

ENVISIONING A COMMUNITY JUSTICE CENTRE FOR WESTERN AUSTRALIA?: FEASIBILITY, CHALLENGES, AND OPPORTUNITIES

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The challenges faced by the justice system are well known. The Western Australian court system has become a revolving door for offenders who become enmeshed in the law due to life circumstances including mental illness, poverty, homelessness, family breakdown and violence, inter-generational trauma, drug and alcohol addiction and unemployment. Community Justice Centres (CJCs) are an innovative way of making justice part of the fabric of a local area and harnessing each community's potential for experimentation and rejuvenation. Through the co-location of a court house with a tightly integrated support service team, this justice model turns the court intervention into an opportunity to problem-solve to address the downward spiral of offending and to partner with local residents, organisations, schools, local government and businesses to create a place of community connection and support. For such a model to 'work' it requires community ownership, buy-in and extensive consultation to create a bespoke Centre that resonates with the needs of the community it serves. This article explores the Community Justice Centre model and its potential benefits for Western Australia.

I INTRODUCTION

The challenges faced by the justice system are well known. The Western Australian court system has become a revolving door for offenders who become enmeshed in the law due to life circumstances including mental illness, poverty, homelessness, family breakdown and violence, inter-generational trauma, drug and alcohol addiction and unemployment. Community Justice Centres (CJCs) are an innovative way of making justice part of the fabric of a local area and harnessing each community's potential for experimentation and rejuvenation. Through the co-location of a court house with a tightly integrated support service team, this justice model turns the court intervention into an opportunity to problem-solve to address the downward spiral of offending and to partner with local residents, organisations, schools, local government and businesses to create

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Australia's first CJC, the Neighbourhood Justice Centre, in Collingwood, Victoria has recently celebrated its 10 year anniversary. The Collingwood experience very much shows that for such a model to 'work' it requires community ownership, buy-in and extensive consultation to create a bespoke Centre that resonates with the needs of the community it serves. This article explores the CJC model, what Western Australia can learn from the model and what potential benefits might spring from implementing CJC learnings in this State.

II THE COMMUNITY JUSTICE CENTRE EXPERIENCE: DOING JUSTICE DIFFERENTLY

'People cared about who I was as a person, not as a docket number'¹

The CJC model developed out of the desperateness of the criminality in New York City. The early models, the first CJC opening in Midtown in 1993 and the second in 2000 in Red Hook, became the justice laboratory for emerging CJs worldwide.² The Midtown Community Court was built in an old Magistrates Court building near Times Square in New York. Its mission was to target street offences with a new justice strategy combining community engagement and restorative sentencing with innovative court architecture, support staff and information sharing between personnel.³ The Red Hook Community Justice Center was housed in a refurbished school after extensive and widespread community consultation and engagement and designed to address high crime rates but also community renewal through 'deterrence, intervention, and enhanced legitimacy'.⁴ The Red Hook judicial officer, Judge Calabrese, described his experience of the Center as follows:

As a judge in a traditional court, I felt like an artist with two colors: in jail or out of jail... At the Justice Center, I have the tools to give people the opportunity to change their lives. Not everyone is successful, but the Justice Center provides defendants with the structure and support

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- 1 Oren Yaniv, 'Red Hook Community Court is a Success for Defendants and Taxpayers, Study Shows' <<http://www.nydailynews.com/new-york/brooklyn/red-hook-community-court-success-study-article-1.1513496>>.
 - 2 Robert V. Wolf, 'Community Justice Around the Globe: An International Overview' (2006) July/August *Crime & Justice International* 4. Rachel Swaner, 'Community Courts' in Gerben Bruinsma and David Weisburd (eds), *Encyclopedia of Criminology and Criminal Justice* (2014) 408.
 - 3 Greg Berman, *Principles of Community Justice - A Guide for Community Court Planners* (Centre for Court Innovation, 2010) 3.
 - 4 Cynthia Lee et al, *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Centre: Final Report* (2013) 4, <<http://www.courtinnovation.org/sites/default/files/documents/RH%20Evaluation%20Final%20Report.pdf>>.

they need to avoid being arrested again and again. After all, don't people deserve a real chance to change their lives before they are locked up?... The Justice Center has changed the life trajectories of hundreds of people for the better. How many courts can say that?⁵

The CJC model is one of restoring and healing individuals and communities while still addressing legal issues. Sentencing offenders divorced from a recognition of their life challenges resigns the legal system to a recidivist trap. The model is based on the premise of supporting people with the problems that are bringing them to the attention of the law such that the justice engagement becomes the turning point for improving individual and community wellbeing.⁶ By working with offenders to address the causes of offending such as drug addiction, homelessness, poverty, chronic pain and unemployment, there is the potential to allow the engagement with the CJC to become the circuit breaker.

The idea of a CJC is to house a court within a much larger interdisciplinary centre. The Centre co-locates a broad range of support services which can work with people coming before the court (but also service the wider community). The court gives 'gravitas' to referrals to these services but still empowers individuals to take control over their lives with the supports the Centre provides.

The model takes from a range of practices including restorative justice, therapeutic jurisprudence and procedural justice.⁷ The extent to which these directly shape and influence a Centre's operations varies between models.

Restorative justice is a non-adversarial approach that values 'restoring victims... as well as restoring offenders and restoring community'.⁸ It prioritises healing and un-doing the damage reaped by crime and criminal activities at a 'micro and macro level'⁹ and recognises that only then can a harmed group or individual begin to process the hurt and turn to the future.

The budding field of therapeutic jurisprudence contends that law, because of its real-world impact, should strive to consider individual well-being to the extent that

5 Greg Berman and John Feinblatt, *Good Courts: The Case for Problem-Solving Justice* (2005, The New Press) 81.

6 David R. Karp and Todd R. Clear, 'Community Justice: A Conceptual Framework' in Charles Friel (ed) *Boundary Changes in Criminal Justice Organizations: Criminal Justice* (vol 2, 2000) 325 <https://www.ncjrs.gov/criminal_justice2000/vol_2/02i2.pdf>.

7 For a more detailed consideration of these principles see Sarah Murray, 'Keeping it in the Neighbourhood? Neighbourhood Courts in the Australian Context' (2009) 35 *Monash University Law Review* 74; Sarah Murray, Tamara Tulich and Harry Blagg, 'The Innovative Magistrate and Legitimacy: Lessons for a Mobile "Solution-Focused" Model' (2017) 40(1) *University of New South Wales Law Journal* 897.

8 John Braithwaite, 'Restorative Justice and a Better Future' in Eugene McLaughlin and Ross Fergusson et al (eds), *Restorative Justice – Critical Issues* (2003) 56-7.

9 Sarah Murray, *The Remaking of the Courts – Less-Adversarial Practice and the Constitutional Role of the Judiciary in Australia* (2014) 13.

this does not undermine legal imperatives.¹⁰ It marries with a range of principles, including ‘solution-focused judging’¹¹ discussed below and:

It recognizes that, whether we know it or not, whether we like it or not, the law is a social force with consequences in the psychological domain...

Therapeutic jurisprudence looks not merely at the law on the books but rather at the law in action - how the law manifests itself... The underlying concern is how legal systems actually function and affect people.¹²

Procedural justice plays a large role in a CJC’s interactions and sees judicial officers prioritise ‘trust, connection and respect’ thereby enhancing the legitimacy of the court and the Centre more broadly.¹³ One of the key contributions of procedural justice research has been recognising that the justice outcome can sometimes be less important than the proper carriage of an empathetic and attentive process.¹⁴

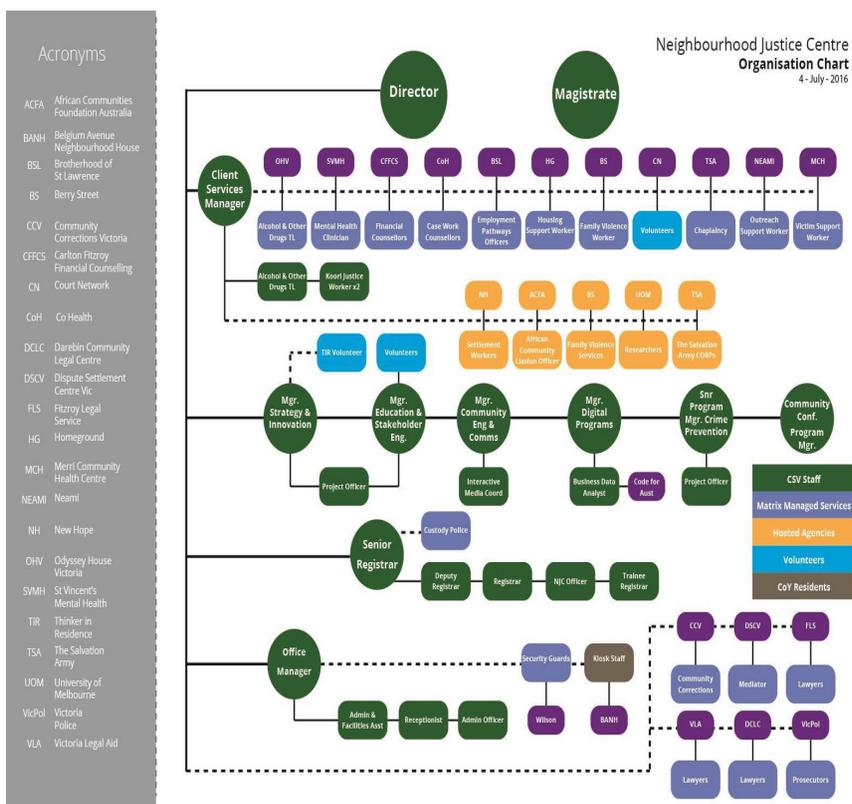
III ‘PLACES NOT CASES’: THE NEIGHBOURHOOD JUSTICE CENTRE

The Neighbourhood Justice Centre (*NJC*), the first and only CJC in Australia, opened as a pilot in Collingwood, Victoria in 2007. Working with a Community Liaison Committee, the Victorian Labor Government wanted the Centre to tackle ‘the underlying causes of offending’ and involved the community in the recruitment of the Centre’s Magistrate, David Fanning.¹⁵

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- 10 See, eg, David Wexler, *Therapeutic Jurisprudence-The Law as a Therapeutic Agent* (1990); David Wexler and Bruce Winick, *Law in a Therapeutic Key- Developments in Therapeutic Jurisprudence* (1996); Winick, Bruce and David Wexler, *Judging in a Therapeutic Key – Therapeutic Jurisprudence and the Courts* (2003); Michael King, ‘Therapeutic Jurisprudence in Australia: New Directions in Courts, Legal Practice, Research and Legal Education’ (2006) 15 *Journal of Judicial Administration* 129; King, Michael, ‘Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice’ (2008) 32(3) *Melbourne University Law Review* 1096.
- 11 Michael King, *The Solution-Focused Judging Bench Book* (2009) 24 ff, <<https://aija.org.au/wp-content/uploads/2017/07/Solution-Focused-Judging-Bench-Book.pdf>>.
- 12 David Wexler, ‘Two Decades of Therapeutic Jurisprudence’ (2008) 24 *Touro Law Review* 17, 20.
- 13 Murray, Tulich & Blagg, above n 7, 899-900.
- 14 John Thibaut and Laurens Walker, *Procedural Justice: A Psychological Analysis* (1975); Tom Tyler, ‘Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform’ (1997) 45 *American Journal of Comparative Law* 871; Tom Tyler, (ed), *Procedural Justice* (2005).
- 15 Victorian Government, *A Fairer Victoria: Progress and Next Steps* (June 2006) 54, <http://www.communitylaw.org.au/clc_loddoncampaspe/cb_pages/images/A_Fairer_Victoria_2006.pdf>.

The Centre, like other examples worldwide,¹⁶ has taken on its own unique shape in combining social welfare services and crime prevention activities with a single-member Magistrate Court. It includes a broad range of services including corrective services, housing, mental health, drug and alcohol counselling, financial counselling, family violence and migrant supports. As the Centre has developed, more agencies have chosen to co-locate at the Centre's premises, offering more services to address more causes of crime and resulting in better outcomes for both individuals and the community.

2017 DIAGRAM FROM NEIGHBOURHOOD JUSTICE CENTRE¹⁷



The Court has legislative support in the *Magistrates' Court Act 1989* (Vic) as the 'Neighbourhood Justice Division'¹⁸ and has a broad multifaceted jurisdiction to

16 Cynthia Lee et al, *A Community Court Grows in Brooklyn: A Comprehensive Evaluation of the Red Hook Community Justice Centre: Final Report* (2013) 2, <<http://www.courtinnovation.org/sites/default/files/documents/RH%20Evaluation%20Final%20Report.pdf>>.

17 Correspondence with Ann Strunks, Community Engagement and Communications Coordinator Innovations Exchange, Neighbourhood Justice Centre, 23 August 2017.

18 *Magistrates' Court Act 1989* (Vic), s 4M.

hear matters where the accused resides in the City of Yarra as well as provision to hear matters in which an Indigenous person has a close connection with the area or matters relating to some homeless offenders.¹⁹

The NJC describes one of its key guiding aspects as ‘places, not just cases’.²⁰ It seeks to engage and work with the local community to help address the causes of crime and improve community wellbeing. Residents can access the Centre’s support services without coming before the Court, while the co-located services allow offenders the chance to turn around the life circumstances that keep them in a spiral of offending.

It also has a staff member, contemplated by the Act, known as the ‘Neighbourhood Justice Officer’, which is a role integrated within the Centre,²¹ assisting people pre- or post- court hearings, supporting the client services team or facilitating ‘problem-solving’ meetings which are informed by restorative practices. The purpose of these meetings is to bring together the parties to a dispute or legal matter, to find useful, practical outcomes aimed at helping the person address the health and social issues behind conflict or offending behaviour. Where appropriate, the outcomes of these meetings are reported back to the Magistrate for the purposes of sentencing and monitoring behaviour. From the perspective of a person coming before the Court and their family, this process:

...seeks to enable accused persons to engage as equal participants in developing strategies to address the causes of their offending rather than casting them in the role of subjects of others’ help and judgement. Critically, this occurs in the context of a discussion that is protective of their rights and conducted in plain language. It can, and has, acted as a “circuit breaker” to assist people shift out of patterns of behaviour and towards making better choices. The Problem Solving Process promotes a person’s engagement with services, and assists to restore relationships between them, their workers, and family members when those relationships have broken down. It models problem solving and decision making as practical tools that are supported by good communication, shared responsibility, unity and consistency among parties to the process.²²

The NJC Program Innovation team find proactive ways to engage with the diverse City of Yarra community to improve relationships and address trouble spots. For instance, it collaborated with the community in setting up a Smith Street Working

19 *Magistrates’ Court Act 1989* (Vic), s 40.

20 Neighbourhood Justice Centre, *Reflections on Practice- The First 6 Years: The Neighbourhood Justice Centre experience of ‘doing justice locally’* (May 2012) 3, <<http://assets.justice.vic.gov.au/njc/resources/003dc268-066d-4fd7-abf1-81359b25def6/reflections+on+practice.pdf>>.

21 *Magistrates’ Court Act 1989* (Vic) ss 3(1), 4Q(2)(a).

22 Jay Jordens and Elizabeth Richardson, ‘Collaborative Problem Solving in a Community Court Setting’ (2014) 23 *Journal of Judicial Administration* 253, 268.

Group, which worked with Aboriginal elders, local businesses and Victorian police and developed into the highly successful Smith Street Dreaming Festival.²³ Similarly, it has held ‘Collingwood Conversations’ to engage and partner with residents of the local housing estates to workshop ways to better understand and plan activities for the families and communities living nearby.²⁴

The physical location and architecture of the building that houses the NJC is both well planned and executed. The Centre is found in a part of Collingwood that is dominated by a skyline of several high rise public housing estates, which are home to many people accessing the Centre. It represented an ideal location due to the combination of the high rates of crime (the crime rate in the City of Yarra in 2007-2008 was 18,000/100,000 people as compared with the state-wide rate of 7,000/100,000²⁵), service availability, public transport accessibility and a grassroots campaign that developed a community willingness to experiment with the NJC model. Court and building design plays a pivotal role in the set-up of such a model.²⁶ Placed in a refurbished and re-designed TAFE building, the physical space in the Centre is welcoming and non-threatening, lacks security screening on entry, and is a contrast to a traditional mainstream court building in re-thinking how people engage and what needs they bring to justice environments.²⁷ The court is on the second floor of the building and includes an outside balcony area where people can smoke. It includes a child play area, community-run cafe and safe spaces for people experiencing family violence. This balancing of the need for security with respect and dignity for the users of the Centre is unique for a justice space.

The NJC has been the subject of extensive and continual evaluation since it opened its doors in 2007. Most recently it was found that:²⁸

- Savings from avoided prison days amounted to \$4.56 million/year.
- Recidivism rates within a 2 year period were 17% lower at the NJC than mainstream courts in Victoria.

23 Delia O’Donohue (in consultation with the NJC and Smith Street Working Group), *Smith Street Dreaming* (February 2014) <http://assets.justice.vic.gov.au/njc/resources/a65c1f63-7568-4d20-92de-6f145bd1a0d8/smith_str_working_group_master.pdf>.

24 Neighbourhood Justice Centre, *Collingwood Conversations: Summary Report* (2014) <<http://assets.justice.vic.gov.au/njc/resources/1be8d67b-70a8-404b-80c2-8aa336598540/collingwood+conversations.pdf>>.

25 Stuart Ross, *Evaluating Neighbourhood Justice: Measuring and Attributing Outcomes for a Community Justice Program* (2015) November No. 499 *Trends & Issues in Crime and Criminal Justice*: <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi499.pdf>, 3

26 Lee, above n 4, 184.

27 Neighbourhood Justice Centre, *Reflections on Practice*, above n 20, 33. See also Murray, ‘Keeping it in the Neighbourhood?’ above n 7, 78.

28 Victorian Auditor-General, *Managing Community Correction Orders* (2017) 33. For other evaluations see also Stuart Ross, Mark Halsey, David Bamford, Nadine Cameron and Anthony King, *Evaluation of the Neighbourhood Justice Centre, City of Yarra- Final Report* (December 2009); Ross, *Evaluating Neighbourhood Justice*, above n 25, 24.

- NJC justice and support costs were \$167 less (per offender) than in other courts.
- Community Based Orders from the NJC are 1.47 times as likely to be completed.
- 77% of community work orders are successfully completed compared with 68% in like courts in Victoria.

Further Ross et al found in early evaluation that the Centre was perceived positively by Court users:

There is strong evidence that there are higher levels of confidence by justice system participants at the NJC and that this in turn generates higher levels of meaningful involvement in justice processes. NJC court users report very high levels of satisfaction across a range of measures of court performance and contrast their experiences at the NJC favourably with their experiences at other court venues. Confidence is notably higher in first time users of the court, who might be expected to find the process more confusing and intimidating. Observations show that defendants, applicants, respondents and their supporters are more directly involved in court proceedings at the NJC than at other court venues.²⁹

The benefits of the NJC to the community are clear after 10 years of operation in the City of Yarra. As Magistrate Fanning has explained, ‘We’re not successful in every case. I’m not Pollyanna or starry eyed, but it is very evident that a lot of people have had their lives changed by their association with the NJC’.³⁰

IV A MULTIDISCIPLINARY APPROACH TO JUSTICE

While the concept of involving a range of skilled professionals to solve a problem or issue is used routinely in the health and medical fields, it has not been the conventional approach in law.³¹ While judicial officers and lawyers may have identified social welfare issues in the people coming before the court as causes of criminal behaviour and recommended referrals to support services, their involvement with these services generally ended there. Drug courts and therapeutic jurisprudential models have radically altered this trend by embedding the judge or lawyer within multidisciplinary teams.³²

The CJC model brings the social welfare issues of people entrapped in the legal system to the forefront. While lawyers retain their obligations to both the court and to the client, they also have a role in working alongside skilled professionals in the assessment, referral and treatment of their clients’ drug and alcohol, mental

29 Ross et al, *Evaluation of the Neighbourhood Justice Centre*, above n 28, 8.

30 Neighbourhood Justice Centre, *Reflections on Practice*, above n 20, 34.

31 See, eg, Swaner, above n 2, 414.

32 Michael King et al, *Non-Adversarial Justice* (The Federation Press, 2nd ed, 2014) 14.

health, financial, housing, employment/training, and other welfare issues.

Similarly, there is a difference in the role of the Magistrate in a CJC as compared with a mainstream court. Guided by principles of ‘solution-focused judging’, the Magistrate is required to act not only as a judicial officer of the court, but as a motivational interviewer and a monitor of compliance and engagement with support services.³³ The therapeutic means by which the Magistrate interacts with the person coming before the court, while also applying the law, is fundamental to the success of the CJC model. Resultingly, a Magistrate chosen to preside over a CJC court, must understand the integral connection between social issues and engagement with the court system; undertake training in therapeutic jurisprudence, judicial monitoring and motivational interviewing; and be willing to apply these practices routinely in their courtroom with the goal of addressing social disadvantage and the revolving door of our court system. Cognisant of that, the *Magistrates’ Court Act 1989* (Vic) requires that the recruitment of a Magistrate to the Neighbourhood Justice Division be guided by the ‘magistrate’s knowledge of, or experience in the application of, the principles of therapeutic jurisprudence and restorative justice’.³⁴ Further, in the sentencing process, the Magistrate can be informed about an individual’s needs from a broad range of services including community or health service providers and the ‘Neighbourhood Justice Officer’.³⁵

At the NJC in Collingwood, sentencing of offenders is often deferred to enable linkage with the client services team members such as mental health clinicians, drug and alcohol clinicians, housing workers, financial counsellors and others. This adjournment allows for assessment but also time for a person to address ongoing problems in their life before being sentenced, such as through a community based order. As Magistrate Fanning explains:

A middle aged Vietnamese woman charged with and pleaded guilty to drug trafficking. She has a prior offence for drug trafficking for which she received an eighteen-month sentence in the county court. She was paroled and on release committed this new drug trafficking offence while on parole. So she was in deep trouble. You might expect that in another court that she’d probably be sentenced to a further term of imprisonment for her drug trafficking. However, it seems to me that if that was to take place, she’d serve her sentence, come out and commit another offence. That’s because, if she doesn’t have an intellectual disability, she certainly has diminished function. So what we’re trying to do is actually break that cycle. We go through a process of endeavoring to look at ways we can help – both with her intellectual disability and her disconnect from family.³⁶

33 King, *The Solution-Focused Judging Bench Book*, above n 11, 16, 175 ff.

34 *Magistrates’ Court Act 1989* (Vic), s 4M(5)(a).

35 *Magistrates’ Court Act 1989* (Vic), s 4Q(2).

36 Neighbourhood Justice Centre, *Reflections on Practice*, above n 20, 43.

To facilitate this, social welfare assessment and referral services are co-located within the CJC. This co-location allows for people at risk to be immediately assessed and linked into the support they need with a “wrap-around” service delivery model.³⁷ This aspect of the model arguably closes the gap that is created when a person coming before the court is referred to a community support service to ensure that people are not being set up for failure. Post-sentence monitoring can also be used to keep offenders engaged and connected as they complete their sentence.

The CJC model therefore takes a prophylactic approach to the causes of crime. In creating local connections through support organisations, the CJC can improve relationships and interactions as well as tackle community alienation and isolation which can exacerbate the risk factors for crime, mental illness and family dysfunction.

V THE PATH FOR WESTERN AUSTRALIA?

The Law Reform Commission of Western Australia noted in its 2008 Consultation Report that:

The potential for community courts to reduce crime and improve outcomes for offenders, victims and the community is significant. Arguably, the community court model encapsulates many of the key features of court intervention programs: interagency collaboration; efficient access to services; personalised and direct communication between the judicial officer and the offender; and a holistic response to social problems that lead to crime.

Importantly, the collocation of staff and service providers on-site is the ideal way to maximise the benefits of court supervised rehabilitation programs.³⁸

While the Law Reform Commission’s Consultation Report invited submissions on establishing a pilot CJC in WA, its Final 2009 Report, concluded that, at that time, there was a lack of data indicating the degree to which the WA public were in favour of a CJC and that, on the basis of the submissions of the Department of the Attorney-General and the Magistrates Court, WA should wait to see the results of the evaluation of the NJC in Collingwood.³⁹ Since 2007 the NJC in Collingwood has been the subject of careful and promising evaluations which provide an excellent base from which to consider the feasibility of the model for

37 Victorian Auditor-General, *Managing Community Correction Orders* (2017), 33.

38 Law Reform Commission of Western Australia, *Court Intervention Programs—Project No 96 Consultation Report* (2008) 175 <http://www.lrc.justice.wa.gov.au/P/project_96.aspx>.

39 Law Reform Commission of Western Australia, *Court Intervention Programs—Final Report—Project No 96*.

Western Australia as well as the various forms that such implementation could take in the State.

VI FEASIBILITY STUDY

In partnering with Anglicare WA, the Community Legal Centres Association (WA) and an Advisory Panel of stakeholders, we are currently part of a team exploring the feasibility of the CJC model for WA. The purpose of the study is to showcase this innovative justice initiative to the WA community and explore the potential for a pilot CJC and/or expanding court-based service provision across mainstream courts. With the support of the Chief Justice of Western Australia and the Advisory Panel, we have hosted a roundtable of stakeholders; are consulting widely (including with the Victorian NJC staff and those involved in its planning and establishment); and presenting at national and local conferences to increase community and professional understanding of the model and its potential benefits.

As is evident in the purposes of the model, a CJC would have the potential to not only be a justice space, but also a site for community activities, art exhibitions and the accessing of services for migrants, refugees, housing, childcare, financial counselling, employment and mediation etc. It would be a community-owned, community-designed place of connection and support. Any centre would need to have the backing of the local community including its residents, local businesses, police, schools, churches and NGOs. It would particularly need to partner with local Indigenous communities to explore current challenges with justice service provision and the shape a CJC could take to better meet community need and become a place for which Indigenous peoples could feel ownership.

The study will also build on the work of the WA Law Reform Commission to explore the extent to which court-based service provision could benefit from practices found within the CJC model. For instance, the *Sentencing Act 1995* (WA) already allows for Courts to defer sentences for up to 6 months⁴⁰ and make pre-sentencing orders,⁴¹ and these have the potential to allow for more integrated services to be incorporated into the mainstream WA court processes. Such mainstreaming could potentially be explored alongside or in the absence of a CJC pilot model.

At the completion of the 18-month study, a report will be presented at a CJC Conference; a community forum; and presented to government. This report will consider the feasibility of this justice initiative for WA. It will offer options on the model suitable for WA's unique challenges, taking into account (in particular) the needs of Indigenous communities; and it will among other things, make suggestions as to possible WA models, implementing CJC learnings including mainstreaming and/or a WA pilot Centre and possible locations for such a Centre.

40 *Sentencing Act 1995* (WA), s 16(2).

41 *Sentencing Act 1995* (WA), Part 3A.

Government, stakeholder and local consultation will then form the next step. Should a pilot CJC receive funding, the selection of a location will need grassroots community support and buy-in for the initiative. The local community will then have a significant role in designing a bespoke Centre to serve the community of which it will form part.

VII CHALLENGES FOR A CJC

There are of course a range of challenges associated with any justice initiative, a few of which are of particular relevance to CJsCs are discussed below.

A Location

While the location of a future CJC in WA is often the first question to be asked by stakeholders, this cannot easily be answered. There are many factors about location or ‘place’ that will impact on the success of a CJC. As a CJC is not just a justice space, but also a place of connection, support and gathering of a community, its location must be determined through a process of extensive consultation and engagement with all levels of the community. For Fagan, the vital factor is ensuring that the Centre is conceived as a ‘social institution grounded in that community’.⁴² The absence of community buy-in for a CJC and its placement will sap it of legitimacy from the very beginning. Accordingly, any CJC project needs to have a community consultation strategy and governance framework to allow for a partnership with the community in the co-design and ongoing management of the Centre.

We know from examples like the closure of the North Liverpool Community Justice Centre,⁴³ that location is vital to the success of any CJC model. As Greg Berman explained in relation to his role in setting up the Red Hook Community Justice Center:

In 1992, Patrick Daly, a local school principal, was accidentally murdered in a drug-related shoot-out. In the months following his death, Brooklyn District Attorney Charles J. Hynes told the local media that Red Hook would be an ideal location for a community court. D.A. Hynes’ remarks started the ball rolling. There were other factors that made Red Hook an attractive site. Most important was the neighborhood’s isolation — it is one of the few communities in New York with easily identifiable borders. You know when you’re in the neighborhood and you know when

42 Jeff Fagan cited in Michael Rempel et al, ‘What Works and What Does Not – Symposium’ (2002) 29 *Fordham Urban Law Journal* 1929, 1939.

43 Located ‘...on the outskirts of the 4 community wards it served which meant its impact was somewhat marginalised’: George Mair and Matthew Millings (2011) *Doing Justice Locally: the North Liverpool Community Justice Centre* 6, 49 <https://assets.justice.vic.gov.au/njc/resources/488e89e5-f5ac-4c73-a4e6-e32236e1bb1c/doing_justice_locally_northliverpool.pdf>.

you're not. In a well-defined community like Red Hook, it is easier for a demonstration project like a community court to have a concentrated impact. It is also simpler for researchers to measure that impact.⁴⁴

The school building ultimately chosen to house the Red Hook Center:

... had once been a valuable community resource, but now stood as a symbol of Red Hook's woes: vacant, boarded up, and full of broken windows. Just as important, the former school was located in neutral territory, in between the public- housing development and Red Hook's waterfront. ... In symbolic terms, this meant that the Justice Center could not be claimed by one community faction over another.⁴⁵

Not only does the physical building that houses the CJC need to resonate with the community but it also needs to be in an area with high crime rates, that is easily accessible by public transport and which is close to existing social welfare services to enable triage and referral services to operate effectively. Of great importance is ensuring that the physical space selected for any CJC in WA is chosen by partnering with Indigenous communities, in order to create and collaborate in fashioning an accepted, trusted space for Indigenous peoples.

B Mixing Models

While learnings from the Victorian NJC as well as Red Hook, Midtown and other CJC's around the world are essential in the consideration of a model for WA, it is imperative that a future CJC is not simply a carbon copy of these experiences. Instead, any prototype for WA will require careful consideration, planning, consultation and understanding of the unique needs of our community.

Given the high numbers of Indigenous people coming before the courts and revolving through our community justice and prison doors, it is essential that a CJC experience is supported, driven, designed and implemented through a sustainable partnership with respected Indigenous leaders, organisations and communities. This will ensure that the voice of Indigenous West Australians is not only heard, but is the driving force behind a successful CJC model for this State. For instance, at the Collingwood NJC, practice over time led to the instigation of monthly 'Aboriginal Hearing Days'.⁴⁶ It would be necessary to

44 Greg Berman, *Red Hook Diary – Planning a Community Court* (1998) 2.

45 Greg Berman and Aubrey Fox, 'From the Benches and Trenches - Justice in Red Hook' (2005) 26 *Justice System Journal* 77, 80.

46 Delia O'Donahue, *Aboriginal Hearing Day - Study of the Partnership between the Aboriginal Community and the Heidelberg Magistrate's Court that led to the formation of the Aboriginal Hearing Day* (2014) <<http://assets.justice.vic.gov.au/njc/resources/74040519-7cc4-4649-8b03-05c90a6572e0/aboriginal+hearing+day+-+heidelberg+magistrates+court.pdf>>; Neighbourhood Justice Centre, *Reflections on Practice*, above n X, 34; Louise Bassett and Yvette Clark, *Aboriginal Hearing Day – Practice Guide* (2012) <<http://assets.justice.vic.gov.au/njc/resources/b111135a-b48b-4217-862d-496eca702fcb/ahd+practice+guide+mainstreaming+jan+2014.pdf>>.

consider the degree to which such practices would be relevant to WA or would need to be reformed or expanded to be more in line with the models associated with Aboriginal court models adopted around Australia, including in rural WA.⁴⁷ Extensive consultation with Indigenous communities will therefore be pivotal to the design of a WA centre.

Another issue which is relevant to the form that any CJC pilot takes, is the scope of its Court's jurisdiction. This includes whether to include adult and/or youth jurisdictions along with a range of issue matters such as residential tenancy disputes, guardianship or dispute resolution. Similarly, the types of offending behaviours to be dealt with by the Court and whether the Court has special hearing days for particular issues such as family violence matters, will depend on the legislative basis of the Court; the community being served; and the social issues behind the offending behaviour coming before the Court.

To bring clarity and predictability to the functioning of a CJC, a firm legislative foundation is vital. This has been shown in the Victorian experience with the legislatively prescribed 'Neighbourhood Justice Division' in the *Magistrates' Court Act 1989* (Vic). Western Australia has traditionally lacked clear legislation for justice innovations such as its Drug Courts, Specialist Treatment and Referral Team Court and other programs for court interventions and diversions. While such WA initiatives operate under broad umbrella legislative provisions, they tend to lack specific legislation directed at the unique needs of the particular program or Court. It also does not give them the perceived permanency and legitimacy that can accompany tailored statutory grounding.

C Costs

Set-up and ongoing operational costs of this justice initiative will require careful calculation and consideration to satisfy potential funding bodies and stakeholders of the benefits of investment while also considering community benefits. Set-up costs can be particularly significant depending on the model and design.⁴⁸ For instance, the costs of refurbishing a current court building may be lower than fitting out a non-justice space but the nature of the community and its particular needs must be fed into any such cost assessments.

Running costs also need to be put against the cost of other alternatives as well as the net societal benefits. For instance, the net daily cost/per prisoner of keeping a Western Australian prisoner incarcerated is \$318.82⁴⁹ with total net operating

47 For example, the Kalgoorlie Boulder Community Court: <http://www.magistratescourt.wa.gov.au/K/kalgoorlie_boulder_community_court.aspx?uid=3291-2300-6331-4792>.

48 See, eg, Swaner, above n 2, 414.

49 Productivity Commission, 2017 Report on Government Services, Volume C: Justice, Page 1 of Table 8A.18, <<http://www.pc.gov.au/research/ongoing/report-on-government-services/2017/justice>>.

expenditure of prisons amounting to \$535,160,000 over 2015-2016.⁵⁰

Along with numerous studies worldwide,⁵¹ evaluations of the Victorian NJC provide us with some promising economic arguments to support the establishment of a CJC in WA. The NJC has been shown to bring about a range of justice efficiencies including saved court time (from guilty pleas etc), crimes avoided, improved order completion and the benefits of community work.⁵² One early evaluation suggested that such savings would provide \$2,487,125 in benefits in the Centre's first 5 years.⁵³ Further, Magistrate Fanning has explained that many of the 'co-locat[ed]' services at the Centre who previously operated within the vicinity have chosen to locate there without being funded from the Centre's budget.⁵⁴ This has meant that for every dollar spent on NJC 'programs', this has been matched by \$5.66 in service contributions.⁵⁵

While many of the benefits of a CJC will be able to be quantified, others will not be as easy to measure, but just as important in terms of their outcomes. For example, the CJC model has great potential to improve neighbourhood safety and increase the overall wellbeing of communities and individuals within it, through innovative community engagement activities and partnerships with local police and service providers. While this wellbeing may not be able to be measured initially, its effects can emerge over time throughout the justice and welfare systems. Studies of Red Hook Community Justice Center, for example, have found significant cost savings from a drop in recidivism, including reduced victims of crime.⁵⁶

It is also difficult to compare the running costs of a CJC to mainstream services due to the difference in their operation styles.⁵⁷ Morgan and Brown found that the referral costs at the NJC are \$359 higher/case than in mainstream case management services (provided by the Victorian Magistrate Court through the Court Integrated Services Program) but also are serviced for considerably longer with a 'higher engagement rate' and receipt of a broader range of supports along with 'better collaboration between service providers and better integration between the court and client services'.⁵⁸ Overall, this meant that 'average expenditure per en-

50 Ibid, Page 1 of Table 8A.1.

51 Kelli Henry and Dana Kralstein, *Community Courts: The Research Literature: A Review of Findings* (2011).

52 Ross et al, *Evaluation of the Neighbourhood Justice Centre*, above n 28, Ch 9.

53 Ibid 166.

54 David Fanning, Submission to the Family Law Council, *Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (June 2015) 8 <<https://www.ag.gov.au/FamiliesAndMarriage/FamilyLawCouncil/Documents/FLC-submissions/David-Fanning.pdf>>.

55 Ross et al, *Evaluation of the Neighbourhood Justice Centre*, above n 28, 170.

56 Lee, et al, above n 4, 17.

57 Anthony Morgan and Rick Brown, 'Estimating the Costs Associated with Community Justice' (2015) 507 *Trends & Issues in Crime and Criminal Justice* 9.

58 Ibid 10.

gaged referral' was 3% less within the NJC model than with the mainstream case management model over the studied period.⁵⁹

D Risks

There are a range of risks which any WA CJC would need to carefully evaluate and monitor into and beyond the pilot period.

1 Marshmallow justice?

One of the most commonly noted risks of a CJC is that it has the potential to be perceived as a 'soft option'. However, as Magistrate Fanning explains:

It's really a misnomer and quite false to say that it's soft on crime. In fact I have the same dispositions and the same approach to sentencing overall as any other court does...[Imprisonment is] not the first option, but it's part of the repertoire, part of the sentencing options that are available. But really, the emphasis here is to try and redress those underlying causes rather than simply delivering a sentence from on high, be it a fine, or imprisonment term, but rather, as I say, to deal with those underlying causes to try and redress those underlying causes. But it's not a soft option, and it's not an option that excludes imprisonment in appropriate cases.⁶⁰

The CJC model asks people who have significant personal and legal challenges to be open to addressing these complex issues with support and judicial monitoring. This requires a person to take responsibility for their actions and revisit often traumatic life circumstances and experiences. This can be a hard path, rather than a 'soft' path, for people who are entrapped in the justice system through social disadvantage, trauma and intergenerational marginalisation, to decide to take.

2 The High Bar of Expectation

While CJsCs present an exciting justice innovation there is also the risk that they will oversell or overpromise to the community, government or other relevant stakeholders. As Murray has indicated elsewhere:

Communities need to appreciate that there may be limitations on a neighbourhood centre's ability to deliver justice and that not all expectations can necessarily be realised. Part of the process of collaboration will involve an alignment of expectations and priorities. One of the most obvious constraints is likely to be fiscal. Clearly, the extent to which

59 Ibid.

60 ABC Radio National, 'One-Stop Legal Shop', The Law Report, 3 April 2007 <<http://www.abc.net.au/radionational/programs/lawreport/one-stop-legal-shop/3400580#transcript>>.

strict budgets are introduced will restrict the number of residents that the centres can assist and over what timeframe. Additionally, neighbourhood centres are likely to be subject to performance indicators and evaluations before financial resources become more readily available. This is likely to shape the types of justice projects which can be undertaken as part of the community model and may require more experimental projects to be put on hold.⁶¹

Expectations of any pilot WA CJC need to be carefully managed and communicated and re-assessed over the life of a Centre as these can and are likely to change along with the community it serves. It is also necessary that expectations are realistic given the timeline of a pilot for a Centre. Establishing a functioning CJC and relationships of trust with the community takes time as does community consultation and partnering to bring about local rejuvenation and justice improvement.

3 *If It Works, Prove It!*

One of the key risks with the CJC model, particularly over short pilot periods, is finding ways to demonstrate that the model ‘works’ across a range of points of interaction with the justice system using traditional criminal justice evaluation tools or finding ways to supplement these to explain the richness of Centre experiences. This is particularly pertinent when such Centres are vying for scarce justice funds⁶² and need to be able to show government bureaucrats that the investments are resulting in community impact and reductions in local crime and recidivism.

Certainly, failures with data recording practices and ongoing self-evaluation contributed to the closure of the North Liverpool Community Justice Centre when it became more and more difficult for it to show that it was making a demonstrable benefit to the local area.⁶³ It is also important that ‘success stories’ are collated and showcased by a Centre not only to government and bureaucrats but also to the local community.⁶⁴ This is something that any WA pilot could learn from the Collingwood NJC which has been very aware of the need to constantly promote and celebrate its successes and community activities. Its website for example notes:

The Age [a newspaper] ran a story in which one of our clients called the Neighbourhood Justice Centre her ‘home away from home’. She was referring to both the treatment she receives from our multi-disciplinary Client Services team, and our court’s problem-solving practices that combine to help turn around her life. Few if any other Australian court

61 Murray, ‘Keeping it in the Neighbourhood’, above n 7, 91-2.

62 Swaner, above n 2, 415.

63 Mair and Millings, above n 43, 5.

64 Ibid 63-4, 94, 96.

receives such praise and our client neatly defined the power inherent in combining problem-solving and community justice to tackle crime. Tales like this and many others make us proud of our revolutionary new services, and makes us strive to keep evolving our work.⁶⁵

4 Personalities

Like any community organisation or institution, it is the people that are vital to the success of a CJC. It is the staff that interact with the community on a daily basis and influence whether residents, welfare services, local police and businesses affirm the work of the Centre and contribute to its ongoing legitimacy and sustainability.

The selection of a Magistrate for the Centre's Court is also of particular importance. It is the Magistrate who will help to set the tone for the Court's operations and the message that is sent to the community about the Court's role. The Magistrate needs to have the community's trust and respect and be sufficiently knowledgeable and connected with the local area while still retaining the appropriate level of independence and perceived impartiality. This can also make it particularly important that any departures or new appointments are very carefully chosen and handled to preserve the CJC's relationship with the community.⁶⁶

VIII CONCLUSION

'Community Justice is not achieved simply by a just response to particular criminal incidents. The shift from traditional to community justice requires a change in purpose from a narrowly conceived agenda of crime control to a broadly determined mission of enhancing the quality of a community.'⁶⁷

The CJC model presents a justice opportunity that allows a refashioning of the relationship of the courts, and the justice system more generally, with the community. In co-locating a court with social welfare and corrective services it allows for greater information sharing, justice efficiencies and community benefits that standard courts are not always able to achieve. It has the potential to unwind traditional justice approaches to instead question why it is that people are coming before the court and whether engagement and intensive support at the point of contact or, ideally, before and after the law intervenes, to partner with individuals to improve their life circumstances and life chances. While such interventions are

65 Victorian Neighbourhood Justice Centre <<http://www.neighbourhoodjustice.vic.gov.au/home/community/projects/>>.

66 Murray, 'Keeping it in the Neighbourhood', above n 7, 92.

67 D.R. Karp, 'Community Justice. Six Challenges' (1999) 27(6) *Journal of Community Psychology*, 752 quoted in Neighbourhood Justice Centre (undated), *Neighbourhood Justice Centre, Community-based crime prevention: theory and practice* 9.

not always going to succeed, they present a justice-embedded opportunity to try to address criminogenic circumstances and ongoing community harm.

The Collingwood NJC experience highlights the potential of the model and the feasibility study currently underway in Western Australia allows this model, and overseas experiences, to be explored and assessed in light of WA's justice and community profile. The CJC model could be implemented in a range of ways. These could include setting up a pilot or pilots adopting the CJC model, mainstreaming the benefits of co-located or referred service provision and/or learning from some of the CJC local crime prevention strategies and experiences.

Implementing the CJC model in WA will entail a great deal of community consultation, consideration and creative thinking. The initiative cannot simply be transplanted with the expectation that it will serve or assist a local community to confront its justice challenges. Instead, conversations must start with communities as to what they want for their neighbourhood and what a bespoke Centre might look like and dare to achieve. With community, stakeholder and police force buy-in, and an extensive grassroots campaign exploring the what, how and the where for the particular locality, justice outcomes have a real potential of being met with adequate funding, government support and sufficiently lengthy pilot timeframes.

One of the key stumbling blocks for justice initiatives is often their financial footprint. While this is no different with a CJC, the benefits in terms of justice savings and community wellbeing can be reaped every year after the initial set-up of a Centre. Various models can be explored and need to be weighed up against the benefits that each can hope to bring to the WA community. The stark reality is that our justice system cannot afford to not explore alternatives. The CJC model allows for a recalibration of the way that justice is done and an alternative way of conceiving of the community/justice interface and bettering that interface for both today and tomorrow.