



Inquiry into Children and Young People 9-14 Years in NSW

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The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that identifies public interest issues and works co-operatively with other organisations to advocate for individuals and groups affected.

PIAC seeks to promote a just and democratic society by making strategic interventions on public interest issues in order to:

- expose unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate;
- promote the development of law—both statutory and common—that reflects the public interest; and
- develop community organisations to pursue the interests of the communities they represent.

Established in July 1982 as an initiative of the Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Centre Funding Program. PIAC also receives funding from the NSW Government Department of Water and Energy for its work on utilities, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Introduction

In February 2008, the Parliamentary Committee on Children and Young People established an inquiry to investigate and report on children and young people aged 9 to 14 years in NSW. The inquiry was undertaken under the statutory functions of the *Commission and Young People Act 1998* (NSW). The Terms of Reference for the inquiry are:

1. The needs of children and young people in the middle years, between about nine and fourteen years of age.
2. The extent to which the needs of children and young people in the middle years vary according to age, gender and level of disadvantage.
3. The activities, services and support which provide opportunities for children and young people in the middle years to develop resilience.
4. The extent to which changing workplace practices have impacted on children and young people in the middle years, including possible changes to workplace practices which have the potential to benefit children and young people in the middle years.
5. Any other matter considered relevant to the inquiry by the Committee.

In making this submission, PIAC focusses on the activities, services and supports needed by young people in this age group—Clause 3 of the Terms of Reference—who are in contact with the juvenile justice system. This age group falls between younger children who are a priority for community services and older age groups who can access supported accommodation and other services open to young people aged over 14 years.

In preparing this submission, PIAC has drawn on the cases coming through the Children in Detention Advocacy Project (CID²AP), in which it is a partner, and research it undertaken as a project partner. CID²AP seeks to improve the way young people are treated by the police and juvenile justice system. Other partners in the project are the Public Interest Law Clearing House and Legal Aid NSW. This submission is not made on behalf of the project partners. A summary of cases is at Appendix 1.

Background

10 to 14 year olds in the juvenile justice system

Nationally, nine percent of children who were under juvenile justice supervision (which includes both those on community service orders and those in detention) were aged under 13 years. Of these, 60 percent were Indigenous. Indigenous children were more likely to be younger when they received their first supervision order than non-Indigenous children. The younger a child enters the system for the first time the more likely they are to have repeat periods of detention in later years. Consequently, the majority of detainees (in all age groups) in juvenile justice detention centres are young Indigenous Australians.¹

In NSW, around half the young people participating in youth justice conferences and half of those on remand are aged less than 15 years. About a third of those under community supervision and a third sentenced to detention are under 15 years.² NSW crime statistics for 2007 record 43,409 young people aged between 10 and 19 of interest to NSW Police. Twenty-five percent of this group (15,114) was aged between 10 and 14 years.³

A vulnerable sub-set of children in this age group in contact with the juvenile justice system is that sub-set who are subject to orders giving the Department of Community Services (DoCS) parental control. Of children in detention, those aged between 11 and 15, who are or have been the responsibility of DoCS are over represented in the system. The Community Service Commission, which investigated the relationship between children who are wards and their likelihood of entering a detention centre, reported from its study that the 'major period of activity is during ages 12 to 14'.⁴ Thirty percent of the sample of this study was aged between 10 and 12, and 44 percent between 13 and 15.

Detention is a poor outcome

There are significant and well-documented reasons why a young person should not spend time on remand in detention including:

- the detrimental affects of detention on the ability of the young person to prepare for their court appearance;
- the offence may not attract a custodial sentence;
- the personal and public benefit of preventing associations forming in detention centres;
- the importance of taking the opportunity of diverting a young person from the juvenile justice system;
- the affect of detention on impairing the young person's ability to maintain community and family ties, and of disrupting schooling;
- centres may be located a long way from a child's family, particularly the case for girls, with fewer options for detention centres;⁵

¹ Australian Institute of Health and Welfare, *Juvenile Justice In Australia 2005-06* (2006) p 2

² Department of Juvenile Justice, *Annual Report 2006-2007* (2007) 19.

³ Email from NSW Bureau of Crime Statistics and Research from Fiona Costell, A 'person of interest' is an alleged offender who the police suspect has been involved in a criminal incident. Some are formally proceeded against by police, and some are not.

⁴ Community Services Commission, *The drift of children in care into the juvenile justice system, Turning victims into criminals* (1996) p42

⁵ NSW Law Reform Commission, *Young Offenders, Report 104* (2005) p230

- breach of international obligations; in particular Article 37(b) of the *Convention on the Rights of the Child* (CROC), which provides for detention for children as a last resort.⁶

The fact that nearly 50 percent of children in detention centres are on remand⁷ makes it clear that there is not enough support for this group of children, the majority of whom are Indigenous. The recent changes to the *Bail Act 1978* (NSW) have made it more difficult for children to apply for bail, and hence the situation worse for those who, with better support, would be living in the community, in contact with family and having the opportunity to attend school.⁸

The percentage of children who are refused bail because of serious violent offences is extremely small (2.5%).⁹ Given this low number, it is quite reasonable to speculate that if the majority of children on remand had a parent or carer taking responsibility and providing a secure home environment, the number obtaining bail and meeting bail conditions would significantly decrease the percentage of children on remand.

Need for care and support

Children who experience family breakdown, homelessness or inappropriate care arrangements are more likely to participate in specific types of criminal activity for survival, which in turn places children in the hands of the juvenile justice system. The Memorandum of Understanding (MOU) between DoCS and the Department of Juvenile Justices (DJJ) acknowledges this relationship by describing children who are:

... at a significantly higher risk of poor educational achievement, alcohol and other drug addiction, mental illness, homelessness and poor family relationships, ... (are at) risk ... (of) criminal offending behaviour.¹⁰

The lack of support for young people increases their likelihood of drifting into the juvenile justice system. This group is particularly at risk as they are not a priority for housing or community services. They will also have more difficulty accessing services if they exhibit challenging behaviours and require access to mental health, drug and alcohol health services. The *Turning Victims into Criminals*¹¹ report described the services that this group of young people needed as specialist behavioural intervention, drug and alcohol services, mental health services and school placements.

Eighty percent of young people who are convicted receive a non-custodial sentence, placing young people back in the community where they need to find support services if they are to have any chance of meeting supervision orders and avoiding a life of periodic detention.

There is a clear connection between early intervention and repeat offending. The NSW Auditor-General's report, *Addressing the Needs of Young Offenders*,¹² found that the rate of re-offending for young people will depend on the action taken in response to the offence. The largest percentage re-offending are those who appear in court, and the lowest rates are for those

⁶ Australia ratified the Convention on the Rights of the Child on 17 December 1990.

⁷ NSW Law Reform Commission, above n5, 231.

⁸ *Bail Amendment Act 2007*, Sch 1, cl 3.

⁹ *Ibid*, 6.

¹⁰ NSW Department of Community Services and NSW Department of Juvenile Justice, *Memorandum of Understanding on children and young people who are under the parental responsibility of the Minister for Community Services and are clients of the Department of Juvenile Justice* (2007) 2.

¹¹ Community Services Commission, above n4, p2

¹² NSW Auditor-General, *Performance Audit, Addressing the Needs of Young Offenders* (2007) p3

receiving cautions or participating in youth justice conferences. Young people and their families require support if they are to participate in diversion programs.

The NSW Auditor-General states that:

... early intervention could prevent an escalation of the seriousness and frequency of offending by a young person in need of help. It should be pursued wherever possible.¹³

For children in the care of community services¹⁴, solutions depend on stable, long-term and appropriately resourced placements. In the CID^aAP case studies it is rare for a young person to reach the point of detention without previous contact with community services. Reports from the Community Services Commission refer to the stability of placements as the 'most notable difference between those wards who have, and those who have not had, contact with the juvenile justice system'.¹⁵ The recommendations in the *Just Solutions* report include 20 that refer specifically to this issue. Even though the report dates from 1999, many of the recommendations are still relevant.

The link between children in need of support and juvenile justice has been established in many NSW reports and studies. The fact that reports from 1996 and 2005 reviewed for this submission describe similar trends and make similar recommendations for reform indicate that nothing has improved in recent years for this group of young people.

¹³ Ibid, p 4

¹⁴ Community Services Commission, above n4, p 42

¹⁵ Community Services Commission, *Just Solutions – wards and juvenile justice* (1999) 42.

Discussion and Recommendations

Accommodation Services

Where children are homeless or cannot return home, magistrates have the choice of setting bail with a condition that relies on DoCs providing accommodation, refusing bail or sending the child back onto the streets. If a Court grants bail with a condition to reside as directed by DoCS, the child will not be released on bail unless DoCS allocates accommodation. A child can remain in detention even if the original charge is minor and, if convicted, would not attract a custodial sentence.

Detention should not be used as crisis accommodation. The best interests of the child will rarely dictate that a child should be held in custody. Accommodation, including crisis accommodation, is needed for young people leaving court in circumstances where medium- or long-term accommodation is not available. Accommodation should provide the young person and carers with an opportunity to assess their care needs and arrange access to a range of services, eg, education, mental health, or drug and alcohol services.

The need for accommodation options is stressed in every report on juvenile justice, including the most recent *Young Offenders* from the NSW Law Reform Commission.¹⁶ The NSW Government in response to this report referred to the Bail Supervision Program, but failed to note that this was only a pilot program, received less than \$1m funding, and only applied to repeat offenders.

Recommendations

1. *Accommodation should be available that is acceptable to the Children's Court where the Court orders this as a condition of bail for a young person.*
2. *Out-of-home care service providers should be able to accept unlimited referrals of children direct from the court in recognition that this group is a priority. The two percent cap of non-DoCS referrals should be removed for this group of young people.*
3. *Accommodation options should include crisis accommodation, during which time need assessments by service providers are undertaken and stable housing and education arrangements are organised.*

Intervention Services

The attached case study of 'Mary'¹⁷ demonstrates how access to appropriate clinical assessment is an essential resource. A failure to provide such services often leads to placement failure and a return to the juvenile justice system. The first point of contact with the juvenile justice system needs to receive attention and the opportunity used to put services in place to avoid young people entering into a life of detention. Children with support are more likely to meet their bail conditions, appear in court as required and be involved in diversion programs such as Youth Conferencing.

The case studies that form part of this submission also include children who were arrested due to breaches of out-of-date bail conditions or conditions that were too restrictive to be practical

¹⁶ NSW Law Reform Commission, above n5, p246

¹⁷ The names of the young people have been changed in the case studies to provide protection from identification.

for families and young people to maintain. It is believed that some bail conditions are an attempt to address the failure of support and care services. Courts sometimes impose bail conditions in an attempt to 'restrict the movement and modify the behaviour of young people'.¹⁸ Such conditions become impossible to meet and the child will then either return to court to apply for the conditions to be amended or be arrested for a breach of conditions. For example, a young person with a bail condition with a curfew will have difficulty remaining at home, if they are on the street escaping domestic violence.

It has been reported to PIAC that bail conditions are enforced by police in a way that places more strain on the family and leads a young person to lose confidence in their ability to comply with conditions.

Repeated appearances in court to review bail conditions are an added stress on families, children. A recent paper presented to the NSW Community Legal Centres' Conference described children attending court and experiencing long delays waiting for their case to be heard.¹⁹ They become frustrated and bored with the wait and leave the court before the matter is heard. Failing to appear at the time they are called then results in additional warrants being issued in relation to the young person. This escalation of events can arise even when the original offence would not have attracted a custodial sentence.

It is not surprising that out-of-home care providers have reported to PIAC that on occasions they cannot continue to care for a child due to the nature of bail conditions.

The NSW Audit Report found that the Police Youth Liaison Officers when in contact with young people (being cautioned or charged) did not always refer young people to other services when needed. This indicates a need for police to improve referral processes and their access to services.

Decisions made during initial contact with the juvenile justice system can predict the likelihood of re-offending. The NSW Audit Office²⁰ noted that arrangements the Department of Juvenile Justice (DJJ) has with other services, where DJJ clients receive priority service, is good practice that will assist in the longer-term aim of meeting a young person's needs. This 'good practice' approach of giving priority access to children who come into contact with juvenile justice should apply to health and community services.

Recommendations

4. *Funding should be provided the Bail Supervision Program to be ongoing and extended to all young offenders.*
5. *Additional funding should be available to provide out-of-hours and weekend support to children in care who are in police custody. This includes access to independent legal advice, support when in police custody and through the court process at all times (including after hours and on weekends). Legal advice and representation should be available in face-to-face meetings and in an environment where confidentiality can be maintained.*
6. *Funding should be provided to implement a data system that provides accurate and timely information about young people in contact with the juvenile justice system to the Courts,*

¹⁸ Ibid, p248

¹⁹ Macquarie Community Legal Service, NSW State conference 2008, Youth Issues Workshop

²⁰ NSW Auditor-General, above n12, p4

Police and the Department of Juvenile Justice. This is particularly the case when accurate and up- to-date bail conditions are required.

7. *A Memorandum of Understanding should be developed and implemented between the Department of Community Services and the NSW Police Force. The Memorandum would set out what, when and in what circumstances police should notify the Department of Community Services when children are interviewed or charged and when and in what circumstances the Department of Community Services managed or funded services should call police to intervene in the management of young people with challenging behaviours.*
8. *Children who come into contact with police or juvenile justice system that require health and community services should given priority by those services.*
9. *The Department of Community Services should provide court liaison officers for all Children's Court sittings.*
10. *The NSW Bail Act should be immediately reviewed and amended to ensure that it does not lead to contraventions of the Conventions of the Rights of the Child.*

Quality services

Service providers who provide support services for this group of young people can have an important impact on whether children enter detention. For example, reactions that increase contact with police include: how children are treated who abscond from a failed foster placement, not assisting children in care to manage and comply with bail conditions, mixing homeless children with no criminal record with those with a criminal background and managing difficult behavior with police intervention rather than with an appropriate care plan.

The Community Services Commission report (1996) found that out-home-care services lacked the funding to retain trained staff and manage young people with difficult behaviours. This in turn created an unstable placement history, which was known to be a risk factor for contact with the juvenile justice system. The report found that contact with juvenile justice was more likely to occur 'during access visits, period of self-restoration to families or inappropriate restoration without adequate supports.'

PIAC met with a group of out-of-home care service providers to discuss their experiences housing children on bail. It is not known how representative this group was of the out-of-home care service sector, but the descriptions they gave of court processes and relationship with DoCS signalled that this is one area needing further exploration.

Representatives provided the following comments about their experience in court with clients and their bail conditions:

- Services are limited in the level of referrals they are able to accept directly from the court, as service providers are limited by the Department of Community Service policies in their funding agreements to limit their non-DoCs referrals to two percent. Services may be able to take referrals direct from the court if this percentage was raised.
- The Department of Community Services sometimes requested assistance at short notice, for example at four in the afternoon to house a client that night. These services are not funded or managed as crisis accommodation.
- Representatives considered it worth investigating whether some young people were in detention because they did not have anyone to advocate the use of mediation through youth justice conferencing.

Recommendation

11. *Funding bodies, police and service providers should review their practices to:*

- *proactively assist young people to meet bail conditions, establish stable housing and allow them to continue to attend school and maintain community contacts;*
- *develop and adequately fund programs to assist parents, carers and service providers manage difficult behaviour, which reduces contact with and the need for police intervention.*

References

- 1) Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2005-06* (2006).
- 2) Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, *Seen and heard: priority for children in the legal process* (1997) Chapter 18. Children's involvement in criminal justice processes.
- 3) Community Services Commission, *The drift of children in care into the juvenile justice system, Turning victims into criminals* (1996)
- 4) Community Services Commission, *Just Solutions – wards and juvenile justice* (1999).
- 5) A Hadaway, *Detention as the last Resort? Finding accommodation for Children Facing Criminal Charges* (2005).
- 6) NSW Auditor-General, *Performance Audit, Addressing the Needs of Young Offenders* (2007).
- 7) NSW Department of Community Services and NSW Department of Juvenile Justice, *Memorandum of Understanding on children and young people who are under the parental responsibility of the Minister for Community Services and are clients of the Department of Juvenile Justice* (2007).
- 8) NSW Department of Juvenile Justice, *Annual Report 2006 – 2007*, NSW Government (2007)
- 9) NSW Law Reform Commission, *Young Offenders, Report 104* (2005).
- 10) NSW Government, *Response to NSW Law Reform Commission Report 104 Young Offenders*.