



Children's Court of New South Wales

RECEIVED
29 JAN 2010

BY: ATSIA 

27 January 2010

To the Committee Secretary,

RE: Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system

It has come to the attention of the Children's Court of NSW that the Standing Committee on Aboriginal and Torres Strait Islander Affairs is currently conducting the "Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system". One of the terms of reference seeks information on

"Best practice examples of programs that support diversion of Indigenous people from juvenile detention centres and crime and provide support for those returning from such centres."

While in the absence of recent evaluations of the Youth Drug and Alcohol Court (YDAC) the Children's Court cannot declare that YDAC is a "best practice example" of a diversionary program for juvenile offenders, it is of the view that the Inquiry should be made aware of its existence, purpose and processes given that a large portion of YDAC participants are Indigenous.

Summary

The Youth Drug and Alcohol Court is a program run by the Children's Court of NSW. The program is aimed at juveniles whose offending is directly linked to their drug or alcohol misuse. It seeks to break the cycle between misuse and offending and at the same time divert juveniles from detention centres. Aside from addressing the young person's drug or alcohol misuse, the program focuses on other factors which also influence the young person's offending, namely, unstable accommodation, poor family or social relationships, physical or mental health issues, poor education and motivational issues. Whilst participating in the program is enabled by children's criminal justice legislation a number of government and non-government agencies provide services. Young offenders participate in the program for at least six months during which time they are assessed and undertake an individualised case program. After successfully completing the program the young person is sentenced to a non-custodial order and is consequently diverted from detention.



Children's Court of New South Wales

Introduction

What is the Youth Drug and Alcohol Court?

The Youth Drug and Alcohol Court is a pilot program which arose out the NSW Drug Summit and is administered by the Children's Court of NSW in accordance with the *Children's (Criminal Proceedings) Act 1987*.

The program is aimed at breaking the cycle of drug and/or alcohol misuse and offending, and diverting young people from custody by adopting a holistic approach addressing each participant's individual circumstances, which may influence their offending. A young offender who has pleaded guilty to an offence and is found suitable for the YDAC program, has his charges adjourned while he undertakes the program before being sentenced. If the young person successfully completes the program, he does not receive a custodial sentence and is instead placed on a community-based order such as a good behaviour bond.

YDAC participants

YDAC is aimed at serious offenders, a great majority of whom have committed violent offences and who are therefore likely to receive custodial sentences. In addition to engaging in frequent drug or alcohol misuse, YDAC participants often present with unstable family or other relationships, are wards of the State in substituted care or are homeless, have learning, emotional or behavioural difficulties, lack living and social skills and suffer from poor self-esteem.ⁱ

YDAC and Indigenous offenders

A significant proportion of YDAC participants is Indigenous. As a result, YDAC works closely with a number of Indigenous-based services such as the Oolong House, the Glen and Weigelli rehabilitation centres, Hebersham Aboriginal Youth Service and various Aboriginal medical centres.

Each participant on the YDAC program is allocated a juvenile justice officer and a support worker attached to the program. Two of the juvenile justice officers and one of the support workers are Aboriginalⁱⁱ and wherever possible these workers are allocated to Aboriginal participants.

In 2008 the Australian Institute of Criminology published a report entitled "Responding to substance abuse and offending in Indigenous communities: review of diversion programs" in which it found that some drug-related diversion programs were less successful with Indigenous than non-Indigenous offenders.ⁱⁱⁱ On the other hand YDAC is widely utilised by Indigenous offenders and appears to be successful at reducing their offending.



Children's Court of New South Wales

Features of YDAC

As YDAC adopts a holistic approach to dealing with young offenders' needs and problems, and in particular focuses on their offending, general welfare, education and health, it relies upon a number of government and non-government agencies in order to successfully deliver the program. As far as the government agencies are concerned, the Children's Court, the Departments of Human Services, Education and Training, and Health, all play a vital role in the delivery of services.

The YDAC Program is implemented by two interdependent teams, namely the Joint Assessment and Review Team (JART) and the Youth Drug Court Team.

JART comprises of representatives from the Departments of Human Services, Education and Training and Health, and is tasked with assessing the suitability of a young offender for YDAC, developing their individual program plans and reviewing their progress.

The Youth Drug Court Team consists of a Children's Court Magistrate, Police Prosecutor, Legal Aid representative and a representative of JART. By means of fortnightly "Report Back" meetings with the young person, members of the Court Team therapeutically interact with the participant, and supervise their progress. These meetings also provide a forum in which the participant and the Drug Court Team can openly discuss any issues which may arise over the course of the program. As a result, YDAC proceedings are usually informal, with the focus being on supporting the young person's rehabilitation and successful completion of the program. The young person is encouraged to openly participate in the proceedings and represent his or her own views rather than rely on the Legal Aid representative or his or her support worker.

Although YDAC shares some of its features with the Drug Court of NSW, it is important to note that unlike the Drug Court, young people whose principal substance of misuse is alcohol rather than illicit drugs, or those who have been charged with a violent offence, and who otherwise satisfy the eligibility criteria, can still qualify for the YDAC program. Further there are no strict geographical boundaries for participation in YDAC and young people who do not necessarily reside, but merely identify with certain parts of the greater Sydney metropolitan area, can also take part in the program.

Process of the YDAC program

Any young person who appears before the Children's Court may potentially participate in the YDAC by request or a referral. Either the young person or a Magistrate of the Children's Court (with or without the young person's consent) can

*2 George Street Parramatta, NSW 2124
PO Box 5113, DX 8257
Chambers: (02) 8688 1463 Fax: (02) 8668 1999*



Children's Court of New South Wales

refer the young person to YDAC for an initial assessment. A young person will only be referred to YDAC if they:

- Plead guilty
- Are charged with an offence the Children's Court can deal with
- Have a serious drug or alcohol problem
- Are aged between 14-18 (or below 18 when they committed the offence)
- Committed the offence in, live in, or identify with, the program catchment area
- Are not eligible for a Young Offenders Act caution or a youth justice conference.

If the young person is found eligible, the young person's matter is adjourned for two or three weeks to enable JART members to complete individual assessments of the participant and develop an individual case plan.

The comprehensive assessment usually covers the following matters:

- The nature and experiences of past and current drug or alcohol misuse including overdoses;
- Prior attempts at detoxification or rehabilitation;
- Current and prior health interventions;
- Overall physical, mental and sexual health;
- Family situation and social networks;
- Accommodation needs and options;
- Offending history and relationship between drug or alcohol use and offending;
- Peer associations and activities;
- Educational or vocational abilities, options and future plans;
- Motivational issues.

If a case plan is developed and a young person is assessed by JART as suitable to participate, it is the invariable practice of the YDAC Magistrate to admit the young person to the program. Once admitted the young person is required to accept supervision and support from the Department of Juvenile Justice and his or her YDAC support worker from a non-government welfare agency. The case plan will often require the young person to participate in individual, group and/or family counselling, educational or vocational assessments and programs, health related assessments or interventions, and recreational or leisure programs. The plan will also require the young person to live at specified premises, submit to random urinalysis and attend YDAC for Report Back sessions.

When admitted to the YDAC the young person's matter is adjourned for at least six and up to twelve months to enable him or her to participate in the program. During this time the young person is placed on strict bail conditions. If the young person withdraws from the program the Magistrate will proceed to sentence the young

*2 George Street Parramatta, NSW 2124
PO Box 5113, DX 8257
Chambers: (02) 8688 1463 Fax: (02) 8668 1999*



Children's Court of New South Wales

person having regard to his or her participation in the program without imposing any additional penalty to the sentence on account of the young person's failure to complete the program. Similarly, if the young person does not adhere to the program he or she will be in breach of their bail conditions. If the breach is deemed serious or persistent, the young person may be discharged from the program and sentenced in the usual way.

After the young person completes or "graduates" from the program they are sentenced to a non-custodial sentence. Many graduates develop significant attachment to the program staff, particularly their support workers, and consequently choose to follow up the completion of the program with some aftercare programs. In most cases this takes the form of graduates continuing to see their support workers who provide them with further assistance and support with a view to ensuring their continuing progress.

Evaluation of the YDAC program

Unfortunately there has only been one evaluation of the YDAC program carried out two years after its commencement. At that time the sample of participants was relatively low and consequently the results are of limited reliability today. Nevertheless, the report noted that YDAC graduates were less likely to re-offend than those participants who did not complete the program, and that the "graduates of the program were more motivated to reduce their drug use than those who terminated from the program"^{iv}. Further, the report noted:

"Given the difficult backgrounds and histories of participants, there was a high and sustained level of satisfaction with the program overall, with the Court and with casework staff".^v

Finally, the anecdotal evidence noted by Magistrate Hannam is that all participants, including those who do not graduate from the program, receive some benefits from their participation, particularly in those areas which have a direct bearing upon their offending, namely, substance abuse, physical and mental health, family and social relationships, living skills and stable accommodation.

If you require any further information about YDAC please do not hesitate to contact the Children's Court of NSW.

Yours sincerely,

Judge Mark Marien SC
President
Children's Court of New South Wales

2 George Street Parramatta, NSW 2124
PO Box 5113, DX 8257
Chambers: (02) 8688 1463 Fax: (02) 8668 1999



Children's Court of New South Wales

ⁱ Roger Dive et al "NSW Youth Drug Court Trial", Paper presented at the AIC/NSW DJJ conference on Juvenile Justice, 1-2 December 2003.

ⁱⁱ Hilary Hannam, "The Youth Drug and Alcohol Court: An Alternative to Custody" (2009) 7 (13) *Indigenous Law Bulletin*, 12, 13-14.

ⁱⁱⁱ Australian Institute of Criminology, *Responding to substance abuse and offending in Indigenous communities: review of diversion programs*, No 88, (2008).

^{iv} Social Policy Research Centre, "Evaluation of the NSW Youth Drug Court Pilot Program: First Implementation Review", June 2001, p. iv.

^v *Ibid.*