

Appendix A: Juvenile justice legislation in Australia

Juvenile justice in Australia is governed by state and territory legislation. The Acts specifying the responsibilities of the juvenile justice departments that are relevant to this collection are listed below.

New South Wales

- *Young Offenders Act 1997 (Part 5 and Schedule 1)*
- *Children (Community Service Orders) Act 1987*
- *Children (Detention Centres) Act 1987*
- *Children (Interstate Transfer of Offenders) Act 1988*

Victoria

- *Children and Young Persons Act 1989 (CYPA)*
- *Sentencing Act 1991*
- *Crimes Act 1958*
- *Bail Act 1977*

(Note: NEW – ‘Children, Youth and Families Act 2005’ (CYFA) is anticipated to be enacted in 2007)

Queensland

- *Juvenile Justice Act 1992 (including Juvenile Justice Amendment Act 1996, Juvenile Justice Amendment Act 1998, Juvenile Justice Amendment Act 2002)*
- *Juvenile Justice Regulations 2003*
- *Child Protection (Offender Reporting) Act 2004*
- *Young Offenders (Interstate Transfer) Act 1987*
- *Childrens Court Act 1992*

Western Australia

- *Young Offenders Act 1994*
- *Young Offenders Amendment Act 2004 (proclaimed on 1 January 2005)*
- *Young Offenders Amendment Regulations 1995*
- *Children’s Court of Western Australia Act 1988*
- *Court Security and Custodial Services Act 1999*
- *Inspector of Custodial Services Act 2003*
- *Sentence Administration Act 2003*

- *Child Welfare Act 1947*
- *Bail Act 1982*

South Australia

- *Family and Community Services Act 1972*
- *Young Offenders Act 1993*
- *Criminal Law (Sentencing Act 1988)*
- *Bail Act 1985*

Tasmania

- *Youth Justice Act 1997*
- *Youth Justice Amendment Act 2003*
- *Youth Justice Regulations 1999*

Australian Capital Territory

- *Bail Act 1992*
- *Children and Young People Act 1999* (currently under review)
- *Crimes (Restorative Justice) Act 2004*
- *Rehabilitation of Offenders (Interim) Act 2001*

Northern Territory

- *Juvenile Justice Act* (until 1 August 2006)
- *Youth Justice Act 2005* (from 1 August 2006)
- *Youth Justice Regulations 2005* (from 1 August 2006)
- *Police Administration Act* (Division 2B of Part VII)

Appendix B: Key elements of juvenile justice systems in each state and territory

With the responsibility for juvenile justice in Australia resting at jurisdictional level, there are many differences in the systems among the states and territories. This appendix provides an overview of the key elements of juvenile justice in each state and territory, and highlights some of the differences.

New South Wales

The term *juvenile justice* is generally used to refer to a state's criminal justice responses to children who have allegedly committed an offence or have been found to have committed an offence. Different aspects of these criminal justice responses are administered in New South Wales by various government agencies.

In New South Wales the age of criminal responsibility commences at 10 years. Under criminal law a child is a person under 18 years.

In some jurisdictions the function of juvenile justice resides within human services agencies and is not viewed purely within a criminal justice context. In New South Wales the Department of Juvenile Justice is considered both a justice and human services agency.

The police

The detection and investigation of crime is the responsibility of New South Wales police. For eligible and entitled young offenders, the police may use the alternatives to court of warnings, cautions or referrals to youth justice conferences that are set out in the *Young Offenders Act 1997*. In court proceedings, less serious juvenile charges bought by the police are dealt with by the Children's Court under the provisions of the *Children (Criminal Proceedings) Act 1987*. Police charges for serious offences are dealt with by the District and Supreme Courts.

Legal representation

All children in New South Wales against whom criminal proceedings are commenced are entitled to free legal representation.

Under the *Young Offenders Act 1997* young people must be informed of their right to speak to a lawyer before making any admission or statement to the police, and be told how they can exercise this right. The Children's Legal Service of Legal Aid New South Wales provides free telephone legal advice for all children in police custody in New South Wales. Aboriginal and Torres Strait Islander children who are taken into police custody are legally entitled to speak immediately to a solicitor from the Aboriginal Legal Service.

Lawyers from the Children's Legal Service represent children in criminal matters in the specialist Children's Courts in metropolitan Sydney (including the Youth Drug and Alcohol Court). Legal Aid pays private solicitors to represent children at local courts sitting as Children's Courts outside Sydney.

The Department of Juvenile Justice funds the Children's Visiting Legal Service (Legal Aid Commission of New South Wales) to give free legal advice and assistance to young offenders in the department's eight Juvenile Justice Centres.

The courts

The commencement, conduct and outcome of court proceedings against children alleged to have committed an offence and who are not diverted under the *Young Offenders Act 1997* are governed principally by the *Children (Criminal Proceedings) Act 1987*.

The *Children (Criminal Proceedings) Act* sets out the principles applicable to all courts exercising criminal jurisdiction with respect to children. These are (section 6):

- 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.
- That children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance.
- That it is desirable, wherever possible, to allow the education or employment of a child to proceed without interruption.
- That it is desirable, wherever possible, to allow a child to reside in his or her own home.
- 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.

Section 33 of the *Children (Criminal Proceedings) Act* permits the courts to make any of the following orders: a dismissal and/or caution, a good behaviour bond with or without supervision, a fine, referral to a youth justice conference, conditional or unconditional probation, a community service order, or an order that confines a young person to a period to detention.

The Department of Juvenile Justice

The main responsibilities of the department are the administration of youth justice conferences and the supervision of young offenders on community-based or custodial orders made by the courts.

The department's work also includes: support for young offenders making applications for bail, supervision of young offenders who are on conditional bail, supervision of young people remanded in custody pending finalisation of their court matters, and the preparation of reports for the consideration of the courts in determining whether to make a control order.

The department also provides funding to a number of community agencies to assist young people who have offended and their families.

Victoria

The Victorian Juvenile Justice Program sits within the Department of Human Services. The Juvenile Justice Program provides a statewide service through three metropolitan and five rural community-based regional Juvenile Justice Units and three custodial centres.

The age jurisdiction of the Juvenile Justice system in Victoria is from 10 years to 17 years inclusive. The inclusion of 17 year olds came into effect on 1 July 2005.

The Juvenile Justice system in Victoria takes a strong diversionary approach to managing children and young people who enter the criminal justice system. This is reflected in the *Children and Young Persons Act 1989* (CYPA), and in the manner in which children and young people are dealt with from the initial point of contact with the police through to completion of any order imposed by the court.

The sentencing principles framed in the CYPA distinguish the developmental needs of children and adolescents as separate to adults. Section 139 (1) of the CYPA contains the matters the court must take into account in determining a sentence:

- the need to strengthen and preserve the relationship between the young person and their family
- the desirability of allowing the young person to live at home
- the desirability of ensuring the young person's education or employment can continue without interruption or disturbance
- the need to minimise the stigma of receiving a court order
- the suitability of the sentence to the young person
- the need to ensure that young people are aware and accountable for their behaviour for any unlawful action
- the need to protect the community or any person from the violent or other wrongful act of the young person.

The criminal division of the Children's Court has a range of options available to it when dealing with children and young people and a clear sentencing hierarchy is established through the legislation.

As part of the diversionary approach, Victoria has a unique sentencing option known as the 'dual track' system. The *Sentencing Act 1991* provides for the adult court to sentence a young person aged 18 to 20 years to a juvenile justice administered Youth Training Centre (YTC) Order as a direct alternative to a sentence of imprisonment.

The Juvenile Justice Program provides a court advice service to both the Children's Court and adult court system to provide assessment and advice to the courts to assist in the sentencing process. There are a number of aspects to this service, including:

- advice on bail options and supervised bail service, including a central after hours bail assessment and bail placement service (CAHBAPS)
- advice to the courts through pre-sentence reports and youth training centre suitability assessments
- pre-sentence group conferencing: a legislative framework for the Group Conferencing Program has now been incorporated into the Victorian Children, Youth and Families Act (CYFA) 2005, and the program has been expanded across Victoria from October 2006.

The Juvenile Justice Program has responsibility for managing supervised sentencing orders imposed by the Children's Court and the YTC order imposed by the adult court. Case management and interventions are informed by a comprehensive client assessment and planning (CAP) process. Offending-related and offence-specific needs are addressed through individual casework and referral to specialist services and programs.

The Youth Residential Board and Youth Parole Board exercise jurisdiction over all young people sentenced by the courts to a period of detention in a juvenile justice custodial centre and over young people transferred by the Adult Parole Board from imprisonment to a juvenile justice custodial centre.

Queensland

Youth justice services overview

The Department of Communities has responsibility for the provision of youth justice conferencing, youth justice services and programs within Queensland.

Youth justice statutory responsibilities are prescribed under the *Juvenile Justice Act 1992*, enabling work with young people aged 10 to 17 that have been charged with a criminal offence. The Act contains a Charter of Juvenile Justice Principles that guides officers in the operation and application of the Act.

Youth justice conferencing, youth justice services and programs offer a specialist model of service delivery that aims to:

- divert young people from further offending
- take a restorative justice approach to working with young people
- address and reduce over-representation of Aboriginal and Torres Strait Islander young people in the justice system.

Youth justice conferencing, youth justice services and programs are delivered from 32 locations including:

- youth justice service centres
- youth justice conferencing services and outpost services
- a court services unit
- two youth detention centres
- a statewide quality service team – youth justice.

Key functions include:

- court-related activities including attending all court appearances by young people, administration of the Conditional Bail Program and bail support services
- administration and supervision of young people on community-based orders
- meeting the safety, wellbeing and rehabilitation needs of detained young people
- coordination and operation of youth justice conferencing.

The youth justice service centres provide supervisory, rehabilitative and re-integrative services to young people on community-based orders and young people leaving detention.

The detention centres provide secure care to young people while assisting with their planned re-integration into the community.

The statewide units provide policy and strategic direction and support direct service delivery. Additionally, the Office for Youth administers Youth Justice Program Management.

Key services delivered by these units include provision of service support and program and policy development to youth justice service centres, youth detention centres, youth justice conferencing, and court services, including implementation of:

- operational procedures
- quality assurance and quality control initiatives
- practice standardisation
- operational advice, support and critical incidents management
- youth justice-related executive correspondence and client relations management (complaints) support
- line management of court services.

Specific programs

Other targeted programs offered through youth justice services and programs include:

- The Youth Bail Support Service is funded by the department to provide accommodation and support services to young people who are remanded in custody, or are at risk of being remanded in custody, because of a lack of stable accommodation. The aims of the program are to:
 - reduce the number of young people held in detention on remand
 - facilitate culturally appropriate placement and intervention for young people released from detention on bail
 - provide courts with a legitimate supported accommodation option to remanding young people in custody.
- The Griffith Youth Forensic Service is a joint initiative of the Griffith University Schools of Criminology and Criminal Justice and Applied Psychology and the Department of Communities. The service is funded by the department and provides clinical intervention services for young people dealt with by Queensland Courts who are guilty of sexual offences. The Griffith Youth Forensic service:
 - provides specialised assessment and treatment programs for young sexual offenders
 - provides pre-sentence reports to facilitate court decisions and treatment planning
 - provides consultancy and training services for departmental and other allied workers who work with the target group.

Western Australia

Legislation

Juvenile justice operations in Western Australia are primarily governed by the *Young Offenders Act 1994*, the *Young Offenders Amendment Act 2004* (proclaimed on 1 January 2005), the *Young Offenders Amendment Regulations 1995* and the *Children's Court of Western Australia Act 1988*.

Jurisdictional placement

Juvenile justice services in Western Australia fall under the Community and Juvenile Justice Division of the Department of Corrective Services. This division covers adult community corrections and juvenile justice within the Community Justice Services Directorate and juvenile remand and detention services in the Juvenile Custodial Services Directorate.

Diversion

Community Justice Services has a community funding program that aims to reduce re-offending by funding local community agencies to provide preventative services and activities for juveniles up to 18 years old who have offended, or are at risk of offending.

Western Australia also offers young people charged with minor offences early alternatives to the formal introduction into the criminal justice system by allowing them to engage in therapeutic services and mediation with victims and other relevant stakeholders. Killara Youth Support Service is a departmental program for at-risk juveniles and young people who may have just started offending and links in with the police cautioning system. Killara offers counselling and support to young people and their families to help them resolve the problems that may be contributing to the offending behaviour. Juvenile Justice Teams also aim to divert minor offenders from the formal court system and to heighten the opportunity for police, mediators, victims and parents/caregivers to be involved in determining, in conjunction with the young person(s), the penalties applied to offenders. Court conferencing is an added function of the Juvenile Justice Teams and provides an opportunity for victims of scheduled offences not able to be referred to Juvenile Justice Teams to engage in a restorative justice.

Court

Should a juvenile offender be convicted and formally sentenced by the Children's Court a number of sentencing options are available: no punishment, no punishment with conditions, no punishment with recognisance, fine, youth community-based order (with possible conditions of community work and therapeutic programs), intensive youth supervision order without detention (with possible conditions as above), intensive youth supervision order with detention/conditional release order (with possible conditions as above and breach or re-offending whilst on the order can result in a custodial term being imposed at the magistrate's discretion), or custodial sentence usually followed by supervised release (juvenile parole).

Juveniles cannot be sentenced without being assigned a Juvenile Justice Officer (JJO). JJOs can be used to provide written and verbal sentencing advice to the courts when required. Whether the sentence granted is custodial or community-based, the role of the JJO becomes primary case management.

Juvenile justice supervision

Depending on the nature of the offence, the age and developmental stage of the young person, the apparent personal issues and the requirements of the disposition, the services can include: generic case management by a Juvenile Justice Officer, psychological counselling, referral to external statutory agencies and local service providers, referral to Victim-Offender Mediation Unit (if there are victim issues that require intervention), the use of Youth Support Officers or mentors, and referral to Department of Justice Education Advisory Officers.

Juvenile Custodial Services

Juvenile Custodial Services provides a safe and secure environment to the young people remanded in custody or sentenced to a period of detention. There are two Juvenile Custodial Facilities in Western Australia, both in Metropolitan Perth: Banksia Hill Detention Centre, which can accommodate 120 males aged 10–18, and Rangeview Remand Centre, which can accommodate 72 males and females aged 10–18. The two centres are staffed by a range of experienced professionals, including Juvenile Custodial Officers, Education and Training staff, Program Facilitators, Psychologists, Case Planning, Supervised Bail and Medical staff.

The wide range of programs provided to the young people in custody includes: Drug Counselling, Abuse Prevention Programs, Personal Development Programs, Healthy Relationships Programs, Conflict Resolution, Life Skills and Healthcare. These are only a small portion of the range provided by both internal and external providers.

Intensive Supervision Program

Aimed at the state's most serious repeat young offenders, the Intensive Supervision Program is the first of its kind in Australia. Intensive Supervision Program (ISP) teams work with young people who have extensive offending histories and complex social circumstances that contribute to their anti-social behaviour.

The Intensive Supervision Programs operate under license from the highly successful Multi-Systemic Therapy (MST) model, which is currently used in 25 American states, as well as in Canada, England, Northern Ireland, Norway, Denmark, France and New Zealand.

Evaluations of the model over the past 30 years have shown a 25–70% reduction in long-term rates of re-arrest of juveniles.

The start-up Intensive Supervision Program team began operating on 1 November 2004; there are now three ISP teams established in the Perth metropolitan area and plans to expand the program to regional areas are underway.

Many of the young people who are referred to ISP have already participated in a range of diversionary programs or have been subject to court orders and detention, which have only been marginally successful at rehabilitation. Therefore, for many families ISP is their 'last

shot' at helping their young people remain out of the justice system. The program finds ways to engage with families and young offenders who might be ambivalent or resistant. Team members work with some of the state's most marginalised and challenging families, often in difficult environments. Interventions used will depend on how the offending behaviours 'fit' or make sense with each family's situation. The main philosophy behind the program is that the best way to help young offenders is by helping their families use their existing strengths, skills and resources.

Perth Children's Court

Juvenile Custodial Services (JCS) resumed responsibility for the holding rooms at Perth Children's Court (PCC) and the transportation of young people across the metropolitan area in August 2004. In August 2005, JCS also accepted responsibility for the management of adult prisoners at the PCC Custody Centre who are appearing on outstanding juvenile charges or for care and protection hearings.

The JCS/PCC philosophy of stimulating interaction and genuine interest in procedures and people has proved successful in dealing with persons in custody, both young people and adults.

Regional Juvenile Remand Centres

In February 2005, as part of its election platform, the state government committed \$24 million to constructing two 12-bed juvenile remand centres in regional areas of Western Australia.

The centres were not designed to replace the function of the Banksia Hill Detention Centre for sentenced detainees. Banksia Hill was purpose-built for sentenced offenders, who usually stay longer in detention centres than young people on remand. While detained at Banksia Hill, young people are supported by the custom-design services and supports that a metropolitan, purpose-built facility can provide.

Following extensive community consultation in the regional areas, the Minister for Corrective Services recently advised that the state government will look at a wider range of options for young offenders at risk.

While the option of building a remand centre remains a possibility, other alternatives will be examined for the \$12 million funding. These could include:

- intensive, one-on-one and group support for families with difficult adolescents
- an outreach program for young people at risk and their families
- agreements with other government and non-government agencies to house young people on bail with individuals or groups, rather than in police lock-ups.

South Australia

The youth justice system is primarily established under the South Australian *Young Offenders Act 1993*, which operates within the context of the general laws of the state and spells out the relevant adaptations and modifications of these laws for the processing and treatment of young people. The youth justice system deals with 10–17 year olds who commit an offence

or are alleged to have done so, although some older youth may be involved in the system for crimes committed as a young person.

Police

Police are the primary gate keepers of the youth justice system and direct offenders either through the tiered diversionary structure or to the Youth Court. The police have the power to issue a young person either an informal or formal caution. Informal cautions are issued 'on the spot' by police officers for 'minor offences'. Formal cautions are issued to a young person who has committed an offence and where the police have determined the offence to be more serious than one warranting an informal caution.

Family conference

For those offences considered too serious for an informal/formal caution, a young person may be directed to attend a family conference. The young person has to admit to the commission of the offence(s). If the charge is denied then the matter is referred to the Youth Court. An outcome of the conference may include a range of different undertakings. The Family Conference Team is situated in the Courts Administration Authority within the justice portfolio.

Youth Court

The composition and function of the Youth Court is determined by the *Youth Court Act 1993*. The Youth Court is presided over by a Judge of the District Court. Young people may be referred to a higher court depending on the seriousness of the offence or the pattern of repeated behaviour. The Supreme Court deals with all charges of homicide regardless of the age of the offender.

Families SA

Families SA is positioned within the Department for Families and Communities. The Department for Families and Communities is additionally responsible for the provision of a range of housing, disability, aged care and general youth services. Families SA has the statutory responsibility to manage orders made by the Youth Court. Families SA's service delivery responsibilities are shown below.

Sentence management

This involves the management of youth justice sentences ordered by the court. Sentence management involves allocation, assessment and sentence planning, implementation and review, and discharge planning. It involves elements of supervision and intervention. Orders include:

- secure detention
- home detention
- conditional release

- suspended detention
- supervised obligation
- community service order
- fines payment community service order.

Remand management

Remand management is the management of young people on detention remand and community bail. Remand management aims to ensure the young person's return to court and compliance with conditions of the order. It involves elements of supervision. Orders include:

- custodial remand
- home detention bail
- conditional bail.

Programs

Programs and activities form part of a case management response aimed at impacting on offending, the building of skills and the development of the young person's capacity to integrate into the community.

Other system responses

- Pre-court and court advocacy functions, including court reports.
- Post-release transition and support services.
- Work with families and communities.

District centres are direct service providers who provide a range of both youth justice and care and protection services. Families SA has 19 district centres located throughout the state. There are two youth secure care facilities in South Australia, Magill and Cavan, both of which are managed by Families SA. Additionally, Families SA provides social welfare services including poverty prevention and intervention services, family and child support and alternative care responses.

Tasmania

Jurisdictional location

Youth Justice in Tasmania is administered through the Department of Health and Human Services (DHHS) by the Youth Justice Services, Business Unit, which is part of the Human Services Group.

Youth Justice Services provides a statewide service from three regional units and one custodial centre. The custodial service is located in the north of Tasmania near the town of Deloraine. The directorate and program support are provided centrally from Hobart.

Legislation

The *Youth Justice Act 1997* underpins the provision of services in Tasmania via restorative justice principles and objectives for the age cohort 10–17 years. The Act provides a comprehensive framework for a restorative justice 'what works' practice base. Some young people are over 17 years of age because they committed their offence before reaching the age of 18 years. A major emphasis of the Act is pre-court diversion and restoration or reparation of harm done in the community. Involvement of victims, parents, guardians and the community is encouraged in order to improve individual resilience and community capacity to take responsibility and work in partnership to assist young people to rehabilitate in the community.

Police

Tasmania Police is responsible for the clearance of reported youth crime and deciding whether to divert or to prosecute matters in the courts. Police are responsible for the diversionary pre-court, informal and formal cautioning service. Police may refer a young person to Youth Justice Services for a community conference. When making decisions, cultural, community and religious diversity must be considered.

The courts

The Magistrates Court (Youth Justice Division) hears all matters brought to its attention under the Act. The Supreme Court hears matters related to serious prescribed offences. Obligations entered into at a community conference are registered with the Court Registrar and if the young person chooses not to comply the matter may be referred back to police to determine if they will proceed with a prosecution of the matter in the courts.

The Magistrates Court (Youth Justice Division) has a range of sentencing options including fines, community conference, probation, community service orders, suspended detention and detention. Before using more serious sentencing options, a pre-sentence report must be obtained from Youth Justice Services. A Magistrate may order a conviction to be recorded for a probation order and community service order and must order a conviction if a detention order is made.

Youth Justice Services

There are two components to the Service, Community Youth Justice and Custodial Services. These Services work closely to ensure a coordinated and integrated assessment and case management practice is used across Youth Justice Services.

The Community Youth Justice Service has a supervision and management role for young offenders who either have a statutory order resulting from a court appearance or an obligation to perform that was agreed to during a community conference. The role of the Community Youth Justice Service is to provide:

- advice to the Magistrates Court (Youth Justice Division) and the Supreme Court prior to sentencing
- assessment and case management service for young people who are the subject of non-custodial statutory orders

- assessment and case management of young people released from detention to serve the latter portion of their order in the community
- referral of young people to appropriate services based on needs assessment
- management of the community conference program
- management of the community service order program
- the development of community partnerships to support young people to be included into the community and take pro-social pathways.

The Custodial Service provides safe and secure custodial services at Ashley Youth Detention Centre. There is only one such centre in Tasmania, which can accommodate up to 51 young people. The centre services both females and males and works closely with the Community Youth Justice Service to ensure assessments that underpin pre- and post-release planning and case management are comprehensive and contemporary.

Ashley Youth Detention Centre ensures educational and training services are provided along with other appropriate health and wellbeing services that are essential for young people in custodial environments. Reviews of client safety and remand levels have been conducted in order to continually review the adequacy of the service for young people in custody. The centre has a dedicated Programs Officer and a number of programs have been developed for residents including drug and alcohol, employment and life coaching programs. Ashley Youth Detention Centre is in a rural setting and has worked hard to ensure it is part of the Tasmanian community. The centre has developed strong links with external service providers in order that support and programs for young people are in place in the community upon release from custody.

Australian Capital Territory

Responsibility for youth justice services in the Australian Capital Territory sits with the Office for Children Youth and Family Support within the Department of Disability, Housing and Community Services.

The youth justice system is primarily administered under the *Children and Young People Act 1999* (C&YP Act), which outlines the specific requirements for dealing with children and young people who offend. However, there is some provision for the sentencing of young people under the *Crimes (Sentencing) Act 2005*, which is primarily designed for the sentencing of adult offenders. Bail decisions for young people are made under the *Bail Act 1992*. The C&YP Act is currently under review.

The youth justice system deals with children and young people aged between 10 and 18 years who enter the justice system (with some capacity to supervise older people whose matters have been dealt with as though they were a young person).

Legislation and policy

The ACT *Human Rights Act 2004* (HR Act) came into force on 1 July 2004 and is Australia's first human rights legislation. The Human Rights Commissioner has a mandate under section 41 of the HR Act to review and report to the Attorney General on compliance with the Act. Under this power, a review of the C&YP Act, which governs the operations of Quamby Youth Detention Centre, was undertaken in 2005. The purpose of this review was

to ensure that the delivery of services to young detainees in the Australian Capital Territory is consistent with internationally agreed human rights standards enshrined in the HR Act. The human rights review has informed a number of changes to practice, the ongoing review of the C&YP Act and will also inform the development of the new youth detention centre.

Police

Police have discretionary powers to divert young people who have committed offences by using a warning and diversionary system. This diversionary process is utilised for minor offences and is based on criteria that consider a range of factors, including prior offending history, maturity and mental capacity and parental input. If a decision is taken to prosecute, Police may proceed by issuing a summons for the child or young person to attend court, or by detaining them until the next sitting of the Children's Court.

Restorative justice

The *Crimes (Restorative Justice) Act 2004* was passed on 31 January 2005. At present, the Act applies only to young offenders who have committed minor offences. In the second phase the Act will be extended to cover both young people and adults, and will apply to all offences involving a victim. A Restorative Justice Unit (RJU) was established within the Department of Justice and Community Safety to administer the Act and to convene and manage the conference processes. The RJU is responsible for all restorative justice activities in the Australian Capital Territory and incorporates the Diversionary Conferencing formerly delivered by the Australian Federal Police. Restorative Justice processes are available to children and young people who have been cautioned, charged or convicted of a criminal offence.

Children's Court

The ACT Chief Magistrate appoints a Magistrate to the position of 'Children's Court Magistrate' for a term of up to two years. The facilities within the Magistrates Court building allows for the physical separation of matters in the children's and adult courts.

Children and young people convicted of indictable offences in the Children's Court may be committed to the Supreme Court for sentence. Conversely, young people convicted by the Supreme Court may be remitted to the Children's Court for sentence. Also, preliminary examination of indictable offences involving both young offenders and adult offenders may, with the approval of the Chief Magistrate, be conducted together.

A specialist court officer within the department attends all court matters relating to a child or young person to provide reports on current youth justice clients and advice on the custodial and community-based services available to children and young people.

Dispositions

The C&YP Act provides specific principles that must be considered when making decisions on sentencing in relation to children and young people. The principles focus on having the child or young person accept responsibility for the offence and be held accountable, while

providing them with the maximum opportunity to re-enter the community and to develop in socially responsible ways.

Dispositions available to the court include:

- dismissal of charge
- reprimand
- conditional discharge
- fine, reparation or compensation order
- probation order
- community service order
- attendance centre order
- residential order
- committal order (within the ACT or to another state institution)
- good behaviour orders.

Remand in custody and custodial management

Quamby Youth Detention Centre currently manages children and young people who have been remanded in custody or sentenced to a custodial term. Within the facility there are case management services and therapeutic services, including mental health and general education programs and specific programs to address offence-related issues. The ACT Government has commenced the development of a new youth detention centre. The new facility is scheduled for completion in 2008.

Community-based management

Community Youth Justice (CYJ) manages children and young people who are placed on bail supervision or other supervised community-based orders. CYJ provides a comprehensive assessment and case management service to clients as well as regular advice and reports to the court on the progress that young people make in meeting the conditions of their orders.

Northern Territory

Juvenile justice is the responsibility of the Northern Territory Police through the Pre-court Diversion Scheme and the Department of Justice, Correctional Services.

Pre-court

Alleged young offenders in the Northern Territory are dealt with in one of three ways:

- referred to a Juvenile Pre-court Diversion Scheme
- released on bail
- remanded in custody.

The Juvenile Pre-court Diversion Scheme may take the form of verbal and written warnings, family conferences, formal cautions, victim-offender conferencing, substance or drug abuse programs and community service programs.

Young people may be released on bail with or without conditions.

If the alleged crime is serious, the accused young person may be remanded in custody prior to court hearing.

Court sentencing options

- Discharge the young person without penalty.
- No further trouble order – matter is adjourned for six months. If the young person does not commit a further offence during that period the court may discharge the young person without penalty.
- The court may fine the young person.
- Order the young person to be of good behaviour for a period not exceeding two years. Good behaviour bond may be subject to a range of conditions including restrictions on where the young person can live or supervision by Correctional Services, and general conditions such as reporting, employment and/or education and participation in rehabilitation programs.
- Order the young person to undertake community work not exceeding 480 hours.
- Order a suspended sentence of detention with the young person placed on probation for a period not exceeding two years. In most cases supervision by Correctional Services is a condition of such orders.
- Order the young person to serve a term of detention but suspend part of the sentence (that is, six months detention order to serve three months, then released on a probation order).
- Sentence the young person to a term of detention. Under the *Juvenile Justice Act* the young person and/or Correctional Services can apply for reconsideration of the sentence. If the young person has responded well to case management and he/she has support in the community, the court will usually release him/her on a supervised order.
- Order the young person to participate in an approved program such as Victim Offender Conferencing (VOC), counselling or skills-based program. Correctional Services undertakes an assessment of the young person's suitability to participate in a VOC or other program for the court. If found suitable, the matter is adjourned until the program is completed. The young person then returns to court and is sentenced, taking into account his/her level of participation in the program.

Juvenile justice supervision

If the young person is bailed the court can place the young person under the supervision of Correctional Services with conditions such as residence, curfew and attendance at specific appointments (for example, alcohol and drug assessments).

All young people placed on orders undergo case management whether on a community-based order or serving a term of detention. Case management goals vary significantly depending on the young person, their family or significant other supports and the services available in their community.

Appendix C: List of remand and detention centres

The remand or detention centres throughout Australia for which data are collected are:

- New South Wales – Acmena Juvenile Justice Centre (Grafton), Broken Hill Juvenile Justice Centre, Cobham Juvenile Justice Centre (St Marys), Frank Baxter Juvenile Justice Centre (Kariong), Keelong Juvenile Justice Centre (Unanderra), Orana Juvenile Justice Centre (Dubbo), Reiby Juvenile Justice Centre (Airds), Riverina Juvenile Justice Centre (Wagga Wagga), Juniperina Juvenile Justice Centre (Lidcombe).

In New South Wales the Kariong Juvenile Justice Centre was transferred from the NSW Department of Juvenile Justice (DJJ) to the NSW Department of Corrective Services (DCS) on 10 November 2004. It was re-named the Kariong Juvenile Correctional Centre.

The facility continues to accommodate young people on remand, those serving sentences for very serious offences, or who have exhibited behavioural problems. A Memorandum of Understanding between DJJ and DCS enables smooth transfer between the two systems.

Young people continue to be transferred from DJJ centres to Kariong based upon DJJ's classification system. To be transferred to Kariong young people must be 16 years old or over and have a serious classification.

Figures for young people in custody in Kariong after 10 November 2004 will not be reported by DJJ.

- Victoria – Malmsbury Juvenile Justice Centre, Melbourne Juvenile Justice Centre, Parkville Youth Residential Centre.
- Queensland – Brisbane Youth Detention Centre, Cleveland Youth Detention Centre, John Oxley Youth Detention Centre (closed 14 March 2001), Sir Leslie Wilson Youth Detention Centre (decommissioned 7 February 2001).
- Western Australia – Banksia Hill Detention Centre, Rangeview Remand Centre.
- South Australia – Cavan Training Centre, Magill Training Centre.
- Tasmania – Ashley Youth Detention Centre.
- Australian Capital Territory – Quamby Youth Detention Centre.
- Northern Territory – Alice Springs Juvenile Holding Centre, Don Dale Juvenile Detention Centre, Wildman River Wilderness Work Camp (closed 14 October 2003).

Glossary

General definitions

Age

In all age-related tables, age is reported in years.

Criminogenic

Producing or tending to produce crime or criminality (Houghton Mifflin Company 2000).

Episode

A distinct period of time during which a young person is under a specific type of supervision by a juvenile justice department. See Section 2.1.2 for a complete definition.

Juvenile justice centre

A place administered and operated by a juvenile justice department, where young people are detained whilst under the supervision of the relevant juvenile justice department on a remand or sentenced detention *episode*. See Appendix C for a list of the juvenile justice centres included in this collection.

Juvenile justice department

Refers to those departments in each state and territory that are responsible for juvenile justice matters. See the Acknowledgments for a list of the relevant departments.

Supervision period

A period of time during which a young person is continuously under juvenile justice supervision of one type or another. A *supervision period* is made up of one or more contiguous *episodes*. See Section 2.1.2 for a complete definition.

Young person

A young person in the national collection is any young person who is under supervision by a juvenile justice department as a result of having committed or allegedly committed an offence. See Section 2.1.1 for a complete definition.

Juvenile justice *episode* types

Pre-sentence community

Other pre-sentence arrangements where the juvenile justice department is responsible for the case management or supervision of the young person (such as supervised or conditional bail where the juvenile justice department is involved with monitoring or supervising the young person).

Pre-sentence detention

Remanded or held in a juvenile justice centre or police watch house prior to appearing in court or to being sentenced.

Sentenced community-based supervision

Includes probation, recognisance and community service orders which are supervised or case managed by the juvenile justice department. May be supervision with or without additional mandated requirements, requiring some form of obligation or additional element that the young person is required to meet. This obligation could be community work such as in a community service order, a developmental activity or program attendance. The juvenile justice department may or may not directly supervise any additional mandated requirements, but remains responsible for the overall case management of the young person.

Reasons for exit from *episodes*

Breached

Breaches are due to re-offending, non-compliance to the conditions of the order, or otherwise, resulting in the ending of an *episode* and/or a change in *episode* type.

Conditions of sentence met

Where the young person has fulfilled the obligations of their sentence and is released from supervision (without a period of supervised release or parole to immediately follow).

Matters proven/charges dismissed

Where the young person exits a pre-sentence *episode* and does not return to juvenile justice supervision because the results of legal proceedings do not invoke a new *episode*.

More serious order begun

Where an *episode* ends because the young person receives another order that is more highly ranked on the *episode* type hierarchy than the original *episode*, but no breach has been recorded. See Section 2.1.2 for details of the *episode* type hierarchy.

Transferred

Transfers may include young people being transferred from one detention centre to another in the same state or territory, a young person being transferred to an adult correctional facility in the same state or territory, supervision or case management of a young person being transferred to the adult justice system, or where young people are transferred interstate.

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List of tables

Table 1.1: Range of juvenile justice outcomes and services available, by state and territory, June 2006.....	4
Table 2.1: Data items in Juvenile Justice NMDS young person collection	13
Table 2.2: Data items reported on in Juvenile Justice NMDS <i>episode</i> collection.....	16
Table 2.3: Australian population aged 10–17 years, by Indigenous status, 2005.....	18
Table 3.1: Young people under juvenile justice supervision, states and territories, 2001–02 to 2004–05.....	24
Table 3.3: Young people under juvenile justice supervision, by sex, states and territories, 2004–05 ..	27
Table 3.4: Rates of young people aged 10–17 years under juvenile justice supervision, per 1,000 young people, by sex, 2004–05	27
Table 3.5: Young people under juvenile justice supervision, by age, states and territories, 2004–05	29
Table 3.6: Young people under juvenile justice supervision, by Indigenous status, states and territories, 2004–05.....	30
Table 3.7: Rates of young people aged 10–17 years under juvenile justice supervision, per 1,000 young people, by Indigenous status, 2004–05	32
Table 3.8: Young people under juvenile justice supervision, by age and Indigenous status, Australia, 2004–05.....	33
Table 3.9: Young people under juvenile justice supervision, by age and sex, Australia, 2004–05	34
Table 3.11: Young people, age at first juvenile justice supervision, states and territories, 2000–01 to 2004–05 (%).....	37
Table 3.12: Young people new to national minimum data set, age at first supervision, states and territories, 2004–05 (%).....	38
Table 3.13: Young people, age at first juvenile justice supervision, by Indigenous status, 2000–01 to 2004–05.....	39
Table 3.14: Young people, age at first juvenile justice supervision, by sex, Australia, 2000–01 to 2004–05.....	40
Table 4.1: Young people, average daily number in community supervision, states and territories, 2000–01 to 2004–05.....	41
Table 4.2: Young people, average daily number in community supervision, by sex, Australia, 2000–01 to 2004–05.....	42
Table 4.3: Young people, average daily number in community supervision, by age, Australia, 2000–01 to 2004–05.....	42
Table 4.4: Young people, average daily number in community supervision, by age, states and territories, 2004–05.....	43
Table 4.5: Young people, average daily number in community supervision, by Indigenous status, Australia, 2000–01 to 2004–05	43
Table 4.6: Young people, average daily number in community supervision, by Indigenous status, states and territories, 2004–05	44

Table 4.7: Young people, average daily number in community supervision, by age, sex and Indigenous status, Australia, 2004–05.....	44
Table 4.8: Young people, average daily number in detention, all ages, states and territories, 2000–01 to 2004–05.....	45
Table 4.9: Young people, average daily number in detention, by sex, Australia, 2000–01 to 2004–05.....	46
Table 4.10: Young people, average daily number in detention, by age, Australia, 2000–01 to 2004–05.....	46
Table 4.11: Young people, average daily number in detention, by age, states and territories, 2004–05.....	47
Table 4.12: Young people, average daily number in detention, by Indigenous status, Australia, 2000–01 to 2004–05.....	47
Table 4.13: Young people, average daily number in detention, by Indigenous status, states and territories, 2004–05.....	48
Table 4.14: Young people, average daily number in detention, by age, sex and Indigenous status, Australia, 2004–05.....	48
Table 4.15: Young people, average daily number in supervision, states and territories, 2000–01 to 2004–05.....	49
Table 5.1: Young people, by number of completed <i>supervision periods</i> , states and territories, 2004–05.....	52
Table 5.2: Completed <i>supervision periods</i> , by length, states and territories, 2004–05.....	53
Table 5.3: Young people, completed <i>supervision periods</i> , by number and average length, Australia, 2004–05.....	55
Table 5.4: Proportion of person days in supervision, by sentenced <i>episode</i> type, states and territories, 2004–05 (per cent).....	56
Table 5.5: <i>Episodes</i> , median length in days, by <i>episode</i> type, states and territories, 2004–05.....	56
Table 5.6: Proportion of person days in supervision, by <i>supervision period</i> length and <i>episode</i> type, Australia, 2004–05 (%).....	57
Table 5.7: <i>Supervision periods</i> , by <i>episode</i> type, states and territories, 2004–05 (%).....	58
Table 5.8: <i>Supervision periods</i> , by type, Australia, 2004–05.....	59
Table 5.9: Reason for exit from remand <i>episodes</i> , states and territories, 2004–05.....	60
Table 5.10: Young people, by number of completed <i>supervision periods</i> and sex, 2004–05.....	61
Table 5.11: Completed <i>supervision periods</i> , by length and sex, Australia, 2004–05.....	62
Table 5.12: <i>Episodes</i> , median length in days, by <i>episode</i> type and sex, Australia, 2004–05.....	63
Table 5.13: <i>Supervision periods</i> , by <i>episode</i> type and sex, Australia, 2004–05 (%).....	64
Table 5.14: Reason for exit from remand <i>episodes</i> , by sex, 2004–05.....	65
Table 5.15: Young people, by number of completed <i>supervision periods</i> and age, Australia, 2004–05.....	66
Table 5.16: Completed <i>supervision periods</i> , by length and age, Australia, 2004–05.....	67
Table 5.17: <i>Episodes</i> , median length in days, by <i>episode</i> type and age, Australia, 2004–05.....	68
Table 5.18: <i>Supervision periods</i> , by <i>episode</i> type and age, Australia, 2004–05 (%).....	69
Table 5.19: Reason for exit from remand <i>episodes</i> , by age, Australia, 2004–05.....	70

Table 5.20: Young people, by number of completed <i>supervision periods</i> and Indigenous status, Australia, 2004–05.....	71
Table 5.21: Completed <i>supervision periods</i> , by length and Indigenous status, Australia, 2004–05.....	72
Table 5.22: <i>Episodes</i> , median length in days, by <i>episode</i> type and Indigenous status, Australia, 2004–05.....	73
Table 5.23: <i>Supervision periods</i> , by <i>episode</i> type and Indigenous status, Australia, 2004–05 (%).....	74
Table 5.24: Reason for exit from remand <i>episodes</i> , by Indigenous status, 2004–05.....	75
Table 5.25: Completed <i>episodes</i> , by <i>episode</i> type and reason for exit, Australia, 2004–05 (%).....	76
Table 5.26: Young people with first ever juvenile justice supervision in 2000–01, year of entry to last <i>supervision period</i> , by age at first supervision, 2000–01 to 2004–05.....	78
Table 5.27: Young people with first ever juvenile justice supervision in 2000–01, number in new supervision period each year, by age at first supervision, 2000–01 to 2004–05.....	79
Table 5.28: Young people with first juvenile justice supervision in 2000–01, total number of completed <i>supervision periods</i> , by age at first supervision, 2000–01 to 2004–05.....	80
Table 5.29: Young people with first juvenile justice supervision in 2000–01, total number of <i>supervision periods</i> , by age at first supervision and Indigenous status, 2000–01 to 2004–05.....	81
Table 5.30: Sentenced <i>episode</i> types following remand, young people aged 14 years, by age at first juvenile justice supervision, 2000–01 to 2004–05.....	82
Table 5.31: Young people aged 10 to 14 years at first ever juvenile justice supervision in 2000–01, number of person days spent in <i>episodes</i> , by age at first contact, 2000–01 to 2004–05.....	84
Table 5.32: Young people aged 10 to 14 years at first ever juvenile justice supervision in 2000–01, per cent of person days spent in <i>episodes</i> , by age at first contact, 2000–01 to 2004–05.....	85
Table 5.33: Age at first juvenile justice supervision, by presence or absence of detention <i>episodes</i> in the first <i>supervision period</i> , 2000–01 to 2004–05.....	86
Table 5.34: Young people aged 10 to 14 years at first <i>supervision period</i> in 2000–01, detention in first <i>supervision period</i> by total number of <i>supervision periods</i> , states and territories, 2000–01 to 2004–05.....	87
Table 5.35: Young people aged 10 to 14 years in 2000–01 at first <i>supervision period</i> , detention in first <i>supervision period</i> by total number of <i>supervision periods</i> per young person, by age at first contact, 2000–01 to 2004–05.....	89

Juvenile justice in Australia 2004–05 state and territory appendices are available online only at <http://www.aihw.gov.au/publications/>.

List of figures

Figure 1.1:	A composite of the juvenile justice processes in Australia	3
Figure 2.1:	Relationship between <i>supervision periods</i> and <i>episodes</i>	14
Figure 2.2:	Australian population aged 10–17 years and total population, by Indigenous status and state and territory, 2005.....	19
Figure 3.1:	Young people under juvenile justice supervision, by supervision type, Australia (excluding Australian Capital Territory), 2001–02 to 2004–05	25
Figure 3.2:	Young people under juvenile justice supervision, by Indigenous status, 2001–02 to 2004–05	31
Figure 3.3:	Young people under juvenile justice supervision, age at first juvenile justice supervision, 2000–01 to 2004–05	37
Figure 5.1:	Young people, by number of completed <i>supervision periods</i> , Australia, 2004–05	52
Figure 5.2:	Completed <i>supervision periods</i> , by length, 2004–05	54
Figure 5.3:	Average proportion of time in sentenced detention from all sentenced <i>episodes</i> when aged 14 years, by age at first juvenile justice supervision in 2000–01	83
Figure 5.4:	Young people aged 10 to 14 years in 2000–01, detention in first <i>supervision period</i> by total number of <i>supervision periods</i> , 2000–01 to 2004–05	88