Embedding Diversion and Limiting the Use of Bail in NSW: A Consideration of the Issues Related to Achieving and Embedding Diversion into Juvenile Justice Practices[*]

Introduction

Numerous studies on juvenile justice (see eg Cunneen and White, 2007) have highlighted problems in the varied responses in Australian jurisdictions to young people in trouble with the law. The most pressing problem, identified in a multitude of reports over the last twenty years (eg, Gale et al 1990; ALRC/HREOC, 1997; HREOC, *Bringing Them Home* 1997), is the continuing and increasing over-representation of Aboriginal children and young people in juvenile justice institutions (AIC 2009).

The primary focus in this comment is on another closely related (Cunneen 2008:47–9) set of issues — the increase in the number of children and young people held in custody on remand and in the length of time spent on remand. Cunneen has argued that changes to bail and other legislation in NSW have meant that 'a growing number of Indigenous young people [are being] held in custodial detention as a result of being denied or unable to meet bail ... [This] is easily as significant an issue as the actual sentencing of Indigenous young people to detention after trial' (Cunneen 2008:49).

The increase in remand numbers has been identified as the most significant driver of the increase in the overall number of children and young people in custody. In late 2009, the community sector in NSW released two reports which made recommendations designed to stem this flow. This comment canvasses and critiques these two reports, presents a different analysis of the underlying reasons for the increases, and proposes other changes that could be introduced in addition to those recommended in these reports.

Aboriginal over-representation

The Australian Institute of Criminology has been monitoring trends in the incarceration of children and young people since 1994. Their latest report (Taylor 2009) states baldly that '[t]he year 2007 recorded the highest over-representation ratio [for Aboriginal children and young people] since 1994' (Taylor 2009:28). In 2007, Aboriginal children and young people were 26 times more likely to be in detention in NSW than non-Aboriginal children and young people. There has been a steady increase in this rate from 1994, when the equivalent figure was 16 (Taylor 2009:29).

So, despite many changes to policy, practice and legislation in NSW, the over-representation of Aboriginal children and young people in detention has worsened. I do not attempt in what follows to make detailed proposals on how to address this issue, but refer readers to the papers and presentations given at the August 2009 Australian Institute of

---

[*] This paper was prepared for the National Juvenile Justice Summit, 25–6 February 2010, Rendezvous Hotel, Melbourne.

Criminology conference on this issue for some examples of promising projects that are designed to address some of the systemic issues underlying the over-representation of Aboriginal children and young people in juvenile justice in many parts of Australia,[1] and to the paper presented by Cunneen at the 10th anniversary of the release of *Bringing them Home* (Cunneen 2008).

Children and young people on remand in NSW

Despite evidence that, apart from violent crime, the overall rates of offending by children and young people in NSW are either falling or stable (Moffatt and Goh 2009), there has been a significant increase in admissions to centres (JJ Annual Report 2008–09: 51) and in the overall daily average number of children and young people in custody since 2005 (Taylor 2009:9).

By 2007,[2] the rate of incarceration of children and young people in NSW was 68 per 100 000 of the relevant youth population, the highest rate in Australia apart from that in the Northern Territory.[3]

More recent data published by Juvenile Justice NSW indicate that the daily average number of children and young people in custody in NSW has continued to rise since 2007. In the financial year 2006–07, the daily average number of children and young people in custody in NSW was 331; in 2007–08 this figure had risen to 390, and by 2008–09, to 427 (JJ Annual Report 2008–09: 52).

Between 2007 and 2009 the daily average number of children and young people on remand In NSW exceeded the daily average number of children and young people on control orders (JJ Annual Report 2008–09: 51, 53, 54).[4]

Recent changes to legislation as well as proactive policing practices appear to be the main drivers, with Aboriginal children and young people bearing much of the burden. A study by the NSW Bureau of Crime Statistics and Research published in May 2009 found that between 2007 and 2008, the remand population in Juvenile Justice Centres in NSW increased by 32 per cent, from an average in 2007 of 181 per day, to an average of 239 per day by late 2008 (Vignaendra et al, 2009). As the Bureau said:

> The increase in juvenile remand is a matter for concern, not only for reasons of cost,[5] but also because of the potential impact of being held in custody on a young person's family relationships, education and work (Vignaendra et al, 2009: 1).

---

1 See <http://www.aic.gov.au/events/aic%20upcoming%20events/2009/indigenousyouth.aspx>.

2 The latest date for which official national data are available: see Taylor 2009.

3 The rate per 100,000 in the NT in 2007 was a staggering 232.2: Taylor 2009:10.

4 Note that, despite this, around 80% of children on remand do not ultimately receive a custodial order: JJ Annual Report 2008–09:54.

5 In 2008, the recurrent annual cost of keeping juveniles on remand was $47.2 million, up from $36.7 million in 2007: Vignaendra et al 2009:1.

They found that:

> Police activity in relation to breach of bail [conditions] and the introduction of s 22A[6] are both putting upward pressure on the juvenile remand population, the first by increasing the number of juveniles placed on remand, the second by increasing the average length of stay on remand (Vignaendra et al 2009:4).

Holding large numbers of children and young people in custody is expensive. In addition to the undocumented costs of proactive policing, the costs associated with court appearances (including legal representation), and the social and economic costs to families and children, simply holding a child in custody costs something like $540 per young person per day. The YJC report described later in this comment estimated that reducing the number of appearances for breach of bail by only ten young people per week would result in savings of around $260,000 per year to the DJJ budget (Youth Justice Coalition 2009:23).

Holding large numbers of children and young people in custody has not resulted in reduced offending rates. The BCSR report found no evidence that locking more young people up had resulted in a reduction in property offences (Vignaendra et al 2009:4).

Holding large numbers of children and young people in custody might even result in increased re-offending. Putting young people in custody disrupts connections with schools, employment, community and family, and brings young people into close contact with other young offenders — which in itself creates a risk of increased re-offending and reduced social outcomes (see Stubbs, 2009).

Identifying the reasons for the problems

The problems that were identified in the Bureau of Crime Statistics and Research report had become increasingly apparent to many of those working at the coal face in NSW well before the publication of their report. For example, Juvenile Justice advised the Wood Inquiry in 2008 that:

> On any given day, detainees on remand in juvenile detention make up 55 per cent to 60 per cent of the total juvenile justice centre population.
>
> …
>
> The situation is particularly worrying when it is considered that about 84 per cent of young people remanded to custody do not go on to receive a custodial sentence (Wood 2008: 558, 559).

Non government agencies and youth advocates were so concerned with the rising remand rates for children and young people in NSW that they took action independently of government to identify the reasons why this was happening and to suggest actions that could be taken. The NSW Youth Justice Coalition, in association with the University of Sydney undertook research on bail issues for young people appearing in the NSW Children's Court at Parramatta, and released a report on this research in September 2009 (Youth Justice Coalition 2009). The NSW Council of Social Services convened a Roundtable on Keeping

---

6 *Bail Act 1978* (NSW).

Children and Young People out of Remand in March 2009. Participants at the Roundtable represented a wide range of NSW non-government organisations (NGOs). UnitingCare Burnside was a major contributor to the Roundtable and produced a background paper (UnitingCare Burnside 2009a) to guide discussion on the day. It then developed a position paper in response to the Roundtable discussion that was released in October 2009 (UnitingCare Burnside 2009b).

The next part of the comment outlines the findings of the Youth Justice Coalition report, and summarises the conclusions and recommendations of the UnitingCare Burnside position paper. I then discuss whether implementation of the recommendations suggested in these reports will lead to a sustained decrease in the number of children and young people in custody in NSW and conclude that their implementation is a necessary but not sufficient condition for the achievement of this aim.

The final part of the comment considers other explanations for the increase in remand, and whether more can and should be done in juvenile justice law, policy and practice in NSW, not just to reduce the detention centre population, but also to comply with human rights norms for dealing with children and young people in trouble with the law in NSW in a manner that is consistent with Australia's international obligations.

The Youth Justice Coalition Report

The NSW Youth Justice Coalition released their report, 'Bail Me Out: NSW Young Offenders and Bail' (the 'YJC Report') (Youth Justice Coalition 2009), in September 2009. The report is based on an analysis of court papers and interviews with a sample of 145 young people who appeared in the Children's Court at Parramatta for breach of bail conditions over two separate periods, one in early 2008 and the other in early 2009. 'Bail Me Out' found that children and young people were remaining in custody, not because they were a danger to the public or unlikely to appear in court to face their charges, but because of family breakdown and homelessness. This was true in particular for the girls in the study.[7] The report concluded that children and young people often find that the conditions that were routinely attached to grants of bail for children and young people were, in the vast majority of cases, difficult to meet. These conditions most commonly included non-association orders, curfews, and area restrictions. The YJC report found that the young people in their research had, on average, three conditions attached to their original grant of bail. They also found that these conditions were often conflicting, unreasonable or unrealistic.

The Burnside Paper

The Burnside Paper (UnitingCare Burnside 2009b) documented the reasons why so many children and young people are held on remand in NSW, set out the consequences of the high remand rates, and proposed some sensible solutions. The YJC report and the Burnside Paper both conclude that the primary reasons for the increase in the remand population are

---

7 For an early and compelling study on this issue, see Carrington 1993.

- 'Severe' and often conflicting bail conditions (such as non-association orders, reporting, area restrictions and curfews) and proactive policing of compliance with these conditions consistent with NSW State Plan[8] objectives;
- a lack of suitable accommodation for children and young people who are appearing in court and given bail with conditions to reside as directed by Department of Community Services/Department of Juvenile Justice;[9] and
- the application to children and young people of s 22A of the *Bail Act 1978* (NSW),[10] and a stretched Legal Aid system. (Youth Justice Coalition 2009: 2–7; UnitingCare Burnside 2009b:3–4).

Proposed solutions

The YJC Report made many detailed recommendations (see Youth Justice Coalition 2009:ch 5) which are essentially similar in focus to the broad recommendations set out in the Burnside Paper. Burnside recommended that:

- the *Bail Act* should be amended to exempt children and young people from the operation of s 22A,
- increased resources should be set aside for early intervention programs for children at risk of entering the juvenile justice system,
- mandated support should be available for children facing criminal charges, both before and during the court process,
- court processes should be changed to ensure that a lack of accommodation is not a sufficient reason to refusal bail to a child or young person, and
- a Residential Bail Support Program, funded by the NSW Government and delivered by the non-government sector, should be implemented (UnitingCare Burnside 2009b:5–7).

If properly implemented, the proposed solutions are likely to assist in reducing some of the overcrowding in juvenile justice centres, provide support for young people while on bail and during the court processes, and reduce some of the financial and social costs of holding significant numbers of children and young people in custody, in the short and in the long term.

These are sensible suggestions, but their focus is largely on the individual child, and not on broader systemic issues. To achieve sustained reductions in the number of children and young people in custody, attention needs to shift from the present focus on the individual issues relating to young people's involvement with the law to a consideration of what needs to be done to address the underlying structural socio-legal and political issues.

---

8 Proactive policing of compliance with bail conditions was included in the original (2005) version of the NSW State Plan, but does not appear in the most recent 2009 version (see <http://more.nsw.gov.au/stateplan>).

9 Both these organisations are now part of a larger Human Services Department that was created in 2009 and are no longer referred to in the way cited here. Rather, they are referred to as Community Services, Department of Human Services, and Juvenile Justice, Department of Human Services.

10 Section 22A limits the number of applications for bail to one unless new facts and circumstances have arisen when a further application is made. The NSW Government chose not to adopt these recommendations in the 2009 amendments made to the *Bail Act*. The reasons given for this are discussed later in this paper.

I'll return to this point later. The next section diverges slightly from the main purpose of my comment to consider the arguments used to reject the recommendations on s 22A of the *Bail Act*.

Section 22A of the *Bail Act 1978 (NSW)*

The Bureau of Crime Statistics and Research found that the introduction of s 22A into the *Bail Act*, and its application to children and young people, was so obviously related to the increase in the number of children and young people held in custody on remand in NSW that it needed no statistical explanation (Vignaendra 2009:3). This section has caused considerable ethical and practical difficulties for both children's lawyers and magistrates. In addition to the YJC and the agencies that contributed to the Burnside Paper, a wide range of other organisations and individuals, including the Law Society of NSW and the NSW Public Defenders (Haesler 2008) have repeatedly called on the NSW government to repeal the application of this section to children and young people.

This section was amended in October 2009. It is not clear how these amendments,[11] which *retain* its application to children and young people, will address any of the issues identified by YJC and Burnside.

In rejecting the calls to amend s 22A in this way, the NSW Attorney-General put forward three arguments.[12] First, he argued that excluding juveniles from the operation of s 22A 'undermines the policy of protecting victims from the stresses of repeated unnecessary bail applications, merely because of [the] age [of the alleged offender]. The second argument was that excluding juveniles from the operation of s 22A 'undermines the policy of preventing 'judge shopping''. The third was that there is nothing to prevent a second application for bail if a young person is able to give more complete instructions to their legal representative than they had been able to do in the first court appearance.

In response to the first argument, it is highly likely that very few victims of offences committed by young people (where there is an identifiable victim) will be aware of the bail applications made to the Children's Courts, particularly given that first bail appearances are now most commonly by audio visual link between the court and the young person sitting in a room at a Juvenile Justice Centre. To my knowledge, it is not common practice for courts to inform victims when any bail application is about to be made.

The second argument, the policy of 'preventing judge shopping', seems to be a curious one for the Children's Court. In practice, there is little or no opportunity to 'judge [sic] shop' in the Children's Courts, particularly the weekend bail court. Magistrates are allocated to the bail court, but neither the young person nor their lawyer have any control over which magistrate will be presiding on a particular day — although the lawyer will generally be aware of which particular magistrate this will be, and generally aware of the views of this magistrate on the interpretation of s 22A.

---

11 *Courts and Crimes Legislation Amendment Act 2009* (NSW) sch 2 (assented and in force 3 November 2009).

12 Attorney-General, Hon John Hatzistergos, 2nd Reading Speech on the 2009 Amendments to the *Bail Act*, NSW Legislative Council, *Hansard*, 20 October 2009, p 18983 <http://www.parliament.nsw.gov.au/prod/web/common.nsf/V3HHBDayLC?open&key=20091029>.

Finally, the NSW Attorney-General said that a second application is permissible under the section when a young person is 'able to provide more complete instructions' to their lawyer than they were able to do on their first appearance. He said:

> The usual reason advanced for the need to exclude young people from section 22A is that children, by virtue of the limitations of their age and circumstances, are unable to put adequate instructions to their lawyers on the first occasion they appear, resulting in bail applications that fail because of a lack of information being provided, which in turn prevents second applications from being made.
>
> These amendments make it abundantly clear that in this situation a second application can be made when the young person is able to provide more complete instructions, and so this reason for excluding young persons falls away.[13]

This argument is curiously circular, seemingly suggesting that (often) immature and inarticulate young people will be less immature and more articulate in second (and potentially other) bail appearances. It is by virtue of this very immaturity that international conventions urge that special laws should be enacted and that special courts should be established for children and young people and that different treatment should be accorded to them from that accorded to adults.[14]

NSW now has the 'toughest bail laws in Australia'.[15] In NSW, in the event of inconsistencies, the *Bail Act* prevails over specific legislation for children in criminal matters. In contrast, in Victoria, the *Children, Youth and Families Act 2005 (Vic)* prevails over the *Bail Act 1977 (Vic)* and contains provisions that provide guidance to decision-makers about specific factors that must be taken into consideration before bail condition can be imposed on a child (such as the need to consider all other options before remanding the child in custody). The NSW Law Reform Commission recommended that similar criteria should be introduced in NSW and incorporated into the *Children (Criminal Proceedings) Act 1987 (NSW)* (NSW Law Reform Commission 2005:244). This recommendation has not been adopted (see Stubbs 2009 for a fuller discussion).

The response of the NSW Government to increases in remand

Apart from retaining the application of s 22A to children and young people, so far, the Government has not specifically responded to the YJC report or to the recommendations in the Burnside Paper. However, two announcements had already been made by the time these reports were released. These were that:

(a) funding would be made available to establish a bail hotline and an after-hours bail placement service;[16] and

---

13 NSW Legislative Council, *Hansard*, 20 October 2009, p 18983.

14 See, eg, *UN Convention on the Rights of the Child* arts 37 and 40.

15 Attorney-General, John Hatzistergos, 2nd Reading Speech, 2007 Amendments to the *Bail Act*, NSW Legislative Council, *Hansard*, 17 October 2007.

16 In July 2009, the Department of Juvenile Justice was allocated $7.3 million over four years to develop a bail hotline for an after-hours bail placement service, which would provide alternatives to remanding young people in custody: NSW Attorney General's Department, Media Release, 1 July 2009

(b) a $20 million upgrade of Juvenile Justice Centres to accommodate the increased numbers would be commenced.[17]

Alternative ways of explaining and responding to increases in remand numbers

There are other ways of explaining and responding to this 'crisis'. These responses, in tandem with those outlined in the YJC report and in the Burnside Paper, could be even more effective in the long term than the mere adoption of the Burnside recommendations. The total number of young people in Juvenile Justice Centres in NSW could be reduced *without* increasing rates of offending by children and young people, while simultaneously providing public protection, and strengthening families and communities. These responses will require the NSW Government to adopt a strong position that is committed to the protection of children's rights,[18] although:

> Any rights agenda for young people and access to justice must ... be articulated through concerted, specific organisational strategies (typically through the agency of the Third Sector and NGOs); be able to access international justice ..; and occur in tandem with a strategy of social justice and redistribution of agency and resources in favour of children and young people as citizens (Brown 2009: 32).

Explaining the crisis

In a recently published collection of essays from the UK on youth offending and youth justice (Barry and McNeill 2009a), the editors found that:

> [There was a 'surprising and perhaps unanticipated'] unanimity amongst contributors [drawn principally from the UK, but including one piece by Australian authors] about the essential factors affecting youth offending and youth justice in recent years. These include the increasing criminalisation and stigmatisation of young people; the relentless drive to punish and blame young people entirely for their own predicament; the emphasis on responsibilising young people and their parents and the fact that many youth justice policies are more likely to exacerbate rather than alleviate the problem of youth crime (Barry and McNeill 2009b: 15).

In common with the UK, and despite the absence of any real increases in most reported crime (Goh and Moffatt, 2009), in recent years NSW has increasingly criminalised and stigmatised young people, encouraged heavy handed policing of children and young people, emphasised the individual responsibility of children and young people and their parents for anti-social and offending behaviour, placed increasing reliance on tools of risk assessment to guide responses to those found guilty of offences (and, more recently to assess the needs of victims participating in youth justice conferences (JJ Annual Report 2008–09), and

---

<http://www.lawlink.nsw.gov.au/lawlink/Corporate/ll_corporate.nsf/pages/LL_Media_Centre_attorney_general_2009>.

17 Minister for Juvenile Justice, Media Release, September 2009 <http://www.djj.nsw.gov.au/media.htm>.

18 See, for example, *UN Convention on the Rights of the Child* art 40(3)(b).

introduced Anti Social Behaviour Projects[19] and a pilot Youth Conduct Orders scheme[20] that are overtly designed to extend the reach of government agencies into the lives of children and young people.

Many of these 'new'[21] strategies were adopted at a time when the number of children and young people appearing in court in NSW and the number of children and young people in custody were falling (see, eg, Chan 2005). There was talk of wholly or partially closing some Juvenile Justice Centres and there was money for other centres to be completely redesigned, relocated and rebuilt (JJ Annual Report 2001–02). The diversionary scheme set out in the Young Offenders Act 1997, ungoverned by a risk assessment framework but consistent with the UN Convention on the Rights of the Child and other relevant international instruments to which Australia is a signatory, was found to be achieving the stated aims of the legislation (NSW Attorney-General's Department 2002), and at least in part, contributing to falling numbers (Chan 2005) and reductions in reoffending (Luke and Lind 2002; Vignaendra and Fitzgerald 2006).

'Risk and responsibilisation' (Phoenix 2009:130) and managerial strategies (Cunneen and White 2006; Maruna and King 2009:114) have become the dominant modes of governance of youth crime. Their adoption in NSW has been questioned (Priday 2006). Criminologists have argued that 'Indigenous young people do not fare well within regimes that determine movements and outcomes on the basis of risk' (Cunneen 2008:51).

> Much of the 'risk' literature ignores the historical, political and economic context in which social life occurs, and is mainly concerned with individual and family failure … A further difficulty with the 'risk and protective factor' model is the assumption that juvenile offending can be divorced from the process of criminalisation … [T]he individualising logic of risk assessment [is that] a person's gender and their cultural identity becomes reduced to a 'risk factor'. This approach … reproduces Aboriginality as criminal, as a site of probability, as a site that requires intense governance and intervention (Cunneen 2008:52–3).

The adoption of the language of risk and responsibilisation through the identification of a young person as falling into a high risk category gives an objective gloss to police and court decisions about bail and the conditions attached to a grant of bail and to the proactive policing of compliance with these conditions. As Cunneen has argued:

> The relationship between risk and bail is a good example of how Indigenous youth lose out in generic measures of risk based on previous offending. Falling into a high risk category for re-offending allows the suspension of the right to bail and the presumption of innocence. (Cunneen 2008:52).

There is now a significant volume of reliable evidence about the systemic changes that can be made to reduce the number of children and young people in custody. Sufficient and credible independent evidence (see, eg, Chan, 2005; Chan et al, 2004; NSW Attorney-General's Department, 2002; Dignan, 2002) now exists which indicates that the

---

19 Managed by the NSW Department of Premier and Cabinet and operating in collaboration with a number of other government departments in certain Local Government Areas.

20 *Children (Criminal Proceedings) Act 1987 (NSW)* pt 4A.

21 Perhaps 'borrowed' (from the UK — ASBOs, Youth Conduct Orders; and from the US — risk assessment) would be a better term here.

NSW government should seriously reconsider its increasing reliance on risk factors, risk assessment and responsibilisation, and also consider reinstating a commitment to the diversionary laws, policies and practices that have a proven track record of changing police practices towards children and young people in trouble with the law (Chan et al 2004), of reducing the number of children and young people appearing in court, and of reducing the number of children and young people in custody in NSW (Chan 2005), although sadly, the available evidence suggests that access to diversionary options has been afforded to Aboriginal children and young people less often than to non-Aboriginal children and young people (see, eg, Chan 2005; Cunneen 2008).

Young Offenders Act 1997 (NSW)

In addition to the changes recommended in the Burnside Paper, there should be a return to the original stated purpose of, and government commitment in partnership with NGOs to, the effective operation of the *Young Offenders Act 1997 (NSW)*. The original *NSW State Plan* (2005) contained a commitment to proactive policing of bail conditions, but it also included a commitment to the effective operation of the *Young Offenders Act*. This commitment has been watered down in the 2009 version of the *State Plan*, to a commitment to 'reducing court appearances by young people through better use of warnings, cautions and Youth Justice Conferencing', rather than to the effective operation of the *Young Offenders Act* as an integrated whole.[22] Warnings, cautions and youth justice conferences were never intended to be used independently of the carefully structured framework set out in the Act. Rather, they were explicitly intended to comprise a 'structured, consistent and principled approach to dealing with juvenile offending across the state', with a hierarchy of four different levels of intervention designed to divert all but the most serious and/or persistent young offenders from court and custody.[23]

In practice, better compliance with the *Young Offenders Act* would remove the question of bail entirely for a significant majority of children and young people in trouble with the law.

Better compliance with the *Young Offenders Act* as originally envisaged and positively evaluated (see NSW Attorney-General's Department, 2002) would require the reinstatement of an independent state-wide Youth Justice Conferencing Directorate, perhaps based in the Attorney-General's section of the Justice Department, and the appointment of a well respected senior police officer to the position of Youth Issues Sponsor. The money saved from the reduction in the numbers of young people in custody should be invested in original and ongoing joint training for police Youth Liaison Officers and Specialist Youth Officers and conferencing staff. Leadership from and real collaboration between responsible Ministers (Attorney-General, Police, Juvenile Justice, Education, and so on), and effective cross government with community collaboration (both formally and informally), both top down and the bottom up are also critical to effective diversion under this statutory scheme (see NSW Attorney-General's Department, 2002; Chan, 2005).

---

[22] See *NSW State Plan*, 'Keeping People Safe', ch 9, p 58 <http://more.nsw.gov.au/sites/default/files/pdfs/stateplan/09Chapter9_Keeping_People_Safe.pdf>.

[23] See the second reading speech of the (then) Attorney-General, Hon Jeff Shaw, *Hansard*, NSW Legislative Council, 21 May 1997, p 8959.

Youth Drug and Alcohol Court

For the relatively small number of young people who are in danger of going into custody for serious drug and alcohol related offences, the Youth Drug and Alcohol Court should be formalised and its operation expanded to rural and regional NSW.[24] Such an expansion would require real investment in the establishment of services for children and young people in rural and regional NSW, and financial and administrative support for the many NGOs (some of whom are struggling financially) that currently provide these services in many parts of NSW.

Koori Youth Court

Consideration should be given to adopting a form of court modelled on the Victorian Koori Youth Court.

Conclusion

> [P]oliticians and policy makers need to be prepared to lead, rather than follow public and media debates. In the arena of systems and practices, much more attention needs to be paid to young people's experiences of developing and desisting, and of their experiences of the practices that exist precisely to support these processes. ... this is as much to do with the moral quality of the interactions between young people and their workers as it is about the technical methods deployed … [therefore] finding ways to develop legitimate, respectful, individualised and constructive modes of intervention, with the active engagement of young people in that process, must be a priority for politicians, policymakers and practitioners alike (McNeill and Barry 2009: 201).

In short, much more attention needs to be paid to deciding how to conceptualise and respond to young people in trouble with the law, and to their families, communities and victims, and how to listen and respond to what these people tell us about their lives and their aspirations. We can and should be able to create a humane system that is committed to the diversion of young people wherever possible and appropriate, in line with international human rights norms and best practice, and one which recognises the human right of young people in trouble with the law to be treated with dignity and respect and to be provided with the conditions in which they can grow and flourish into happy, contributing and well rounded adults — surely our responsibility as adults, and an aspiration we must have for *all* our children.

Jenny Bargen

CHD Partners, Sydney

---

[24] The Youth Drug and Alcohol Court continues to operate as a 'pilot' project, despite the fact that this innovative court has functioned in the Sydney metropolitan area since 1999. For more information, see <http://www.lawlink.nsw.gov.au/lawlink/drug_court/ll_drugcourt.nsf/pages/ydrgcrt_index>.

References

AIC (2009): Indigenous Young People, Crime and Justice Conference, Crowne Plaza Hotel, Parramatta, Sydney, 31 August 2009 – 1 September 2009 <http://www.aic.gov.au/events/aic%20upcoming%20events/2009/indigenousyouth.aspx> at 17 January 2010

ALRC and HREOC (Australian Law Reform Commission and Human Rights and Equal Opportunity Commission) (1997) 'Seen and Heard: Priority for Children in the Legal Process', ALRC Report no 84, AGPS, Canberra, 1997

Barry, M and McNeill, F (eds) (2009a) *Youth Offending and Youth Justice*, Jessica Kingsley Publishers, London

Barry, M and McNeill, F (eds) 'Introduction', in Barry, M and McNeill, F (eds), *Youth Offending and Youth Justice*, Jessica Kingsley Publishers, London

Barry, M and McNeill, F (2009) 'Conclusions', in Barry, M and McNeill, F (eds), *Youth Offending and Youth Justice*, Jessica Kingsley Publishers, London

Brown, S (2009) 'The Changing Landscape of Youth and Youth Crime' in Barry, M and McNeill, F (eds), *Youth Offending and Youth Justice*, Jessica Kingsley Publishers, London

Carrington, K (1993) *Offending Girls: Sex, Youth and Justice*, Allen and Unwin, Sydney

Chan JBL (ed) (2005) *Reshaping Juvenile Justice: The NSW Young Offenders Act 1997*, Sydney Institute of Criminology, Sydney

Chan, J, Bargen, J, Luke, G and Clancy G (2004) 'Regulating Police Discretion: An Assessment of the Impact of the NSW Young Offenders Act 1997', *Criminal Law Journal* vol 28, no 2, pp 72–92

Cunneen, C (2008) 'Changing the Neo-Colonial Impacts of Juvenile Justice' *Current Issues in Criminal Justice* vol 20, no 1, pp 43–58

Cunneen, C and White, R (2007) *Juvenile Justice: Youth and Crime in Australia* (3rd ed), Oxford University Press, Melbourne

Dignan, J (2002) 'Restorative Justice and the Law: The Case for an Integrated, Systemic Approach', in Walgrave, L (ed), *Restorative Justice and the Law*, Willan Publishing, Devon

Gale, F, Bailey-Harris, R and Wundersitz, J (1990) *Aboriginal Youth and the Criminal Justice System: The Injustice of Justice?* Cambridge University Press, Melbourne

Goh, D and Moffitt, S (2009) *NSW Recorded Crime Statistics 2008*, NSW Bureau of Crime Statistics and Research, Sydney

Haesler, A (2008) 'Kids are Sleeping: New Bail Laws', paper presented to the NSW Criminal Defence Lawyers Association, 16 April 2008 <http://www.lawlink.nsw.gov.au/lawlink/pdo/ll_pdo.nsf/pages/PDO_newbaillaws2008> at 17 January 2010

HREOC (Human Rights and Equal Opportunity Commission) (1997) *Bringing them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from the Families*, Commonwealth of Australia, Canberra

JJ (Juvenile Justice (NSW)) (2009) *Annual Report 2008–09*, NSW Government, Sydney <http://www.djj.nsw.gov.au/publications.htm#annualreport> at 17 January 2010

Luke, G and Lind, B (2002) 'Reducing Juvenile Crime: Conferencing Versus Court', *Crime and Justice Bulletin* no 69, NSW Bureau of Crime Statistics and Research, Sydney

Maruna, S and King, A (2009) 'Youth, Crime and Punitive Public Opinion: Hopes and Fears for the Next Generation' in Barry, M and McNeill, F (eds), *Youth Offending and Youth Justice*, Jessica Kingsley Publishers, London

Moffatt, S and Goh, D (2009) 'An Update of Long-Term Trends in Property and Violent Crime in New South Wales: 1990–2008', *Bureau Brief*, Issue Paper 39, NSW Bureau of Crime Statistics and Research, Sydney

NSW Attorney-General's Department, Legislation and Policy Division (2002) 'Report on the Review of the *Young Offenders Act 1997*', NSW Attorney-General's Department, Sydney

NSW Law Reform Commission (2005) 'Young Offenders', Report no 104, NSW Law Reform Commission, Sydney

Phoenix, J (2009) 'Beyond Risk Assessment: The Return of Repressive Welfarism?', in Barry, M and McNeill, F (eds), *Youth Offending and Youth Justice*, Jessica Kingsley Publishers, London

Priday, E (2006) 'New directions in Juvenile Justice: Risk and Cognitive Behaviourism', *Current Issues in Criminal Justice* vol 17, no 3, pp 413–30

Stubbs, J (2009) 'Critical Reflections on Bail', Paper presented at the 40th Anniversary Symposium of the NSW Bureau of Crime Statistics and Research, 18–19 February 2009, Powerhouse Museum, Sydney

Taylor, N (2009) *Juveniles in Detention in Australia 1981–2007* Australian Institute of Criminology, Canberra

UnitingCare Burnside (2009a) 'Locked into Remand: Children and Young People on Remand in New South Wales', Background Paper, February 2009 <http://www.burnside.org.au/> at 17 January 2010

UnitingCare Burnside (the Burnside Paper) (2009b) 'Releasing the Pressure on Remand: Bail Support Solutions for Children and Young People in New South Wales', Position Paper, UnitingCare Burnside, Sydney <http://www.burnside.org.au/> at 17 January 2010

Vignaendra, S, Moffatt, S, Weatherburn, D and Heller, E (2009) 'Recent Trends in Legal Proceedings for Breach of Bail, Juvenile Remand and Crime', *Crime and Justice Bulletin* no 128, May 2009, NSW Bureau of Crime Statistics and Research, Sydney

Vignaendra, S and Fitzgerald, J 'Reoffending among Young People Cautioned by Police or who Participated in a Youth Justice Conference' *Crime and Justice Bulletin* no 103, October 2006, NSW Bureau of Crime Statistics and Research, Sydney

Youth Justice Coalition (2009): 'Youth Justice Coalition, Bail Me Out: NSW Young Offenders and Bail', Sydney September 2009 (available at <http://www.yjconline.net/BailMeOut.pdf>)