

# **Juvenile justice and youth welfare: a scoping study**

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# **Juvenile justice and youth welfare: a scoping study**

**1998**

Australian Institute of Health and Welfare  
Canberra

AIHW cat. no CWS 6

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ISBN 0 642 24787 0

### **Suggested citation**

Australian Institute of Health and Welfare (AIHW) 1998. Juvenile justice and youth welfare: a scoping study. AIHW cat. no. CWS 6. Canberra: AIHW.

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Published by Australian Institute of Health and Welfare

Printed by Elect Printing

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# Acknowledgments

This report was written by Robyn Hartley of RHMSS Social Research Services for the Australian Institute of Health and Welfare.

The support of the Australasian Juvenile Justice Administrators (Chair: Mr Terry Keating) for this study is gratefully acknowledged. Information and assistance from administrators of all States and Territories were provided to Ms Hartley, and their kind cooperation has been essential for this work.

Assistance and helpful comments from Mr Stuart Ross of the Melbourne Office of Australian Bureau of Statistics are also acknowledged.



# 1 Introduction

In the light of changes to the ways in which community services in Australia are structured and delivered and the need for more reliable and comparable data about their provision, there have been significant moves in recent years towards developing key national information issues and priorities in regard to community services.

A National Community Services Information Agreement, signed by the Commonwealth, State and Territory community services authorities (excluding Western Australia), the Australian Bureau of Statistics (ABS) and the Australian Institute of Health and Welfare (AIHW), came into effect in March 1997. It covered aged care, disability services, children's services, child protection services, juvenile justice and emergency relief services (AIHW 1997).

An information development plan was subsequently developed by the National Community Services Information Management Group (NCSIMG), the group set up to manage the Agreement, under the auspices of the Standing Committee of Community Services and Income Security Administrators (SCCSISA). The development plan outlines a framework for community services data development, development strategies and priorities and sets out recommendations (NCSIMG 1998). Included in the scope of community services for the plan is the area of 'child welfare (including juvenile justice)' (NCSIMG 1998:1).

In three biennial reports on Australia's welfare, the first in 1993, the AIHW has progressively expanded coverage of child welfare statistics, including child abuse and neglect and children under protection and care orders. However, comparability of data across each State and Territory has been affected by significant changes in child protection practices in some States in recent years and NCSIMG is reviewing issues concerned with data collection in these areas.

In the area of juvenile justice and welfare, NCSIMG notes that there is considerable developmental work to be done. The NCSIMG framework for developing community service data utilises four key foci: population wellbeing (providing status reports for the population and its subgroups in respect of support and care needs and demands); service provision (representing the inputs and outputs of the service sector and a profile of the service environment); service utilisation (representing the pattern of service uptake and client characteristics across the community services and related sectors); and client and carer outcomes (representing the intended results of service interventions for the client and their carers) (NCSIMG 1998:8). Across all of these foci, NCSIMG assesses both the availability of data and information development activity to be at a low level in relation to juvenile justice and welfare, with one exception. Developmental activity in regard to information about service provision is assessed to be at a medium level (NCSIMG 1998:11).

To date, AIHW has not reported on juvenile justice matters. The ABS has responsibility for reporting on crime, court and corrections statistics. Currently, ABS work in this area is concentrated on adults, but ABS has an interest in extending its coverage to juveniles. The Australian Institute of Criminology has a quarterly juvenile justice custody collection, called 'Persons in Juvenile Justice Corrections Institutions'. The information is collected from the relevant source of such information in each State and Territory (department of justice, juvenile justice or community services department). The collection is for the use of State and Territory jurisdictions and is not publicly available. It is generally acknowledged that while

the collection is useful for the various jurisdictions for benchmarking purposes and apparent differences between the States and Territories suggest some interesting questions for analysis, the differences between systems and States make comparisons very difficult. In addition, the usefulness of the collection is limited by the fact that sex, age and Indigenous status are the only variables included.

In order to advance its responsibility to report nationally on juvenile justice, AIHW commissioned the present issues paper to identify the scope of what might be involved, to summarise the key features of juvenile justice in each State, and in particular to identify issues in the relationship between juvenile justice systems and youth welfare systems likely to impact on a national framework for reporting. The paper should be regarded as a preliminary identification of issues only, in order to provide a basis for further development of national reporting on juvenile justice.

## **1.1 Methodology**

- A brief literature search of current trends in juvenile justice was conducted.
- Legislation, program descriptions and statements, practice manuals and other relevant documents were collected from each State and Territory.
- Telephone consultations were conducted with departmental officers in juvenile justice and community services in the States and Territories to clarify aspects of the documents, to identify aspects of the relationship between juvenile justice and youth welfare programs, and to identify relevant data collections. Summaries for each State and Territory were prepared by the consultant and commented upon by juvenile justice administrators.
- Telephone consultations were conducted with a small number of key informants other than departmental officers concerning key issues in the relationship between juvenile justice and youth welfare programs.

## **1.2 Scope of the paper**

The paper:

- summarises the key elements of juvenile justice and relevant aspects of welfare programs in each State and Territory;
- identifies the main juvenile justice data collections in each State and Territory;
- identifies key issues in the relationship between juvenile justice and youth welfare programs in each State and Territory; and
- summarises the main government-provided and/or -funded programs for the target group of young people by State and Territory.

Greater emphasis is placed on the juvenile justice system than the youth welfare system in each State and Territory because the former is more clearly defined than the area of 'youth welfare', an issue discussed in more detail in chapter 4.

The paper is concerned principally with issues in the relationship between juvenile justice and youth welfare systems which may have implications for AIHWs responsibility to report nationally on matters relating to the health and welfare of the population. In each State and Territory there are significant policy issues concerning the interaction of juvenile justice and child protection and related matters of administration and practice. Such issues are referred

to in the paper in so far as they may affect data collection and reporting; however, they are not the main focus.

### **1.3 Organisation of the paper**

The first part of the paper outlines recent trends in juvenile justice; summarises key aspects of juvenile justice systems in the States and Territories including the coverage of data collections; discusses the parameters of 'youth welfare'; and identifies issues in the relationship between juvenile justice and youth welfare systems.

The second part of the paper comprises separate summaries for each State and Territory, which outline:

- where the juvenile justice system sits administratively;
- relevant Acts and key features of the juvenile justice system;
- the age scope of the juvenile justice system;
- core functions of the system;
- integration and linkages between juvenile justice and youth welfare systems;
- where responsibility lies for young people on State and Territory care and protection orders who commit offences;
- the types of programs available to young people in the juvenile justice system; and
- the main data collections available.

The summaries provide more detailed information about aspects of juvenile justice and the issues raised in the first part of the paper, as they relate to the separate States and Territories.

# 2 Trends in juvenile justice

## 2.1 Introduction

Three broad approaches have influenced juvenile justice in Australia in recent times. Over the past couple of decades, States and Territories have come to adopt systems of juvenile justice characterised by criminologists as consistent with a justice model as opposed to previous approaches based on a welfare model. More recently, some States have adopted elements of what is sometimes known as the New Zealand model of juvenile justice and incorporated aspects of 'reintegrative shaming' theory outlined by Braithwaite (1989).

The welfare model was underlain by the notion of a benign children's court that acted in the best interests of the child and had a degree of informality and discretion, but which in effect was often arbitrary in its decision making and blurred the distinction between children who offended and those who were regarded as being in need of care and protection. The justice model is so called because it places emphasis on adherence to the due processes of the law, young people accepting responsibility for their actions, and penalties that are set down by legislation and designed to be in proportion to the severity of the offence. The third model, currently having a significant impact on approaches to juvenile justice in Australia, is that of 'restoration, reconciliation and reintegration', which gives attention to restoring victims' losses, reconciling victims and offenders, and reintegrating young people into their communities (Borowski & O'Connor 1997:227).

Along with the shift in models, most States and Territories now have fewer young people in detention than previously, diverting them from this most severe option by various means. Most systems include ways of diverting young people from courts, such as informal and formal police cautions and, for those who do go to court, a wider range of community based orders whereby young people are required to do community work or to enter into a variety of undertakings. There is also a stronger emphasis on young people accepting responsibility for their actions and an emphasis on parents taking greater responsibility for their children's offences in some jurisdictions. Overall, there is strong commitment to incarceration as the appropriate sentence for more serious offences. Conferencing, consistent with the restoration, reconciliation and reintegration model and variously called family, group or youth conferencing, has been introduced in some States.

## 2.2 Models of juvenile justice

Underlying the welfare model were beliefs that juvenile crime was an indicator and predictor of later adult criminality and that the role of the State was to intervene and ensure that proper normal development occurred (O'Connor 1997a). This opened the way for considerable intrusion by the State into the lives of children, young people and their families. It is generally conceded that it also led to widespread injustices.

From the mid-1960s criticisms of the welfare model focused on a number of concerns. They include the failure of systems to promote adequate attention to the rights of young people, a concern that reflected to some extent wider issues about children's rights in general. There

was consensus that boundaries between criminal behaviour, youth misbehaviour, troubled youth and protective issues were blurred, and that this was reflected in a mixing of protective and criminal matters in the children's courts. The focus on rehabilitation was seen to be failing; indeed, there was a perception by some that involvement in the juvenile justice system increased the possibility of adult criminality. Other concerns were the potential for punishments that were not proportional to the seriousness of the offence and the culpability of the offender, and the considerable discretion that lay with administrative authorities to determine the nature, form and content of orders imposed by the court (O'Connor 1997a).

The justice model emerged from what O'Connor (1997a:236) calls 'the competing critiques of civil libertarians and the law and order lobby', both of which were concerned (from different perspectives) about the potential injustices of an individualised system with a degree of informality. Civil libertarians argued that the system was arbitrary and stigmatised and further disadvantaged many young people; law and order advocates argued that penalties were sometimes not severe enough to deter re-offending.

As a result of legislation introduced in most States from the late 1980s through to the early 1990s, juvenile justice systems now reflect a focus on the offence rather than the individual, proportionality of punishment, a greater emphasis on young people's rights to have certain legal procedures followed and on non-intervention for non-criminal behaviour.

Along with the separation of the handling of welfare and criminal justice issues and efforts to divert young people from the juvenile justice system, there is now a focus on the 'hard end' of repeat offenders and on programs for such young people. O'Connor (1997b) argues that the 'focus on repeat offenders, only after they become repeat offenders, while ignoring their social context and the processes of law enforcement which contribute to criminalisation, in part explains why Aboriginal (and other disadvantaged youth) are so over-represented in detention centres' (O'Connor 1997b:4). Overall, there is evidence to suggest that there is now a much higher proportion of young people in detention who have a multiplicity of social, psychological and other needs, representing a greater challenge for those providing services (Keys Young Pty Ltd 1997). It should be noted that repeat offenders represent only a small percentage of juvenile offenders. For example, an analysis of over 50,000 juvenile offenders in New South Wales indicated that 70% did not reappear before the court on a second proven criminal matter and of the 30% who did re-offend, around half returned to court only once (Cain 1997a).

Concern about high levels of incarceration of already disadvantaged groups in the population, together with other tensions in the justice model, has promoted the introduction of aspects of a restorative justice model. The basis of this approach 'assumes the shared social citizenship of victim and offender, and conceptualises the individual as embedded in a web of social relationships' (O'Connor 1997b:5). The aim of restorative justice is healing, through the young person recognising the harm that has been done (not just to the 'victim' but to all concerned) and appropriate restitution being available to the victim, opening the way to reconciliation between the offender and the victim and the ultimate reintegration of the young person into a social and family network (Wundersitz 1997a:282).

Family or group conferences, involving a range of participants including victims, the police, family members and significant others in a young person's life, are used to promote reintegration. At present, New South Wales, South Australia, Queensland and Western Australia have provisions for conferencing and several other States are either exploring the possibility of introducing conferencing or have established pilot projects.

However, some commentators argue that the context in which these processes have been introduced in some Australian States threatens to distort the nature of group conferencing (O'Connor 1997b). They are being introduced at a time of considerable focus on youth law and order and in an environment where victims' rights are increasingly an important

element of the equation. In such circumstances there is concern that restoration and reconciliation can readily become a focus for ensuring that young people are more than adequately punished for stepping outside social norms, to the neglect of attention to the circumstances which contributed to the offending and more broadly, of policies that might prevent offending. Other criticisms made of group conferencing have been noted by Wundersitz (1997a:287). They include the argument that conferencing is overly intrusive: it tends to promote harsher outcomes than children's courts and leads to unequal and inconsistent punishments for the same offence.

Currently there is a general shift across a range of policy areas towards the State ensuring that parents assume a greater responsibility for their older children. This is reflected in the juvenile justice arena through the notion of parental restitution, whereby parents may be required to accept some financial responsibility for the results of their child's offending. Hil (1996) identifies two sides to the inclusion of families in juvenile crime management: first, their inclusion in the general orientation of community control in relation to juvenile offending; second, legislation which provides for parental punishment and restitution for their children's offending in certain circumstances. The second represents a 'growing tendency on the part of the State to attribute blame for juvenile offending to families as a whole' (Hil 1996:2), to see parents as culpable and their action or inaction as contributing significantly to their children's offending. In States where this is an integral factor of juvenile justice policy there are implications for the relationship between juvenile justice and family support services, as well as youth welfare services.

# 3 Juvenile justice systems

## 3.1 Key elements

At the broadest level, the key elements of juvenile justice systems in most States and Territories include:

- police, who are young people's first point of contact with the system;
- a children's or youth court, where young people receive one of a variety of orders or dispositions available to the court and varying in severity;
- centres where young people who commit the most serious offences are detained or placed in custody. They are variously called youth detention centres, youth training centres or juvenile justice centres. At any one time only a relatively small number of young people are in custody, varying from as few as 12 to as many as 500, although the throughput is greater, with sentences varying from days to several years (Keys Young Pty Ltd 1997:66); and
- a government agency which usually supervises court orders, both those that require the young person to be placed in custody and those that require some sort of supervision in the community, and either provides directly or funds other agencies to provide a variety of programs and services for young people in detention and on orders in the community.

There is a range of non-detention orders across the States and Territories, only some of which require supervision. Some require various commitments or undertakings from young people, such as community service, attendance at a centre, or participation in some activity. Other orders of less severity, such as fines and good behaviour bonds, do not require supervision, so there is no ongoing involvement with juvenile justice authorities. Such unsupervised orders include a significant proportion of young people who go before the courts.

The main focus of this paper is the supervision of orders and the provision of programs and services, with some attention to the legislative basis for juvenile justice in each State.

## 3.2 Administrative location of juvenile justice systems

In the Australian Capital Territory, Victoria, Tasmania and South Australia, juvenile justice units responsible for detention centres and programs for young people who offend are part of a department that is concerned with family and community services. In Western Australia juvenile justice sits within the Ministry of Justice and in the Northern Territory within the Corrective Services Department. New South Wales has a separate Department of Juvenile Justice. At the time of writing the Queensland system was one of shared responsibility between the Department of Justice, the Queensland Corrective Services Commission and the Department of Families, Youth and Community Care. However, following the change of government in mid-1998, this is set to change and the main responsibility for juvenile justice will revert to the Department of Family, Youth and Community Care. Responsibility for family, group and youth conferencing arrangements varies.

In regard to the relationship between juvenile justice and youth welfare systems, there appear to be no clear and consistent distinctions between systems located in family and community services departments and those not so located. However, to the extent that administrative location reflects something of the underlying philosophy of the juvenile justice system, it is likely to have a bearing on the relationship. For example, a survey of juvenile justice services and transition arrangements (Keys Young Pty Ltd 1997) noted that the philosophy underpinning the Western Australian system (which sits within the Ministry of Justice) is one of encouraging responsible citizenship among juvenile offenders and encouraging family responsibility. In Victoria (where juvenile justice is part of the Youth and Family Services Division of the Department of Human Services) there is a much closer alignment with a social welfare approach.

**Table 1: Location of juvenile justice administration in each State/Territory**

<b>State/ Territory</b>	<b>Location</b>	<b>Comments</b>
NSW	A separate Department of Juvenile Justice	In the same ministerial portfolio as Department of Community Services
Vic	Juvenile Justice Section is part of the Youth Services Branch of the Youth and Family Services Division, Department of Human Services	
Qld	Key responsibility will revert to the Department of Families, Youth and Community Care (FYCC) in the near future; at present, responsibility shared between the Department of Justice, the Queensland Corrective Services Commission and FYCC. Coordinated by a Juvenile Justice Steering Committee (member from each relevant department and the police)	FYCC has responsibility for delivery and development of youth community corrections, case management of young offenders in community or detention, and some court support services
WA	Since 1993, juvenile justice within the Offender Management Division of the Ministry of Justice	Before 1993 in Youth Justice Bureau, Department of Community Development (now Family and Children's Services)
SA	Detention centres, programs and supervision of orders etc. are the responsibility of Family and Youth Services (FAYS) within the Department of Human Services	Courts Administrative Authority, Attorney-Generals Department, responsible for family group conferencing.
Tas	Administered through the Child, Youth and Family Support Division of the Department for Community and Health Services	Has always been located within the department concerned with health and welfare
ACT	Since March 1988 Youth Justice Services has been a Branch of the Children's, Youth and Family Division within the Department of Education and Community Services	Previously part of Family Services Branch, Children's Youth and Family Services Bureau, Department of Education and Training
NT	Part of the Corrective Services Department	Both community corrections and detention arms are under the general (adult) justice system



### **3.3 Population and size**

Population and geographical spread shape systems to some extent. For example, New South Wales currently has approximately 40 Juvenile Justice Community Services Offices responsible for supervision of community-based orders, probation and parole and 10 Juvenile Justice Centres (detention centres), some located in regional areas; Tasmania has one detention centre which caters for children and adolescents. Population size has implications for whether separate detention facilities can be provided for different age groups and for males and females. It also has implications for the development of comprehensive programs around different individual needs. In States and Territories with small populations, the numbers of young people on detention orders is very small and authorities are likely to have to rely on mainstream or generalist services (i.e. services not specifically designed for or available only to young people who offend).

Small populations and/or widely scattered populations (together with limited resources) do not allow for separate juvenile justice and youth welfare and child protection staffs in some areas. For example, in Queensland regional centres and in some areas of Western Australia the same worker may be responsible for both areas. In the Northern Territory workers in corrective services share responsibility for both adults and juveniles.

### **3.4 Sex**

Males predominate in arrests for the major categories of violent and more serious crime (Mukherjee 1997) and constitute the overwhelming majority of juveniles in detention. Overall, girls and young women who offend represent a very small proportion of all young people who offend. This has implications for the programs and services that are available to males and females. Several of the smaller States indicated that services for the very small number of young women in custody had to be individually negotiated and supports and appropriate services found wherever possible in the community and elsewhere. Alder (1997b) makes the general point that, when economic considerations are a significant element in determining policies and practices, the fact that young female offenders constitute such a small group presents a problem for the development and implementation of appropriate services for them.

### **3.5 Age scope**

In the majority of States and Territories juvenile justice legislation refers to children and young people aged 10–17 years, i.e. once a young person attains the age of 18, they are no longer considered a juvenile (for most purposes related to the relevant Act). Tasmania has recently passed legislation to extend the age of a juvenile to include 17 year olds. The exception is the Northern Territory. The Northern Territory Juvenile Justice Act defines a juvenile as someone who has not attained the age of 17 years. Children under the age of 10 years (in the Northern Territory 11 years) generally cannot be charged with a criminal offence. In some States and Territories there is a provision that children between certain ages (most commonly 10–13 years) are presumed not to be criminally responsible for any act or omission. In order for the child to be held responsible, the onus is generally on the prosecution to establish that the child knew that the act was wrong or substantially wrong.

In all States and Territories except Victoria and the Australian Capital Territory, young people aged 18 years and over on a custodial sentence are sent to an adult prison. Victoria has a 'dual track' system whereby 18–21 year olds, although appearing before an adult

court, can be given a Youth Training Centre Order of not longer than three years, i.e. they are sent to a centre designed specifically for this age group rather than to an adult prison. In the Australian Capital Territory there is no adult prison: until recently 17–20 year olds were retained in the Youth Detention Centre; they are now able to be transferred to an adult remand centre if they commit violent offences whilst in the Youth Detention Centre and are aged 18 years or over at the time of the new offence. Youth Justice Services is looking to extend an existing agreement with New South Wales whereby young offenders serving sentences can be transferred between New South Wales and the Australian Capital Territory to facilitate family contact and general rehabilitation (ACT DET 1997b).

In most States and Territories (other than Victoria with its dual track system), there is some flexibility as to whether and when young people on a youth detention order are transferred to an adult prison once they turn 18. Legislation in several States provides that either the authorities or the young person can apply for a transfer and individual circumstances are considered in any decision to transfer. The result is that at any time, there are likely to be a significant number of young people aged 18 and over in youth detention centres. (In South Australia informants estimated that up to half of the young people in the State's Cavan Training Centre are likely to be 18 years or over.) The Northern Territory is the exception. There, the relevant Act provides that if a young person turns 17 while in a detention centre they should be transferred to a prison within 28 days of turning 17, to serve the remainder of their sentence.

In Queensland, the Juvenile Justice Act provides for a one year window period after the young person becomes an adult under the Act, i.e. when they turn 18. If an offence is committed as a child and proceedings begin more than one year after the person turns 18, those proceedings must be taken as if the offender were an adult at the time of the offence being committed and, if found guilty, the young person must be sentenced as an adult (s. 105.1). If proceedings are started when the young person is a child but are not completed to a finding of guilty or not guilty by the time one year has passed after they become an adult, the proceedings are finished as if the offender is a child but if found guilty, they must be sentenced as an adult (s. 105.2).

## **3.6 Juvenile justice data collections**

In general terms, juvenile justice data collections relate to (a) information regarding young people who go through the children's or youth courts and who have a finalised order of some kind and (b) client information systems, which include young people with whom the juvenile justice system has some ongoing involvement, i.e. young people who have supervised orders where there is some justice authority involvement. Client information systems generally include both young people on custodial and (supervised) non-custodial orders. Some States have separate statistical collections for custodial and community-based orders. The comprehensiveness of demographic and other information recorded varies, with sex, age, Indigenous status and country of birth the most common variables, but some States and Territories record detailed information on their client information systems, including previous and current involvement with care and protection authorities.

Young people with orders that are not supervised by the relevant juvenile justice authority are not included in client information systems. As indicated, these generally include fines and good behaviour bonds and make up a significant proportion of young people who go before the courts. Hence reliable information about such young people and the outcome of their order is difficult to obtain.

Other detailed information juvenile justice authorities hold about young people on orders which require supervision relates to case management issues and planning. Such information may be used for research and policy development.

Changes in legislation in most States and Territories over recent years make direct comparability of data over a long period difficult in some cases.

Table 2 sets out the main data collections related to juvenile justice in each of the States and Territories. Further detail is included in the separate State and Territory summaries.

**Table 2: Juvenile justice data collections in the States and Territories**

<b>State/ Territory</b>	<b>Name of collection</b>	<b>Years available</b>	<b>Program to which data relates and notes on coverage</b>	<b>Collected by</b>	<b>Relates to clients/ services/both?</b>
New South Wales	Children's Court Information System	1990-91 to 1996-97	All finalised appearances before the Children's Court	Department of Juvenile Justice	Clients
	Client Information System	Since the mid-1980s	Department of Juvenile Justice clients	Department of Juvenile Justice	Clients
Victoria	Juvenile Justice Client Information System (JJCIS)	1996 onwards with patchy data from late 1980s onwards	Juvenile Justice: custodial and community based order case management	Juvenile Justice in the Department of Human Services	Mainly clients at present
Queensland	Courts data base	From mid-1980s onwards, but some pre-1993 data not able to be directly compared with post-1993.	All orders for young offenders	Courts	Clients
	Client Information System (CIS)		Includes young people on protective and justice orders. (Unsupervised orders are recorded but not entered as a case on CIS)	Department of Families, Youth and Community Care	Clients
	Youth Services Information System		Youth services, including some specifically for young offenders	Department of Families, Youth and Community Care	Services
Western Australia	Admissions by sex and Indigenous status for sentenced and remand admissions	1994-95	Juvenile Custodial Services	Juvenile Custodial Services	Clients
	Total admissions, remand and sentenced	From 1985	Juvenile Custodial Services	Juvenile Custodial Services	Clients
	Referring and sentencing courts by district	From 1984	Juvenile Custodial Services	Juvenile Custodial Services	Clients

	Incidents in institutions	From 1993	Juvenile Custodial Services	Juvenile Custodial Services	Juvenile Custodial Services	Clients
<b>Table 2 (continued): Juvenile justice data collections in the States and Territories</b>						
South Australia	Justice Information System		All orders		Office of Crime Statistics, Attorney Generals Department	Clients
	Average daily occupancy/ admissions and profile data for youth in secure care	Since change of legislation in 1994	Detention		Department of Human Services	Both
	Community-based programs	Post-Oct. 1996	Community based programs for young offenders		Department of Human Services	Both
	SECAP (Secure Care Psychosocial Screening Tool)	1997, 1998	Young people entering secure care		Department of Human Services	Clients
	Community Services Orders	1994 onwards	Community Work Program		Department of Human Services	Clients
Tasmania	Manually collected statistics on young people in detention		Young people in Ashley Youth Detention Centre and type of order		Department for Community and Health Services	Clients
	Manually collected statistics on young people on community orders		Community-based orders		Department for Community and Health Services	Clients
Australian Capital Territory	Justice Information Management. Includes comprehensive background information	Past 2-3 years	All referred Youth Justice clients (all those with orders supervised by Youth Justice Services)		Youth Justice Services	Clients
Northern Territory	Integrated Justice Information System		All statutory orders (client age, sex, country of birth and type of statutory order)		Maintained by head office and linked with court and correction services	Clients

(Continued)

# 4 Youth welfare

## 4.1 Scope of youth welfare

Despite a growing debate among youth theorists and practitioners concerning the limitations of age as a basis for understanding young people's lives (Wyn & White 1996), age remains an important consideration in the organisation and provision of community services. However, the age group to which youth services in general and specific 'youth welfare' measures are directed varies across programs and is subject to change. Underlying some of the problems and the variability is the socially constructed nature and meaning of the category of 'youth' and its relationship with trends in education, employment and the nature of work.

The age group spans individual developmental periods during which significant changes occur in individual responsibility, emotional, physical and sexual maturity, and social and personal identity. The overwhelming majority of 10–17 year olds (the age group to which juvenile justice legislation most commonly refers) live with one or both of their parents. However, this statement tends to obscure the varied and sometimes complex nature of young people's family circumstances and the different living arrangements that individual children may experience during childhood and adolescence (McDonald 1997).

Estimates of the number of young people 'at risk' (and the way in which 'at risk' is defined) vary. A recent analysis estimated that, in 1996, 15% of 15–19 year olds were likely to have limited future options for employment and income. Some 187,000 of the age group were in marginal activities, either employed part time and not in education, unemployed and not in education, or neither in the labour force nor in education (McClelland et al. 1998). Some of these young people are homeless; some are in institutions of various kinds. In the 1996 Census, a total of 2,584 15–19 year olds responded that they were guests, inmates or other residents of listed types of institutions, including juvenile justice institutions (McClelland et al. 1998).

Many areas of government activity and program provision are related to the overall welfare or wellbeing of young people. The most salient areas vary according to age, however family support services, education and training, and health services are crucial. While governments often have relatively clearly defined policies concerning families and children, youth policies are often not so clearly defined or so well articulated. Education and training for young people generally receive considerable attention. So too do areas of young people's activity that are seen as problematic, such as drug use and law and order issues, or certain categories of young people, for example, those considered 'at risk'. Comprehensive policies directed towards enhancing or facilitating the welfare of all young people are less common.

Youth services are very diverse and often fragmented. A recent survey of youth sector funding in Victoria noted that a 'clearly delineated and integrated' field of youth services has yet to be developed (Papadopoulos & Bough 1998). The survey noted that in Victoria, there are some 2,000 agencies providing youth services. They are funded by all tiers of government and respond to a range of not necessarily related policies. The survey found that it was common for agencies to receive funding from multiple sources. This diversity and fragmentation are likely to be reflected in other States and Territories.

Specific youth services currently reported on by AIHW include the Adolescent Mediation and Family Therapy sub-program, funded through the Attorney-General's Department, which aims to prevent youth homelessness; the Supported Accommodation and Assistance Program (SAAP) as it relates to homeless young people; and a number of initiatives for young people with a disability (AIHW 1997).

Recently there have been significant developments in several areas of concern related to young people, especially mental health and youth suicide prevention. The National Mental Health Strategy includes a range of strategies for promoting the mental health of young people. The National Youth Suicide Prevention Strategy provides funds for a comprehensive range of activities, including research, program development, crisis intervention and primary care services, education and training, and community development and support.

Some States and Territories have initiated moves towards further development of policies and identification of good practice in relation to those young people variously defined as most vulnerable or at highest risk. For example, Victoria has reviewed services for high risk adolescents in placement and support services (including those who are or have been on a juvenile justice order) (Victoria DHS:1997b) and South Australia has recently taken steps to develop an integrated approach to vulnerable young people in contact with community services (South Australia DFCS 1997a).

A comprehensive outline of programs related to the welfare or wellbeing of young people would include programs related to family and adolescent support, child protection, accommodation, education and training, employment, literacy, life skills, disability, homelessness, suicide prevention, early intervention and youth health (including drug education, treatment and support, mental health, creative arts and sport and recreation).

It is beyond the scope of this paper to give attention to all of these areas. This part of the paper focuses principally on 'care and protection' aspects of children's and family services (as they relate to adolescents and older children) and refers to policies and practices around vulnerable or 'at-risk'/'high-risk' adolescents and young people developed in several States. Chapter 6 and 7 provide information on

- the principal 'specialised' and 'mainstream' programs available to young people in the juvenile justice system in each State and Territory (as identified by juvenile justice administrators and gathered from government documents);
- programs that States and Territories identify as aimed at 'at-risk' young people (not necessarily young people involved in juvenile justice systems).

## **4.2 Young people and child protection systems**

Children and young people who come to the notice of State and Territory community service departments for protective reasons have access to a range of services, as do their families. As a last resort they can be placed on a care and protection order through the appropriate Court. This is also the case with children who have been abandoned, children for whom adequate provision for their care is not being made, children in situations of irretrievable breakdown between themselves and their parents, and children who are deemed uncontrollable or a threat to parents or siblings. Children and young people on care and protection orders are either on guardianship orders or non-guardianship orders. Most of those on guardianship orders live in foster care and most of those on non-guardianship orders live with parents or relatives (AIHW 1997:215).

Except under very exceptional circumstances, States and Territories discharge young people from care and protection orders by the time they are 18 years old. There is, however, a

noticeable trend for young people to be discharged earlier, at 15 or 16 years of age, and evidence that in some cases young people who have reached this age do not have a high priority in the child protection system (Maunder et al. forthcoming). Reasons for the lack of priority vary but include inadequate resources and assessments that these young people are able to look after themselves. There is a very real concern that some young people, who are under the care and protection of the state because of their vulnerability or because their behaviour is challenging, will not be able to cope and some find their way into the juvenile justice system. The 'drift' from state care to juvenile justice is discussed below.

In general, the structure and priorities of care and protection systems are geared more to the needs of children than young people. Young people (as opposed to children) on care and protection orders and some who are considered 'at risk' but may not be on any order, present special challenges, not least of which is the development of appropriate placement and support services for young people who are often very vulnerable and troubled. There is a view that statutory care and protection responsibilities appropriate for young children are not necessarily appropriate, or do not offer the most effective support, for some adolescents. Some would clearly benefit from guidance and a range of intensive and ongoing support services, but they may not necessarily benefit from the current options available for children and young people on guardianship orders.

Some States and Territories have programs in place but it is generally acknowledged that not all young people who would benefit from them have access to them. Intensive support services are in many cases provided by non-government agencies and such agencies are not necessarily well resourced to do so. In addition, there is the broader challenge of ensuring that young people, often with limited education and income, have access to accommodation and education and training opportunities.

In common with other young people, the quality of care and the level of support that young people on care and protection orders receive while they are growing up are important factors in how they cope when they leave home (or leave care). Several recent studies have identified concerns that young people leaving care, either formally discharged from care and protection orders or 'absenting' themselves from authorities, are often ill prepared for independent living and are frequently without any of the normal family back-up and community supports that other young people can fall back on if they need them (Cashmore & Paxman 1996; Maunder et al., forthcoming).

The vulnerability of young people discharged from care and protection orders at an early age without adequate support and skills is of particular concern, given that most young people now have to rely on family support for longer and many leave home later than was previously the norm. Maunder et al., (forthcoming) noted that Aboriginal young people, young women and young people in remote areas where there are few services were particularly vulnerable. They also noted the contrast between concepts of care for young people on care and protection orders and government expectations that families will provide for their older children for longer periods, as extended education, unemployment or casual work delay their access to an income commensurate with full independence.



# 5 Issues in the relationship between the juvenile justice and youth welfare systems

## 5.1 Introduction

The foregoing brief outline above of some aspects of youth welfare suggests that the potential scope for exploration of the relationship between juvenile justice and youth welfare is very broad indeed. The relationship is underlain by often highly contested questions about state and family responsibility for children and young people, personal responsibility, the social, economic and psychological reasons for juvenile offending, and appropriate community and government responses to offending. Only those issues likely to have relatively clear implications for the AIHW in reporting on juvenile justice and youth welfare are discussed in this paper. Nevertheless, it is worth listing the broad factors that are likely to have some impact on how systems interact. Such factors also represent significant aspects of the context in which data relating to juvenile justice and youth welfare need to be interpreted. They include:

- the principles underlying juvenile justice legislation and the ways in which juvenile justice issues are currently conceptualised by governments;
- broad social and economic policies concerned with youth issues, especially government and community responses to 'law and order' issues;
- the impact of economic policies on service provision generally but also on the shrinking of direct government provision of services;
- the extent to which there is a comprehensive and integrated youth policy in the State or Territory;
- the administrative location of juvenile justice, i.e. where it sits in relation to other areas of government and especially in relation to community and family services and to adult justice and corrections;
- the extent of linkages and integration between juvenile justice and other youth-related areas of policy and administration;
- how 'core' functions are defined by juvenile justice and by other areas of government that deal with youth welfare issues, e.g. health, family services and accommodation;
- social and economic factors that lead to particular categories of young people being more likely than others to enter the juvenile justice system; and
- the relationship between government and non-government provision of services and programs for disadvantaged young people, i.e. who provides what and the relationship between them.

## **5.2 Commonwealth and State responsibilities**

Access to appropriate and affordable accommodation, to appropriate education and training, and to income support are recognised as key factors in service provision for a proportion of young people who offend. The Commonwealth has responsibility for income support for young people 16 years and over; States and Territories have responsibility for family and children's services for under 16 year olds who are expected to be in school and are financially supported by their families or by the State if they are under a guardianship order.

The impact of recent changes to income support for young people and the introduction of the Youth Allowance in July 1998 cannot yet be assessed. With a few exceptions, young people aged 16 and 17 who are not in full-time education and training will not have access to income support and there will be lower levels of payments to 18–19 year olds whose families are on relatively moderate incomes. Some students and young homeless people will benefit as a result of changes introduced with the Youth Allowance, however there is concern that some disadvantaged young people, including those recently discharged from protective and justice orders and without adequate family or other support may be left more vulnerable.

## **5.3 Links between the justice and welfare systems**

There is ongoing debate about the causes of juvenile offending and theories of criminality (see for example, Chan 1997). However, while not the only consideration, there are established links between juvenile offending and such factors as family support for children and young people, child protection issues, youth income support and accommodation. The extent to which such issues are addressed in juvenile justice systems tends to vary with approaches to juvenile justice. Justice models, especially in a climate of great concern for youth law and order, tend to promote an emphasis on justice systems responding to the offending behaviour, rather than on broad welfare issues, in general leaving less scope for preventive programs.

The distinction between welfare and justice issues is not always easy to maintain; offending behaviour is frequently associated with broader 'welfare' issues and, despite the different mandates of juvenile justice systems and child protection systems, all justice systems incorporate varying degrees of attention to some welfare issues. The Keys Young survey of programs and supports for young people in detention reported increasing recognition by some juvenile justice authorities of the diversity of needs of some young people in detention (Keys Young Pty Ltd 1997:66).

However, juvenile justice systems are also concerned with punishment, either detention, supervised community service/work or other undertakings that have an element of compulsion. They are also increasingly concerned with reparation. These elements do not always sit easily with attention to broad (or specific) welfare issues. In addition, the work cultures and the nature of the workforce in juvenile justice are different from those of child protection systems.

Protocols have been developed between juvenile justice and child protection systems in a number of States. While the aim is effective coordination of case management and delivery of appropriate services to young people, there are some challenging issues around separate and/or dual responsibility in case management and some acknowledged practical difficulties in coordination across the two systems.

## 5.4 Effectiveness of links between systems

Practice guidelines in a number of States indicate a view that it is not a desirable situation for young people's welfare or protective needs to be first identified through the juvenile justice system, although it is recognised that this does occur. It is generally acknowledged that there are areas where the effectiveness of links between youth welfare and juvenile justice systems and, as a consequence, outcomes for young people could be improved. The following examples were noted during the consultations:

- Limited welfare services for some groups can increase the likelihood of young people's involvement with the justice system. There are often very limited service options available for 12–15 year olds, under either guardianship or non-guardianship orders, who have a history of placement breakdowns. Included in this group are some who, particularly in an environment of limited resources, are sometimes regarded by care and protective authorities as 'too difficult' or as able to cope by themselves and who may subsequently become juvenile justice clients.
- Sometimes young people may be remanded to secure care, i.e., placed in an institutional setting pending further action, due to a combination of offending and 'at-risk' issues, especially if they are homeless. Accommodation is often a key issue for young people's stability and life chances and magistrates sometimes opt for a custody option where the young person will at least be clothed and fed and have access to some services.
- Inadequate attention to care and protection matters for younger children, and to family support and early intervention over a period of time, can result in young people being regarded as uncontrollable. If community services departments' role as gatekeeper to support services fails or breaks down for whatever reason, children may well have committed some offence by the time they are in early adolescence and hence drift into the juvenile justice system.
- In some States, courts do not necessarily have information about previous notifications or other aspects of a child's past, nor are unstable family situations always readily apparent, e.g. a series of foster placements which would indicate care and protection issues. Cross-referencing does not occur in a number of situations. Detailed court reports about a young person's background are not always required. In such circumstances welfare issues may be overlooked or not attended to.
- Young people's welfare issues may not be picked up if they receive a juvenile justice order, such as a fine or good behaviour bond, which does not require supervision by juvenile justice authorities.
- Young people who are remanded to secure care and have not had prior contact with a community services department are not always identified as needing specialist services. Some States are moving towards identifying such young people. For example, the South Australian Department of Human Services has set down criteria for identifying a 'Vulnerable Young Person' in the above circumstances who requires further assessment. The criteria reflect the salience of 'welfare' needs for young people. They are:
  - aged under 15 years and homeless;
  - aged under 15 years (but especially aged 12–13 years) and without parent or family support; and
  - in addition to the above, experiencing significant problems in functioning due to either substance abuse, intellectual disability, mental health issues, physical disability or extreme behaviours (South Australia DHS 1998:10).

## 5.5 'Drift' to juvenile justice systems

Young people moving from wardship or State care and protection orders to the juvenile justice system have been a concern for some time. It was clearly articulated in a New South Wales discussion paper which indicated that wards in that State were 15 times more likely to enter the juvenile justice system than were non-wards and wards were readmitted to Juvenile Justice Centres (detention centres) more often than non-wards (Community Services Commission (NSW) 1996).

Two of the areas identified as high priority following this report and a report on wards in juvenile justice from the Inter-Departmental Committee of Juvenile Justice were (a) the establishment of an accessible and comprehensive data system on wards at risk and (b) research on indicators to help identify State wards who are at risk of entering the juvenile justice system, particularly in relation to young women, Aboriginal and Torres Strait Islander youth, young people with a disability, and young people from diverse ethnic backgrounds (Marsden 1998).

The report of the Australian Law Reform Commission and Human Rights and Equal Opportunity Commission (1997) on children in the legal process also expressed concern about the drift from one system to the other and suggested that children who had experienced multiple placements and had limited education were particularly at risk. In addition to these factors, there is some anecdotal evidence that entering care at an older age and having a high number of departmental workers are associated with young people on care and protection orders having contact with a juvenile justice system.

Alder (1997(b):56) suggests that the movement from wardship to juvenile justice for girls and young women is often more direct than might be suggested by the word 'drift'. There is evidence that girls 'acting out' in welfare placements or foster care are sometimes charged with criminal offences such as property damage and a 'subsequent bail refusal, guilty plea, and control order' may result in the girl being characterised as a 'serious offender'.

## 5.6 Service overlap

The distinction between programs and services for offenders and non-offenders is not always clear. Supervised non-custodial orders may involve a variety of activities and undertakings and may include young people attending certain programs or having access to services designed to meet their needs. Some services are specific to offenders, others are not; some may be regarded as 'mainstream' services, some are designed to meet special needs.

In some States, the overlap is reflected in policy statements. As noted, Victoria recently reviewed high-risk adolescents in placement and support services. This included young people currently or previously on a juvenile justice order (Victoria DHS 1997b). The current redevelopment of family and youth services in Victoria discusses both sets of statutory functions of the service system (child protection and juvenile justice) together to a significant extent. It also notes that there is a need to strengthen links between the statutory service response (both community based and custodial) in regard to juvenile justice and the targeted services required by some young people who offend (Victoria DHS 1997a).

It is also the case that young people on orders, either protective or as a result of offending, seek services through general youth service channels. A survey in South Australia found that over a two week period just over 50% of presentations of young people at youth services (both directly provided by Family and Youth Services and by funded services) involved young people who were under a legal order; most were under a young offender

order (29% of total presentations) and 20% were under a care and protection order (South Australia DFCS 1997a).

## **5.7 Welfare, justice and young women**

The conceptual relationship between juvenile justice and 'welfare' issues for girls and young women is complex. Recent attempts to examine women's experiences in relation to criminality and patterns of female offending have challenged traditional theories of criminality and juvenile 'delinquency'; however, Alder (1997a) notes that in general sex has been largely neglected in theorising about crime and delinquency. Until relatively recently care and protection issues were the predominant reasons why girls and young women were placed in custody. Their offences were more likely than male offences to be related to such things as being disorderly or placing themselves in what was regarded as moral danger. Now, the separation of care and protection and offending systems has reduced the number of non-offending young women in juvenile correction institutions to virtually none (Alder 1997b:54). This has not, however, necessarily led to a thorough addressing of issues such as the strong relationship between child sexual abuse and offending for girls and young women and the challenge this offers for theories that rest on a strict distinction between victim and offender (Alder 1997a). At the very least, such issues make it difficult to draw clear conclusions from the existing statistics on girls and young women who offend.

It has already been noted that overall, and especially in smaller systems, there are limited special programs and services available for young women. The Keys Young survey noted that young women in correctional institutions have not had the same access to programs as have young males and few programs have been tailored specially to their needs (Keys Young Pty Ltd 1997:50).

## **5.8 Cultural background and ethnicity**

It is not possible to get accurate data related to the cultural background and ethnicity of young people at each stage of police, court and juvenile justice system involvement. The complexity of ethnic identity makes it difficult to find ways of accurately recording ethnicity for all purposes and continuing efforts are being made to ensure comparable data. Standards for the National Minimum Data Set currently include country of birth and language preferred. In regard to juvenile justice data, there is considerable variation in the data that are collected in each State and Territory and the accuracy with which they are recorded. The area was not explored in any detail for this paper, but, the following brief discussion of Aboriginal and Torres Strait Islander young people and young people of South East Asian origin in the juvenile justice system highlights some issues relevant to the relationship between juvenile justice and youth welfare and to accurate reporting and interpretation.

### **Indigenous young people**

The significant over-representation of young Aboriginal and Torres Strait Islander people in juvenile justice systems is well documented (Cunneen & White 1985; Cunneen 1997; Wundersitz 1996; Wundersitz 1997b). They are similarly over-represented in care and protection orders and other parts of the child protection system. Factors likely to contribute to this over-representation include the disruptive impact on families and individuals of past colonial practices and removal of children from their families, and continued marginalisation and differential treatment of a proportion of young Indigenous people.

Although police and children's courts do not, in general, report information that would allow a comparison between Aboriginal and non-Aboriginal arrests and court appearances, the available evidence indicates that Aboriginal young people are subject to proportionally more contact with police than non-Aboriginal youth, and their over-representation increases as one proceeds through the juvenile justice system (Cunneen 1997). In all States and Territories except Tasmania and the Australian Capital Territory, the rate of incarceration for Aboriginal and Torres Strait Islander juveniles far exceeds that for non-Aboriginal and Torres Strait Islander youth (Cunneen 1997:105). Any interpretation of juvenile justice statistics needs to take account of the impact of historical, cultural and economic factors.

It is also the case that the 1996 Census revealed a significant increase since the previous Census in the number of people identifying as Aboriginal and Torres Strait Islander people. The extent to which this trend is reflected in the numbers of young people in the juvenile justice system is not known.

All juvenile justice systems have responded to the Royal Commission into Aboriginal Deaths in Custody report by instituting services targeted specifically at young Aboriginal people. Initiatives include culturally appropriate services, often staffed by Aboriginal personnel, that aim to increase practical and vocational skills; literacy and numeracy programs; programs that aim to increase young people's knowledge of and identification with their own culture; family placement programs; and mentor programs. In South Australia family conferencing was seen (in addition to other initiatives) as potentially an effective way of responding to young Aboriginal offenders (Wundersitz 1997b).

## **Young people of South East Asian origin**

Overall, there is a dearth of research and accurate information on migrant youth juvenile crime and juvenile justice. What is available is not necessarily consistent or easy to interpret, not least because research often includes different groups under the definition of 'migrant' youth (Easteal 1997). In recent years, there has been concern about the involvement in juvenile justice systems of young people of South East Asian origin, especially for drug-related offences. Hunt (1997) reviewed literature concerned with young Indo-Chinese people's involvement in the juvenile justice system in Australia. She noted the difficulties of drawing conclusions about increased numbers of young Indo-Chinese in juvenile detention centres given the evidence of over-policing, higher visibility, 'whether or not other sentencing options are utilised rather than detention, and the length of sentences applied to these young people' (Hunt 1997:7). 'Over-policing' in one part of the Sydney metropolitan area has been documented by Maher et al. (1997).

Some programs aimed specifically at young people of South East Asian origin have been developed by juvenile justice systems. The New South Wales Department of Juvenile Justice has initiated a number of programs and services designed for young people of Vietnamese origin (Cain 1997b) and Victoria has recently established a support service for young South East Asian offenders. Some general services (i.e. outside the juvenile justice area) also exist and are funded through a variety of sources. For example, in Victoria a number of relevant services are funded through the State's Turning the Tide drug strategy.

The establishment of consistent definitions for the collection of data related to ethnicity would greatly assist in accurate reporting. There is much to be done in teasing out how youth welfare and juvenile justice systems interact in relation to young people of varying cultural backgrounds and ethnic identification.

## **5.9 Young people on care and protection orders and justice orders**

States and Territories vary somewhat in their approach to handling responsibility for young people on protection orders who enter the juvenile justice system. Most informants stated that, in theory, the community services department retains responsibility for overall 'welfare' issues. In practice, various factors operate to make this not always the case. Some of the difficulties of effective coordination have already been alluded to. The situation in some States and Territories is outlined below.

In New South Wales, in theory young wards who commit offences remain the responsibility of the Department of Community Services (DCS). However, in practice, 'criminal' issues often predominate once the young person has committed an offence and for older young people especially, DCS is much less likely to play a role in relation to welfare issues, since their primary focus is young children. If young people are in detention, safety issues tend to predominate (Community Services Commission (NSW) 1996). Consultations for the present paper also indicated that there was often little involvement from DCS following release from detention. Reasons cited as contributing to DCS's lack of involvement include limited resources, a system more oriented to children than adolescents, high staff turnover because of the nature and conditions of the work, lack of adequate training for staff, and the impact of political pressures on policies and practices.

In Tasmania administrative responsibility for young people under care and protection remains in theory with the district centre case manager; however, in practice the seriousness of the offence is often a consideration. The offending behaviour may capture more attention, so the juvenile justice worker takes more of the responsibility for the young person.

In the Australian Capital Territory if young people under wardship commit an offence there is a formal case conference involving juvenile justice officers and family services workers. Informants stated that individual factors would determine what support services were employed and the ultimate decisions would be made by team leaders.

In South Australia there is a protocol concerning co-working in relation to young people under care and protection and under a youth court order. In general, FAYS (Family and Youth Services) district centres have case management responsibility for FAYS adolescent clients on non-custodial orders, while RAYS (Residential and Youth Services) provides specific placement and program services in partnership with the district centre case workers. Young people who are placed in secure care are allocated a district centre case worker, although it is recognised that over 16 year olds may not require an allocated worker (South Australia DHS 1998).

In Queensland, if a young person under a care and protection order commits an offence responsibility for their welfare remains with the departmental case worker while youth justice workers have certain statutory responsibilities. In regional centres the same worker may be responsible for both areas. Joint case conferences are held where there are separate workers.

## **5.10 Data on young people on protective and justice orders**

Most States and Territories are working towards being able to provide more accurate and timely information about young people on both juvenile justice and care and protection orders, especially given concern about the 'drift' from care and protection to juvenile justice.

Most jurisdictions would currently be able to provide some information about young people on 'dual orders' although in some States and Territories this would require some manual retrieval of information. In most instances it is likely that previous or current involvement with care and protection authorities would be noted by juvenile justice workers, via court proceedings records, intake procedures or established protocols between welfare and juvenile justice systems and workers. However, this is not always the case.

While current involvement with care and protection authorities may be known to juvenile justice authorities, previous involvement may not always be apparent. As has already been indicated, there are circumstances in which protective issues may not necessarily arise in court proceedings. It is also the case that as children get older they are less likely to remain on a protective order, therefore younger juveniles are more likely than older juveniles to be currently on dual orders.

As noted, there are a significant number of young people on unsupervised orders which do not require ongoing involvement from juvenile justice authorities. They are not included in client information systems and therefore information about their involvement with care and protection is not available through juvenile justice systems.



# 6 Programs and services

All juvenile justice systems deliver some services themselves and contract out other services to community agencies and organisations, both for young people in detention and for those on orders in the community. Programs and services cover a wide variety of areas.

The survey by Keys Young of programs and services for young people in detention noted a number of general points regarding services:

- The context of program delivery in juvenile justice is sometimes highly volatile and frequently subject to change.
- There is a dearth of evaluation of existing services.
- The needs of young people in custody are many and complex and are often interrelated.
- Services and programs cannot be examined in isolation from the philosophy underlying the juvenile justice policy, the philosophy or professional approach of the service provider, and the circumstances of individual young people's lives (Keys Young 1997:4-5).
- The range of programs and supports available varies both across States and Territories and across detention centres within a State.
- The overall number of programs is large.
- There is little overall consistency about the value of programs and supports, with varying views expressed by program managers of government and non-government services, administrators, different professionals and other key informants (Keys Young Pty Ltd 1997: 35-36).

Consultations for the present paper revealed in addition:

- the increasing tendency for services to be contracted or tendered out; and
- the short-term and/or 'pilot' nature of some programs and the apparent ongoing emergence and disappearance of programs as different needs or needs of different groups are identified and responded to, making it difficult to do more than merely identify the range of services (beyond basic services) available at any one time.

## 6.1 Young people in detention

While basic services for young people in detention are generally provided by the juvenile justice system itself, some States are moving towards contracting out services. For example, Victoria is moving to tendering for services such as health services. In most systems, young people have access to a school program run by the relevant department of education and some accredited vocational programs organised through TAFE.

The survey by Keys Young identified the following programs for young people in detention:

- alcohol and other drug services and programs
- educational programs, including schools
- vocational programs
- health services and programs

- recreational programs
- independent living skills programs
- arts and crafts
- cultural programs of various kinds
- legal services
- counselling programs.

Some States are moving towards a structured approach to providing services for young people in detention. For example, in Queensland QCORE, the corporatised part of Corrective Services, has conducted a major review of programs and new programs are being put into place. They are based on young people's needs and are designed to address young people's offending behaviour in an integrated manner, within a framework of a clear set of standards and consistent monitoring for quality.

## **6.2 Young people on orders in the community**

Many of the same types of programs and services are available to young people on orders in the community. There is a wide range of programs available for young people who have to 'attend' youth justice centres in the community. Some or all of the following activities might be included in various programs: communication skills, self-esteem building, problem solving, stress management, drug and alcohol treatment and support services, drink driving issues, anger management, information about vocational and educational options, budgeting, legal rights and responsibilities. Some States and Territories have developed programs for specific groups of young people who commit sex offences or violent offences. The State and Territory summaries give further details of programs and services for young people.

States and Territories vary in the extent to which general psychological services and counselling are provided to young people. In general, access to appropriate mental health services is limited, although some States and Territories have initiated programs in this area.

A number of States and Territories have developed support programs to assist young people who would otherwise be considered an unacceptable risk for bail (e.g. because of their past history of offences or because they lack support). For example, in Queensland a youth worker can be assigned to provide up to 32 hours a week daily support for young people until their next court appearance

It has already been noted that programs specifically designed for girls and young women in the juvenile justice system are not nearly as well developed as those for young males.

# 7 State and Territory summaries

The following State and Territory summaries provide an outline of:

- where the juvenile justice system sits administratively;
- relevant Acts and key features of the juvenile justice system;
- the age scope of the juvenile justice system;
- core functions of the system;
- integration and linkages between juvenile justice and youth welfare systems;
- where responsibility lies for young people on State and Territory care and protection orders who commit offences;
- the types of programs available to young people in the juvenile justice system; and
- the main data collections available.

## 7.1 New South Wales

### **Administrative location of juvenile justice**

New South Wales has a separate Department of Juvenile Justice. A Juvenile Justice Advisory Council reports directly to the Minister. Prior to 1991 juvenile justice was part of the Department of Community Services (DCS). Currently, the Minister responsible for juvenile justice also holds the portfolio for Community Services. Service delivery is regionalised and operates through five clusters responsible for community operations and detention. There are two clusters within the Sydney metropolitan area and three outside it. Approximately 40 Juvenile Justice Community Services Offices are responsible for supervision of community-based orders, probation and parole. New South Wales currently has 10 Juvenile Justice Centres (four in metropolitan Sydney, five in regional centres and a short-term emergency accommodation unit at Broken Hill). New detention centres are planned for Grafton and Dubbo. The centres will be built in compliance with the National Standards for Detention Centre Facilities. When completed, the new centres will allow closure of centres elsewhere. A Juvenile Justice Advisory Council provides independent advice on juvenile justice policy and related youth, welfare and legal issues.

### **Current legislation and key features of the system**

In 1987 the Children (Criminal Proceedings) Act, the Children (Detention Centres) Act and the Children (Community Service Orders) Act were passed. Together with the Children (Care and Protection) Act of the same year, they form the basis of welfare and justice provisions for young people in New South Wales. Following expressed public and governmental concern around issues of youth law and order, two Acts were passed in 1997 providing for a greater range of pre-court diversions and sentencing options, and

strengthening principles of offender responsibility and appropriate punishment for offenders. They have recently become operational.

The *Young Offenders Act 1997* incorporates the principles of young people being held responsible for their actions, families sharing responsibility for their children's behaviour, victims playing a part in decision making processes about young people in some cases, and family involvement in decision making. The Act provides for a range of pre-court diversionary measures including police warnings, cautions and youth conferencing. A warning may be given for minor offences and the young person's name is not recorded by police. Cautions are for more serious offences, where the offence is admitted and the caution consented to; it is formally recorded. The provisions for youth conferencing grew out of various localised schemes operating since the late 1980s. They may be used in relatively serious instances (e.g. stealing or damage to property) where a victim has suffered harm. The decision to have a conference can be made by the Director of Public Prosecutions, a court or a police youth liaison officer. Youth conferences are controlled by trained conference convenors.

In summary, the Act introduced conferencing and a legislative basis for police cautioning, which is now more rigorous and formal than in the past. The four key options available in relation to juvenile offenders are warnings, cautions, conferencing, and being dealt with by the court.

The Children (Protection and Parental Responsibility) Act came into effect in December 1997. It expanded the provisions of the previous Children (Parental Responsibility) Act, introduced in 1994, designed to deal with what was seen as the failure of parents to provide adequate care and control of their children. Under the new Act, parents of people under 18 years old can be made responsible for their children's actions. Parents can be required to attend court and if their child is found guilty of an offence it is open to the court to release them on condition that the parent(s) agree to certain undertakings, including a guarantee that the young person will comply with the conditions, that the parent(s) will take action to assist the young person's development and guard against them committing further offences, and that they will report on a young person's progress or give financial or other security. Further, if parents are considered by the court to have contributed to their children's offending they can be required to attend counselling instead of, or in addition to, a penalty of \$1,000 (Legal Information Access Centre (NSW) 1997:5).

## **Age scope of the juvenile justice system**

The juvenile justice system applies to young people aged 10–17 years inclusive. Under the *Children (Criminal Proceedings) Act 1987* (NSW), a child under 10 cannot be guilty of a criminal offence. Children between the ages of 10 and 14 are assumed not to have the capacity to know what they are doing is wrong. Young people between 10 and 18 years charged with an offence have their cases heard in the Children's Court. The Children's Court also hears care proceedings regarding abused and neglected children (Legal Information Access Centre (NSW) 1997:1).

There is some flexibility in how 18 year olds in detention are dealt with, with individual circumstances being considered in any decision to transfer them to an adult prison.

## **Core functions of the juvenile justice system**

The core business of the Department of Juvenile Justice is to fulfil statutory responsibilities in relation to young people charged with offences, brought before courts and sentenced to a variety of orders. As far as community operations are concerned, the Juvenile Justice Community Services Offices

- give advice to courts regarding the most appropriate sentence for young people;
- supervise young people under court orders; and
- put in place and supervise whatever rehabilitative programs are either ordered or deemed appropriate for young people.

The key functions required to be fulfilled in detention centres are supervision, rehabilitation and the provision of secure care.

General services provided include:

- advocacy for young people applying for bail or remanded in custody because of welfare issues such as homelessness;
- assessments and reports to assist courts in sentencing;
- supervision and support of young people on community-based court orders, including community service. (Although the principle role of supervision of community service orders resides in the Community Services Offices, sometimes young people are more directly supervised by agencies or part-time contracted workers);
- counselling of young people to address their offending behaviour and to develop coping skills;
- assisting young people to access appropriate educational, vocational, recreational and counselling programs; and
- a case management system to assess the needs of individuals and plan their graduated return to the community (New South Wales DJJ 1997).

## **Linkages between juvenile justice and youth welfare**

There is a clear legislative framework for when young people enter the juvenile justice system and when they are liable to come under the care and protection of the State. In practice, there are issues about responsibility for young people and a significant number of 'shared clients'.

In 1996 a discussion paper was released by the Community Services Commission in New South Wales, entitled *The Drift of Children in Care into the Juvenile Justice System: Turning Victims into Criminals*. Included in the discussion paper was an analysis of figures indicating that wards were 15 times more likely to enter the juvenile justice system than were non-wards (the separate figures for males was almost 13 times more likely and females were 35 times more likely). Wards are also readmitted to Juvenile Justice Centres more often than non-wards.

As well as evidence of 'drift' from wardship to the juvenile justice system, the discussion paper noted that:

Once a ward is charged with a crime, the responsibility and care for the child can shift from the Department of Community Services to the Department of Juvenile Justice. Such a transfer means that more attention is paid to the young person's crime, punishment and rehabilitation than their 'welfare' needs such as accommodation, emotional disturbance and physical and mental health. For some young people, this

drift in care is a form of systems abuse which turns the victim into the criminal. (Community Services Commission 1996:10).

The paper indicated areas where the absence of proper linkages between the systems responsible for care and protection of young people and for juvenile justice had failed young people.

A Wards Project Officer was subsequently appointed and further work on the recommendations from the discussion paper and from the Wards in Juvenile Justice report of the Inter-Departmental Committee on Juvenile Justice has established priorities for action by the two relevant departments (Marsden 1998). Areas identified as high priority are:

- the establishment of an accessible and comprehensive data system on wards at risk;
- research on indicators to help identify state wards who are at risk of entering the juvenile justice system, particularly in relation to young women, Aboriginal and Torres Strait Islander youth, young people with a disability and those who come from a non-English speaking background;
- identifying best practice guidelines for behaviour management in residential care, and clear policies, guidance and training for staff in dealing with challenging behaviour in school settings (in order to reduce the likelihood that wards with challenging behaviours enter the juvenile justice system);
- development and funding of additional accommodation options, such as temporary respite services and emergency accommodation for young people on bail; and
- clearly identifying numbers of shared clients and accommodation issues for this group.

The above issues concerned with linkages between juvenile justice and youth welfare refer to those young people who are already under the care and protection of the state as a result of the action, or lack of action, of parents or guardians. There are, however, young people who come in contact with the juvenile justice system who are not wards of the state but who nevertheless may have significant welfare needs. The following issues relating to linkages between the two systems were identified in consultations for the present issues paper:

- DCS is the 'gatekeeper' to some key services for young people and for families. Inadequate attention to care and protection matters for younger children, and to family support and early intervention, often over a period of time, can result in 12-13 year olds being regarded as uncontrollable. By 12 or 13 years, children may well have committed some offence and hence drift to the juvenile justice system.
- Courts do not necessarily have information about previous notifications or other aspects of a child's past, nor are unstable family situations always readily apparent, e.g. a series of foster placements which would indicate care and protection issues. Cross-referencing does not occur in a number of situations. Detailed court reports about a young person's background are not required in all cases.
- Protocols have been developed but they operate only if the young person is a 'joint client' (of the two systems). This means that they do not apply when a young person gets an unsupervised order and is hence not a client of the Department of Juvenile Justice since no action from the Department is required. A significant proportion of orders are unsupervised.
- Protocols do not operate for young people not formally under a care order. Broad welfare needs for young people are not necessarily supported by DCS in the absence of substantiated child protection and notification issues.
- The absence of clear protocols and interactions between the two systems can determine that young people end up in the juvenile justice system rather than the welfare system.

- Accommodation is often a key issue. If magistrates do not consider that a young person's accommodation is stable enough or supportive enough, or that they are in danger of constantly moving between shelters or shelters and the streets, there is a greater likelihood that they will favour a custody option where the young person will at least be clothed and fed and have access to some services.

## **Responsibility for young people on care and protection and justice orders**

As already indicated, in theory, young wards who commit offences remain the responsibility of DCS. However, the Community Services Commission's 1996 discussion paper reported that in practice 'criminal' issues often predominate once the young person has committed an offence and there is a much reduced likelihood that DCS plays a significant welfare role, particularly with older young people. If young people are in detention, safety issues tend to predominate. Consultations for the present paper also indicated that there was often little involvement from DCS following release from detention. Factors contributing to DCS's lack of involvement include limited resources, high staff turnover because of the nature and conditions of the work, inadequately trained staff, lack of an adolescent focus (in structural positions and practice principles) and the impact of political pressures on policies and practices.

## **Programs for young people on justice orders**

### **Specialised services provided by the Department of Juvenile Justice**

The Department funds programs to address a range of health and welfare issues for young people. There are both generic program support officers and Aboriginal program support officers in each of the juvenile justice clusters. Their role is to assist community agencies to generate programs to meet the needs of young offenders. Approaches vary according to geographical area and young people's needs. Some programs and services are provided directly by the Department of Juvenile Justice and others are provided through funding of non-government organisations and agencies. Departmental programs currently include:

- counsellors located at juvenile justice centres, intensive program units and community facilities to provide individual and group counselling for young people convicted of serious violent offending.
- a sex offender program;
- alcohol and drug specialist services;
- six forensic psychologists located at juvenile justice centres and intensive program units to assist young offenders suffering from mental illness or specific mental health problems; and
- specialist counselling programs aimed at assisting young people to deal with their offending behaviour and personal issues.

The Department of Juvenile Justice also funds a number of post custody programs, including:

- education programs to enable young people to continue their studies and redress basic skill deficits; and

- jobs skills, living skills and recreational programs focused on assisting community reintegration.

In detention centres, education courses provided by Department of Education and Training teachers include a focus on literacy and numeracy. Job skills training, often in conjunction with TAFE providers, and life skills are also part of the educational program. Young people in detention receive health assessments, health care and general health education.

### **Services provided by other agencies**

The Department funds approximately 80 community groups to provide a range of support services for young offenders. They include:

- diversionary programs for young Aboriginal offenders;
- an Aboriginal mentor scheme;
- bail services to provide accommodation and support for young people granted bail by the courts;
- funding of an Aboriginal youth service to provide a bail accommodation facility;
- an alternative placement program offering accommodation and support for clients of the Department of Juvenile Justice who are homeless or lacking suitable accommodation;
- a generic mentor scheme in which members of specific ethnic communities are recruited and trained to provide support and guidance for young people;
- a specialist fee-for-service assessment and counselling service for young people convicted of serious violent offences;
- sessional fee-for-service supervisors of young people on community-based orders; and
- funding of three family workers attached to established adolescent drug and alcohol services (New South Wales DJJ 1997).

### **Data collection**

There are two main data collections: the Children's Court Information System and the Client Information System. Currently there is no common data linking the juvenile justice system and child protection, however a project to do so is under way. The New South Wales Judicial Commission has a database of information about programs available in different areas for offenders. It can be used, for example, by judges making orders.



**Table 3: Data collection, New South Wales**

Descriptive name of collection	Years for which data are available	Program/service to which collection relates	Dept/agency responsible for collection	Who collected by? (institutions/agencies/govt)	Do data relate to clients/services/both?
Children's Court Information System	1990–91 to 1996–97	All finalised appearances before the Children's Court	Department of Juvenile Justice	Department of Juvenile Justice and Attorney-General's Department	Clients
Client Information System	Since the mid-1980s	Department of Juvenile Justice	Department of Juvenile Justice	Department of Juvenile Justice	Clients

## 7.2 Victoria

### Administrative location of juvenile justice

Juvenile justice in Victoria sits within the Youth Services Branch of the Youth and Family Services Division in the Department of Human Services. It has long been located within the general health and welfare sector of government.

### Current legislation and key features of the system

The *Children and Young Persons Act 1989* became fully operational in 1992. It provides for a clear distinction in the Children's Court between the Family Division, which responds to the protective needs of children, and the Criminal Division, which responds to criminal behaviour of young people. The Act set out principles for juvenile justice, established a sentencing hierarchy for courts to follow and introduced two major dispositions: youth supervision orders, administered by juvenile justice units, and youth residential orders, administered by Parkville Juvenile Justice Centre.

There is at least one juvenile justice unit in each of the Department of Human Services regions. The units provide a variety of programs for young people (primarily 10–17 years of age) involved in the juvenile justice system but not subject to a custodial sentence. The programs include:

- court advice
- probation orders
- youth supervision order
- youth attendance orders (up to 10 hours per week)
- parole.

There are three main custodial centres in Victoria: Malmsbury Juvenile Justice Centre, Melbourne Juvenile Justice Centre and Parkville Youth Residential Service. Victoria is the only State to have a dual-track system for males aged 17–20. Young offenders aged 17–20 are dealt with by adult courts; however, if a custodial sentence is imposed the court has the option of an adult prison sentence or a youth training centre order, a less intrusive sentencing option than prison for young people. The latter option is most likely for young people considered vulnerable or immature. They may be sentenced to a period of detention no longer than three years. Young people with sentences longer than six months go to Malmsbury Juvenile Justice Centre; those with sentences of six months or less go to Melbourne Juvenile Justice Centre (which also houses 15–16 year old males).

Parkville Youth Residential Service caters for boys and girls aged 10–14 years on remand or undergoing a youth residential order, young women 15–16 years on remand or a youth training centre order from the Children's Court and young women 17–20 years on a youth training centre order from an adult court. There is also a minimum security forestry camp setting providing accommodation for a small number of 17–20 year olds on a YTC order. All residential units include structured education, vocation, health, recreation and leisure programs.

The Children and Young Persons Act allows for young offenders in juvenile justice centres to be granted escorted or unescorted temporary leave while serving their sentence. Most

young people with sentences over eight months are granted parole and serve part of their sentence in the community under the supervision of a parole officer.

Victoria does not currently have a system of youth or family conferencing as part of the juvenile justice system. However, a pilot program of group conferencing involving the family or carers of the young offender is being evaluated. It is targeted at young people being considered for a probation order for the first time.

The *Children and Young Persons Act 1989* provides for compensation and restitution for loss or destruction of or damage to property as a result of offences committed by young people. While parents are not specifically mentioned in the legislation, courts are required to take into consideration the child's financial circumstances. Hil (1996:15) notes that 'the provision of restitution in practice often becomes a de facto payment by parents'.

## **Age scope of the juvenile justice system**

The Act refers to young people aged 10–17 years. Under 10 year olds cannot be charged with a criminal offence. As indicated above, although tried in an adult court, older male offenders may be sentenced to a youth training centre order and be detained in a juvenile justice centre.

## **Core functions of the juvenile justice system**

There is a focus on diverting young people from the juvenile justice system, rehabilitating those who enter it and developing crime prevention strategies. Core functions of the juvenile justice service are:

- court advice;
- supervision of custodial and community-based case management services; and
- provision of rehabilitative programs, including the young offender support program.

## **Linkages between juvenile justice and youth welfare**

Juvenile justice is regarded as part of an overall 'welfare' service, the aim of which is to promote the wellbeing of children and young people. Documents outlining the current redevelopment of family and youth services in Victoria discuss both sets of statutory functions of the service system (child protection and juvenile justice) together to a significant extent (Victoria DHS 1997a). Nevertheless, the mandate for each is clearly different.

There is an established protocol between juvenile justice and child protection services (Victoria DHS 1994). It covers the following circumstances:

- where clients are on statutory orders from both the Criminal and Family Divisions of the Children's Court;
- where protective services clients are appearing before the Criminal Division of the Children's Court;
- where there appear to be protective concerns in relation to a juvenile justice client; or
- where protective services clients are at risk of being admitted to remand facilities for alleged offending behaviour;
- where young people are not subject to any statutory orders, but are at risk in relation to both the protective and juvenile justice areas.

The protocol states that assisting a young person in resolving problems, particularly those relating to offending behaviour, and advocacy and appropriate referral to mainstream services is as legitimate a role for a juvenile justice worker as being a supervisor and monitor. It is incumbent on juvenile justice workers to make links with mainstream services.

Mandatory reporting requirements operate if nominated workers, including those in the juvenile justice system, hold a belief on reasonable grounds that a young person has been sexually abused or physically injured.

## **Responsibility for young people on care and protection and justice orders**

Where young people under an order from one division of the Children's Court are placed on an order from the other division, the protocol states that there is an obligation to advise the relevant team leader and to set up a joint case discussion in no later than two weeks. The case management responsibility remains unchanged unless negotiated at the case discussion (Victoria DHS 1994).

At present there is no accurate way of tracking all common clients of juvenile justice and care and protection. The Department of Human Services is about to undertake a joint project with the University of Melbourne Department of Criminology concerning 'dual order' young people, i.e. those under orders from both divisions of the Children's Court. The project will include issues related to definition and scope of young people involved in the two systems.

## **Programs for young people on justice orders**

The juvenile justice units in each Department of Human Services region provide a range of services including advocacy and support for young people in need of assistance to gain bail, employment training, legal advice and income support. They also facilitate young people's access to a range of mainstream services and to non-government agencies funded specifically to provide supervision and support for young people on statutory orders. In most regions there are links between juvenile justice units and the Department's Protective Services Program.

The distinction between government- and non-government-provided services is difficult to maintain in Victoria. Many services are either already contracted out or about to be. For instance, at the time of writing health services, previously directly provided by government, were about to be contracted out.

At the three residential units for young people on custody orders, vocational training, education services and a range of other programs are provided. TAFE offers courses at the three centres and provides a range of vocational training courses as well as general literacy and numeracy education. The Department of Education provides a comprehensive educational service for young people of compulsory school age. Each juvenile justice centre has a specialist health team including psychologists, drug and alcohol counsellors, nurses and doctors.

Psychological and psychiatric services are integrated into the specialist service framework as part of mainstream services for both institutional and community-based offenders.

Psychologists and other health staff are based at training centres and perform a range of assessment and treatment functions, including primary and secondary consultation, family counselling, parole follow-up and liaison with psychiatric services. There is also access to

child and adolescent mental health services. Private psychiatric services can be purchased on a sessional or consulting basis as required.

Specialist support services for young offenders include:

- peer education programs covering alcohol and drug and infectious disease issues;
- a violence prevention strategy comprising a number of components that reflect the multi-determined nature of violence;
- suicide and self harm prevention strategy;
- health promotion project;
- training of youth officers with regard to sex offender supervision, self-harm prevention, and violence prevention;
- The Male Adolescent Program for Positive Sexuality (MAPPS) available to institutional and community based offenders; and
- a Serious Offender Program which comprises the sex offender and violent offender treatment programs and is available in juvenile justice centres and community based settings.

In addition to compulsory post-release support for those on parole, the Department of Human Services funds three agencies to provide voluntary post-release support services for young offenders leaving juvenile justice centres. One agency has a special commitment to working with young South East Asian offenders, many of whom have been on youth training centre orders for drug related offences. Another specifically addresses issues for young women.

### **Employment Access Program**

The Employment Access Program operates in each of the nine departmental regions and caters for young people aged 15–20 years on juvenile justice or protective court orders who are supervised through the Department of Human Services. Young people who meet the criteria for the program are assisted with employment and training preparation, placement and post-placement support.

### **Koori youth**

Initiatives for Koori youth include:

- establishment of a Statewide network of Koori justice workers;
- intensive strategies by juvenile justice units to divert Kooris from the justice system and provide culturally relevant supervision and support;
- training of all direct care workers in Koori culture, self-restraint and health issues; and
- close involvement of the special Aboriginal Health Unit attached to the Victorian Aboriginal Community Services Association Inc.

Koori justice projects operate in seven rural locations and one metropolitan location. They are operated by local Aboriginal agencies and provide programs aimed at preventing offending and re-offending behaviour by strengthening positive role modelling for young Indigenous people. Koori justice projects also operate diversionary programs for young people who are at risk of offending.

## **‘Mainstream’ youth welfare programs**

The Turning the Tide drug strategy is an extensive program of education in schools, early intervention, community education and support, and specific drug treatment and support initiatives that some juvenile justice clients benefit from. Mainstream mental health services and Supported Accommodation Assistance Program services are utilised by juvenile justice clients, although juvenile justice clients compete with non–juvenile justice clients for some of these services and agencies are sometimes reluctant to take on juvenile justice clients.

## **Services provided by other agencies**

There are a range of other small projects, often jointly funded and aimed at specially targeted groups of young people, who have been identified as requiring particular support. For example, Care and Communication Concern (more commonly known as God’s Squad Christian Motorcycle Club) has established a motor vehicle crime prevention program known as the Hand Brake Turn Project. Funding comes from the Commonwealth Department of Education, Employment, Training and Youth Affairs, the Victorian Department of Human Services, the Office of Youth Affairs, and there is some support from the corporate sector. The project is targeted to young people (14–17 years) currently incarcerated or in danger of being incarcerated for motor vehicle offences. It provides a structured 15 week training course aimed at young people acquiring skills in a variety of vehicle-related areas, defensive driving skills and improved literacy and numeracy skills.

The Youth Outreach Program is jointly funded by the Department of Justice, the Office of Youth Affairs and Health and Community Services and run by the Victorian Council of Churches. The target group is young people aged 13–17 years who are not in the juvenile justice system but are involved in antisocial behaviour and are deemed likely to be at risk of involvement with the juvenile justice system.

## **Data collection**

The main juvenile justice collection is the Juvenile Justice Client Information System which includes young people on custodial and community based orders that require supervision. There are problems currently in providing information on ‘dual clients’ but as noted, Juvenile Justice is working towards being able to do so and being able to deal with issues of coverage and definition.

**Table 4: Data collection, Victoria**

<b>Descriptive name of collection</b>	<b>Years for which data are available</b>	<b>Program/service to which collection relates</b>	<b>Dept/agency responsible for collection</b>	<b>Who collected by? (institutions/agencies/govt)</b>	<b>Do data relate to clients/services/both?</b>
Juvenile Justice Client Information System	1996 onwards with patchy data from late 1980s onwards	Juvenile Justice: custodial and community-based order case management	Juvenile Justice in the Dept of Human Services	Juvenile Justice operational staff in the regions	Mainly clients at present

## 7.3 Queensland

### Administrative location of juvenile justice

The arrangements outlined below have been in operation in recent years, but are set to change following the change of government in mid-1998. Administrative arrangements for juvenile justice in Queensland have been unique among the Australian States and Territories in that responsibility has been shared between the Department of Justice, the Queensland Corrective Services Commission and the Department of Families, Youth and Community Care. A Juvenile Justice Steering Committee made up of senior members of each relevant department and the Queensland Police Services', coordinates the youth justice area. The President of the Children's Court also has a significant role to play.

- The Department of Justice is responsible for policy and legislative development, research, program coordination and the implementation of community conferencing under the *Juvenile Justice Act 1992*.
- The Queensland Corrective Services Commission administers the Act as it relates to youth detention centres. There are currently two detention centres in Brisbane and one in Townsville.
- The Department of Families, Youth and Community Care (FYCC) has responsibility for the delivery and development of youth community corrections, case management of young offenders, either resident in the community or in a youth detention centre, and some court support services. Within FYCC, the Youth Justice Branch has responsibility for the development, monitoring, evaluation and review of programs administered by FYCC.
- The Juvenile Justice Steering Committee coordinates policy directions and deals with interface issues for juvenile justice. The Committee comprises representatives from the Commission, FYCC and the Queensland Police Service. It is chaired by the Department of Justice and has secretariat support from the Juvenile Justice Branch, Department of Justice (Queensland Government 1996).

Under the new government, juvenile justice is to be re-integrated under FYCC but at the time of writing details were not known.

### Current legislation and key features of the system

The *Juvenile Justice Act 1992* and the *Children's Court Act 1992* (introduced in September 1993) reflected a move away from the welfare model end of the spectrum of approaches to juvenile justice, towards the justice model end. The Juvenile Justice Act explicitly articulated sentencing principles, including the provision that children who commit offences should be held accountable and encouraged to accept responsibility for the offending behaviour, and extended the sentencing options available under the *Children's Services Act 1965-1980*. Since the introduction of the Act significant changes have been made, including the joint administrative arrangements outlined above.

The current Act provides for two means by which young people who commit an offence may be diverted from the criminal justice system. They are police caution (where the child admits the offence and consents to the caution) and community conferences.



When a child is found guilty before a court of an offence not defined as a 'serious offence' the available sentence orders are:

- reprimand
- a good behaviour order of no longer than one year
- a fine as prescribed under the Act for a specific offence
- probation
- unpaid community service for children 13 years of age and over
- detention order with an immediate release order
- detention order.

For serious offences the court may order the child to be placed on probation for up to three years. For a serious offence other than a life offence, there is provision for detention of not more than seven years and for a serious offence that is a life offence detention of not more than 10 years or life in certain circumstances.

The Queensland *Juvenile Justice Act 1992* articulates a clear link between alleged negligent acts of parents and the offending behaviours of their children, although it lacks clear definitions of what might constitute wilful failure on the part of parents to exercise proper care of and supervision of children (Hil 1996).

## **Age scope of the juvenile justice system**

The *Juvenile Justice Act 1992* refers to young people aged 10–17 years. Children 14 years and over are held criminally responsible in the same way as adults. In the case of children aged 10–13, the Criminal Code provides that a child is presumed not to be criminally responsible for any act or omission. In order for the child to be held responsible, the onus is on the prosecution to establish that the child knew the act was wrong or substantially wrong. Children under the age of 10 years are not criminally responsible for any act or omission and therefore cannot be found guilty of a criminal offence. However, they may be brought before a court on an application for care and protection under of the *Children's Services Act 1965*. This can result in the child being placed in the care of the Director General of the Department of Families, Youth and Community Care.

The *Juvenile Justice Act 1992* provides for a one year window period after the young person becomes an adult under the Act, i.e. when they turn 18. If an offence is committed as a child and proceedings begin more than one year after the young person turns 18, those proceedings must be taken as if the offender were an adult at the time of the offence being committed and, if found guilty, the young person must be sentenced as an adult (s. 105.1). If proceedings are started when the young person is a child but not completed to a finding of guilty or not guilty by the time one year has passed after they become an adult, the proceedings are finished as if the offender is a child but, if found guilty, they must be sentenced as an adult (s. 105.2). The Act also sets out circumstances under which orders made against a person as a child may be dealt with as an adult order. Further, once young people in detention turn 18, they, or the Commission, may apply to have the unserved part of the detention period served in a prison. In general, there is a fair amount of discretion at this 18 year old age level, with decisions depending on individual circumstances. As in some other States, there are instances of 20 year olds in youth detention centres.

## **Core functions of the juvenile justice system**

The core functions of the juvenile justice system revolve around, on one hand, holding young people accountable for their actions and encouraging them to accept responsibility for their offending behaviour and, on the other hand, facilitating their reintegration into the community and decreasing the likelihood that they will reoffend.

The principles underlying the operation of the Juvenile Justice Act (s. 4) include:

- The community must be protected from offences.
- Children should be given special protection during an investigation of proceedings in relation to an offence.
- Detention in custody should be seen as a last resort.
- Children committing an offence should be treated in ways that divert them from the court's criminal justice system, unless the nature of the offence and the child's criminal history indicate that proceedings should be started.
- Children should be held accountable for their actions and encouraged to accept responsibility for their offending behaviour.
- They should be dealt with in a way that gives them the opportunity to develop in responsible, beneficial and socially acceptable ways.
- A victim of an offence committed by a child should be given the opportunity to participate in the process of dealing with the child for the offence in a way allowed by the law.
- Parents should be encouraged to fulfil their responsibilities for care and supervision of the child.

The different functions and responsibilities of the various government authorities in relation to juvenile justice have already been outlined. The core functions of FYCC in relation to juvenile justice are the delivery and development of youth community corrections, case management of young offenders and some court support services.

## **Linkages between juvenile justice and youth welfare**

There is a clear legislative distinction between young people who enter the juvenile justice system and young people who enter the child protection system. Queensland currently deals with the grey area of 'status offenders', (i.e. young people whose behaviour or actions are the subject of court action because their legal status is that of a child) through child protection legislation.

Current relevant protocols or memoranda of understanding are in operation between FYCC and Queensland Corrective Services regarding the interface between youth justice staff and detention centre staff around exchange of information and development of case plans.

A protocol is being developed by FYCC and services regarding under 16 year olds using SAAP services. It will set out expectations regarding young people in SAAP services who are either on probation or exiting detention or under state care and protection.

At an administrative planning level within FYCC there is scope for considerable integration of general youth programs and youth justice programs. The Office of Youth Affairs and Juvenile Justice are subsumed under the Youth Program area. Child protection matters and juvenile justice matters have historically been provided through regional offices. The two areas are never completely divorced and in regional offices workers may well be doing both

child protection and youth justice work. Under the new regional structure for delivery of services, other services will also be integrated into a regional structure.

FYCC has developed a number of community-based programs following concern about the very high percentage of young people in detention who were on remand. The programs offer courts alternatives to remanding young people in custody (Queensland FYCC 1997a). Details of the programs are given below.

## **Responsibility for young people on care and protection and justice orders**

If a young person on a care and protection order commits an offence responsibility for their welfare remains with the departmental case worker while youth justice workers have certain statutory responsibilities. As already indicated, in regional centres, the same worker may be responsible for both areas. Joint case conferences are held where there are separate workers.

## **Programs for young people on justice orders**

### **Specialised programs for young people in the juvenile justice system**

The provision of programs for young offenders must be seen in the context of a shift towards corporatisation in Queensland and the contracting out of a range of services. QCORE, the corporatised part of Corrective Services, took over detention centres in 1997. A major review of programs has been undertaken and as a result new programs are being put into place. They are to be based on a clear set of standards, based on young people's needs, monitored for quality and aimed at addressing offending behaviour in an integrated manner. Within this framework, two new programs, Brain Waves and Challenging Offending Behaviours, have been developed. The former is a cognitive skills program based on a competency framework and is planned so that it can eventually be available for young people while in detention or on a community-based order or after exiting detention. A range of other contracted programs are provided for young people in detention, including drug and alcohol programs and anger management.

There has been an audit of case management in relation to juvenile detention and clear guidelines drawn up towards the detention period being underlain by a structured case management process.

A number of programs have been developed by FYCC. They include the Conditional Bail Program and the Young Offenders Project, which are responses to concerns about the number of young people on remand.

- The Conditional Bail Program provides intensive support to young people who would otherwise be considered an unacceptable risk by courts to be granted bail. A youth worker can be assigned to provide up to 32 hours a week daily support for young people until their next court appearance. Participation in an individualised supportive program becomes part of the bail conditions.
- The Young Offenders Project, a pilot project in the City of Logan established to meet the needs of recidivist offenders, provides structured programs and support for young people on community-based juvenile justice orders and a reintegration program for young people who are nearing the end of their custodial sentence. The Project is integrated with services provided by the community and government agencies in the area (Queensland FYCC 1997a).

The Aboriginal Outreach Program is a FYCC initiated program that provides the courts with alternative sentencing options for young Aboriginal and Torres Strait Islander offenders and focuses on those who it is considered are highly likely to fail to comply with the conditions of their orders without substantial intervention. The Program operates in two areas and employs youth workers to provide intensive support, structured activities and means of linking young people in with their communities.

As in other States, there are difficulties in accessing mental health services for adolescents. A new model for service delivery is currently being developed which will include children with conduct disorders as part of the target group.

### **'Mainstream' youth services**

Education Queensland provides a school in each detention centre and the State Health department provides dental and medical services.

### **Services provided by other agencies**

A range of services and programs are provided by community agencies for young people in detention and on community-based orders. Detention centres are able to buy in such services as arts and crafts and recreational and developmental programs.

### **Data collection**

A Courts Statistical System and a Client Information System are maintained by FYCC. Information is received from courts regarding all finalised appearances whatever the outcome, i.e. the courts database includes protective, custodial, community-based and unsupervised orders such as fines. The Client Information System is compiled from court information and information from area offices, detention centres and funded residential institutions (Queensland FYCC 1997b). The Client Information System can therefore provide information about the numbers of young people who are currently on protective orders, justice orders or both types of orders. Information concerning young people on unsupervised orders is less reliable than that on supervised orders as the former is recorded but not entered as a case on the Client Information System. A Youth Services Information System lists youth services provided directly by government and contracted out, some of which are specifically for young offenders.

**Table 5: Data collection, Queensland**

Descriptive name of collection	Years for which data are available	Program/service to which collection relates	Dept/agency responsible for collection	Who collected by? (Institutions/agencies/govt.)	Do data relate to clients/services/both?
Courts database	From mid-1980s onwards, but some pre-1993 data not directly comparable with post-1993.	All orders for young offenders	Courts	Courts	Clients
Client Information System		Includes young people on protective and justice orders (Unsupervised orders are recorded but not entered as a case on)	FYCC	FYCC Client Information Service; Juvenile Justice officers attend court, feed court and other information into Client Information System	Clients
Youth Services Information System		Youth services, including some specifically for young offenders	FYCC		Services

## 7.4 Western Australia

### Administrative location of juvenile justice

Juvenile justice operations are the responsibility of the Ministry of Justice, Offender Management Division. The Ministry was established in July 1993. Previously, responsibility rested with the Department of Community Development (now Family and Children's Services), Youth Justice Bureau.

Custodial Services is responsible for juveniles in detention and community-based operations for the case management of juvenile offenders in the community. In February 1997 the management structures of Juvenile Justice and Community Corrections were amalgamated. The amalgamation maintains separate juvenile justice officers and community corrections officers with their respective specialist roles, other than in remote locations. In smaller remote centres there is a need for officers to have the capacity to perform both functions. In practice, this has occurred informally, with juvenile justice officers covering for the community corrections officers in their absence and vice versa. Previously juvenile justice had four regional managers based in Perth each with responsibility for a quarter of the State. The new system is designed to provide better access to support and supervision (Western Australia Ministry of Justice 1997).

### Current legislation and key features of the system

The *Young Offenders Act (1994)* was proclaimed on 13 March 1994. Key provisions are the notification and active role of parents or responsible adults at all stages of their child's involvement in the juvenile justice system and the participation of victims wherever possible. The Act provides for

- a legislative basis for juvenile justice teams to deal with minor offending;
- youth community-based orders and intensive youth supervision orders with conditions ranging from attendance at a program to intensive supervision;
- the mandatory recording of convictions for scheduled (serious) offences;
- the introduction of supervised release (juvenile parole) for all detainees and the removal of remission; and
- the introduction of a custodial sentence which requires an offender (aged 16–21) to undertake a particular form of activity, e.g. work camps.

A range of dispositions are available to the Children's Court for sentencing purposes. Dispositions which require involvement from the juvenile justice system are:

- youth community-based orders
- intensive youth supervision orders without detention
- intensive youth supervision orders with detention.

These orders require the young person to comply with one or more of the following conditions:

- attendance – participation in an educational, rehabilitative or other course;
- community work – unpaid work for a specified number of hours; and

- supervision – which requires reporting and submitting to supervision or other contact.

Seventeen year old offenders may also be sentenced to dispositions (community service orders and community supervision) available to the adult courts.

Other dispositions such as discharge with no punishment, good behaviour bonds and fines do not require any ongoing juvenile justice involvement.

Western Australia has a remand centre where 10–17 year olds who have been arrested and are to be bailed out, are waiting for a court case, or are waiting to be sentenced may be held in a secure setting (i.e. supervised at all times) for short periods.

The role of juvenile justice teams is to divert minor offenders from the formal court system and to heighten the opportunity for parents of offenders and victims to be involved in the determination of penalties applied to the child. The teams are intended to 'ensure that the consequences for minor offenders are immediate and meaningful, that is, they accept responsibility for their actions' (Western Australia Ministry of Justice 1998).

Juvenile justice teams are coordinated by the Juvenile Community Based Services Directorate and each team includes a coordinator for juvenile justice as well as a representative of the police, the Education Department and the Aboriginal community. Teams are established in six metropolitan locations as well as being coordinated from each country office. Referrals can be made either from the police or the court. Once a matter has been referred, a team member will make contact with the young person, the family and the victim. The team then negotiates with the parties involved to establish the best outcome. The outcome may require reparation to be paid to the victim, an apology or community work.

The *Young Offenders Act 1994*, introduced in an atmosphere of widespread public concern about 'youth law and order' issues, has a central focus on family and parental responsibility. The Act provides for compensation or restitution in regard to any damage or loss caused by the young person's offence, and an order for payment by the young person may be accompanied by an order that payment is made by another person in default of payment by the young person. While no mention is made of parental restitution, it is stated specifically that responsible adults, along with young people themselves, may be liable for the payment of fines or restitution or compensation if such conditions are imposed by the court (Hil 1996).

## **Age scope of the juvenile justice system**

Children and young people are treated as children in the Children's Court if they are under the age of 18 when an alleged offence was committed. As noted, 17 year old offenders may also be sentenced to dispositions available to the adult courts and there is a capacity to send juveniles to prison in exceptional circumstances.

There is one remand centre for 10–17 year olds and one detention centre which accommodates males and females 10–17 years old.

The recent restructure is expected to allow better management of 16–21 year old offenders and more flexibility to deal with young offenders nearing 18. Young people will not have to be transferred to the adult system because of age alone: 'a more flexible approach will develop with transfer to adult supervision occurring at a time best suited to the young person, rather than because they turned eighteen whilst under supervision' (Western Australia Ministry of Justice 1997).

## **Core functions of the juvenile justice system**

Core functions of the juvenile justice system are

- the provision of Court reports`
- supervision of custodial orders
- supervision of community-based orders, which can involve work with families
- some preventive work.

The stated objective of custodial services is to manage young offenders in secure, safe custodial settings which encourage the development of detainees towards responsible citizenship and which involve parents and significant others in the planning and implementation of their child's developmental program towards responsible citizenship. The stated objective of community-based services is to provide advice to sentencing and releasing authorities, to manage individual offenders in the community, to work with appropriate family members and community resources to assist offenders to adopt law-abiding lifestyles, and to assist communities in the development of effective preventive programs.

## **Linkages between juvenile justice and youth welfare**

Written protocols have been developed concerning the welfare needs of young people in the juvenile justice system.

There are expressed concerns about the service gap for young people, particularly those in the 12–15 year old age group, who fall between situations of 'identifiable harm' (who are likely to be placed on a protective order) and those on juvenile justice orders because of offending behaviour. The welfare needs of such young people do not necessarily fit the priorities of either system.

The 1994 juvenile justice legislation reflected a strong community concern about issues of youth crime and a tougher attitude to offenders and the location of juvenile justice in the Ministry of Justice promotes a strong emphasis on justice issues. With the separation of juvenile justice from the Department of Community Development (now Family and Children's Services), the Ministry of Justice assumed responsibility for some preventive services, which in the climate of the time it was decided were better linked with the juvenile justice area than the family and children's services area. Juvenile Justice supports various local activities and clubs, particularly but not exclusively in country towns, which are aimed at assisting both offenders and non-offenders.

There is, however, a view that in practice the emphasis of juvenile justice tends to be on the most serious offenders and that there are limitations to the preventive work that can be done because of resource limitations and limitations of coverage in some areas.

Killara Youth Support Service is a program for 'at-risk' juveniles and young people who may have just commenced offending. It was set up in conjunction with the Police Department and links in with the police cautioning system of informal or formal cautions. Families are either referred to the service by police, offered support by Killara following the issue of a police caution to their child, or they can phone the service directly. Police can also refer young people to Killara if they have concerns about welfare issues (for example, if they cannot locate the parent of a child or young person). Killara offers counselling and support to young people and their families to address problems that may be contributing to young people's offending behaviour. The service offers a short term intervention which may result in referral to a range of appropriate services if longer term support is required.



## **Responsibility for young people on care and protection and justice orders**

In theory, the responsibility for wards remains with Family and Children's Services regardless of their involvement in the juvenile justice system. In practice, there are times when criminal behaviour tends to be the dominant consideration and the main involvement would be with juvenile justice workers attending to the offending behaviour and to the broad welfare needs where possible. There are written protocols regarding welfare needs of young people in juvenile justice.

## **Programs for young people on justice orders**

### **Specialised services for young people in the juvenile justice system**

The detention centre program includes unit living, life skills and health units, education, vocational training, therapeutic units and recreation. The education department operates a school and young people can undertake accredited TAFE units. The aim is to provide an individual program for every young person. Some services are contracted out.

The legislation provides for such activities as a work camp and one was established for a brief period. While the camp was considered by the government to work quite well for some young people, there was political opposition to the notion and the impact on recidivism has not been clearly established. Warminda Intensive Intervention Centre is an intensive supervision centre for 16–21 year old offenders which replaced the previous work camp. It caters for young people coming out of prison and those for whom Warminda may be a last chance before going to prison. Participants attend for three months, are closely supervised and undertake a structured rehabilitation program. An alcohol and drug program has been instituted. The Centre is based on the principle of restorative justice.

Other programs include a mentor scheme, whereby people are paid to work part time with young offenders; an Aboriginal Family Supervision Program; and Victim Mediation.

### **Services provided by other agencies**

The Juvenile Community Based Services Directorate has provided funding to a number of non-government agencies which provide services related to juveniles completing court orders or statutory obligations. These obligations primarily relate to completing attendance and community work conditions or residential requirements. Agencies are also funded to provide preventive programs for identified at-risk populations.

## **Data collection**

Data are collected on the number of admissions by sex and Indigenous status for sentenced and remand admissions to juvenile justice institutions; total admissions, remand and sentenced; court dispositions by district; and incidents in institutions. Juvenile justice administrators report that it would not be difficult to report on the number of young people in the juvenile justice system who are also on protective orders.

**Table 6: Data collection, Western Australia**

<b>Descriptive name of collection</b>	<b>Years for which data are available</b>	<b>Program/service to which collection relates</b>	<b>Dept/agency responsible for collection</b>	<b>Who collected by? (institutions/agencies/govt)</b>	<b>Do data relate to clients/services/both?</b>
Admissions by sex and Aboriginality for sentenced and remand admissions	1994–95	Juvenile Custodial Services	Juvenile Custodial Services	Institutions	Clients
Total admissions, remand and sentenced	From 1985	Juvenile Custodial Services	Juvenile Custodial Services	Institutions	Clients
Referring and sentencing courts by district	From 1984	Juvenile Custodial Services	Juvenile Custodial Services	Institutions	Clients
Incidents in institutions	From 1993	Juvenile Custodial Services	Juvenile Custodial Services	Institutions	Clients

## 7.5 South Australia

### Administrative location of juvenile justice

The police have an important role to play in juvenile justice in South Australia, as does the Courts Administration Authority of the Attorney-Generals Department, which is responsible for family group conferencing. A Juvenile Justice Advisory Committee monitors and evaluates the administration and operation of the relevant Act, oversees the collection of relevant data and statistics and gives relevant advice to the Minister. Family and Youth Services (FAYS) within the Department of Human Services administers Community Residential Care, the two youth training centres, and a range of community-based programs for young people who offend. It also undertakes supervision of court-ordered obligations in community-based district centres.

FAYS has responsibility for a range of services to vulnerable adolescents and their families in addition to services for young people who offend. Some services are provided directly by FAYS, including case management, supervision of young people on care and protection orders, responses to child protection issues, services for Aboriginal families, alternative care, financial assistance, referral and advice. A variety of youth services are also funded under the Family and Community Development Program.

### Current legislation and key features of the system

The shift from a welfare-based system of juvenile justice to a justice-based model occurred in South Australia in the early 1990s. As a result of a Parliamentary Select Committee report three new Acts were introduced in 1993: the *Youth Court Act 1993*, the *Young Offenders Act 1993* and the *Education Act Amendment (Truancy) Act 1993*. Along with these developments, the conceptual underpinnings of the juvenile justice system in South Australia changed towards a stronger emphasis on 'holding young people accountable for their behaviour, on imposing penalties of sufficient severity to act as a deterrent, on increasing victims' access to reparation and on ensuring greater community protection' (Wundersitz 1996:xvi).

The *Young Offenders Act 1993* commenced operation on 1 January, 1994. It provides for a two-tiered system of pre-court diversion, consisting of police cautioning and family conferencing, alternatives intended to deal with minor offences. The third tier is the Youth Court designed to deal with the most serious cases.

In the first tier of pre-court diversion, police can informally or formally caution young people picked up for offences. In 1994–95, the first year of operation of the new Act, 56% of matters were diverted from the court in this way (Wundersitz 1996); in 1996–97, the overall percentage was the same, however the proportion of informal cautions had risen and the percentage of formal cautions had fallen slightly from the previous year (South Australia Juvenile Justice Advisory Committee 1997). Informal cautions are for very minor offences and no official record is supposed to be kept of such cautions, although Wundersitz (1996) found that police had a policy of recording informal cautions as ancillary reports on the Justice Information System. A formal caution involves the young person in some undertaking such as compensation, apology or community work.

Family conferences are the second level of diversion. They are 'predicated on the notion of restorative justice' and offer opportunities for victims to 'confront the young person and play a significant role in deciding what outcomes or sanctions are appropriate' (Wundersitz

1996:xxiii). Police refer matters to family conferences because of the seriousness of the offence or because of some other consideration such as prior offending. Family conferences are presided over by a youth justice coordinator and may require young people to enter into a written agreement which can include an apology to the victim, compensation to the victim, community service or other undertakings agreed to by attendees at the family conference (South Australia DFCS n.d.).

Under the family group conference provisions, the *Young Offenders Act 1993* contains reference to parental restitution. Conferences may require compensation undertakings to the victim of the offence. The Act does not have the more punitive emphasis evident in the Queensland and New South Wales legislation, however, it does place considerable emphasis on parents' obligations to ensure that their children comply with the conditions of any orders made (Hil 1996:16). Guardians may be required to make the undertakings later adopted in the New South Wales *Children (Protection and Parental Responsibility) Act 1997* concerning guarantees that young people comply with undertakings, taking action to assist their development and guard against further offending, and reporting their progress at intervals.

A home detention option was always anticipated in the changes to juvenile justice but did not come into operation until October 1996 after several amendments to the original Act had been passed. This is the first home detention program in Australia for young people who offend (South Australia DFCS 1997b). Home detention can be imposed for a period not exceeding six months (or for periods not exceeding six months in aggregate over one year or less) and the option is only possible where the court is satisfied that the specified residence is suitable and adequate resources exist for the proper monitoring of the young person by a home detention officer.

Other relevant Acts administered by the Department of Human Services are the *Children's Protection Act 1993* and the *Family and Community Services Act 1972*.

## **Age scope of the juvenile justice system**

The *Young Offenders Act 1993* defines a 'youth' as a person of or above the age of 10 years but under the age of 18 years, in relation to proceedings for an offence or detention in a training centre, and includes a person who was under the age of 18 years on the date of the alleged offence. A person under the age of 10 years cannot commit an offence (s. 5).

Young people aged 18 and over, or the Director General on behalf of the young person, may apply to a Judge of the Youth Court for an order that the person be transferred to a prison for the remainder of the period of detention. At any time, up to half of the young people in Cavan Training Centre can be over 18 years. Factors taken into consideration in transfer to an adult prison include whether the young person has requested a transfer, their level of maturity, and their behaviour while in custody. There is also provision under S. 63(4) that under some circumstances a young person of 16 or above can be so transferred, however this is apparently very rarely used and only in exceptional circumstances.

## **Core functions of the Department of Human Services in relation to young offenders**

- The Department's Court Liaison Unit provides information to the Youth Court in the metropolitan area concerning young offenders for whom the department has responsibility, and on matters related to FAYS work in juvenile justice.

- The Department administers of the Community Service Order program in three locations (North, South and West), involving supervision of young people on these orders and liaison with other organisations and agencies.
- It also administers two juvenile detention facilities, Cavan Training Centre and Magill Training Centre. Cavan is for young male offenders primarily between 16 and 18 years. Magill Training Centre caters for younger male youths and all young women admitted on warrants and police custody, remand or detention mandates. The female unit caters for very small numbers of young women on remand and in detention.
- The Department is responsible for community-based programs, including home detention and a number of court ordered alternatives to detention.
- Staff at District centres have responsibility for supervising young people and ensuring their court ordered obligations are fulfilled.

## **Linkages between juvenile justice and youth welfare**

There is a clear legislative framework for when young people enter the juvenile justice system and when they are liable to enter the child or youth welfare system. The former is dependent on committing an offence and being apprehended for it and on age.

The Vulnerable Young Person policy, initiated in 1996, aims to bring together a range of services and programs for young people under one policy umbrella. The policy covers young offenders, care and protection and guardianship, generic youth services, the homeless and Aboriginal services. FAYS operates a range of support programs for at-risk young people aimed at increasing skills for independent living and linking young people into community networks.

Some young people cross program boundaries because of a range of identified issues. A recent research project examined the needs of, and service delivery to, vulnerable young people in South Australia (South Australia DFCS 1997a). The research, commissioned by the Policy and Development Division of FACS (now FAYS), included a profile of young people coming into contact with FACS youth services (both directly provided and funded services) over a two week period. The following findings are relevant to the present paper:

- Just over 50% of presentations at services involved young people who were under a legal order; most were under a young offender order (29% of total presentations) and 20% were under a care and protection order.
- A very high 46% of presentations were concerned with accommodation or placement issues. Staff assessed accommodation or placement, parent-child conflict, family breakdown and offending behaviour as the four main presenting factors for young people.
- There were significant sex differences. Males were more likely than females to present as a young offender and with severe behavioural problems. Females were more likely than males to present with multiple issues such as being a victim of child abuse or neglect, family breakdown, parent-child conflict, being a victim of domestic violence, with issues affecting emotional health and wellbeing, mental health needs, suicidal threats or behaviour and self-harm or mutilation.
- There were significant age differences with young people 14 years and under more likely to present with severe behavioural problems and parent-child conflict and those 15 years and over more likely to present as a young offender, with accommodation or placement needs and with needs for financial assistance.

The report identified the following general conclusions in relation to young people's needs:

- Young people in contact with FACS services have complex, serious and generally multiple needs.
- The needs young people are presenting with are very difficult to address.
- Young people's needs go across program and systems boundaries (they require not only a cross-agency approach but a cross-government response, e.g. involving issues of health, welfare, education and housing).
- A number of young adolescents (young people under 14) presented with particularly severe needs or situations.
- It was apparent that young people 15 and above still require extensive levels of adult support, care and guidance.

The project also found that referral across services was very common and was part of the pattern of working. Even when young people received a service from the agency, the most common response was to send the young people to another point of service for assistance, often resulting in frustration for both the young person and the worker (South Australia DFCS 1997a:55-6).

Informal co-working arrangements between the two sections of the Department of Human Services with responsibility for child protection and juvenile justice matters have been in existence for some time. There has recently been a framework for co-working established between the Field Services Section and the Residential and Youth Section of FAYS to cover co-working arrangements for young people who are both clients of district centres and placed on a youth court order for offending.

South Australia has a program of Community Residential Care. Young people may be placed in community residential care via a voluntary custody position, guardianship of the minister order or a youth court order. For placement in community residential care to occur, the young person must have an allocated district centre social worker.

The Remand Intensive Neighbourhood Care (RINC) program is a placement service for young people who would otherwise be remanded to secure care. It is therefore a program that straddles the areas of youth welfare and juvenile justice. There are two forms of the Intensive Neighbourhood Care (INC) program, one for Aboriginal young people and one for non-Aboriginals on remand. The program provides family based care for young offenders on remand from the Youth Court, on conditional release from secure care detention or at risk of being sentenced to detention. The program is provided as an alternative to secure care and targets young people experiencing family and placement difficulties combined with offending behaviours. Young people who are ordered by the Youth Court to a period of bail with a RINC carer or family are case managed by a FAYS district centre social or youth worker.

## **Responsibility for young people under care and protection and justice orders**

The protocol concerning co-working in relation to young people under care and protection and under a Youth Court order may be subject to some change with the departmental change to FAYS. However, the principles are likely to remain the same. In general, FAYS district centres have case management responsibility for FAYS adolescent clients on non-custodial orders, while the residential and youth services section provides specific placement and program services in partnership with the district centre case workers. Young people who are under the guardianship of the Minister and who are placed in secure care,

are allocated a district centre case worker, although it is recognised that young people over 16 may not require an allocated district centre worker (South Australia DHS 1998).

While in theory the administrative responsibility for young people under care and protection remains with the district centre case manager, juvenile justice administrators were of the opinion that in practice the seriousness of the offence is often a consideration. The offending behaviour may capture more attention, so the juvenile justice worker takes more of the responsibility for the young person. There has been ongoing dialogue around young people on community service orders between staff of the two divisions in the district offices.

## **Programs for young people on justice orders**

Overall, FAYS is the key service provider of services for young people at the court level. The Residential and Youth Services Unit has responsibility for program initiatives specifically designed to provide alternatives to detention and alternative forms of detention. There are a range of community-based programs for young people.

The Metropolitan Aboriginal Youth Team (MAYT) is a specialist unit that provides services and programs designed to assist in reducing the representation of Aboriginal youth in the juvenile justice system and secure care (South Australia DFCS 1997b). MAYT is mainly staffed by Aboriginal personnel representing a variety of Aboriginal clan groups from intrastate and interstate. The aim is to facilitate programs in a culturally aware manner and establish a large network system.

A range of programs is offered, including skills based, recreation, activity and behaviour management. These programs aim to engage young Aboriginal people in an area of interest that provides the opportunity for skill development and participation in activities which challenge their offending behaviour. They seek to impart practical skills including accredited vocational qualifications, whilst using the group learning experience to enhance life skills. The team also offers a short-term family placement service, undertaking the recruitment, training, appraisal and support of carers and the matching of carers with the young people.

Community Based Programs was established in 1995 to provide a range of community-based initiatives for young people involved with FAYS and the juvenile justice, system (South Australia DFCS 1997b).

The Detention Alternatives Unit was established in 1996 as part of Community Based Programs. It targets repeat offenders who are likely to be remanded in custody or face a detention order. The primary programs of the Unit are Home Detention, Remand Intensive Neighbourhood Care and the Bail Assessment Program. The last program is a pilot intensive 10-day program offered as an additional detention alternative for the Youth Court. Secondary programs of the Unit include two challenge/adventure programs, (Dukes Plus, through the Duke of Edinburgh Award Scheme, and PACE, the Program for Advocacy Challenge and Employment).

There is an education centre run by the Department of Education, Training and Employment within Magill and Cavan Training Centres. Magill has an Aboriginal TAFE college link and Cavan provides opportunities for young people to take accredited TAFE modules in horticulture and the hospitality and automotive industries. The Education Department operates Bowden Brompton School out of three campuses for children and young people who do not readily fit into mainstream schools. Warrypinda is an Aboriginal community school.

## **Services provided by other agencies**

FAYS funds a range of general youth agencies and services for disadvantaged children and young people. These include the Operation Flinders outdoor challenge program and the Youth in Motor Sports Program for young offenders whose offences relate to illegal use and misuse of motor vehicles. *A Window on Vulnerability* (South Australia DFCS 1997a), indicated that a significant number of young people who offend present at the range of services provided by community based organisations. Young offenders are referred to Supported Accommodation Assistance Program services and the non-government alternative care system when appropriate.

## **Data collection**

Information from the police and court system in relation to juvenile justice is compiled and maintained by the Office of Crime Statistics in the Attorney-General's Department. The Justice Information System is a centralised system that includes information about apprehensions, cautions and court appearances. FAYS collects data on community service orders it services, detention centres and residential community care. Some data are available pre-1994 (when the current Act came into operation) but are not comparable with present statistics due to a system change. SECAP (Secure Care Psychosocial Screening Tool) is an assessment tool. A statistical analysis of information from SECAP forms has been carried out. Items include sex, age, Aboriginality, eyesight and hearing problems, situation of natural parents (including their involvement with the law and drug and alcohol problems), reading age, survival spelling and numeracy, where residing prior to being placed in secure care, substance use, self-harm, suicide attempts, feelings of hopelessness, and number of close friends. Social Background Reports prepared for the Youth Court also contain quite detailed information about young offenders.

FAYS has the system for juvenile justice and child and youth welfare, but there is no direct interface to allow for tracking of clients.



**Table 7: Data collection, South Australia**

<b>Descriptive name of collection</b>	<b>Years for which data are available</b>	<b>Program/service to which collection relates</b>	<b>Dept/agency responsible for collection</b>	<b>Who collected by? (institutions/agencies/govt)</b>	<b>Do data relate to clients/services/both?</b>
Justice Information System	Since 1994	Police and court information regarding apprehension, cautions, court orders	Office of Crime Statistics, Attorney-General's Department	Office of Crime Statistics	Clients
Average daily occupancy/ admissions and profile data for youth in secure care	Since change of legislation in 1994	Detention	Department of Human Services	Family and Youth Services	Both
Community-based programs	After October 1996	Community-based programs for young people who offend	Department of Human Services	Family and Youth Services	Both
SECAP (Secure Care Psychosocial Screening Tool)	1997, 1998	Community work program	Department of Human Services	Family and Youth Services	Clients
Community service orders	1994 onwards	Young people entering secure care	Department of Human Services	Family and Youth Services	Clients

## 7.6 Tasmania

### Administrative location of juvenile justice

Services for juvenile offenders are administered through the Child, Youth and Family Support Division of the Department for Community and Health Services. Youth justice has always been located within the department concerned with health and welfare. For a brief period in the first half of the 1990s, justice was part of this department and youth justice was located with the broader justice system.

### Current legislation and key features of the system

The youth justice system in Tasmania is in the process of change. The system is still operating under the *Child Welfare Act 1960* (as amended a number of times), however two new Acts – the *Youth Justice Act 1997* and the *Children, Young Persons and their Families Act 1997* – have been passed and are due to be proclaimed in mid-1999.

The *Child Welfare Act 1960* provides for the Children's Court to make a range of formal orders (including remand, committal to a period of detention and supervision for a period of time) which require supervision by a youth justice worker. The development of new legislation for young offenders was authorised in April 1995; an exposure draft of the Youth Justice Bill was tabled in the Tasmanian Parliament in May 1997 and passed with amendments and the deletion of exclusion order provisions in December 1997.

The new Act represents a shift from a welfare model to a restorative justice model. It is designed to encourage young people to accept responsibility for their behaviour and to divert young people charged with minor offences, including first offenders, from the court process where appropriate. For young people who are repeat offenders the Act provides a greater range of sentencing options for the court, including the introduction of a community service order (CSO) scheme for young people over the age of 13 years. The proclamation of the two Acts is awaiting upon the establishment of infrastructures and, as far as youth justice is concerned, the setting up and development of five new programs to support the Youth Justice Act. The first three programs have been assessed as priorities. All are to be put out for tender. The five programs are;

- a police cautioning/conferencing program
- a community service order program
- non-custodial community placement services for young offenders
- a community conferencing program and
- the completion of the Youth Justice Information System ('Tasmanian Update' 1998).

With the new Acts passed but not yet proclaimed, there is a lack of clarity in some areas. Magistrates have begun to make shifts and to anticipate the new Acts in their determinations and there has been at least one instance of a magistrate making a non-legal order. Change has also begun to occur in relation to the age of young people being sentenced to detention. The existing Child Welfare Act relates to 7–16 year olds and the new Youth Justice Act to 10–17 year olds. Magistrates are already sentencing 17 year olds to youth detention, whereas previously they would have been regarded as adults.

The Children, Young Persons and their Families Act incorporates an emphasis on supporting young people to maintain contact with their family and involving families in making decisions about the ongoing safety and wellbeing of their children. An Intensive Family Support Program exists to support families to continue to care for their children.

Both the Children, Young Persons and their Families Act and the Youth Justice Act include provision for group conferencing. Pilot programs of family group conferencing have been conducted for children found to be in need of care and protection but the youth justice system is examining the evaluation literature carefully for the efficacy of their use in relation to young people in the juvenile justice system, particularly as far as longer term outcomes are concerned.

In regard to parental responsibility, the Child Welfare Act states directly that a parent or guardian who, by wilful default or neglect to exercise proper care and supervision contributes to a child committing an offence for which the child is found guilty is themselves guilty of an offence. If convicted of the offence, they can be fined, ordered to pay damages or costs and ordered to enter into an assurance for the good behaviour of the child for up to 12 months (Hil 1996:20).

## **Age scope of the juvenile justice system**

The *Child Welfare Act 1960*, covering children in need of care and protection and young offenders, relates to 7–16 year olds. A youth is defined in the *Youth Justice Act 1997* as 'a person who is 10 or more years old but less than 18 years old at the time when the offence the person has committed, or is suspected of having committed, occurred' (s. 3).

It has been the practice under the existing Act that young people turning 17 while they are still under a detention order will serve out their time in the youth detention centre if the time left is relatively short, up to perhaps one year, unless their offence is particularly serious or their behaviour very challenging, when they are likely to be transferred to an adult prison.

## **Core functions of the juvenile justice system**

The core functions of the Juvenile Justice unit are:

- preparation of background assessment reports to the court
- supervision of young persons subject to formal court orders.

The Unit provides

- advice to the Children's Court;
- case management services for young people who are the subject of a relevant court order;
- referral to appropriate community accommodation and out of home care for young people on orders;
- support services to the families of young people who offend; and
- custodial care and other appropriate services, including education and training at the Ashley Youth Detention Centre.

## Linkages between juvenile justice and youth welfare

Youth and family services and juvenile justice services are linked administratively. Supervision, support and custodial services for young offenders are one of a number of the broad activity categories of the Child, Youth and Family Support Division of the Department of Community and Health Services. The others are:

- a broad range of support services to communities, families and individuals;
- assessment, support and education services for people with substance abuse problems;
- health assessment, education, support and referral services for 0–18 year olds; and
- dental services for all children and health care card holders.

Both youth justice workers and children's service workers at present operate under the same legislation, the *Child Welfare Act 1960*. In the past, generic workers had responsibility for both protective and justice issues and a 'remnant of this practice culture remains today' (Tasmania DCHS 1995, Part 3:7). The Practice Manual states,

It is critical that Youth Justice workers restrict their involvement to those issues that relate to offending. In the interests of diverting young people away from the criminal justice system it is not appropriate for young people to have to go through the Youth Justice door to access care and protective services.

The new Acts ensure a clear distinction between welfare and juvenile justice administrative 'pathways' and the scope for administratively-based decisions about young people in detention is now minimal. The existing procedural and practice links between juvenile justice and youth welfare, particularly in regard to joint case management for young people, will be subject to review as the new Acts come into full operation. The following practice linkages outlined in the Practice Manual are based on the existing Act.

- When care and protection issues are identified as part of a youth justice assessment process, it is important that the youth justice worker work alongside the young person to identify the agency best placed to service those needs, and to make an effective referral. Sometimes this will require taking on an advocacy role.
- Where the identified agency is the Children's Services sub-program, the process is essentially the same except that communication should be assisted by existing linkages.
- Youth justice clients should be allocated high priority within the Children's Services sub-program.
- Youth justice workers have a statutory obligation to report maltreatment to the child protection team.
- Youth justice workers have responsibility to participate in the identification of gaps, blockages and solutions for the range of services that are required to be delivered to young offenders.
- Informed consent has to be obtained before referral to another service (Tasmania DCHS 1995, Part 3:7).

From the juvenile justice perspective, the broad aims in any reassessment of these procedures following the proclaiming of the new Acts will be to ensure that the care and protection needs of young people are not neglected and that juvenile justice service delivery structures continue to work closely with the broad child and youth welfare sector.

Procedures currently exist for joint case management on welfare and justice issues for young people and again new procedures and protocols will be developed as the new Acts come into operation. There are also existing protocols with adult prisons regarding transfer of

young people over 16 years (to be over 17 years in the new Act) from youth detention to prison and less frequently from prison to detention.

Several years ago, as a result of public concern about and media attention to homeless wards, an interim high-support program was set up in a separate section at Ashley Youth Detention Centre for a small number of young people who were not under a juvenile justice order and not able to be placed in the community because there were no appropriate options available for them. In the future, it is likely that such young people would be accommodated in a residential service that is being planned for young people with challenging behaviours, although at the time of writing it was unclear when this would be established.

A longitudinal study following young people through the care and protection system is in progress. Data collected by juvenile justice indicates that retention rates at school are much lower for young offenders than for those who do not offend. Most young offenders are out of school by the age of 14 and those in the juvenile justice system exit school earliest. There are clear implications for an examination of school programs and the role of the school in regard to general student welfare.

## **Responsibility for young people on care and protection and justice orders**

Current procedures set out for occasions when young people who are wards enter the juvenile justice system are:

- *supervised probation and wardship* – Where dual orders of supervised probation and wardship occur, the respective workers of both agencies must meet and decide after considering the circumstances of the young person which agency, or whether both agencies should assume case responsibility. If there is no continued need for wardship then agreement may be reached to seek discharge of the wardship order; and
- *community service order (CSO) and wardship or Supervision* – Where Community Corrections has involvement through a CSO only, then Youth Justice must continue to exercise supervision using their existing order. CSO staff and the supervising youth justice worker should liaise to discuss the most appropriate manner of exercising their dual roles (Tasmania DCHS 1995, Part 3:6).

With the future tendering out under the new Act of a community service order program and of non-custodial community placement services for young offenders, arrangements are likely to be reformalised. At the time of writing it was unclear whether service delivery would be split and there were some concerns about the loss of existing working arrangements.

## **Programs for young people on justice orders**

### **Specialised services provided for young people in the juvenile justice system**

The Ashley Youth Detention Centre caters for all young people of both sexes aged 10–17 and in detention. Programs at the Centre include:

- an education department priority school that has a major emphasis on literacy;
- pilot vocationally oriented TAFE programs, possibly to be expanded, involving workplace training for older young people based on national competency standards, incorporating an ‘on the job’ training model with recognition of prior learning and employing juvenile justice staff who have been trained as assessors of some course units;

- education, sporting and work-release programs for Aboriginal young people to assist them to return to their community; and
- experience on the redeveloped farm aimed at facilitating courses in agriculture.

The system is looking to develop a separate program and facility for the small number of young women in detention. At present there is no discrete program for young women and their needs are individually assessed. Where possible they are linked into community-based programs.

Funding has been obtained through the National Mental Health Strategy to employ a project officer to implement recommendations from the Youth Justice Mental Health Strategy that was developed in 1996. The Strategy will facilitate early identification, access and delivery of services to young people with mental health problems who have come into contact with the youth justice system. The report on youth justice and mental health issues (De Jong 1996) recommended that the Mental Health Program develop a Statewide policy that clarifies whether forensic assessment reports for adolescent offenders should be provided by Child and Adolescent Services in each region or the Forensic Psychiatric Service. However, overall, it was recommended that an effective partnership be developed between Mental Health and Youth Justice to ensure that an appropriate program is developed. Negotiations around such a partnership were to begin at the time of writing. At present it is difficult to ensure appropriate access to mental health services for young people.

### **‘Mainstream’ youth services**

Young people involved in the juvenile justice system represent a very small proportion of the total youth population and the range of services available to meet their multiple needs is limited. However, a range of ‘mainstream’ programs and services are used when and where they are available to target individual needs of young people as required. Other services available through the Child, Youth and Family Support Division, such as community nursing, social work and drug programs are utilised.

Discharge planning for young people in detention begins from the time of entry and a range of accommodation, support, life skills and training services are involved prior to and on their departure. Young people on community-based orders and without family support also use what accommodation and other support services are available for young homeless people.

### **Services provided by other agencies**

Some of the above services are provided by non-government organisations. The number of services provided by the non-government sector will increase with the tendering out of the community service order program and non-custodial community placement services for young offenders. So too will the likelihood of partnership between the Youth Justice and the non-government sector.

### **Data collection**

At the time of writing work was proceeding on the development of a new data collection system in conjunction with the new Acts coming into operation. At present all data collection for juvenile justice is done manually. Information regarding young people in detention is available from the Ashley Youth Detention Centre. Regional offices provide information about young people on community-based orders to the central office. At the

time of intake into Ashley welfare orders are recorded, making it possible to link data on young people on both care and protection and justice orders.

**Table 8: Data collection, Tasmania**

Descriptive name of collection	Years for which data are available	Program/service to which collection relates	Dept/agency responsible for collection	Who collected by? (institutions/agencies/govt.)	Do data relate to clients/services/both?
Manually collected statistics on young people in detention		Young people in Ashley Youth Detention Centre and type of order	Child, Youth and Family Support Division of the Department for Community and Health Services	Ashley Youth Detention Centre	Clients
Manually collected statistics on young people on community orders		Community-based orders	Child, Youth and Family Support Division of the Department for Community and Health Services	Regional offices	Clients



## 7.7 Australian Capital Territory

### Administrative location of juvenile justice

Until March 1998 Youth Justice Services was part of Family Services, which in turn was a branch in the Children's Youth and Family Services Bureau of the Department of Education and Training. In March 1998, following an election in the Australian Capital Territory, the name of the Department was changed to Department of Education and Community Services, and Youth Justice Services became a separate branch of the Children's, Youth and Family Services Bureau within this renamed Department.

Within the same Bureau, other policy areas relevant to young people's welfare are the Family Services Branch, which includes the Care and Protection Service and Child Abuse Prevention, and the Office of Youth and Community Development, which includes Youth Connections, a program which provides support for young people and their families and students at risk of not completing school.

### Current legislation and key features of the system

The Australian Capital Territory *Children's Services Act 1986* (as amended), enacted in 1988, signalled the legislative separation of welfare and justice issues for young people in the Australian Capital Territory and a consequent rapid decrease in the number of young people in custody. It also set out specific sentencing powers in relation to juveniles. The Act is the principal Act in relation to the welfare of children and young people, covering child protection issues and the operation of the Children's Court as well as juvenile justice. It is currently under review. Although the review largely pertains to child protection and other non-juvenile justice issues, some changes are proposed to allow the administrative transfer of young offenders to institutions interstate and for there to be a limit to remand periods for young people in custody (ACT DET 1997b).

Court dispositions for young offenders available under the Act are:

- bail (with or without supervision);
- recognizance for good behaviour;
- probation;
- Attendance Centre Order (ACO) for the more serious or recidivist offenders as an alternative to a custodial order. An ACO involves community service work and coping skills modules (see below);
- remand; and
- committal.

Quamby Youth Detention Centre is the detention centre for serious and persistent offenders held on remand and committal orders. It includes a number of beds for young people considered as 'high risk' or with special needs. There are no special facilities for young women but every effort is made to have a female worker available for young women in detention.

Other relevant Acts are the *Crimes Act of New South Wales 1900* (as amended) and the *Bail Act 1992* (as amended). Under *the Crimes Act* young people can be required to enter into a

recognizance which involves undertakings and conditions such as fines whereby the actual offence is not punished but can be if the conditions and undertakings are breached. Under the Children's Services Act young people can be punished for breaching orders relating to an offence but not for the original offence. Magistrates sometimes prefer to use the provisions of the Crimes Act, as it gives them more power over young people re-offending. The Australian Capital Territory has recently completed a trial period, during which some young people who are going to plead guilty in court were offered the option of a conferencing procedure. An evaluation has been conducted and a decision will be made about the future of conferencing in the Australian Capital Territory.

## **Age scope of the juvenile justice system**

The *Children's Services Act 1986* covers children and young people from age 8–17 years inclusive. There is a 'rebuttable presumption that a child who has attained the age of 8 years but has not attained the age of 14 years is incapable of committing in the Territory an offence against a law in force in the Territory by reason that the child did not have the capacity to know that the act or omission concerned was wrong' (s. 27(2)).

If a young person commits a crime as a juvenile and is within three months of turning 18 by the time the matter comes to court, the matter is dealt with by the Children's Court. If they are sentenced to a period of detention, in theory, they could be aged 20 by the time they are released from the Youth Detention Centre.

There is no adult correctional centre in the Australian Capital Territory. Until recently 17–20 year olds were retained in the Quamby Youth Detention Centre, a situation noted by the Official Visitor as sometimes causing considerable problems of control with older more experienced offenders apt to be a disturbing influence on those younger and less experienced (ACT DET 1997a). This led to a change whereby young adults serving juvenile sentences are able to be transferred to an adult remand centre if they commit violent offences whilst in Quamby and are over the age of 18 at the time of the new offence. A long-established agreement allows the transfer of young offenders in the Australian Capital Territory to New South Wales institutions, however its application is limited to the sentencing magistrate. Youth Justice Services is looking to establish a broader agreement whereby offenders serving sentences can be transferred between New South Wales and the Australian Capital Territory in order to facilitate family contact and general rehabilitation (ACT DET 1997b).

## **Core functions of the juvenile justice system**

The Youth Justice Service provides a range of services for young people who have come to the notice of the courts for criminal behaviour. Services provided are

- court liaison
- court assessments
- bail supervision
- supervision of community-based orders
- provision of secure remand and committal facilities.

The Residential Unit of the Service is responsible for the administration of Quamby Youth Detention Centre. The Community Unit is responsible for providing bail, probation and supervision of attendance centre orders, which include community service work, as well as Pre-sentence and other court-ordered assessments. The Unit aims to maintain young people

within their families and communities. It involves parents in the design and implementation of case plans.

## **Linkages between juvenile justice and youth welfare**

Until the recent administrative changes, juvenile justice was part of Family Services. In a relatively small department this meant considerable interaction between the two. There is now some administrative separation of financial resources.

The Act ensures a distinction between young people who are subject to a court disposition for offending and those who are not. Where there are welfare issues involved, as is frequently the case, there is joint action on case management between juvenile justice and Family Services workers. All young people on committal or on community-based orders have a case plan. They go through an induction process, where their needs are assessed and referral to Family Services workers is made if necessary.

Section 26 of the Children's Services Act specifically allows for the transfer or setting aside of criminal matters when the court is satisfied that the key issues are related to the child's need of care. Care matters are then addressed as a priority over criminal charges.

While in theory a case management approach is put in train for all young people, it was determined that this was not happening for young Indigenous people and special procedures were developed following the recommendations of the Report of the Royal Commission into Aboriginal Deaths in Custody. Young Indigenous people granted bail by a court are supervised by youth workers who develop individual case management plans to address health, accommodation and welfare needs. This approach was developed in consultation with Indigenous community organisations. The aim is to enable young people to remain in the community and to reduce the risk of offending. The service provides magistrates with an alternative to a remand-in-custody order (ACT DET 1997a).

## **Responsibility for young people on care and protection and justice orders**

If young people under wardship commit an offence there is a formal case conference involving juvenile justice officers and Family Services workers. Individual factors determine who takes the primary responsibility and what support services are employed. Decisions are made on a case-by-case basis and the ultimate decision is made following consultation between youth justice workers and relevant family and youth services workers. The underlying aim is to discourage young people's contact with the justice system and seek other options if possible.

## **Programs for young people on justice orders**

### **'Specialised' services provided for young people in the juvenile justice system**

In addition to community service work, coping skills modules are an integral component of attendance centre orders for young people. Participation in coping skills modules can be either recommended as an option or demanded as part of a sentence. The modules focus on educating and equipping young offenders with basic skills to assist their community integration and to divert them from offending behaviour. The modules include communication, self-esteem, problem solving, stress management, drug and alcohol, drink

driving issues, vocational and educational options, budgeting, and legal rights and responsibilities.

An accredited education centre is adjacent to the Quamby Youth Detention Centre. All regular educational components are catered for. The education centre also offers opportunities to gain work skills through a variety of programs incorporating skill development and activities. There is scope for young people to complete TAFE courses.

Psychological services in juvenile justice focus on four key areas:

- psychological assessments to the Children's Court on youth justice clients;
- service delivery (counselling or strategic planning and advice) for community-based clients;
- consultancy for clients in the residential unit (counselling or arrangement of special services, facilitating family contact, monitoring emotional and psychological distress, assessing 'at risk' behaviour and special needs) and the community unit; and
- facilitating general training needs for youth justice staff (ACT DET 1997b).

The small number of young women in the system at any one time are catered for by female workers, who are expected to develop an appropriate program for individual young women. Every effort is made to have a female youth worker available for young women in detention.

### **'Mainstream' services and services provided by other agencies**

In general, since the Australian Capital Territory system is small, there is a heavy reliance on other agencies and whatever services are available are utilised whenever they can be. Some are provided by government agencies and others by non-government organisations and groups. Services used when appropriate include refuges, youth centres, anger management groups and a young men's group. Some of the most difficult needs to meet are those for youth appropriate drug and alcohol treatment and support, mental health services and accommodation options with a range of levels of support. Work has begun on protocols between Family Services and Mental Health in the Australian Capital Territory.

Youth Connections is a program of the Office of Youth and Community Development within the Children's Youth and Family Services Bureau. It provides support for young people and their families, counselling for students at risk of not completing schooling and assistance to chronic truants. An Aboriginal worker is employed in the Youth Connections program. Where appropriate this program may be used for juvenile justice clients.

### **Data collection**

The Juvenile Information Management (JIM) system is a database of Youth Justice clients. Young people receiving an order from the Court have an identifying charge number. The JIM database includes all young people with youth justice involvement, i.e., with orders that are supervised by Youth Justice Services. (Some community-based and bail orders do not involve Youth Justice Services supervision and are not included.) Client information includes age, sex, country of birth, Indigenous status, nature of offence(s), previous criminal record, type of order, previous custodial experience, employment, education, length of sentence, medical history, special needs (drug and alcohol use, disabilities, history relating to mental illness, psychiatric needs, suicidal, security risk) and family structure.

In the induction process for Youth Justice Services clients, any involvement with care and protection is noted on the relevant form and entered into the database. Files for young

people on care and protection orders and justice orders are stored in the same area and available for access by the separate systems in appropriate circumstances. In theory, and dependent on the comprehensiveness of the induction process, the JIM system can identify clients with 'dual orders'.

**Table 9: Data collection, Australian Capital Territory**

<b>Descriptive name of collection</b>	<b>Years for which data are available</b>	<b>Program/service to which collection relates</b>	<b>Dept/agency responsible for collection</b>	<b>Who collected by? (institutions/agencies/govt.)</b>	<b>Do data relate to clients/services/both?</b>
Justice Information Management. Includes comprehensive background information	Past 2 to 3 years	All referred Youth Justice clients (all those with orders supervised by Youth Justice Services)	Youth Justice Services	Court records and information from court liaison officer	Clients

## 7.8 Northern Territory

### Administrative location of juvenile justice

Juvenile justice in the Northern Territory is part of the Northern Territory Corrective Services Department. The Department has a Custodial Operations Section that includes the two youth detention centres and the two adult prisons. Custodial services for young people are thus under adult corrections. The Community Corrections Section of the Department includes 10 community corrections offices. All but one of the community corrections officers (at the time of writing numbering 56) carry a joint caseload of both juvenile and adult clients (including pre-probation and pre-parole prisoners). At the time of writing there was no administrative position that carried a specific responsibility for juvenile justice, both the community corrections and detention arms of the system being part of the overall justice system.

### Current legislation and key features of the system

The current Act is the *Juvenile Justice Act*, first passed in 1983, with amendments. This Act established a Juvenile Court and provides for the following dispositions in relation to juveniles:

- discharge without penalty;
- adjournment for a period not exceeding six months and if no further offence has been committed, discharge without penalty;
- a fine;
- a good behaviour bond with conditions for a period not exceeding two years;
- an order for participation in an approved project for a number of hours not exceeding 480 (a community service order);
- probation with conditions;
- detention;
- an order to participate in a project or program provided or approved by the Minister (a punitive work order); and
- some other order under the relevant law that the court could make if the juvenile were an adult convicted of the offence under that law.

In March 1997 mandatory minimum sentences for the majority of property offences (excluding shoplifting and armed robbery) were introduced for both adults and juveniles. For 15 and 16 year old juveniles the second or subsequent offence carries a mandatory sentence of 28 days detention. Determinations by the Full Court of the Supreme Court have established that mandatory minimum sentences cannot be wholly or partially suspended by a court and must be served in full.

Provisions for punitive work orders, which in some ways can be regarded as a stricter form of community service, were also introduced in March 1997 for the same range of property offences that attract mandatory minimum sentencing. However, while, as indicated above, juveniles who commit a first offence are not subject to mandatory sentencing, they are

subject to a punitive work order. Punitive work orders involve 224 hours of supervised work and are served following a mandatory sentence.

There are currently two youth detention centres in the Northern Territory, one in Darwin and the other at the Wilderness Work Camp based at the Wildman River on the edge of Kakadu National Park. In addition, Aranda House, a community crisis and accommodation centre run by the Central Australian Aboriginal Child Care Association holds juveniles on bail for a payment from Northern Territory Community Corrections. A part of Aranda House is currently being upgraded to a short-term secure facility to hold young people for up to three days.

The Juvenile Justice Act provides for restitution or compensation payments and, while parents are not specifically mentioned, the relatively high ceiling of \$5,000 for possible restitution is likely to mean that parents would be required to assume some responsibility for payment. The Northern Territory is the only jurisdiction that provides for an order that parents contribute towards the cost of their child being placed in a detention centre (Hil 1996).

## **Age scope of the juvenile justice system**

The Juvenile Justice Act relates to 11–17 year olds. The Act defines a juvenile as ‘(a) a child who has not attained the age of 17 years; or (b) in the absence of proof as to age, a child who apparently has not attained the age of 17 years’ (s. 3).

The Act provides that if a young person turns 17 while in a detention centre, they should be transferred to a prison within 28 days of turning 17 to serve the remainder of their sentence.

## **Core functions of the juvenile justice system**

The core functions of the juvenile justice system are to:

- supervise court orders, both community based and detention
- provide pre-sentence reports on young people
- provide assessments regarding community service orders.

The role of a Community Corrections officer in the system is ‘to supervise and monitor orders of the Court and Parole Board. By effective supervision and encouraging clients to address issues which lead to offending, (they) aim to minimise reoffending and maximise community protection’ (Northern Territory Community Corrections 1998).

## **Linkages between juvenile justice and youth welfare**

The juvenile justice system relates quite clearly to young people who are found to be guilty of an offence by the court. However, the Juvenile Justice Act provides that

where the court believes, on reasonable grounds, that a juvenile against whom proceedings for an offence are brought is not receiving adequate care or that his (sic) welfare is endangered in any way, it may require the Minister to make an investigation of the circumstances and to take appropriate action to secure the proper care of and attention to the juvenile’s welfare (s. 52).

In order to provide for this statutory obligation a welfare worker from Child Protection and a Community Corrections court officer are present every day the juvenile court sits. Magistrates may ask welfare workers about sentencing options when young people who are under state care come before the court.



Where there are welfare issues involved, and in circumstances of children under care coming before the court, welfare workers and juvenile justice workers work together to prevent children and young people from re-offending.

At present, Juvenile Justice does not monitor the number of young people who are 'under care' and come before the court.

## **Responsibility for young people on care and protection and justice orders**

If young people under care are found guilty of an offence, the main responsibility for their general welfare lies with Child Protection, while Juvenile Justice has clear statutory obligations. As indicated above, there are often joint case conferences. Community Corrections has recently instituted a structured system of case management for the clients it supervises. The system distinguishes between statutory and voluntary action areas, is organised around specific objectives and tasks, and incorporates regular reviews. The overall aim of the case management system is to prevent re-offending (Northern Territory Community Corrections 1998).

## **Programs for young people on justice orders**

### **'Specialised' services provided for young people in the juvenile justice system**

A range of organisations and groups provide support, information and services for young people in detention. There is a full time school operating at the detention centre for 50 weeks per year. The Faculty of Aboriginal and Torres Strait Islander Services (FATSIS) at the Northern Territory University provides a range of work preparation and language courses for young people who are in detention and those on community-based orders. There is a particular emphasis on language and literacy. The Wilderness Work Camp has links through FATSIS with the Conservation Council. Some young people in detention have day release for work experience.

The Territory Health Service Forensic Unit set up by Community Corrections provides counselling for both adult and juvenile offenders and provides specialist services for certain offenders, e.g. sex offenders.

Young people in the main detention centre in Darwin have access to health services provided by private providers, including initial assessment and attention to general health issues.

### **'Mainstream' youth services**

Young people in the juvenile justice system have individual case plans and they are assisted to access whatever appropriate youth and family services are available in the community. Government programs available for young people in juvenile justice include:

- a range of support services provided through Family, Youth and Children's Services; and
- Territory Health Services Living with alcohol program.

Services and support available to young offenders in remote areas are often more limited.

## **Services provided by other agencies**

A range of community-based programs are available for young people in general and used as appropriate for young offenders. They include:

- a number of Aboriginal-run services and programs available for young people as well as adults. They include a 24-hour on-call service for assistance and support for young people with alcohol and other drug use, including petrol sniffing, and support with general health issues including contraception and STDs;
- services provided by Anglicare – Youth Housing, Resolve Counselling and Mediation Services, Health Connections for Youth and a Youth Suicide Program;
- various YMCA programs, including workshops on conflict resolution with families; and
- Darwin Youth Support Group.

In addition, there is a support and advocacy network for young people who are or have been in care in the Northern Territory and various programs for parents in understanding such issues as drug use by young people.

## **Data collection**

An integrated Justice Information System is maintained by the Department of Corrective Services. It provides basic information about clients, including age, sex and country of birth, and includes types of statutory orders. The data are collected from courts and correction services.

**Table 10: Data collection, Northern Territory**

Descriptive name of collection	Years for which data are available	Program/service to which collection relates	Dept/agency responsible for collection	Who collected by? (Institutions/agencies/govt.)	Does data relate to clients/services/both?
Integrated Justice Information System	All years	All statutory orders	Department of Corrective Services	Maintained by head office and linked with court and correction services	Provides information about clients (age, sex, country of birth) and type of statutory order

# Abbreviations

ABS	Australian Bureau of Statistics
ACO	Attendance Centre Order
AIHW	Australian Institute of Health and Welfare
CIS	Client Information System
CSO	Community Service Order
DCHS	Department of Community and Health Services (Tasmania)
DEETYA	Department of Education, Employment, Training and Youth Affairs
DET	Department of Education and Training (Australian Capital Territory)
DFCS	Department of Family and Community Services (South Australia)
(SA) DHS	Department of Human Services (South Australia)
(Vic) DHS	Department of Human Services (Victoria)
DJJ	Department of Juvenile Justice (New South Wales)
FATSIS	Faculty of Aboriginal and Torres Strait Islander Services
FAYS	Family and Youth Services
FYCC	Department of Families, Youth and Community Care (Queensland)
INC	Intensive Neighbourhood Care
JIM	Juvenile Information Management
JJAC	Juvenile Justice Advisory Committee
JJCIS	Juvenile Justice Client Information System
MAPPS	Male Adolescent Program for Positive Sexuality
MAYT	Metropolitan Aboriginal Youth Team
NCSIMG	National Community Services Information Management Group
PACE	Program for Advocacy Challenge and Employment
RAYS	Residential and Youth Services
RINC	Remand Intensive Neighbourhood Care
SAAP	Supported Accommodation Assistance Program
SCCSISA	Standing Committee of Community Services and Income Security Administrators
SECAP	Secure Care Psychosocial Screening Tool
YTC	Youth Training Centre

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