

Sentencing Children And Young People - A Judicial Officer's Perspective

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There is a great degree of similarity amongst the States and Territories concerning the law relating to sentencing young offenders. I will primarily use NSW legislation and authorities for the purpose of discussion. A comprehensive discussion of sentencing in the NSW Children's Court can be found in *The nexus between sentencing and rehabilitation in the Children's Court of NSW* Vignaendra and Hazlitt, Research Monograph 26, Judicial Commission of New South Wales 2005.

What follows is a series of observations drawn from my experience as a Children's Magistrate who has sat in Children's Courts in various metropolitan, regional and rural locations.

1. Why Treat Young People Differently?

Brain research

Human brains do not finish developing until our early 20's.

Jay Giedd, the lead researcher on the subject at the US National Institute of Mental Health, explained to PBS's Frontline that during adolescence the "part of the brain that is helping organization, planning and strategizing is not done being built yet.... It's sort of unfair to expect them to have adult levels of organizational skills or decision making before their brain is finished being built."¹

Legislative and Treaty Principles

International Law

International instruments recognise the need to deal with children charged with criminal offences in a different manner from adults.

United Nations Convention on the Rights of the Child (CROC) Article 40 (see Appendix 1)

New South Wales Legislation

The two main pieces of legislation regarding children in the criminal justice process are the Children (Criminal Proceedings) Act and the Young Offenders Act. Each enunciates similar principles. The relevant parts of the legislation are set out below.

¹ *Adolescent Brain Development and Legal Culpability*, American Bar Association, Spring 2003. The full text of this article is available at www.abanet.org/crimjust/juvjus/juvdp.html

Children (Criminal Proceedings) Act 1987 No 55

6 Principles relating to the exercise of criminal jurisdiction

A court, in exercising criminal jurisdiction with respect to children, shall have regard to the following principles:

- (a) that children have rights and freedoms before the law equal to those enjoyed by adults and, in particular, a right to be heard, and a right to participate, in the processes that lead to decisions that affect them,
- (b) that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance,
- (c) that it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption,
- (d) that it is desirable, wherever possible, to allow a child to reside in his or her own home,
- (e) that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind.

Young Offenders Act 1997 No 54

7 Principles of scheme

The principles that are to guide the operation of this Act, and persons exercising functions under this Act, are as follows:

- (a) The principle that the least restrictive form of sanction is to be applied against a child who is alleged to have committed an offence, having regard to matters required to be considered under this Act.
- (b) The principle that children who are alleged to have committed an offence are entitled to be informed about their right to obtain legal advice and to have an opportunity to obtain that advice.
- (c) The principle that criminal proceedings are not to be instituted against a child if there is an alternative and appropriate means of dealing with the matter.
- (d) The principle that criminal proceedings are not to be instituted against a child solely in order to provide any assistance or services needed to advance the welfare of the child or his or her family or family group.
- (e) The principle that, if it is appropriate in the circumstances, children who are alleged to have committed an offence should be dealt with in their communities in order to assist their reintegration and to sustain family and community ties.
- (f) The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children.
- (g) The principle that victims are entitled to receive information about their potential involvement in, and the progress of, action taken under this Act.

1.3 Judicial sentencing principles

Courts also recognise, as a matter of policy, that young people need to be dealt with differently from adults.

The approach to be adopted in the sentencing of young offenders has been discussed in a number of cases. In *R v Wilcox*, (15 August 1979, unreported) Yeldham J. remarked during the course of sentencing of a young offender that “in the case of a youthful offender ... considerations of punishment and of general deterrence of others may properly be largely discarded in favour of individualised treatment of the offender, directed to his rehabilitation.” His Honour relied upon *R v Smith* [1964] Crim L R 70 where it was said: “In the case of a young offender there can rarely be any conflict between his interest and the public's. The public have no greater interest than that he should become a good citizen.” *R v GDP* (1991) 53 A Crim R 112

2. Who commits offences

Most teenagers commit criminal offences.² Very few of these are detected.

.... a very large proportion of juvenile crime is the work of secondary school students who merely dipped their 'toe' into the 'water' of crime. In other words much of juvenile crime is committed by typical everyday students who desist from crime of their own accord without the need to any significant intervention (whether this being the form of juvenile justice conversion programs or punitive sanctions such as a custodial sentence).

Most offending by teens is concentrated amongst a very small number. Their social characteristics are overwhelmingly those of socioeconomic disadvantage. Two NSW studies highlight the prevalence of abuse and neglect, educational disadvantage, intellectual disability and mental illness, unstable accommodation and risk taking behaviour³. See Appendix 2

An enduring tragedy of sentencing young offenders is the overrepresentation of young people from Aboriginal and Torres Strait Islander background. The good news is that the number of young ATSI people in detention is gradually declining (unlike the situation for ATSI adults where numbers are increasing). Numbers of non-ATSI young people in detention is declining at a faster rate with the result that this overrepresentation is increasing. See Appendix 3. Generally this appears to reflect the socioeconomic circumstances of these young people rather than any characteristic of the justice system, although there is some evidence that suggests that a greater propensity to socialise in public areas attracts greater police attention to young aboriginal people.

3. Who sentences young offenders?

One thing that must be recognized in any discussion of sentencing of juvenile offenders is that courts are not the only bodies that are the final arbiters of how a young offender is dealt with.

Many young offenders are dealt with by way of penalty notices for matters such as minor driving offences or failing to pay for public transport travel. This means that a disproportionate burden often falls on young offenders who have little or no income. The fine payable takes no account of the means of the offender and does not allow the issuer of the penalty notice to make provision for this. A serious consequence for many of these young people is that fine default prevents them from obtaining drivers licences.

A significant development in dealing with young offenders is the statutory recognition and encouragement of outcomes that divert young offenders away from courts. In

² *Transient Offenders in the 1996 Secondary School Survey: A Cautionary Note on Juvenile Justice Diversion* Weatherburn and Baker Current Issues in Criminal Justice Vol 13 No 1 July 2001 at p69

³ *2003 NSW Young People in Custody Health Survey. Key Findings Report.* Allerton and Champion NSW Department of Juvenile Justice. 2003 and *NSW Young People on Community Orders Health Survey 2003-2006 Key Findings Report*, Kenny et al, University of Sydney 2006

NSW in formal warnings, formal cautions, and youth justice conferences are used. Police can directly determine the matter will be dealt with by each of these options, and courts can deal with matters by way of caution or referral to a youth justice conference. It would appear that these options are effective, perhaps more effective than court based outcomes.

“.....conferences respected the interests of the victims and the support persons of offenders. For example, almost all the victims in this sample reported that they had been given the opportunity to explain the loss and harm which they had suffered as a result of the offence. The majority of victims believed that their conference took adequate account of the effects of the offence on them. Most of the offenders’ support persons reported that their concerns about the offenders’ actions were very well dealt with at the conference.”⁴

“.....conferencing has the effect of reducing or delaying reoffending as measured by subsequent court appearances or conferences. While the reduction in reoffending may be small, the effect is persistent in all of the comparisons carried out in this study. When the effects of other factors are controlled for, it appears that both the risk of reoffending and the rate of reappearances per year in the follow-up period are about 15 to 20 per cent lower for those who had a conference than for those who went to court.”⁵

All Australian States and Territories give greater jurisdiction to Children's Courts to deal with more serious offences committed by young offenders than is available to Local Courts. Children's Courts can commit young offenders for sentence to higher courts if the magistrate believes that the appropriate sentence is not within the limits of her or his sentencing powers. It is rare that this option is exercised in NSW.

4. Are older teens mini adults?

One of the temptations in sentencing older teenage offenders is to view them as mini adults. Often the physical presentation and the gravity of their offending leads in this direction. Judicial intuition leads to the conclusion that if they young offender acts like an adult they should be dealt with as an adult.

In *Pham* (1991) 55 A Crim R 128 Lee CJ at CL said at 135:

It is true that courts must refrain from sending young persons to prison, unless that course is necessary, but the gravity of the crime and the fact that it is a crime of violence frequently committed by persons even in their teens must be kept steadfastly in mind otherwise the protective aspect of the criminal court's function will cease to operate. In short, deterrence and retribution do not cease to be significant merely because persons in their late teens are the persons committing grave crimes ..."

The position is expressed more starkly in *R v PDJ* [2002] VSCA 211 O'Bryan AJA said that^l

⁴ *An Evaluation of the NSW Youth Justice Conferencing Scheme* Lily Trimboli NSW Bureau of Crime Statistics and Research, Sydney 2000 p66

⁵ *Reducing Juvenile Crime: Conferencing versus Court* Garth Luke and Bronwyn Lind Crime and Justice Bulletin No 69 2002 NSW Bureau of Crime Statistics and Research, Sydney p13

"The age of the applicant was considered carefully in terms of a long period of incarceration. His Honour said, in effect, that had the offender been older the sentence would have been higher. There can be no doubt in my mind that conduct of the kind indulged in by the applicant cannot be significantly reduced because he is a youthful offender in the sense in which that expression is used in R v Mills. A youth who roams the streets at night, drinking alcohol, planning and participating in serious criminal activities, cannot rely upon his immaturity or lack of years when he is caught. Sadly, with very serious offences such as murder, armed robbery and rape, the age of the offender is reducing to an alarming level. The youthful offender can no longer expect to trade on his or her youth in such cases for the elements of deterrence, condemnation and just punishment are significant matters."

With all due respect to those wiser and cleverer than myself, I find the concept of the young offender "trading" on his youth to be a curious one. The reason for immaturity not being able to be relied upon is not explained, which is unfortunate given that it is a significant characteristic. This intuitive response is at odds with the growing understanding of the levels of responsibility and foresight of consequences that can be expected of teenagers.

Perhaps the balance is best expressed in R v C (unrep, 12/10/89, NSWCCA). Gleeson CJ in dealing with a Crown inadequacy appeal summarised the facts as follows:

"The objective circumstances surrounding the offences to which the respondents pleaded guilty were extremely serious. In what the learned sentencing judge accurately described as a cowardly and brutal attack, they set upon a man of middle age in the park and bashed him with a view to robbing him of a relatively small amount of money. The circumstances are rendered even more serious by reason of the fact that during the progress of their attack they observed that the man in question was a police officer, and thereupon kicked and beat him with increased ferocity with the purpose of endeavouring to ensure that he would not pursue or apprehend them or be able to recognise them."

Each of the offenders in question was 16 or 17 years old.

"It was submitted on behalf of the respondents that ***in sentencing young people of this age, the consideration of general deterrence is not as important as it would be in the case of sentencing an adult and that considerations of rehabilitation should always be regarded as very important indeed. I accept that submission,*** [emphasis added] but when one comes to apply it to the circumstances of C and S, and in particular to the circumstance concerning their past performance whilst on probation, it seems to me to produce the consequence that the sentences imposed on them provide inadequately for their rehabilitation by allowing insufficient time for them to spend in an institution."

It is typical of the offences committed by young offenders that they are opportunistic, there is little if any forethought of consequences and there is peer pressure or groupthink i.e. everyone thinks that it was someone else's idea and "goes with the flow".

5. The roles of family and peers

A developing feature of our community is the changing position and authority of families and peers. Young people are spending greater time than previously with their peers and many see peers as their primary relationship groups and their primary

sources of authority and guidance. This is a factor that needs to be taken into account in sentencing.

In April 2007 I travelled to China and delivered papers to conferences jointly sponsored by The Australian Human Rights and Equal Opportunity Commission and the Supreme People's Court and the Supreme People's Procuratorate of the People's Republic of China. One aspect that struck me in discussions with conference attenders and in an opportunity to observe the sentencing of some teenagers charged with robbery was the formal provision made for a family representative in the process. Special seating was provided and a parent or guardian was expected to be present and was given the opportunity to comment on the evidence.

My own practice has changed as a result and I pay much more careful attention to whether a parent is present. I am now keener to discover what the parent's perspective is and whether they are a help or a hindrance to the young person. On occasions I will issue a notice that requires the attendance of a parent. Sometimes I discover that the young person has managed to conceal their offending from their parents. On other occasions it becomes clear that the young person is burdened rather than supported by their parent or parents. It will often be necessary to address family dynamics in order for the process of rehabilitation to take place.

6. Have they no shame?

The role of shaming is one that requires careful consideration. It is a valid aspect of any punishment that may be imposed on an offender. Any remarks on sentencing by a judge or magistrate should involve condemnation of the behaviour being punished and include an element of shaming. It does, however, need to be effective. For the vast majority of young offenders it will be ineffective. If a young person has effective and supportive family members then they will become aware of the commission of the offences in question. The shame that the young person will suffer because of this will be the most effective form of shame. The experience of Children's Court magistrates when hearing from young people consistently backs this up.

While powerless common criminals do not have the structural benefit of a corporate veil, strong families can be a functional equivalent, transforming external stigmatization into a loving, reintegrative kind of internal disapproval. The trouble is that the worst juvenile offenders are those least likely to have such families; often their families amplify internally the stigmatizing messages from outside. Hence with common crime it is irresponsible to promote external stigmatization in the hope that it will be transformed into internal reintegration.⁶

Many young offenders, particularly those who are persistent offenders, lack adequate family or similar support. For them any form of shaming will be ineffective.

Nathan Harris's (1999) analysis of the RISE conferencing data shows that shaming by people the offender does not respect fails to induce shame. Indeed, the only shaming that induces shame is disapproval of the act by those who we respect very

⁶ John Braithwaite Zero Tolerance, Naming And Shaming: Is There A Case For It With Crimes Of The Powerful? *Australian and New Zealand Society of Criminology Conference, 30 September, 1999, Perth*

highly. Just respecting them a bit is not enough. So shaming by police, judges and mass publics who read newspapers is mostly beside the point. ⁷

This will especially be the case for young people who come from the more marginalised parts of the community, especially aboriginal young people and those from non-English-speaking backgrounds.

Our criminal justice system is intended to create fear, shame and conformity to mainstream norms in transgressors, via a system that punishes and deters. Aboriginal people have learnt how to shift the moral burden instead to those who police, try, and imprison them and to re-interpret their experiences of the criminal justice system to subvert those experiences and hence make them tolerable. By these means they gain some fleeting sense of power however illusory and transitory this might be over a system that is overwhelmingly stacked against them.⁸

The adverse effects of shaming are magnified in smaller communities, particularly in regional and rural areas, where the anonymity of urban centres does not exist. This has been demonstrated in the Northern Territory. A 2006 episode of the Radio National Law Report provides to very clear examples. ⁹

The provisions for cautioning and youth justice conferencing in the Young Offenders Act provide the most effective form of shaming of young offenders. Where each of these options is employed a parent or other support person will be present. The process occurs in a confidential setting, and where a youth justice conferencing has occurred an outcome plan will be promulgated and monitored to ensure that the young person takes some steps which demonstrate them taking responsibility for their offending.

7. The imposition of conditions on sentences

Most of the penalties imposed on young offenders are bonds, probation, or custodial sentences that include parole. From the period on parole is so much more significant portion of the sentence than is the case for adults. Most of these penalties include provision for supervision by Juvenile Justice or Community Offender Service officers. In imposing these sentences it is sometimes helpful to be more specific than merely requiring the young person to submit to supervision. If they are told at sentencing that they are expected to anticipate family counselling, vocational training, alcohol and other drug treatment, etc this assists the supervisor in ensuring compliance with these rehabilitative measures.

The question arises, though, about how prescriptive any sentence should be. This particularly arises if the young person has become involved with a particular form of rehabilitation or there is an advocate of such a form of rehabilitation - perhaps a parent or family friend. Sentencers should be careful in being too prescriptive without being fully aware of the efficacy of the particular course of rehabilitation that is

⁷ *ibid.* ref to Harris, Nathan Shaming and Shame: An Empirical Analysis. PhD Dissertation, Law Program, Australian National University, Canberra 1999.

⁸ Lynn Atkinson, Aboriginal Youth, Police And The Juvenile Justice System In Western Australia. National Conference On Juvenile Detention 1992

⁹ ABC The Law Report Naming and Shaming Juvenile Offenders 3 October 2006
<http://www.abc.net.au/rn/lawreport/stories/2006/1752189.htm>

advocated. Many options that appear superficially attractive, such as juvenile wilderness programs or ‘scared straight’ experiences, are not supported by objective results. The lack of research in this area in Australia has been lamented.¹⁰ The authors go on to refer to the most comprehensive international study and summarise its conclusions.

In her review of the relevant literature, MacKenzie (2002) cites a number of programs that have been shown not to work, at least in an American context. These include:

- Specific deterrence interventions, such as shock probation and ‘scared straight’;
- Rehabilitation programs that use vague, nondirective, unstructured counselling;
- Intensive supervised probation or parole;
- Home confinement;
- Community residential programs;
- Urine testing;
- Increased referral, monitoring and management in the community;
- Correctional boot camps using the old-style military model; and
- Juvenile wilderness programs.

The list of criminal justice programs and policies MacKenzie lists as having been shown to be effective in reducing recidivism includes:

- Rehabilitation programs that target known criminogenic risk factors (e.g. antisocial attitudes, poor impulse control);
- Cognitive behavioural therapy;
- Community employment;
- Drug treatment; and
- Incapacitation of offenders who continue to commit crimes at very high rates.

8. Therapeutic Jurisprudence – a different approach

A recent NSW development in sentencing is the Youth Drug and Alcohol Court. The Youth Drug and Alcohol Court (YDAC) is an innovative pilot program within the criminal justice system. Rather than offenders being processed through the justice system, they are offered an opportunity to participate in an intensive program of rehabilitation before being sentenced. In a program that must last at least six months participants undergo detoxification and rehabilitation, attend educational and vocational courses, and appear regularly throughout that period before the Youth Drug and Alcohol Court. A more detailed explanation is set out at Appendix 4.

Evaluations to date indicate that this is a novel program which is having success with the very “hard end” of juvenile offending and offenders.

One of the key elements of the YDAC is the report back which happens every 2 weeks or so. I have adapted that idea with some “out of control” young offenders by requiring them to attend court frequently to see if they are adequately involved in the

¹⁰ *The transition from juvenile to adult criminal careers* Shuling Chen, Tania Matruggio, Don Weatherburn and Jiuzhao Hua Crime and Justice Bulletin No 86 NSW Bureau of Crime Statistics and Research, Sydney May 2005 pp10-11citing *Reducing the criminal activities of known offenders and delinquents*, Evidence-Based Crime Prevention, L.W. Sherman, D.P. Farrington, B.C. Welsh & D.L. MacKenzie (eds.), Routledge, London 2002 pp. 334-421.

first steps of a rehabilitation plan eg more regular school attendance, compliance with Juvenile Justice officer requirements. The threat of bail refusal or custodial penalty is made if they don't show sufficient compliance.

Paul Mulroney
Children's Magistrate
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Appendix 1

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Appendix 2

2003 NSW Young People in Custody Health Survey. Key Findings Report. Allerton and Champion NSW Department of Juvenile Justice. 2003

Social Background

- One or more parents of 43% of the participants had been imprisoned, and 11% had a parent who was currently incarcerated.
- Young people minimised and denied experiences of abuse and neglect; nevertheless 42% said they had been physically abused, 11% sexually abused, 38% had experienced emotional neglect, and 34% physical neglect.

Physical Health

- Most young men (91%) and women (76%) rated their health as 'good', 'very good' or 'excellent'.
- Asthma had been diagnosed in 28% of the young men and 56% of the young women.
- Ear infections had been diagnosed in 28% of young men and 39% of the young women. Mild hearing loss was found in 32% of young men and 30% of young women.
- Sleeping problems and energy loss or fatigue were the most common recent symptomatic complaints.
- All of the young women and 99% of the young men had seen a health care provider since admission to custody.

Intellectual and Educational Performance

- The mean WASI Full Scale IQ score was in the low average range.
- Poor educational attainment was common; three quarters had left school before finishing Year Nine, a high proportion had not regularly attended school, and over 90% had been suspended at some time.
- Seventeen percent had cognitive functioning scores consistent with a possible intellectual disability. Ten percent met both culture-fair IQ and adaptive behaviour deficits consistent with DSM-IV criteria for intellectual disability.
- Sixty percent of the subjects could read at a low average level or better, and 50% could spell at a low average level or better. The arithmetic skills of 64% of the subjects were equivalent to those expected of people with intellectual disabilities.

Mental Health

- Eighty-eight percent reported mild, moderate or severe symptoms consistent with a clinical disorder.
- The three most prevalent disorders were Conduct Disorder, Substance Abuse Disorder and Adjustment Disorder.
- Thirty percent reported high or very high psychological distress implying that they may have a greater than 50% chance of an anxiety or depressive disorder.

Risk Behaviours

- Thirty three percent of young men and 44% of young women either never used condoms or used them less than half of the time when they had penetrative sex with casual partners.
- Nineteen percent (16% of young men and 53% of young women) had injected drugs in the twelve months prior to custody.
- Almost 90% had used cannabis.
- Most (94%) had consumed alcohol and been drunk (85%).
- Nineteen percent of males and 24% of females had seriously considered attempting suicide at some time in the past.

NSW Young People on Community Orders Health Survey 2003-2006 Key Findings Report, Kenny et al, University of Sydney 2006

Young people serving community orders with the NSW Department of Juvenile Justice are a vulnerable and disadvantaged group of young people, as indicated by their disadvantaged social and family background, low intellectual functioning and poor educational achievement, high frequency of physical and mental health

problems and engagement in risk behaviours. On most of the factors assessed, they did not differ substantially from young people in custody.

Social and Family Background

- 27% young people had one or more parents who had been imprisoned, and 5% had a parent who was currently incarcerated.
- 64% young people were living in the family home; 11% were in unsettled accommodation.
- 6% young people were parents of one or more children.
- Young people minimised and denied experiences of abuse and neglect; nevertheless, 31% reported low, moderate or severe levels of physical abuse, 46% emotional abuse; 14% sexual abuse, 50% emotional neglect; and 37% physical neglect.

Intellectual Functioning and Educational Achievement

- The mean WASI Full Scale IQ score (IQ=83) was in the low average range (80-89).
- 12% had culture-fair IQ scores (using FSIQ for ESB and PIQ scores only for CALD and Aboriginal and Torres Strait Islander young people) consistent with a possible intellectual disability.
- 15% had WASI Full-Scale IQ scores consistent with a possible intellectual disability.
- 11% met both IQ and adaptive behaviour deficits consistent with DSM-IV criteria for (possible) intellectual disability (8% based on a culture fair assessment).
- 56% had left school before commencing Year 10; 60% had not attended school regularly (skipped school more than twice per week), and 89% had been suspended from school.
- 62% could read at a low average level or better; 62% could spell at a low average level or better. The reading skills of 21% and arithmetic skills of 64% were equivalent to those expected of people with intellectual disabilities.

Physical Health

- Most males (78%) and females (79%) rated their health as 'good', 'very good' or 'excellent'.
- Asthma had been diagnosed in 33% males and 35% females.
- Ear infections had been diagnosed in 26% males and 40% females.
- Sleeping problems (39%) and energy loss or fatigue (39%) were the most common recent symptomatic complaints.
- 5% males and 11% females tested positive for Chlamydia.
- 23% males and 25% females either never used condoms or used them less than half of the time when they had penetrative sex with casual partners.
- 3% males and 12% females were hepatitis C antibody positive.
- 7% males and 17% females had injected drugs in the twelve months prior to completing the survey.
- 81% were smokers; 25% smoked more than 20 cigarettes a day.
- 89% had used cannabis; 47% used cannabis at least weekly.
- Most (91%) had been drunk; 31% engaged in binge drinking at least weekly (>6 standard drinks for males and >4 standard drinks for females).

Mental Health

- 40% reported severe symptoms on the Adolescent Psychopathology Scale
- consistent with a clinical disorder.
- Conduct Disorder (19%) and Substance Abuse Disorder (26%) were the two most prevalent disorders.
- 25% had 'high' or 'very high' distress scores on the Kessler Psychological Distress Scale, suggestive of a depressive or anxiety related disorder.
- 15% males and 28% females had intentionally hurt or injured themselves.
- 14% males and 32% females had considered attempting suicide.
- 8% males and 18% females had attempted suicide.

Appendix 3

Juveniles in detention in Australia, 1981–2006 Australian Institute of Criminology 2007

**Table 18: Persons aged 10 to 17 remanded or sentenced by jurisdiction, 2005–06
(number)**

	NSW ^a	Vic	Qld	WA	SA	Tas	NT	ACT	Australia
Males									
Sentenced									
30 Sep	110	30	26	44	23	9	5	0	247
31 Dec	92	30	26	55	18	5	8	5	239
31 Mar	110	26	42	48	17	7	9	7	266
30 Jun	117	19	33	48	20	3	8	8	256
Females									
Sentenced									
30 Sep	7	8	2	3	1	3	0	0	24
31 Dec	5	3	5	1	2	1	0	0	17
31 Mar	7	3	2	1	1	1	1	0	16
30 Jun	6	2	3	2	0	1	1	0	15
Total									
Remanded									
30 Sep	125	20	63	56	14	19	4	7	308
31 Dec	118	22	89	67	21	13	8	7	345
31 Mar	145	30	115	78	18	18	9	8	421
30 Jun	133	17	101	57	21	26	16	9	380
Sentenced									
30 Sep	117	38	28	47	24	12	5	0	271
31 Dec	97	33	31	56	20	6	8	5	256
31 Mar	117	29	44	49	18	8	10	7	282
30 Jun	123	21	36	50	20	4	9	8	271

Table 14: Over-representation of Indigenous young people aged 10 to 17 in juvenile detention at 30 June 1994–2006 (rate ratios)

Year	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Australia
1994	16.2	11.7	22.5	28.2	16.4	2.1	2.4	0.0	17.0
1995	12.2	23.8	25.7	22.8	7.7	2.0	2.1	5.2	14.7
1996	14.5	8.0	30.8	26.7	11.3	5.0	3.3	10.9	16.4
1997	18.2	15.9	22.8	32.0	10.7	na	29.9	13.0	18.8
1998	12.7	23.4	27.0	31.6	20.0	na	7.9	18.7	19.2
1999	13.4	22.5	20.8	37.8	14.1	na	3.7	6.7	18.8
2000	16.5	9.1	22.6	30.9	10.9	na	5.5	6.6	18.2
2001	19.9	15.8	32.9	69.2	5.4	na	–	16.1	21.1
2002	18.4	13.1	24.2	39.8	23.0	na	3.6	11.9	20.8
2003	18.8	13.3	25.0	45.5	24.6	4.9	3.2	6.7	19.9
2004	29.6	20.4	23.1	51.9	20.3	3.8	5.3	19.5	25.6
2005	24.1 ^a	37.4	18.1	44.1	22.3	3.9	9.9	17.3	23.0
2006	22.7 ^a	11.8	15.4	31.9	13.0	4.8	31.0	20.6	20.9

Appendix 4

Youth Drug and Alcohol Court

Overview

The Youth Drug and Alcohol Court (YDAC) in NSW is an innovative pilot program within the criminal justice system. Rather than offenders being processed through the justice system, they are offered an opportunity to participate in an intensive program of **rehabilitation BEFORE being sentenced**. In a six month program participants undergo detoxification and rehabilitation, attend educational and vocational courses, and appear regularly throughout that period before the Youth Drug and Alcohol Court.

Evaluations to date indicate that this is a novel program which is having success with the very **“hard end” of juvenile offending** and offenders.

Our purpose

The YDAC aims to **rehabilitate young offenders** with alcohol and or drug problems. It seeks to address not only the legal factors, but the holistic and systemic health and welfare issues which have affected the young person's ongoing substance misuse and associated offending. The YDAC program is an integrated and collaborative initiative, which brings together the elements of the **juvenile criminal justice system** with various **government and non-government** adolescent service providers.

Young offenders at the Children's Court can be referred to the Youth Drug and Alcohol Court if they:

- plead guilty
- are charged with an offence the Children's Court can deal with
- have a serious drug or alcohol problem
- are not eligible for a Young Offenders Act caution or youth justice conference
- are suitable for treatment and rehabilitation; and
- agree to participate in the YDAC program while on bail.

At their first appearance before the Youth Drug and Alcohol Court, the **YDAC Magistrate determines the young person's legal eligibility** to participate. The YDAC Magistrate has, at this point, a discretion to exclude a legally eligible young person because a caution or Youth Justice Conference is more appropriate; or because the young person's offence or history of offending is so severe that the young person would be sentenced to a control order even if he or she successfully completed a YDAC program.

Each young person who is legally eligible and acceptable to the YDAC has their matter adjourned for 14 days, while they undergo an in-depth, holistic assessment of their needs. These assessments are conducted by the Joint Assessment and Review Team (JART) to determine the young person's clinical suitability to enter and participate on the YDAC Program.

Program plan - what is involved for participants?

These assessments result in the formulation of a **potential program plan**. The program plan details the activities, responsibilities and interventions proposed.

A program plan typically includes components which require the young person to:

- reside as directed (maybe at an accommodation or residential rehabilitation service),
- accept supervision by the Department of Juvenile Justice,
- accept case management support from a YDAC Case Manager,
- participate in individual, group and/or family counselling,
- participate in educational or vocational assessments and programs,
- participate in health related assessments or intervention,
- participate in recreational/leisure programs,
- submit to random urinalysis,
- attend the YDAC for Report Back sessions as directed

If a suitable program plan cannot be developed for a young person (for example, because the young person suffers from an severe mental illness or intellectual disability) they may not be suitable for program participation.

Joint Assessment And Review Team (JART)

The YDAC team is supported by a Joint Assessment and Review Team (JART), which is comprised of representatives of the departments of Health, Community Services, Education and Juvenile Justice.

In addition to being responsible for the provision of assessments to the Court of young people referred to the YDAC, JART also retains the responsibility to **direct the nature and frequency of intervention undertaken** and performs a **monitoring and review role** in regard to the young person's overall program participation.

Youth Drug and Alcohol Court Team

The meshing of judicial and treatment approaches is most clearly demonstrated in the operation of the Youth Drug and Alcohol Court Team. The Court Team comprises the sitting Children's Magistrate, Police Prosecutor, Legal Aid Solicitor, YDAC Registrar and a representative of the Joint Assessment and Review Team (JART).

Of particular significance is the young people's personal interaction with members of the Court Team. The deliberate degree of informality and open discussion at **Report Back** sessions promotes the young person's rapport building with members of the Court Team, most notably with the Magistrate and Prosecutor. It encourages the young person to assume responsibility for their actions and to actively contribute to the ongoing development and adherence to their program plan.

The YDAC team members dress informally, use first names and **get to know the young person well** - the average number of attendance at court is 17 times over an average of 8 months on the program, and most young people meet with the team every fortnight.