role. This has the potential to create:

- Miscarriages of justice - who knows whether the untrained interpreter understands English well enough to be able to accurately translate complex legal concepts.
- Conflicts of interest - as an interpreter the person needs to impartially translate exactly what has been said – as a support person they may have strong opinions about what should happen which they wish to convey.

The lack of access to trained interpreters can place legal service providers and courts in the difficult position of having to weigh up whether it is in the best interests of the defendant/accused to spend more time in detention/ custody waiting for an interpreter or whether to proceed with an untrained interpreter or without an interpreter at all.

## 4 Critically competing priorities

### 4.1 Culture vs court

Important cultural requirements can create critically competing priorities for children caught up in the criminal justice system. Anecdotal evidence gathered by Blurred Borders indicates that these competing priorities can and do result in children breaching:

- Bail conditions (by not coming to court).
- Community based orders (by not completing them within the requisite time).
- Supervised release orders (by not getting permission to cross the border).

These breaches can arise from young people and their families and elders not understanding their rights and responsibilities well and can result in children spending additional time in detention.

#### Example 1

A **CI**-year-old **CI** went with Elders to **CI** to take part in **CI**. This happened at very short notice and there was no time for the **CI** to do anything but go. **CI** ended up staying in **CI** on an ongoing basis. **CI** had outstanding court matters in **CI** and when **CI** failed to appear in court a bench warrant was issued.

#### Issues arising

1. Fear of coming back to **CI** as a bench warrant had been issued.
2. Likely to get a conviction for breaching bail on return to **CI**.
3. Harder to get bail in the future.
4. Increased likelihood of spending time in detention on return to **CI**, depending on the seriousness of the original charges.
5. May have to be transported in custody to detention **CI**, as there are no youth detention facilities in the cross-border region.

**CI**

Example 2

The Department placed two children, aged CII, with a kinship carer with strict conditions that the children were not to have contact with CII. Three months after the placement commenced, the kinship carer was culturally obliged to attend a funeral in a nearby community. CII took the children CII. CII was also at the funeral and had direct contact with the children over a number of days.

Example 3

A CII-year-old CII charged with CII was picked up on a bench warrant and charged with breach of bail after failing to attend court. CII explanation was that CII went to CII to attend a funeral with CII.

## 5 Arbitrary divide

### 5.1 Many culturally connected communities span the border

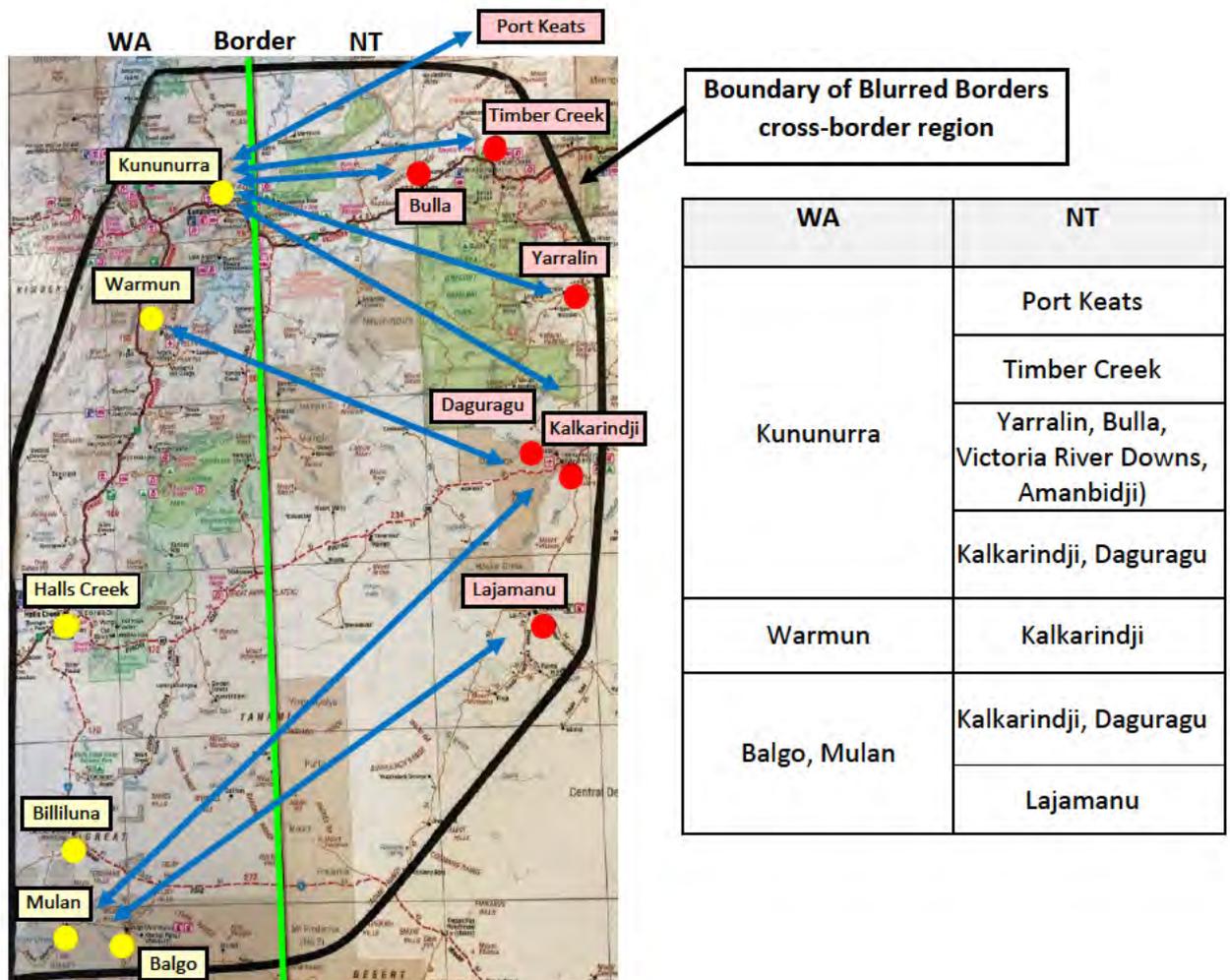
The NT/WA border was drawn without reference to traditional Aboriginal regions. As a result, it often creates an arbitrary divide through many culturally connected Aboriginal communities which span the border.

Many Aboriginal people in the Blurred Borders cross-border region regularly move across the border. In August 2016, Blurred Borders conducted 41 legal health checks on Aboriginal people attending the Kalkarindji Freedom Festival:

- ❑ 15% (6/41) lived in both WA and the NT.
- ❑ 73% (30/41) said they spent time in both WA and the NT.
- ❑ Another 15% (6/41) said they lived and spent time only in WA – but were actually in the NT when they completed the legal health check.

This makes a total of 88% (36/41) with actual cross-border movement.

The cross-border connections of local Aboriginal people identified in the Blurred Borders project are set out below.



Map showing identified cross border movement in the Blurred Borders project

## 5.2 The border can be a barrier in child protection matters

The most suitable candidate to care for Aboriginal children in protection and care matters may be on the other side of the border. Anecdotal evidence gathered by Blurred Borders to help identify cross-border legal issues, points strongly to a reluctance from both WA and NT 'Departments' to place children across the border even where the correct cultural connections are maintained. Lawyers working in this area would like to see much better working relationship between the relevant Departments.

### Example 1

*A family member in CII was unable to keep caring for a child CII had been looking after for CI years when CI moved across the border to CII. Even though CII was still strongly connected to the CII community and would have maintained the appropriate cultural connections.*

### Example 2

*A vulnerable Aboriginal CII who was a victim of domestic violence had CII children taken into care in CII. Due to circumstances beyond CII control, CII had to return home to CII without CII children. CII presented in CII with some minor traffic matters. The CII lawyer tried to assist with CII child protection matters. The lack of access to the information needed from CII made it practically impossible to proceed. The lawyer could have got a lot more information if the children were in CII.*

### Example 3

*Two children were in approved care in CII in CII. The carer got a job in CII. It took CII years before the carer was contacted by the Department to do a relative care assessment on the CII home.*

### Example 4

*A CII family were living in CII. Whilst they were in CII the children were taken into care. Both parents returned to their CII community and took considerable steps to rehabilitate themselves. They had strong family support in CII and had really sorted themselves out. Despite their significant efforts, they were unable to get their children returned across the border and they remained in foster care with non-relatives in CII.*

### Example 5

*A CII with serious capacity issues had CII children taken into care in CII. Child protection proceedings were on foot and CII did not have a CII based lawyer (or a CII lawyer). CII had family members in CII that CII wanted assessed as kinship carers but did not know how to go about arranging this. CII did not have sufficient capacity to instruct a lawyer and would need a CII based adult guardian appointed if CII wanted to predominantly reside in CII. CII would probably also need a CII based litigation guardian if CII wanted to be involved in child protection proceedings relating to CII children. CII was also a victim of domestic violence and a VRO was in place in CII but this was not recognised in CII.*

### 5.3 Difficulties moving legal matters across the border

Children and adults would spend less time in detention/custody if it was easier to finalise outstanding criminal matters and continue with existing orders and/or conditions in either jurisdiction.

#### 5.3.1 No general scheme

There is an established cross-vesting scheme that allows the transfer of civil proceedings between states and territories.

Unfortunately, there is no equivalent scheme in relation to criminal matters in the northern section of the NT/WA border. If a suspect or accused person has left the state or territory, the matter can only proceed if they return or are extradited. A warrant is issued in the original jurisdiction which may be enforced by police in other states or territories.

Surrendering to police in relation to existing charges in another jurisdiction typically means being taken back to the original jurisdiction (often in custody or detention) to have the matter dealt with.

##### Example

A **CI** living in a **CI** community had a current **CI** criminal matter. **CI** was a full time carer for **CI** who had a serious illness. **CI** was keen to resolve the **CI** court matter and approached **CI** to see if it was possible to have the court case transferred to the bush court in the **CI** community. **CI** got him on the telephone to his **CI** lawyers but don't know what advice he received (though they expect he could not transfer the matter). **CI** receives this kind of enquiry reasonably frequently.

#### 5.3.2 Lack of reciprocal orders

- ❑ **Reporting to police:** Anecdotal feedback gathered by Blurred Borders indicates that people with state or territory based reporting conditions regularly attempt to continue to report to police once they have crossed the border. More often than not, the police on the other side of the border have no idea why the person is coming in.

##### Example

A **CI** year old on bail for property offences in **CI** was required to report to **CI** police on Mondays. **CI** passed away and **CI** had to travel with family to **CI** to attend the funeral. **CI** gets stuck in **CI** due to car trouble and can't get back to **CI** to report, so the next Monday **CI** goes to **CI** police station instead. The **CI** police don't know what to do with **CI**. When **CI** returns to **CI** is arrested and charged with breach of bail by failing to report. **CI** is refused further bail, remanded in custody and taken to **CI** in the police paddy wagon to appear in court.

- ❑ **Reporting on supervised release orders:** Children on supervised release orders in WA must get permission from Community Corrections before they are allowed to cross the border. If they don't they will be in breach. Failing

to get permission commonly occurs when children are taken across the border at short notice by their families to:

- Attend a funeral.
  - To go back to country to learn about traditional 'law/lore'.
- DVOs/VROs:** These are not enforceable on the other side of the border unless they have been registered. Many people are not aware of this and are subsequently not afforded the protection the order is designed to offer, including any children named on the order.

Consent is not a defence to breaching a VRO in WA. This can create problems for people who move frequently across the border.

Example

A **CI** is granted a VRO preventing **CI** from having any contact with **CI** for **CI** years. **CI** moves to **CI** to live with **CI**. **CI** months later **CI** relocates to **CI** and reconciles with **CI**. They all live together without incident in **CI** for **CI** months. All three return to **CI** for a funeral **CI** months after the VRO order was made. **CI** is arrested and placed into detention for breaching the VRO.

### 5.3.3 The NPY Lands Cross Border Justice Scheme

The NPY Cross-Border Justice Scheme (CBJS) is a partnership between WA, SA and NT designed to lift state/territory borders in a particular region and improve cooperation between justice services across the different jurisdictions. It applies to a prescribed region known as the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) lands – a 467,000 square km area covering the north-west of SA, the Central Reserves of WA and the NT south of Alice Springs.

The NPY CBJS has had a lower uptake than originally anticipated. Between 2010 and mid 2013 only 43 individuals were identified with CBJS matters. Possible reasons for the low numbers include:

- Delays in getting the police service agreement signed.
- Resistance to taking on CBJS cases as it creates extra work.
- Poor Magistrate/police relations.
- Lack of senior level "champions".
- Unrealistic expectations.

Another possible explanation is the exodus from the region by many Indigenous people due to increased policing during the Commonwealth government's NT intervention.

General benefits of the NPY CBJS have been reported to include: an increased police presence; greater community awareness of domestic violence as a crime; and improved cooperation between agencies across the borders generally.

The official evaluation of the NPY CBJS in 2013, recommended that:

- Public awareness must be improved through tailored communication strategies to target groups.

- Stakeholder knowledge must be enhanced and experience communicated.
- Any current administrative burdens should be identified, lifted and lessened.
- A monitoring framework should be implemented.
- Victim safety must assume priority status.
- Aboriginal legal services must be encouraged to come on board.
- Parole boards and criminal appeals should be added to the scheme's remit.
- An efficient process must be identified and implemented for the payment of fines, whether through the CBJs or another mechanism.
- Resources should be maintained for the task.

#### 5.3.4 Application of the Cross Border Justice Scheme to other regions

The current cross-border scheme operating in the NPY lands was clearly designed for use in other regions. The explanatory memorandum for the *Cross-Border Justice Bill 2007* states that "the Bill will serve as a model for legislation in the other participating jurisdictions". At paragraph 29, the memorandum states:

*"The inaugural cross-border justice scheme is planned for the area where the borders of all three jurisdictions meet. However, separate bi-lateral schemes could be developed for other regions, eg that part of the border between the NT and the Kimberley region of WA, or the region centred on the Nullarbor Plain which straddles the borders of WA and SA."*

The potential benefits and application of a cross border justice scheme between the Western NT and the Kimberley region of WA is something Blurred Borders plans to consider, subject to funding, later in the project.

#### 5.4 Issues around going to school across the border

Many Aboriginal children from WA go to school in the NT. This can create a number of problems for children caught up in the criminal justice system. If a child has court commitments in WA their parents might:

- Keep them out of school for the whole term so they can attend court.
- Send them to school instead of going to court resulting in a bench warrant and potentially the child spending time in detention and possibly being transported to Perth as there are no youth detention facilities in the cross-border region.
- Bring children back across the border from school to attend court. This can disrupt established school routines and can also result in more trouble whilst they are not in school.

##### Example 1

A [redacted]-year-old [redacted] from [redacted] was charged with stealing. It was a relatively minor matter for which [redacted] was unlikely to get detention. [redacted] had gone across the border to go to school in [redacted] before the matter had been dealt with and ended up staying there. The [redacted] lawyer, based in [redacted], tried to sort out [redacted] court matters. The court agreed to deal with the matters in [redacted] absence but the lawyer still needed to take instructions. The lawyer used a youth worker to try and find [redacted] but this was difficult as the lawyer was unsure whether [redacted] carers in [redacted] knew [redacted] had court matters

in CII. The matter continued in court in CII for many months before it was finally sorted out. It could have easily resulted in a bench warrant if the charges were more serious.

## 5.5 Lack of communication regarding people moving across the border

Anecdotal feedback gathered by Blurred Borders indicates that in the criminal justice system, there is a lack of exchange between lawyers and courts of sometimes crucial information about defendants/accused who have crossed the border.

### Example 1

A person who was declared unfit to plead to criminal charges in the NT had crossed the border and was facing criminal charges in WA. Neither lawyers nor court staff were aware that CII been deemed unfit in the NT.

### Example 2

A young offender with an extensive criminal history appeared in court in CII where CII was given a good behaviour bond with a condition that CII go to CII and not return to CII. No provision was made for CII supervision or support in CII. CII re-offended in CII and CII were unsure what to do about CII apparent breach of the good behaviour bond from CII. The CII court refused to release the extensive pre-sentence material which included useful assessments that could be put before the CII court who knew nothing about CII complex history.

Blurred Borders is looking to pilot a cross-border interagency referral process in 2017. This will only assist where the lawyer knows the client is moving across the border.

## 5.6 Lack of knowledge in providing legal assistance on other side of border

In the Blurred Borders baseline survey, when legal service providers were asked to rate their knowledge to advise or assist clients on the other side of the border:

- 97% (28/29) had 'a little' or 'no' knowledge of bail or warrant problems.
- 97% (29/30) had 'a little' or 'no' knowledge of DVO/VRO problems.

Not all survey respondents practice/work in the area they were being surveyed on. This may account for some of the lack of knowledge.

Again, high turn of staff in the region is a contributing factor.

Improving the levels of knowledge of legal service providers in the cross-border region in the area of bail/warrants and DVOs/VROs is a key part of the Blurred Borders project. Additional training is required to more fully ensure practitioners can educate and inform young people and their communities of their rights and do so in culturally appropriate ways on all matters pertaining to their lives.

## **6 Lack of regionally specific solutions**

### **6.1 No youth detention facilities in the cross-border region**

The lack of youth detention facilities in regional WA means that Aboriginal children from the cross-border region who are placed in detention:

- Can spend additional time in detention being transferred to and from Perth.
- Are less likely to receive visits from family members while being detained in Perth.
- Can become very culturally disconnected being so far away from their country.
- May end up be exposed to adult offenders and court matters while being detained in police lock ups and court houses.

### **6.2 No alternatives to detention in the northwest of WA**

Anecdotal feedback gathered by the Blurred Borders project indicates that there are currently no available alternatives to detention for young people in the cross-border region.

In the past, successful programs have been run. For example, the Burkes Park working station near Halls Creek used to place young people but has lost the funding to do this and now caters for work for the dole placements.

### **6.3 Tapping into diversion programs operating across the border**

Anecdotal feedback gathered by Blurred Borders indicates that:

- There are some successful diversion programs for children running in the NT.
- Children from SA have previously taken part in NT diversion programs around the Alice Springs area. (Probably funded by SA).
- WA children in the cross-border region could participate in NT diversion programs and maintain the appropriate cultural connections, if funding was available. In many cases this may be more suitable and cost effective than engaging in court diversion programs elsewhere in WA.

### **6.4 Reliance on individuals to make things work**

The Blurred Borders project has identified some great local examples of where things are working well. These solutions are often dependant on individuals such as the Magistrate, the police officer in charge or the community liaison officer to make them work.

#### Example 1

*In one remote community, if a child with a bench warrant agreed to stay in the community, keep out of trouble and hand themselves in to court at the next sitting date, they would not be put into detention until their court date and would not be charged with breach of bail.*

#### Example 2

*The Magistrate, police prosecutor and lawyers travelled to a remote WA community to specifically deal with outstanding warrants. Local people were encouraged to get all of their outstanding matters listed and as many as possible outstanding warrants were dealt with and finalised on that day.*

Example 3

*In some communities, children are able to intensively complete community based orders and work orders during school holidays to avoid breaching them.*

## 6.5 Making better use of technology

### 6.5.1 Video link

Working video link facilities in remote locations:

- Help to reduce the amount of time children spend in detention.
- Can be used to avoid breaches of bail occurring and arrest warrants being issued.
- Reduce the need to transport children, who are already under arrest and in custody, long distances to appear in court.

Anecdotal feedback gathered by Blurred Borders indicates that many video link facilities in remote courts are unreliable and often don't work. Some remote community courts do not have video link facilities at all.

Example

A CII [REDACTED] was picked up by police on a bench warrant in CII [REDACTED] and placed under arrest for breach of bail for failing to appear in court at CII [REDACTED]. CII [REDACTED] was transported in police custody by road to CII [REDACTED] (640km, 8 hours) to go to court. As CII [REDACTED] was facing serious charges and there was already a breach of bail, the court in CII [REDACTED] refused bail. CII [REDACTED] was then transported in custody to CII [REDACTED] as there are no youth detention facilities in CII [REDACTED].

*If the video link facilities were working in CII [REDACTED], CII [REDACTED] may have been able to meet CII [REDACTED] court commitment by video link from CII [REDACTED].*

### 6.5.2 Finding more flexible solutions

In WA, Magistrates and Judges exercise a great deal of discretion when deciding whether to sentence someone via video link or telephone. Many will not place a child on an order unless they are sentenced in person.

Greater use of skype and similar technologies would also assist, particularly where there is no video link but there is a telephone line.

## **6.6 Training for legal assistance service providers, other agencies and groups**

- 6.6.1 Anecdotal feedback gathered by the Blurred Borders project has identified a clear need for regionally specific training for legal assistance service providers. It was widely agreed that training opportunities in Darwin were far more likely to be useful for people based in Kununurra than the training available in Perth. Due to its proximity, Darwin based training was also far more accessible.
- 6.6.2 Identified training needs include understanding the cultural context, interpreter user training, legal information provision, legal health checks and procedures for effective referral to and between legal services.
- 6.6.3 The legal agencies currently operating in the region have limited resources for travel to and provision of training to on-the-ground service providers and community leadership groups.
- 6.6.4 A number of agencies working in the region identified child protection law as one of the areas least understood and requiring dedicated resources to educate communities about laws and policies in both jurisdictions. Due to limited resources for the project Blurred Borders was unable to take this on, however it was identified as the next priority if additional resources are secured.
- 6.6.5 There are a range of existing materials and strategies for community legal education that would enhance the understanding of rights and responsibilities in relation to matters that result in youth detention and child protection in the cross-border region. Full resourcing of legal agencies to adapt and deliver comprehensive programs would contribute to reducing the interactions outlined above.

## 7 Contact us

For more information about this submission, please contact the Blurred Borders Project Manager:

Privacy [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]