



Response to

**‘Review of the *Youth Justice Act 1997*:
public consultation paper’**

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1. Introduction

Anglicare Tasmania welcomes the opportunity to contribute to this review of the *Youth Justice Act 1997* and congratulates the Department on the consultation paper prepared to guide discussion, which lays out the issues under consideration clearly and comprehensively.

In this submission, Anglicare has chosen to focus on two main issues: the need to incorporate more of a welfare focus into the youth justice system and the need for an integrated support system for young offenders and their families to underpin the legislation and ensure that it is implemented in line with its objectives. Anglicare's response is shaped around a belief that the main functions of the youth justice system should be to act in the best interests of the young person, uphold the human rights of the young person and to support rehabilitation and reintegration. Our submission draws on the principles contained within the United Nations Convention on the Rights of the Child (1989) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), or 'Beijing Rules', which are also acknowledged by Youth Justice Services in its service delivery framework (Youth Justice Services 2007, vol. 1, p. 2) and referred to in the consultation paper (Office of the Deputy Secretary 2009, p. 3).

The submission is also informed by our extensive service delivery experience. Anglicare delivers a number of services for young people, including the following:

- Anglicare Reconnect, which provides support for young people at risk of homelessness;
- the Glenorchy Illicit Drug Service, which provides information and counselling about alcohol and other drugs for young people and their families;
- Hassles, which provides counselling and support for young people experiencing family conflict;
- Job Placement, Employment and Training (JPET), which provides support for young people to overcome barriers and engage in education, employment and training;¹
- KITCASS, a King Island outreach service which arranges accommodation and support for young people aged 13-18 who need a safe place to stay;
- Options, which provides counselling, support and mediation for young people experiencing family conflict;
- PASS (the Placement and Support Service), which provides accommodation and support for young people aged 13-18 who need a safe place to stay;
- Rural and Remote Tasmania Reconnect, which provides outreach support for young people at risk of homelessness;
- Staying Put, which provides support for young people to help them maintain their tenancies;
- Taz Kids Clubs, which runs groups and camps for children aged 7-17 years who have a parent or relative living with mental illness; and
- Youthcare, a crisis shelter for young males aged 13-19.

Of course, not all the clients of these services are involved with the youth justice system; many are receiving support from Anglicare for quite different reasons. However, some of the young people who are Anglicare clients are involved in offending behaviour and are drawn into the youth justice system to

¹ Note: Under the Australian Government's recent restructure of employment services, JPET ceased to exist from 1 July 2009. However, Anglicare's experience of working with JPET clients is highly relevant to this submission.

some level. This submission draws on Anglicare's experience of working with these clients and is also informed by a brief literature review of relevant issues.

2. List of recommendations

Anglicare recommends:

- That the preamble and ss. 4-5 of the Youth Justice Act ('Objectives of Act' and 'General principles of youth justice') be amended to remove all references to 'punishment'.
- That ss. 4-5 of the Youth Justice Act ('Objectives of Act' and 'General principles of youth justice') be amended to require that the best interests and well-being of the young person be the primary consideration.
- That the outcomes of this legislative review be supported by the provision of additional funding to Youth Justice Services and to other relevant services to ensure that the objectives and principles of the legislation can be fully realised in reality.
- That the legislated role of youth justice workers be broadened to incorporate the capacity to provide earlier intervention and support to young people entering the system. This additional role should be supported by additional funding and resources.
- That the legislation be amended to include the following:
 - Prior to any decision around bail, remand or sentencing, a youth justice worker should be required to provide information to the court relating to welfare concerns that fall below the threshold of a care and protection order.
 - The court should be required to consider this information when making decisions on bail, remand or sentencing.
 - If appropriate, the court may order an intervention. The nature of that intervention should depend in the main on the professional recommendation of the youth justice worker and the wishes of the young person.
- That s. 33 of the Youth Justice Act ('Presentence report') be amended to specify the information to be contained in a presentence report, based upon s. 83 ('Contents of a pre-sentence report') of the Sentencing Act.
- That s. 33 of the Youth Justice Act permit a verbal up-date on matters contained within the pre-sentence report to be provided to the court if the young person's circumstances have significantly changed between the development of the report and the court hearing.
- That s. 33 of the Youth Justice Act require that the information contained in the presentence report is relevant, that it be used in the best interests of the young person to promote their wellbeing, and that sufficient resources and services are available to respond to any issues raised.

- That s. 105 of the Youth Justice Act ('Adjournment to determine mental health or disability of youth') be amended to require a youth justice worker to inform the court if the worker becomes aware of a potential disability or mental health issue.
- That once an appropriate mental health facility becomes available, provisions relating to this facility should be incorporated into s. 105 of the Youth Justice Act ('Adjournment to determine mental health or disability of youth') with appropriate protections to ensure that the court receives the benefit of expert advice in relation to the suitability of the facility for the individual concerned.
- That s. 104 of the Youth Justice Act be amended to qualify the term 'suitable place' to exclude a custodial centre.
- That the Youth Justice Act be amended to include the following provisions in relation to bail for young people:
 - a statutory presumption in favour of bail;
 - a legislated requirement for the court to consider the best interests of the young person, including whether a decision against bail will result in greater risk to the young person or jeopardise their chances of successful rehabilitation;
 - a standard bail condition requiring that a young person undergo an assessment of support needs, with any identified needs to be addressed by a youth justice worker and other services as appropriate;
 - legislated requirements around the provision of information on bail, the conditions of bail and the consequences of not complying with those conditions, including the requirement that information be provided in a variety of formats appropriate for disadvantaged groups, that the information include detailed contact information for a person or people able to provide further information, advice or clarification, and that a copy of the information be provided to any adult responsible for the young person; and
 - a legislated requirement that the objectives and principles of the Youth Justice Act are considered in any response to a breach of bail conditions.
- That the Youth Justice Act be amended to include the following provision: that if, due to the severity of the young person's offending behaviour, a young person is placed in remand in order to protect the community, a meeting between the young person, their parent(s) or guardian, their youth justice worker and any other relevant stakeholders and service providers should be convened within 24 hours to identify alternative, appropriate arrangements to remand. The State Government must prioritise making these alternative arrangements available.
- That the Youth Justice Act be amended to establish a statutory requirement that young people on remand should be brought before a court within seven days of being remanded into custody.
- That the State Government ensure that sufficient resources are allocated for youth-specific Legal Aid and community legal services so that lawyers are available, prepared and able to appear.
- That the Youth Justice Act be amended to require that, once a young person has spent 28 days on remand, a collaborative conference of all relevant stakeholders will be convened as soon as is practicable to ascertain the cause of the delay and resolve any issues that may be contributing to it.

- That s. 74 of the Youth Justice Act ('Community service may only involve certain kinds of work') be amended to require only that community service be unpaid and that an appropriate option is available. The decision relating to what kind of community service would best suit the needs of the young person should be delegated to the youth justice worker.
- That any additional provision allowing the court to apply special conditions to a community service order should be conditional on the special conditions being in the young person's best interests and likely to improve the chances of successful rehabilitation.
- That the Youth Justice Act be amended to prevent a young person being detained in an adult prison facility, regardless of its gazetted classification.
- That, in preference to accommodation in an adult prison, a separate facility should be built to accommodate young people requiring higher security than is available at Ashley.
- That Ashley Youth Detention Centre investigate alternative means of accommodating residents in order to minimise risks associated with inappropriate resident mix and ensure special needs in relation to age, gender, background and health and wellbeing are met to the highest possible standard.
- That the Youth Justice Act be amended to allow direct sentencing to rehabilitative programs, subject to the following provisions:
 - the young person must agree to the order and be genuinely willing to comply with it;
 - the decision to sentence to a rehabilitative program must take into account the needs of the young person and the origins and factors contributing to their offending behaviour as this may illuminate the most appropriate program choice;
 - the program must be suitable and promote the young person's rehabilitation; and
 - an appropriate program must be available.
- That the s. 37F of the Police Offences Act be amended in relation to young people and motor vehicle theft to allow for the court to exercise discretion in relation to disqualification from driving and the terms of disqualification, as currently occurs with adults convicted of motor vehicle theft.
- That there be no extension to the power of police to arrest under s. 24 of the Youth Justice Act ('Limit on power to arrest').
- That in cases where the police officer has serious concerns about the ongoing safety of the young person, the legislation allow the police officer to contact child protection services with regard to the young person, with a statutory obligation then imposed on child protection services to respond promptly and appropriately to the enquiry.
- That Youth Justice Services consider the option of amending the Youth Justice Act to ensure that a formal program of post-release support is available to young people exiting a detention centre. These considerations should include extensive consultation with young offenders, as well as detention centre staff, relevant government agencies and community organisations.

3. The purpose of the Act

Note: This section includes Anglicare's response to questions 1 and 2.

3.1. Punishment

While it is important that criminal behaviour is recognised and treated as such, Anglicare believes that all criminal justice systems should be focussed on the rehabilitation of the offender (whether they be a child, youth or adult). Anglicare is concerned that the repeated use of the word 'punishment' in the objectives and principles of the Youth Justice Act places an undue emphasis on something that should not be a primary consideration. The separation of the juvenile and adult justice systems arises in part because it is recognised that young people are still developing and maturing, and that this should influence the kind of response from society that is appropriate for any breach of law and order (UNODC 2006, p.1). A blanket objective to punish, which *The Macquarie dictionary* defines as 'to make someone suffer because they have done wrong', is at odds with the requirement in the Beijing Rules to avoid 'merely punitive sanctions', to base any response to young offenders 'on the consideration not only of the gravity of the offence but also of personal circumstances' and to ensure that in youth justice cases, 'just desert and retributive sanctions' are 'always be outweighed by the interest of safeguarding the wellbeing and the future of the young person' (UNSMRAJJ 1985, Article 5, commentary; Article 17, commentary).

RECOMMENDATION

Anglicare recommends that the preamble and ss. 4-5 of the Youth Justice Act ('Objectives of Act' and 'General principles of youth justice') be amended to remove all references to 'punishment'.

3.2. The best interests of the young person

Both the United Nations Convention on the Rights of the Child and the Beijing Rules state that the best interests and well-being of children and young people are the most important consideration (UNCRC 1989, Article 3.1; UNSMRAJJ 1985, Article 5.1). Focussing on the best interests of young offenders does not negate principles of accountability and responsibility. Instead, it emphasises the reason why a focus on accountability and responsibility is important: it is in any young person's best interests to be supported as they mature to accept responsibility for their actions and be accountable for the consequences. Reframing accountability and responsibility in this way also moves away from 'tough on crime' notions that demand young people be forced into 'accepting' the consequences of their actions for purely punitive motives.

RECOMMENDATION

Anglicare recommends that ss. 4-5 of the Youth Justice Act ('Objectives of Act' and 'General principles of youth justice') be amended to require that the best interests and well-being of the young person be the primary consideration.

3.3. Resources

Anglicare's experience is that some of the principles currently included in the Act² are not being fully realised in the implementation of the legislation because of a lack of resources in the youth justice sector and other service delivery areas. For example, the requirement that custody should only be used as a last resort is compromised by the lack of appropriate alternative accommodation for young people, particularly those on bail or remand. The principle of strengthened family relationships is difficult to achieve when there are limited resources within the human services system for providing intensive support to families. The principle of not unnecessarily interrupting education or employment can be compromised for young people remanded into custody because there is no appropriate alternative.

Failure to achieve these principles due to lack of resources then creates difficulties in achieving the objectives of the legislation. As Youth Justice Services (2007, vol. 1, p. 13) notes, 'Detention is the most expensive but least effective intervention to reduce recidivism', so if young people are being placed in detention environments due to a lack of resources for accommodation and support, then this undermines the legislation's objectives regarding the rehabilitation of young offenders.

RECOMMENDATION

Anglicare recommends that the outcomes of this legislative review be supported by the provision of additional funding to Youth Justice Services and to other relevant services to ensure that the objectives and principles of the legislation can be fully realised in reality.

4. Incorporating a welfare focus into the youth justice system

Note: This section includes Anglicare's response to questions 3-5, some aspects of question 14, questions 15-16 and questions 56-57.

Youth Justice Services is unusual for a "human services" organisation, in that clients enter the youth justice service system as a result of their offending, as opposed to their "human services" needs. However ... offending behaviour is often a consequence of such needs. ...[I]n an overwhelming number of cases the endeavours of the system should be directed towards rehabilitation, not towards punishment... (Youth Justice Services 2007, vol. 1, p. 17).

When the Youth Justice Act was introduced in 1997, the previous legislation covering juvenile justice, the *Child Welfare Act 1960*, was criticised in its second reading speech for failing to promote accountability among young offenders because it '[focused] on the needs rather the deeds of young people who offend'; this focus was also blamed for the limited sentencing options available and the excessive use of the court system for minor offences (Tasmania, Legislative Council 1997). However, while Anglicare supports the diversionary focus of the Youth Justice Act and the aim of promoting accountability among young offenders, we also strongly support a closer interaction between the welfare-focused *Children, Young Persons and their Families Act 1997* and the justice-focused Youth Justice Act. The 'welfare' and 'justice' models should not be seen as mutually exclusive or as an either/or proposition. Anglicare believes that a focus on 'needs' as well as 'deeds' is necessary, is in line with research, and would not result in inappropriate compromises on the rights of young people.

² In this submission, references to 'the Act' refer to the Youth Justice Act.

There is clear evidence that many of the reasons why young people commit crime are related to welfare issues, even if these issues don't reach the threshold requiring statutory intervention.

As the Director of Youth Justice Services noted in the foreword to Youth Justice Services' service delivery framework, '[t]he casual patterns that underpin offending behaviour often include drug and alcohol problems, intellectual developmental delay, mental health issues, peer pressure, school refusal or exemption and a history of childhood abuse or neglect' (Youth Justice Services 2007). Similarly, a UK study found that the main risk factors for youth crime were low income and poor housing, living in deteriorated inner-city areas, a high degree of impulsiveness and hyperactivity, low intelligence and low school attainment, poor parental supervision and harsh and erratic discipline (including physical abuse) and parental conflict and broken families (Joseph Rowntree Foundation 1996). According to Youth Justice Services, a small proportion of offenders commit a large percentage of offences and these young people also tend to have issues with housing, relationships, employment, drugs and alcohol and aggressive behaviour (Youth Justice Services 2007, vol. 1, p. 7).³

Given the clear connection between unmet welfare needs and offending behaviour, taking action to address young offenders' welfare needs will lead to better justice outcomes. Anglicare believes it is possible for the state to intervene in the best interests of a young person without unnecessarily intruding on the rights and responsibilities of the young person or their parents. The important thing is that the level of resources provided for such intervention is sufficient to allow the young person, and their family and community, to be supported and empowered by the process.⁴

4.1. Background: youth justice, youth at risk and child protection

A broad range of issues can place a young person at risk, including homelessness, disengagement from education, substance use, age-inappropriate behaviours and troubled family background. Anglicare acknowledges that work is underway to develop a better collaborative approach between Youth Justice Services and Child Protection (Youth Justice Services 2007, vol. 3, p. 9), but Anglicare's experience is that, for a range of reasons, including a constrained funding environment that has created a particular culture around the management and allocation of resources, child protection services are reluctant to engage with older children (those aged 10 years or more) even when these children and young people are clearly at risk. Anglicare has experienced this particularly in relation to homeless youth.⁵

The State Government recently commissioned KPMG to develop an integrated strategy for child protection, family services and out-of-home care, which was released in January 2008 (Children and Family Services 2008). The strategy describes a continuum of services for families ranging from primary services like education and universal health services through to secondary services like early

³ The National Youth Affairs Research Scheme has also pointed out that the social characteristics of young offenders influence the response taken to offending behaviour by the police and by the justice system, and drive the strategies governments use to respond to youth crime (NYARS 1996, p. 10). It is a challenge to the whole community to ensure that our response to young offenders does not arise out of stereotyping or prejudice.

⁴ It is of course important to acknowledge that in some cases, either family members do not want to or cannot be involved in what is occurring with the young person or their involvement is inappropriate.

⁵ This is not a situation unique to Australia – for example, a study of the experience of clients in a young women's shelter in the ACT found that, although the mean age of clients studied was 15, all had been identified as being 'at risk' and many had parents who were hostile or had withdrawn from responsibility, in most cases child protection services failed – and in some cases refused – to take on a pro-active or early intervention role. This meant that responsibility fell to case workers, and the blurring of roles resulted in inappropriate and compromised outcomes for clients (Graham 2005, p. 59).

childhood intervention, counselling, mediation, housing and family support, through to tertiary services, including child protection, out-of-home care and youth justice, which would respond to children at risk (Children and Family Services 2008, p. 5). Under the new framework, it appears that child protection services will continue to focus on those children and young people who are already experiencing serious abuse or neglect,⁶ while family services will support both children and young people already engaged with child protection and those 'whose development is at risk because of adverse family circumstances' (Children and Family Services 2008, pp. 5, 13). Homelessness is listed as one of the criteria governing case allocation to 'youth-focused child protection workers', but the cases will be those of young people who have already entered the system (Children and Family Services 2008, p. 59). Homelessness does not appear to be recognised as a risk in its own right that should trigger involvement by protective services.

A longitudinal study of homeless youth in Melbourne found that it is true that some young people (about a third of participants) leave home out of a desire for adventure and independence (Mallett et al. 2006, p. 2). It is Anglicare's experience that this is often cited as the reason why engagement by child protection services does not occur: the young person is seen to be homeless by choice and not at risk. However, in the Melbourne study, another third of participants said that family violence was the reason they left home, with two thirds of these young people saying the violence had been long-term (Mallett et al. 2006, p. 2). The study identified four main groups of homeless young people – those living on the streets, those who were service-based (i.e. in transitional accommodation), those living part-time in a family home and those living in a family home or private rental. The first and third groups, the 'street-based' group and the 'part-time family home' group, had insecure housing and tend to be most representative of the young people Anglicare works with. The study found that the street-based group were the most vulnerable, with abusive and chaotic family backgrounds. Their housing was unstable, they had a history of involvement with child protection, they had drug and alcohol and mental health problems and almost half had attempted suicide. The part-time family home group also had difficult family backgrounds, with some having lived for a time in foster care, and reported ongoing problems with substance use, mental illness and unstable incomes. These young people did not return home permanently but rented and couch-surfed instead (Mallett et al. 2006, pp. 3-5).

Homelessness and experiences of abuse and neglect are in turn linked to offending behaviour: a review of the literature by the Australian Institute of Health and Welfare identified clear links between the experience of child abuse and neglect, homelessness and criminal activity among young people (AIHW 2008, pp. 2-3). A study involving face-to-face interviews with 371 young people either sentenced or remanded in detention found that only 53% previously lived at home with their parents; 39% lived in a home belonging to someone else and 8% lived alone or on the streets. The study also identified that young people not living at home with their parents were more likely to have reported neglect, violent abuse and emotional abuse (Prichard & Payne 2005, pp. 2, 4). A Queensland study assessing the

⁶ Child protection services' target group is

children and young people from birth to seventeen years where there is: serious physical abuse or unexplained injury; evidence of threats of serious physical injury or death; evidence of the impact of cumulative harm such that the child or young person's development has been seriously compromised (this may include persistent exposure to family violence); a disclosure of sexual abuse by a child or the presence of indicators which suggest that sexual abuse may be occurring; evidence of serious and persistent emotional abuse; or the presence of indicators that suggest the child is subject to chronic neglect or inadequate supervision. Notifications should also be made if there is no adequate guardian for the child, or parents are unable or unwilling to protect or provide care for the child (Children and Family Services 2008, p. 5).

impact of police cautioning found that while the majority of young people who were cautioned in the youth justice system did not re-offend as a young person, children who had been maltreated (defined as a substantiated child protection notification) were much more likely to re-offend, especially if they were Aborigines or Torres Strait Islanders. The researchers argued that this finding did not mean cautioning did not work with these offenders, but that child protection issues ‘may serve as an indicator that a child is exposed to a number of circumstances that place them at risk of [re-offending]’ (Dennison, Stewart & Hurren 2006, p. 5). There is some evidence to suggest that children abused only in childhood are less likely to offend than children who are also or only abused in adolescence (Thornberry, Ireland & Smith, cited in Stewart, Dennison & Waterson 2002, p. 2). Another Queensland study, this one looking at the links between child abuse and juvenile offending, confirmed this finding; the researchers also found that physical abuse and neglect in particular were linked to an increased likelihood of offending and that the risk of offending increased with the severity of the abuse (Stewart, Dennison & Waterson 2002, p. 5). Their conclusion was that the study ‘demonstrates a direct path from child maltreatment to juvenile offending’ (Stewart, Dennison & Waterson 2002, p. 1).

In summary, there is clear research evidence that homelessness, experiences of abuse and neglect and offending behaviour are connected. Yet Anglicare’s experience is that the risks to homeless young people are not consistently being identified via the child protection system. That child protection is not actively involved does not mean the risks are not there, and in Anglicare’s experience they often contribute to or are connected with offending behaviour or they inhibit the capacity of a young person to break free from a cycle of offending behaviour. It is Anglicare’s hope that the reforms to child protection and family support services which are to be rolled out over the next five years and the forthcoming cross-agency youth-at-risk strategy flagged by the Minister for Human Services in Estimates hearings recently (Tasmania, House of Assembly, Budget Estimates Committee 2009, p. 46) are successful in addressing these issues and we urge the State Government to ensure that this happens.

4.2. Role of youth justice workers

Under the Act, Youth Justice Services can only work with young people who have already offended (Youth Justice Services 2007, vol. 1, p. 10) and all youth justice clients are on orders with supervision requirements or part of diversionary proceedings such as community conferencing or court-mandated drug diversion programs (Youth Justice Services 2007, vol. 2, p.5). Youth Justice Services argues that despite the ‘apparent lack of “visibility” of youth justice workers in the legislation in the early assessment and referral stages of a community conference, the reality is that the role of workers has been much more significant and is seen as ‘pivotal to successful referral, preparation, conduct and restorative outcomes’. It is policy that a youth justice worker will attend all community conferences (Youth Justice Services 2008a, p. 9). However, Youth Justice Services also acknowledges that, ‘[t]he majority of young people referred to a Community Conference will not be known to the Youth Justice Worker prior to the conference’ (Youth Justice Services 2008a, p. 22), which explains why the role of the youth justice worker at a conference is confined to contributing knowledge of the young person’s official files and knowledge of the youth justice and rehabilitation system⁷.

⁷ The role includes being aware of the young person’s previous offending history, which may allow for other appropriate service providers to engage with the process or lead to a reassessment of the appropriateness of the conference, providing informed comment and preventing the imposition of excessively punitive sanctions, providing suggestions about suitable, appropriate and available rehabilitation programs, exploring possible community service placement options, providing

Anglicare believes there would be value in promoting the involvement of trained youth justice workers earlier in the diversionary process to allow for early intervention. This would not necessarily occur at the informal caution stage, noting that most people connect with the criminal justice system only briefly (Youth Justice Services 2007, vol. 1, p. 7), but would occur when formal action was to be taken, such as a formal caution, a community conference or a court appearance. While care would need to be taken that the earlier involvement of a youth justice worker did not lead to stigmatisation and criminalisation of the young person or an assumption of guilt in relation to the offence, and acknowledging that some young people may only require minimal additional support, the skills and experience of youth justice workers in working with young people who are vulnerable to or engaged in offending behaviour could be valuable in supporting the young person to re-engage positively with the community. Youth Justice Services themselves acknowledge that youth justice workers with expertise in adolescent development and criminogenic needs can contribute to providing a holistic response that takes into account “needs” as well as “deeds” (Youth Justice Services 2008a, p. 21).

Broadening the youth justice workers’ role to incorporate early intervention could fill a number of gaps in the system. For example, Anglicare’s experience is that in the time between their original arrest and their court appearance date, a young person’s offending behaviour can escalate if they are not provided with sufficient support. This can mean that by the time they appear in court they have moved on to committing offences that incur a sentence far more severe than the sentence which would be likely to be imposed for their original offence. The provision of specialist support during this period would assist the young person to avoid re-offending. Providing earlier support also allows for a relationship to be built up between the worker and the young person. This allows relevant issues that may not be immediately apparent, perhaps due to lack of trust on the part of the young person and therefore an initial reluctance to disclose information, to be identified.

There is research evidence supporting early intervention in a youth justice context: a study looking at young offenders and drug use found that 47% of the young people in detention or on remand who were interviewed had started offending before they first used drugs, but that 70% reported that they were under the influence of substances at the time they committed the offence that had caused their detention. The researchers concluded that this finding highlighted the importance of early intervention programs to break the drugs-crime cycle ‘that target not only the criminogenic behaviours of juveniles, but the environmental circumstances that may give rise to such activities’, including interventions that considered the role of the family. They acknowledged that this would ‘require investment... and greater collaboration between key government agencies’ (Prichard & Payne 2005, pp. 3, 6).

Currently the three regional community-based youth justice teams in Tasmania offer the following services: community conferencing, case management and supervision for those on statutory orders, statutory supervision and court support, community engagement to develop capacity to service community service orders and collaborative case conferencing for high needs clients (Youth Justice Services 2007, vol. 1, p. 5). If their role is broadened to incorporate more early intervention and

support, then workers must be resourced to carry out these additional responsibilities and their case loads must be set at appropriate levels.

Early intervention by youth justice workers could pose a risk of drawing young people further into the youth justice system when that is inappropriate. To minimise this risk, youth justice workers engaged in early intervention should have the capacity and the authority to refer the young person to other services outside the justice system if that is more appropriate and in the best interests of the young person. However, referral to services where the intention is to address welfare needs, not issues related to the offence, should not be connected in any way to the youth justice 'process'. That is, young people should not be penalised for later disengagement from welfare programs nor should there be any compliance requirements attached.

RECOMMENDATION

Anglicare recommends that the legislated role of youth justice workers be broadened to incorporate the capacity to provide earlier intervention and support to young people entering the system. This additional role should be supported by additional funding and resources.

4.3. Provision of information on welfare concerns to the court

The commentary attached to the Beijing Rules acknowledges the importance of considering a young person's offence in context, which includes 'social status, family situation, the harm caused by the offence or other factors affecting personal circumstances', but warns that 'reactions aiming to ensure the welfare of the young offender may go beyond necessity and therefore infringe upon the fundamental rights of the young individual...' (UNSMRAJJ 1985, Article 5, commentary).

Anglicare acknowledges the importance of striking a balance between identifying and responding to the young person's personal circumstances and intervening too intrusively in the young person's life. However, it is also important to recognise that many young people coming into the youth justice system experience considerable disadvantage and face complex welfare issues which need to be taken into account in any decisions regarding bail or sentencing. Once these issues are identified, a duty of care arises which requires some kind of response.

RECOMMENDATION

Anglicare recommends that the legislation be amended to include the following:

- **Prior to any decision around bail, remand or sentencing, a youth justice worker should be required to provide relevant information to the court relating to welfare concerns that fall below the threshold of a care and protection order.**
- **The court should be required to consider this information when making decisions on bail, remand or sentencing.**
- **If appropriate, the court may order an intervention. The nature of that intervention should depend in the main on the professional recommendation of the youth justice worker and the wishes of the young person.**

The court-ordered intervention need not be excessively intrusive, and the legislation should allow for flexibility in what may be required. Options include a collaborative case conference (see Youth Justice Services 2007, vol. 2, pp. 8-9) but could also be as simple as requiring the youth justice worker to facilitate a non-binding referral to an appropriate welfare service. The court could also require the involvement of child protection services. This does not necessarily mean a formal care and protection order; the Government's new child protection strategy includes an emphasis on early intervention and developing the capacity to respond to children and families at risk before issues escalate and statutory intervention becomes necessary (Children and Family Services 2008, p. 3) and early intervention services such as the Early Support Program, which is delivered by Anglicare, do already exist.

Determining the nature of the intervention by drawing on the professional recommendation of the youth justice worker minimises the risk of the court being required to take on the role of social worker, while engaging the young person in the process is consistent with Convention on the Rights of the Child – that a child capable of forming his or her views should have 'the right to express those freely in all matters affecting the child' and that this should be particularly the case in 'any judicial or administrative proceedings affecting the child' (UNCRC 1989, Article 12).

4.4. Presentence reports

Presentence reports assist the court in considering the range of issues relating to the young person, consistent with the objectives and principles of the Youth Justice Act (such as the requirement to take into account the young person's social or family background) and the Beijing Rules, which explicitly require a presentence report (UNSMRAJJ 1985, Article 16). However, the description of the contents of a presentence report contained in the Act is sketchy and although Youth Justice Services states that the provision of a pre-sentence report 'includes a risk-assessment process' (Youth Justice Services, vol. 3, p. 2), the only content mandated by legislation is that requested by the court, which could result in important and relevant information being overlooked.

In contrast, s. 83 of Tasmania's *Sentencing Act 1997* lays out a comprehensive description of the content of a presentence report, which must include information relating to age, social history and background, medical, psychological and psychiatric history and condition, educational background, employment history, previous offending history, financial circumstances, special needs, courses, programs, treatment, therapy or other assistance that could be helpful and the nature and history of the relationship, if any, between the offender and the victim of the offence. These provisions could form the basis for an amendment to s. 33 of the Youth Justice Act, following consultation with youth justice workers and other specialist stakeholders to identify if there are any further appropriate inclusions relating specifically to young people, such as the degree and nature of any family support, previous child protection notifications or housing situation.

The process of developing the presentence report may mean that the youth justice worker identifies and responds to issues affecting the young person – for example, by making a referral to a specialist homelessness service to address issues relating to housing. This may mean that the young person's circumstances have changed by the time of their court appearance. In this case, it would be appropriate for the legislation to permit a verbal up-date on information provided in the report to be given to the court. However, the provision of the whole presentence report verbally creates a risk that the report

would also be developed ‘on-the-spot’ which means that again, important information might not be included.

Acknowledging the concern expressed in the Beijing Rules commentary regarding unnecessary intervention cited above, the legislation should also require that the information in the presentence report must be relevant, that it be used in a way that enhances the best interests of the young person and promotes their rehabilitation and that sufficient resources and services are available to respond to any issues identified.

RECOMMENDATIONS

Anglicare recommends that s. 33 of the Youth Justice Act (‘Presentence report’) be amended to specify the information to be contained in a presentence report, based upon s. 83 (‘Contents of a pre-sentence report’) of the Sentencing Act.

Anglicare recommends that s. 33 of the Youth Justice Act permit a verbal up-date on matters contained within the pre-sentence report to be provided to the court if the young person’s circumstances have significantly changed between the development of the report and the court hearing.

Anglicare recommends that s. 33 of the Youth Justice Act require that the information contained in the presentence report is relevant, that it be used in the best interests of the young person to promote their wellbeing, and that sufficient resources and services are available to respond to any issues raised.

4.5. Young people with disabilities or mental health issues

Given the potential for a disability or mental health issue to influence both offending behaviour and to increase the vulnerability of the young person should a custodial sentence be imposed, it is critical that these issues are identified early in the youth justice process. The Legislative Council Select Committee inquiring into Ashley, youth justice and detention expressed concern that the failure to identify issues such as psychiatric disabilities or acquired brain injury prior to the young person being placed in custody exacerbated security and safety issues for residents and staff at Ashley (LCSC 2007, pp. 35-6). Identification of disabilities and mental illnesses should be improved through the earlier involvement of youth justice workers and through the use of standardised presentence reports. However, the provisions in s. 105 of the Youth Justice Act could be strengthened to ensure that, if a youth justice worker or an associated service provider engaged with the young person does identify a potential disability or mental health issue, this information will be provided to the court in order to trigger an adjournment and appropriate assessment.

RECOMMENDATION

Anglicare recommends that s. 105 of the Youth Justice Act (‘Adjournment to determine mental health or disability of youth’) be amended to require a youth justice worker to inform the court if the worker becomes aware of a potential disability or mental health issue.

Anglicare also notes the lack of specialist mental health facilities for young people in Tasmania. While there are various protections in the Youth Justice Act relating to the accommodation of young people in either the secure mental health unit or adult mental health facilities, Anglicare urges the State Government to fund an appropriate mental health facility for young people that includes the provision of residential services for young people at risk, including those young people whose condition and/or behaviour places them or those around them in danger. The State Government has indicated that it remains committed to providing a child and adolescent mental health inpatient unit at the Royal Hobart Hospital, but has stated that this initiative is on hold until ‘State finances allow’ (Giddings 2009). Development of a specialist mental health facility should not be tied to the availability of sufficient funding to commence the full Royal Hobart Hospital redevelopment, but should instead be pursued as a matter of urgency.

RECOMMENDATION

Anglicare recommends that once an appropriate mental health facility becomes available, provisions relating to this facility should be incorporated into s. 105 of the Youth Justice Act (‘Adjournment to determine mental health or disability of youth’) with appropriate protections to ensure that the court receives the benefit of expert advice in relation to the suitability of the facility for the individual concerned.

Anglicare notes the lack of appropriate facilities for young people with mental health problems is not the only shortfall in Tasmania’s supported accommodation system – there is equally a lack of specialised, appropriate residential support for young people with drug and alcohol issues, for young people with disabilities, including acquired brain injury and intellectual disabilities, and for young people who have experienced severe trauma, including those who are suicidal or vulnerable to severe self-harm.

4.6. Young people with protection needs

Anglicare notes the comment in the consultation paper that ‘there is reticence to ask the court to use these provisions [in relation to an adjournment for youth protection matters] in case the young person is remanded to Youth Ashley Detention Centre [sic]’ (Office of the Deputy Secretary 2009, p. 65). Anglicare supports the legitimacy of such concerns. Placing a young person who is already at risk in a detention environment both exposes that young person to higher or additional risks and also exposes them to patterns of behaviour to which they may not previously have been exposed. ‘Suitable places’ should be those that can provide an appropriately therapeutic environment and cause minimal disruption and stress to the young person.

RECOMMENDATION

Anglicare recommends that s. 104 of the Youth Justice Act be amended to qualify the term ‘suitable place’ to exclude a custodial centre.

5. The need for an integrated supported system to underpin the legislation

Note: This section includes Anglicare's response to questions 6-13, 21-23, 40, 43-44 and 60-64.

Anglicare has chosen to focus on the support system underpinning the Youth Justice Act in its submission because the existence of a reviewed piece of legislation on its own will not achieve the ambitious objectives and principles outlined. There must be recognition of the financial and human resources required to support implementation of the Act and achievement of the objectives, particularly in light of the fact that funding for Youth Justice Services is only expected to marginally increase over the next four years and in fact, has been slightly cut in the 2009-10 financial year (Parliament of Tasmania 2009, p. 5.9).

Young offenders and their families require support to overcome the issues that may have led to the offending behaviour in the first place, but this support is not always provided. Anglicare has particular concerns around the adequacy and range of support available to those young offenders whose behaviour leads them to court appearances and potentially custodial sentences. A review of what works to reduce young people's involvement in crime found that programs that were targeted at the needs of the individual were the most effective. Programs should address multiple risk factors in an integrated way rather than one at a time, work across the whole of the young person's life (including with their family, school, peers and community), create changes in thinking processes and behavioural responses, incorporate skills-based components, emphasise behavioural skills at school and be culturally specific. They should be focussed on those with the highest risk of future offending and be sufficiently lengthy and intensive to achieve lasting change (Australian Institute of Criminology 2004, p. 8).

5.1. Bail

Given the greater vulnerability of young offenders and the potentially damaging effects of being remanded into custody, particular care is required in making bail decisions relating to young people and it is therefore appropriate for legislation to set out specific bail provisions for young people. As Youth Justice Services states in its service delivery framework, 'Young people are vulnerable and need to be afforded special protection from any unnecessary involvement with the criminal justice system' (Youth Justice Services 2007, vol. 1, p. 17). For this reason, Anglicare supports a statutory presumption in favour of bail for young people.

In addition to the matters usually considered in relation to bail decisions (Office of the Deputy Secretary 2009, p. 9), there should also be a legislated requirement for the court to consider the best interests of the young person, including whether a decision to remand the young person could place them at greater risk or damage their chances of successful rehabilitation. As part of the standard conditions relating to bail, the young person should undergo an assessment of support needs, and if particular needs are identified, they should be provided with support by a youth justice worker, who should also have the capacity to refer the young person to other services if it was more appropriate that the support be delivered by a service outside the justice system.

King, Bamford and Sarre (2005, pp. 8, 10) identify three broad goals in relation to bail decisions: to ensure the integrity and credibility of the justice system (for example, ensuring the defendant will

return to court), to protect the community and to assist in the care and protection of the defendant's rights. They argue that over the last forty years, the emphasis has moved away from the first goal and focussed more and more heavily on the second, with decisions to remand people into custody being treated as an indicator of strong policies on punishment and retribution. Their research also identified that the reason many bailed defendants do not attend court is not that they are deliberately trying to evade justice but is 'the result of disorganised, dysfunctional lives' which could be addressed in part through increased social support, case management and the use of new communications technology (King, Bamford & Sarre 2005, p. 10).

King, Bamford and Sarre (2005) looked at bail and remand generally; but as Denning-Cotter (2008, p.5) notes, the bail requirements imposed on young people are even more complex than for adults. This increases the difficulty experienced by disadvantaged young people in understanding and complying with their bail conditions, especially those young people who have literacy issues, poor English skills, learning disabilities or other issues that might inhibit comprehension and retention of information, such as a mental illness or acquired brain injury. As a result, bail information needs to be provided in a range of appropriate written or pictorial formats, be reinforced verbally, include a number of different methods of contacting a person or people through which to obtain further information, advice or clarification (including a detailed street address, landline and mobile phone numbers, email and website) and be provided to the young person's family member, guardian, case worker or other support person. The information needs to clearly explain what bail is, any conditions attached to bail and the consequences of not complying with those conditions.

Given the level of difficulty that some disadvantaged young people may experience in understanding their bail conditions, the youth justice system should also recognise that breaches of bail may occur. Currently under the *Bail Act 1994*, a person who 'without reasonable cause' breaches the conditions of bail 'is guilty of an offence and is liable on summary conviction to a fine ... or imprisonment' (s. 9). Anglicare submits that, given the vulnerability of young people and the disadvantage generally experienced by young people involved with youth justice, the notion of 'without reasonable cause' needs to be flexible in cases of a breach by young person. A breach may not always be deliberate or malicious. Anglicare notes the objectives and principles of the Youth Justice Act, which require that custody be used only as a last resort (s. 5(g)) and that young offenders are dealt with in a manner that takes context into account (s. 4(g)-(h)). It is appropriate then that the objectives and principles of the Youth Justice Act govern any decision about the consequences of a breach of bail conditions by a young person, to ensure that knee-jerk responses, such as remanding the young person into custody with little consideration of the context for the breach and when the young person is not a threat to the community, do not occur.

RECOMMENDATION

Anglicare recommends that the Youth Justice Act be amended to include the following provisions in relation to bail for young people:

- **a statutory presumption in favour of bail;**
- **a legislated requirement for the court to consider the best interests of the young person, including whether a decision against bail will result in greater risk to the young person or jeopardise their chances of successful rehabilitation;**

- **a standard bail condition requiring that a young person undergo an assessment of support needs, with any identified needs to be addressed by a youth justice worker and other services as appropriate;**
- **legislated requirements around the provision of information on bail, the conditions of bail and the consequences of not complying with those conditions, including the requirement that information be provided in a variety of formats appropriate for disadvantaged groups, that the information include detailed contact information for a person or people able to provide further information, advice or clarification, and that a copy of the information be provided to any adult responsible for the young person; and**
- **a legislated requirement that the objectives and principles of the Youth Justice Act are considered in any response to a breach of bail conditions.**

5.2. Remand

A comparative research project into factors influencing custodial remand in Victoria and South Australia identified four key factors shaping remand trends: provisions within bail legislation; processes for accountability, scrutiny and review; operational procedures, especially within the police force; and the responsiveness of the courts to the broader needs of defendants. For example, in Victoria, over the period studied, the seriousness of criminal history among defendants declined but the seriousness of drug and alcohol abuse and mental illness among defendants increased. The researchers identified that in response to changes in the characteristics of defendants, some Victorian magistrates had adopted a 'therapeutic justice' approach which sought to find alternatives to custody. Victoria's remand rates are markedly lower than South Australia's (King, Bamford & Sarre 2005, pp. 6-8).

As with bail decisions, the best interests of the young person should be paramount in any decision to remand into custody. There are particular concerns around homeless young people or young people whose home is unsafe or inappropriate. Anglicare supports the anecdotal evidence cited in the consultation paper (Office of the Deputy Secretary 2009, p. 12); Anglicare workers are also aware of instances where young people are remanded into custody due to unmet welfare needs such as a lack of safe accommodation or a lack of adequate support. Furthermore, the figures cited on p. 12 of the consultation paper suggest that a majority (which increased over the period covered) of young people in custody in Tasmania were there on remand, which among other things suggests that at least some young people are being remanded for offences which do not later incur a custodial sentence.

Research has identified that the three main barriers young people face in being granted bail and meeting the conditions of bail are lack of appropriate accommodation, lack of a responsible parent or guardian and lack of after-hours support services (Denning-Cotter 2008, p. 4). Youth Justice Services notes that 'it is absolutely critical that incarceration in a youth detention centre is never considered a placement option to address protective concerns within a child protection framework' (Youth Justice Services 2007, vol. 3, p. 9). Perhaps one of the most succinct descriptions of the impact of being in a detention environment is provided by this young research participant: 'When you are inside, you pick up everybody else's attitudes and you mix it up with yours – so you all end up with the same attitude. You all talk the same and you all act the same and when you get out you have to get rid of that attitude and get your own attitude back, which is pretty hard' (cited in NYARS 1997, p. 26). The physical and psychological environment that prevails in detention means that remanding a young person into custody 'for their own protection' is in most cases not actually protective of their best interests.

In addition to concerns about use of remand as a substitute for appropriate accommodation or protection, remand requires the young person to be placed in particular location (Ashley) which removes them from their family and community support networks. This is at the same time as it exposes them to custodial settings that may be beyond their capacity to handle and beyond the capacity of their family or community to support them in.

Part of the problem is the well-identified lack of alternatives for young people where behaviour, care and protection or welfare issues makes standard forms of bail inappropriate and the establishment of 'alternatives to support young people on bail in the community instead of being remanded in custody' was been identified by the Minister for Human Services as one of the issues to be explored in this review (Thorp 2009).

Alternatives to bail available in other states include an intensive support program for young people on bail, a brokerage-based program providing referrals and financial support to assist a young person on bail to secure appropriate accommodation, an after-hours bail assessment program that works with the young person to negotiate suitable accommodation with family or friends and a program for Koori youth which offers intensive support to young people and their families (Denning-Cotter 2008, p. 5). Anglicare notes that two initiatives using SAAP funding have been piloted in recent years looking to increase community-based support and accommodation options for young people on bail (Youth Justice Services 2007, vol. 3, p. 6); one of these was Anglicare's Bail Options Project (BOP). BOP was described by the Department of Health and Human Services as 'so successful in averting homelessness [among alleged offenders] that ongoing recurrent funding was secured in 2005-06' (DHHS 2006, p. 14). Finally, the State Government's new integrated child and family services framework recommends the development of a range of out-of-home care models and specialist placement programs (Children and Family Services 2008, p. 16). Some of these models may also be appropriate options to develop on behalf of young people with complex needs as an alternative to remand as many of the young people moving through the youth justice system have similar issues to young people under the jurisdiction of child protection. The Department has recently indicated that as part of the outsourcing of out-of-home care it intends to tender for a 'step-down' program for young people exiting Ashley that also has the capacity to support young people on bail and the Minister has stated that a youth-specific housing facility for homeless and at risk young people, including potentially young people on bail, is being planned for Launceston as part of the Government's homelessness strategy (Tasmania, House of Assembly Estimates Committee 2009, pp. 46-7).

Denning-Cotter (2008, p. 5) argues that to be successful, bail support programs must address all the key barriers – lack of accommodation, lack of a parent or guardian and lack of after-hours support – if they are to be successful. According to King, Bamford and Sarre (2005, p. 9), good practice in bail and remand systems demands a clear statement of principles, objectives and criteria to guide decision-making, clear definitions of roles and responsibilities, adequate resources and quality assurance mechanisms, with resources particularly crucial in ensuring the availability and sustainability of support services for people on bail. International literature suggests that the best practice principles for bail support programs include voluntary participation, support and intervention rather than supervision or monitoring, a holistic approach, a coordinated and interdepartmental approach that allows for

navigation through different service systems and adaptability and responsiveness to the context of the program and local needs (Denning-Cotter 2008, pp. 1-2).

RECOMMENDATION

Anglicare recommends that the Youth Justice Act be amended to include the following provision: that if, due to the severity of the young person's offending behaviour, a young person is placed in remand in order to protect the community, a meeting between the young person, their parent(s) or guardian, their youth justice worker and any other relevant stakeholders and service providers should be convened within 24 hours to identify alternative, appropriate arrangements to remand. The State Government must prioritise making these alternative arrangements available.

Anglicare is concerned that some young people are spending long periods on remand. Anglicare notes the establishment of the Youth Justice Liaison Committee which is considering issues including the documented long periods of remand experienced by young offenders (Youth Justice Services, vol. 3, p. 2). The consultation paper includes a short discussion of research conducted into the reasons for court adjournments and concluded that in 20% of cases, the adjournments were related to 'failures of defendants and the unavailability of their lawyers', with 'a significant adverse impact upon the day-to-day operation of the Court' (Office of the Deputy Secretary 2009, p. 71). The recommendations in section 5.1 of this submission relating to improved communication around bail conditions should, in Anglicare's view, assist in improving the attendance rate of young people at court hearings.⁸ However, Anglicare is concerned about some of the issues relating to lawyers. If lawyers are unable or do not have time to adequately prepare, then this may be a resourcing issue for legal aid or community legal services that should be addressed as a matter of urgency.

For young people, a period of 28 days on remand before being required to be brought before a court is too long, especially as, given the presumption against custody unless as a last resort in the Act, young people should not be placed on remand unless they are at considerable risk either from their own behaviour or from others' behaviour. Long periods in detention will increase this level of risk.

RECOMMENDATIONS

Anglicare recommends that the Youth Justice Act be amended to establish a statutory requirement that young people on remand should be brought before a court within seven days of being remanded into custody.

⁸ Appendix B to the consultation paper, which discusses the adjournment research, includes the 'four most common' explanations given by defendants who fail to appear. Anglicare offers the following comments on these: as mentioned above in section 5.1, literacy issues are a major issue among the youth justice client group (and indeed among many disadvantaged adults). In this context, the 'prominent sign' referring defendants to court reception if they are unable to find their name may not necessarily be of much use and misreading the bail documents may actually be a genuine issue. Loss of a bail document may also be understandable if a young person is homeless and moving frequently. People with mental illnesses, intellectual disabilities or acquired brain injuries may experience particular difficulties with self-organisation. Anglicare does not deny that some defendants may deliberately try to avoid court and may produce spurious excuses for this, but it is also true that some people do face genuine barriers to understanding, remembering and following written instructions and for a variety of reasons, may find it difficult to ask for assistance.

Anglicare recommends that the State Government ensure that sufficient resources are allocated for youth-specific Legal Aid and community legal services so that lawyers are available, prepared and able to appear.

A statutory limit on maximum time on remand would, as acknowledged in the consultation paper (Office of the Deputy Secretary 2009, p. 14), be difficult to administer. An alternative is to set a time period after which further action to resolve the situation would be triggered. Anglicare's recommendation is that this time period be 28 days; under the seven day limit for each remand period proposed above, a young person who has spent more than 28 days on remand would have had their case adjourned, with further remand periods imposed, on four separate occasions, which is unreasonable given the vulnerability of young people and makes the cost and time involved in further intervention justifiable.

RECOMMENDATION

Anglicare recommends that the Youth Justice Act be amended to require that, once a young person has spent 28 days on remand, a collaborative conference of all relevant stakeholders will be convened as soon as is practicable to ascertain the cause of the delay and resolve any issues that may be contributing to it.

5.3. Community service

Anglicare notes that under the Act attendance at 'education, health, personal and other programs' can constitute community service (s. 69.2). However, the conditions relating to the performance of community service outlined in s. 74 (that it must be for the benefit of victims, disadvantaged people, non-profit organisations or government only) are likely to dominate in any decision relating to community service orders.

Engagement in alternative programs, such as treatment, counselling or other rehabilitative programs, could be a useful form of 'community service' for young people but it is important that this is not extended to include programs that are provided purely to address welfare needs. These should be delivered separately because the young person's right to have these needs addressed is separate from their offending behaviour and any consequences arising from it. It is also important that welfare-related support is not seen as connected to punishment or penalty and that disengagement from welfare-related support is not subject to penalty or compliance measures as this may discourage young people from disclosing that they have welfare-related issues.

RECOMMENDATIONS

Anglicare recommends that s. 74 of the Youth Justice Act ('Community service may only involve certain kinds of work') be amended to require only that community service be unpaid and that an appropriate option is available. The decision relating to what kind of community service would best suit the needs of the young person should be delegated to the youth justice worker.

Anglicare recommends that any additional provision allowing the court to apply special conditions to a community service order should be conditional on the special conditions being in the young person's best interests and likely to improve the chances of successful rehabilitation.

Under the amendments proposed above, a community service order could include work to benefit the victim of the crime or victims of similar crimes or working for disadvantaged people, non-profits or government services, or engagement with educational, health or personal programs, but it could also include engagement with treatment, counselling or other rehabilitative programs. It is critical that any decision relating to community service is made with the participation of the young person, noting s. 70(b) of the Act which requires the young person to be willing to comply with the order and the provisions of Article 12 of the Convention on the Rights of the Child discussed in section 4.3 of this submission on the right of children to have their voices heard. Engaging the young person in the decision-making process also fits with the 'practice strands' on participatory decision-making and strengths-based approaches articulated in Youth Justice Services' service delivery framework: '[p]ractice decisions will include the voice of the young person...'; 'Youth Justice's approach ... emphasises "working with" and not "working for" ... [and] engages with people in working to achieve their own goals and in solving their own issues' (Youth Justice Services 2007, vol. 1, p. 18). Ensuring that the community service order matches the needs of the young person would also improve rehabilitation outcomes, empower the young person to accept responsibility and accountability and improve the likelihood of compliance with the order.

Anglicare notes that the requirement that an appropriate option be available, which is also included in current legislation under s. 70(d)(ii), carries with it resourcing implications.

5.4. Use of adult prison facilities

Anglicare is extremely concerned about the possibility that a young person could be detained in any adult prison facility. Providing a separate detention facility for young offenders in part recognises that adult prison environments are not designed to be appropriate for the needs of young offenders, including their welfare and rehabilitative needs. Gazetting adult prisons as a youth detention centre does not make them actually become youth detention centres in the sense that they are appropriate for young people. If a higher security environment is needed for young offenders than is available at Ashley then a separate facility needs to be provided that offers that higher level of security but does not result in young people being incarcerated in an adult prison. The location of the facility would require further investigation, but its design must be age-appropriate and supportive of rehabilitation. A secure unit previously existed at Ashley but was destroyed in a fire in 2001; the gap has been met by construction of the new security fence, but evidence was given to the Legislative Council Select Committee⁹ that the new arrangements had restricted the rehabilitative opportunities available to all residents, including those who were not identified as a security risk, and the Committee recommended the secure unit be re-established (LCSC 2007, pp. 15, 45-6, 76).

⁹ In this submission, 'Legislative Council Select Committee' refers to the Legislative Council Select Committee – Ashley, Youth Justice and Detention, which reported in 2007.

Anglicare does not dispute the fact that it is not always appropriate for young adults (e.g. 18-21 year olds) to be accommodated in an adult prison as some young adults can be extremely vulnerable to harm in that environment, but workers have expressed concern about the risk this can pose to younger detention centre residents. The risks inherent in the mix of residents at Ashley was raised as part of the Legislative Council Select Committee inquiry into youth justice issues, with particular concerns expressed about bullying, intimidation and violence directed against younger residents by older ones. The problem was attributed to the nature of the Ashley facility itself, which grouped all residents – remandees and sentenced offenders – together, regardless of age, offending history, vulnerability or gender. The Committee urged a review of resident mix, which it described as ‘dysfunctional’ (LCSC 2007, pp. 5, 13, 34-5, 40-1, 74-6).

Anglicare agrees that there are risks inherent in mixing all residents together and urges an exploration of alternative accommodation and support arrangements that could be used both to address the resident mix issue and to better achieve the intent of the Youth Justice Act that detention be used as a last resort only (s. 5(1)(g)). A number of witnesses to the Legislative Council inquiry argued for a new approach to detention for some young offenders based on ‘half-way houses’ accommodating smaller groups rather than one large facility (LCSC 2007, pp. 68-9). Anglicare is unable to comment on whether or not this model would be appropriate for Tasmania, but recommends that a range of models be investigated.

RECOMMENDATIONS

Anglicare recommends that the Youth Justice Act be amended to prevent a young person being detained in an adult prison facility, regardless of its gazetted classification.

Anglicare recommends that, in preference to accommodation in an adult prison, a separate facility should be built to accommodate young people requiring higher security than is available at Ashley.

Anglicare recommends that Ashley Youth Detention Centre investigate alternative means of accommodating residents in order to minimise risks associated with inappropriate resident mix and ensure special needs in relation to age, gender, background and health and wellbeing are met to the highest possible standard.

5.5. Direct sentencing to rehabilitative programs

Anglicare is one of the services contracted to deliver the Court-Mandated Diversion Program (covered by part 3A of the Sentencing Act) which allows a court to order an offender to undergo treatment for illicit drug use. While direct sentencing by the court to rehabilitative programs is an attractive option in rehabilitative terms, successful engagement with any rehabilitative program or indeed any program promoting personal or life changes is only possible if the person themselves is committed to engaging fully with the program. A drug and alcohol counsellor, for example, cannot compel into a drug-free state a person who does not admit they have a drug problem or does not want to do anything about their drug problem. Anglicare notes that under s. 27B(3)(c) of the Sentencing Act, offenders must agree in writing to comply with a rehabilitative program order.

RECOMMENDATION

Anglicare recommends that the Youth Justice Act be amended to allow direct sentencing to rehabilitative programs, subject to the following provisions:

- **the young person must agree to the order and be genuinely willing to comply with it;**
- **the decision to sentence to a rehabilitative program must take into account the needs of the young person and the origins and factors contributing to their offending behaviour as this may illuminate the most appropriate program choice;**
- **the program must be suitable and promote the young person's rehabilitation; and**
- **an appropriate program must be available.**

Again, there are resourcing implications to ensure that this option is genuinely available to all young people who would benefit and that young people are offered an appropriate range of programs, including drug treatment, anger management and other therapeutic programs¹⁰. Court-ordered referral to programs could also be made a condition of probation to improve rehabilitation chances among young people who have served time in custody.

5.6. Motor vehicle theft

Mandating a particular penalty for any offence is counter-productive as it removes the capacity of the justice system to respond to the particular circumstances of the offender and/or victim. In the case of motor vehicle theft and the youth justice system, an argument could be made that the current legislation is discriminatory on the basis of age, because although the court 'may' disqualify an adult convicted of motor vehicle theft, the court 'shall' disqualify a juvenile (*Police Offences Act 1935*, s. 37F(1)-(2)). If disqualification were to remain mandatory, a fairer approach would be to link it to a particular offence, be it committed by youth or adult. Anglicare also points out that a person who is willing to break the law and steal a motor vehicle is unlikely to be deterred by being an unlicensed driver or indeed have particular concerns about driving while unlicensed. Because of this, mandatory disqualification could lead directly to future offences and begin the spiral of offending behaviour and criminalisation.

RECOMMENDATION

Anglicare recommends that the s. 37F of the Police Offences Act be amended in relation to young people and motor vehicle theft to allow for the court to exercise discretion in relation to disqualification from driving and the terms of disqualification, as currently occurs with adults convicted of motor vehicle theft.

A discretionary approach would allow the court to decide against disqualification in instances where that would jeopardise the young person's employment and/or their chances of successful rehabilitation now or into the future (Anglicare notes that s.5(2)(d) of the Youth Justice Act requires that a young person's education and employment are not unnecessarily interrupted). Where the court does elect to disqualify a young person who is a non-license holder from driving for a period following the date they become eligible to hold a license, then there should be the capacity for a review by the court of that decision if the young person's circumstances or behaviour significantly change during the intervening

¹⁰ Youth Justice Services' service delivery framework outlines a number of possible therapeutic approaches (Youth Justice Services 2007, vol. 2, pp. 14-15)

period. An alternative option would be for the court to be able to issue a ‘suspended disqualification’, similar to a suspended sentence – a young person would be expected to refrain from repeating the offence for a stated period and if they did so, would be permitted to keep their license, but if they did repeat the offence, disqualification would be applied.

5.7. Power to arrest

Anglicare notes that some feedback cited in the consultation paper (Office of the Deputy Secretary 2009, p. 68) argued that the power to arrest under the Youth Justice Act be extended to include a provision allowing police officers to make an arrest for the purposes of ensuring the safety of the young person. Anglicare is concerned that if a young person’s safety is in such jeopardy that arrest would be justified, then a better alternative would be to mandate the involvement of other services that are perhaps better equipped to respond to complex welfare and risk issues. This could include child protection services, although given the issues identified in section 4.1 of this submission regarding the impact of restricted resources within the child protection service, resources would need to be provided to support a statutory requirement on child protection services to respond and deliver on any support requirements in such cases. Other services that may be appropriate to engage, perhaps via referral from child protection, are crisis mental health or drug and alcohol services and again, resourcing and age-appropriate alternatives for young people would be critical issues.

RECOMMENDATION

Anglicare recommends that there be no extension to the power of police to arrest under s. 24 of the Youth Justice Act (‘Limit on power to arrest’).

Anglicare recommends that in cases where the police officer has serious concerns about the ongoing safety of the young person, the legislation allow the police officer to contact child protection services with regard to the young person, with a statutory obligation then imposed on child protection services to respond promptly and appropriately to the enquiry.

5.8. Young people leaving custody

Although youth detention rates in Australia declined by more than half between 1981 and 2006, most of the decline occurred between 1981 and 2002 and since then, rates have stabilised (Taylor 2007, p. vi). Detention is a critical life event that can cause significant problems for young people making the transition to adulthood more difficult (Mission Australia 2009, p. 1). Levels of disadvantage among young offenders who have been given custodial sentences are particularly acute: ‘juveniles in detention represent some of the most socially and economically disadvantaged youth in Australian society’, and many have multiple and complex needs (NYARS 1997, pp. 45, 65).

Rob White, Professor of Environmental Criminology at the University of Tasmania, argued to the Legislative Council Select Committee that ‘the more you funnel the hard cases into court, the more you are going to get the hard, difficult kids coalescing in the one place. That is problematic in its own regard because you end up putting the most difficult cases together and that is a real problem’ (Tasmania, Legislative Council, Select Committee 2007, p. 3). Professor White expressed the view that instead of targeting resource-intensive options like community conferencing at first-time offenders

or those who have committed trivial offences, 'intensive resources should go to those who need the intensive assistance' (LCSC 2007, p. 56).

The majority of Youth Justice Services funding (about \$10 million) is directed at Ashley, while only about \$3 million is directed at community-based interventions (Tasmania, House of Assembly Estimates Committee 2009, p. 33). Neither the Department of Health and Human Services annual report nor the 2008-09 Budget papers makes it possible to compare the proportion of the \$10 million allocated to Ashley which is spent on the provision of support and rehabilitation programs to the proportion spent on security. In relation to the imbalance between funding for Ashley and funding for community-based interventions, the Minister has stated that 'I would like to see those proportions swapped' (Tasmania, House of Assembly Estimates Committee 2009, p. 33). Anglicare strongly supports investment in early intervention services, so if 'swapping' the proportions means that young people currently in Ashley are given greater access to support and diversionary programs within the community rather than being placed in detention on remand or sentence, then this would be a positive move and in line with the rehabilitative focus of the Act. But if, in a constrained funding environment, it means that young people detained in Ashley, who are among those with the most complex needs and the greatest need for assistance, suffer as a result of downgraded services and support, then this would be an injustice. Anglicare is not suggesting that this is the Government's intention; neither was it the Legislative Council Select Committee's, which recommended maintaining funding levels for youth custodial services while increasing funding for community-based and early intervention services (LCSC 2007, p. 77).

But there is a risk that the emphasis placed on diversionary measures for other offenders can result in the marginalisation of those young people who do end up in detention, particularly as the population in detention represents an increasingly residualised group in terms of disadvantage and severity of offending behaviour (NYARS 1997, pp. 1, 21). Given the political, community and media sensitivities that inevitably influence much of youth justice policy (see NYARS 1997, p. 4), extra vigilance needs to be taken to ensure that the fact that many, if not most, of the young people detained in Ashley have multiple and complex needs, long-term criminal histories or severe behavioural problems is not allowed to create a situation where they are seen as 'beyond hope' and unworthy of the investment of time, energy and resources. In fact, the situation should be quite the opposite: their greater need should attract investment.

The consultation paper does not explicitly cover what happens to a young person who has been in custody after they have completed their custodial sentence and supervised release order. Youth Justice Services state that '[c]onsiderable effort is put into exit planning with the young person, service providers and family and local community supports' (Youth Justice Services 2007, vol. 2, p. 6). However, the Legislative Council Select Committee inquiring into youth justice issues was scathing about the lack of post-release support, accusing the 'over stressed youth support system' of 'abandoning' newly released young people (LCSC 2007, p. 5). The experience of Anglicare workers is that exit planning and support is certainly inadequately resourced which means that it can be ineffective and insufficient. The Department itself acknowledged in Estimates hearings that, especially for young people without a supportive family home to return to, the 'process is not as robust as it could be' and that while 'for some young people that process works okay', 'there is plenty of scope for improving it' (Tasmania, House of Assembly Estimate Committee 2009, p. 45). Although what happens to young

people after they have served their supervised release order is beyond the scope of the legislation, it is critical to the long-term achievement of the objectives of the Act and for this reason, it is worth exploring the option of amending the Youth Justice Act to ensure that a formal program of post-release support is available. This option will require further consultation and discussion prior to making the amendment because there is some debate over whether statutory, compulsory programs or voluntary programs are preferable and over what kind of model works best (NYARS 1997, pp. 40-43).

The National Youth Affairs Research Scheme lists the following as benchmarks for successful transition programs: a coordinated and collaborative approach to service provision, maintenance of contact with family or other appropriate personal support networks, use of 'open custody' (that is, increasing young offenders' involvement with the outside world through such strategies as providing opportunities for residents to participate in outside activities and facilitating participation by family and community members in detention centre activities), continuity in service provision from detention centre to community and involving young offenders themselves in decision-making about their involvement with programs and services (NYARS 1997, pp. 16-18). The Scheme recommended the introduction of staged release schemes for young people soon to exit detention, including opportunities for day release, work release and study leave.¹¹ This kind of staged approach is a particularly important strategy for dealing with accommodation needs (NYARS 1997, pp. 14, 69). The Scheme also conducted interviews with young offenders themselves, who identified the following as very important factors in assisting them to make the transition from detention to a normal life: suitable accommodation, personal support, assistance to stay off drugs or alcohol, assistance with employment or training, temporary release programs that allowed for gradual adjustment to the community, maturing and getting older and avoiding the authorities, especially the police (NYARS 1997, pp. 27-30).

Anglicare also recommends the provision of support throughout the detention period to the young person's family and/or guardian to prepare them to assist the young person to reintegrate successfully into the community (where it is appropriate or possible that family are involved). This would be consistent with the focus in the objectives and principles of the Youth Justice Act on encouraging parental involvement and responsibility (Youth Justice Act ss. 4(f), 5(1)(e), 5(2)(b)). Appropriate programs working with families can significantly reduce offending behaviour (Youth Justice Services 2007, vol. 1, p. 16). Supporting the family allows the young person to return to a home environment that is supportive of their needs rather than one that may simply replicate the circumstances that led to the offending behaviour in the first place. In many cases young people face the same problems upon leaving detention that they faced when entering it, but the problems may have escalated due to the detention experience (NYARS 1996, p. 7).

Intensifying the level of support available to young people and their families obviously carries with it resourcing implications. The National Youth Affairs Research Scheme noted 12 years ago that the capacity of youth justice workers to deliver extensive one-on-one support was limited by resource constraints and heavy case loads and flagged an emerging trend to outsource such services to the

¹¹ The Department is exploring the possibility of establishing a staged exit from Ashley through refurbishment of the former manager's house to accommodate young people in the last few weeks of their detention period. Young people living in the house would be able to practise independent living skills as a transitional step back into the 'real world' (Tasmania, House of Assembly Estimates Committee 2009, p. 45).

community sector (NYARS 1997, pp. 41). This outsourcing trend is now well-established, but programs need to be funded to adequate levels to allow them to ‘explore the unique context and circumstances of their clients, and provide differentiated responses as required’ (Mission Australia 2009, p. 8). A collaborative approach is also recommended as the sheer diversity of needs among young offenders means that no single program or agency is likely to be able to deliver all the services that are required (NYARS 1997, p. 16).

RECOMMENDATION

Anglicare recommends that Youth Justice Services consider the option of amending the Youth Justice Act to ensure that a formal program of post-release support is available to young people exiting a detention centre. These considerations should include extensive consultation with young offenders, as well as detention centre staff, relevant government agencies and community organisations.

Current engagement between Youth Justice Services and the wider community sector occurs primarily around the development of options for community service orders, although there is an acknowledgement of the value of broader collaboration (Youth Justice Services, vol. 3, pp. 3-5; Youth Justice Services 2008b, pp. 11-12). Anglicare notes that Youth Justice is aware of the need to ‘to enlarge the scope of community partnerships and programs to focus on the identified case management needs of young people’ (Youth Justice Services 2008b, p. 4). Youth Justice Services is to chair a Community Youth Justice Collaboration Forum in each region to coincide with its business planning processes and these forums have as their aim ‘the development of opportunities in the community to divert young people from the criminal justice system and to rehabilitate young people who are already engaged with the criminal justice system’ (Youth Justice Services 2008b, pp. 13, 16).

If Tasmania is to successfully address the causes and not just the consequences of crime, engagement between Youth Justice Services and the community needs to incorporate not just the development of capacity and opportunities for youth justice clients to meet their sentencing obligations or rehabilitative needs but also the development of capacity and opportunities for the youth justice target client group, separate from and unconnected to their engagement with the justice system, to address welfare and related issues that are affecting or contributing to their offending behaviour. As Nacro, a crime reduction charity in the UK, has commented, ‘[j]uvenile offending can only be successfully tackled where family, school and neighbourhood problems are addressed simultaneously. This cannot happen in institutions which are remote from the juvenile offender’s home nor can it be compensated for by post-release supervision’ (Nacro, cited in NYARS 1997, p. 10).

Research suggests that rather than focussing on short-term reduction in recidivism rates as the main performance indicator, rehabilitation programs should consider a focus on outcomes like reduction in substance abuse, improvements in self-esteem and well-being, better family relationships and re-engagement with education, training and employment (Mission Australia 2009, p. 8). While Youth Justice Services’ remit is focussed around offending behaviour and Anglicare is not suggesting that this be broadened to take on unrelated welfare needs, a young person’s contact with Youth Justice Services represents an important transition point where additional support and assistance from community and government services can be made available to the young person as part of promoting social inclusion.

The development of referral networks, collaborative working arrangements and better engagement between government and non-government services are all critical elements of such an approach.

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