



## *Children's Court of New South Wales*

**5<sup>th</sup> Annual Juvenile Justice Summit  
Rydges Melbourne: Tuesday 25 March 2014**

**Judge Peter Johnstone  
President of the Children's Court of NSW**

### **“Emerging Developments in Juvenile Justice”**

#### **Introduction**

1. This paper has been prepared for the 5<sup>th</sup> Annual Juvenile Justice Summit on Thursday 25 March 2014.<sup>1</sup> The topic for my address is “Emerging Developments in Juvenile Justice: The Use of Intervention, Diversion and Rehabilitation to Break the Cycle and Prevent Juvenile Offending.”
2. At the time I was asked to speak at this Summit, and provide a Presentation Outline, I was unaware that the Keynote Opening Address by Megan Mitchell would address a similar theme. At the time of writing, I look forward to following that address, hopefully to develop and expand upon the theme. On the other hand, I am concerned that I will not be overly repetitive of any content in her address.
3. I have now been President of the Children's Court for nearly 2 years. During that time I have had the opportunity to preside over a wide range of cases, to observe a large number of children and young people involved in the juvenile justice system, to visit most of the juvenile detention centres in the state, to read widely, to attend conferences and seminars, and to speak to a lot of experts and others involved in or interested in the juvenile justice system.

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<sup>1</sup> I acknowledge the considerable help and valuable assistance in the preparation of this paper provided by the Children's Court Research Associate, Paloma Mackay-Sim.

4. The *Children's Court Act 1987* (NSW) imposes upon me both judicial and extra-judicial functions: s 16. My extra-judicial obligations include a requirement to confer regularly with community groups and social agencies on matters involving children and the Court. I am also required to chair an Advisory Committee that has a responsibility to provide advice to the Attorney-General and the Minister for Community Services on matters involving the Court and its function within the juvenile justice system in New South Wales.
5. What follows is, if you like, an exposition of where my thinking and philosophical viewpoint has reached as a result of my observations, experience, and reading over the first two years of my appointment.

### **Origins of the Children's Court of NSW**

6. I would like to set the scene by means of a short excursion into history.
7. The Children's Court of NSW is one of the oldest children's courts in the world. It is a specially created stand-alone jurisdiction whose origins can be traced back to 1850.
8. Prior to 1850, however, the criminal law did not distinguish between children and adults, and children were subject to the same laws and same punishments as adults and liable to be dealt with in the adult courts.
9. Indeed there were a number of children under 18 transported to NSW in the first fleet of 1788. The precise number of convicts transported in the first fleet is unclear, but among the 750 to 780 convicts in the fleet, there were 3 children under 14 years of age and some 72 young persons aged 15 to 19.<sup>2</sup>

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<sup>2</sup> 'First Fleet Convicts', State Library of NSW, Research Guides

10. The first special provision recognising the need to treat children differently was the *Juvenile Offender Act* (14 Vic No 11) 1850. This legislation was enacted to provide speedier trials and to address the “evils of long imprisonment” of children.
11. Then, in 1866, further reforms were introduced, including the *Reformatory Schools Act* (30 Vic No IV), which provided for the establishment of reformatory schools as an alternative to prison, and the *Destitute Children Act* (30 Vic No11), under which public and private “industrial schools” were established, to which vagrant and destitute children could be sent.<sup>3</sup>
12. Without going into a detailed analysis of subsequent history, since those early beginnings there was a steady, albeit piecemeal, progression of reform that increasingly recognised and addressed the need for children to be treated differently and separately from adults in the criminal justice system.
13. Ultimately, in 1905, specialist, discrete Children’s Courts were established at Sydney, Newcastle, Parramatta, Burwood and Broken Hill. Two “Special Magistrates” appointed from the ranks of existing magistrates commenced sitting at Ormond House, Paddington in October 1905.
14. Since then, the idea of a separate specialist jurisdiction to deal with children has prospered and developed till the present time. Over that time the legislation that governs the way in which the Children’s Court deals with cases has become more complex but the fundamental principle upon which the Court was established remains the same: that children should be dealt with differently, and separately.

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<sup>3</sup> Children’s Court of NSW website: “The Children’s Court & Community Welfare in NSW” by Rod Blackmore, with the kind permission of Publishers Longman Cheshire Pty Ltd and the author, a former Senior Children’s Magistrate of NSW.

15. Today, the Children's Court of NSW consists of a President, 13 specialist Children's Magistrates and 10 Children's Registrars. It sits permanently in 6 locations, and conducts circuits on a regular basis to country locations across New South Wales.
16. The Children's Court does not charge children with crimes, but it does determine whether they are to be granted bail or not, and if they plead not guilty, hears and determines their guilt. If children plead guilty, or are found guilty after a trial, the Children's Court conducts a sentence hearing and determines the appropriate sentence to be imposed.
17. In recent years there have been around 350 children in detention at any given time in New South Wales. Aboriginal children are badly over-represented. Some 60% of detainees are Aboriginal.
18. In addition to the 350 or so children under detention, there are a further 2,000 or so children under supervision; that is, they are serving sentences involving suspended sentences or community service; or they are under good behaviour bonds, probation orders or on extended bail (Griffith remand). They are supervised by caseworkers from Juvenile Justice. Most of them are undergoing drug and alcohol programs, occupational training, anger management courses, or other rehabilitation programs.
19. The conclusion I have reached is that the ultimate aim of an enlightened system of juvenile justice should be to have no children in detention centres. Rather, we should be developing other social mechanisms to deal with problem children.
20. This paper discusses, therefore, what I propose to call "the four pillars of a modern, enlightened juvenile justice system": prevention, early intervention, diversion and rehabilitation.

## Prevention

21. An enlightened society seeks to tackle juvenile crime at its very roots.
22. Thus, the primary focus must be on the situations that will impact upon a young person's likelihood of committing crime, to prevent offending before it begins (AIC 2003).
23. Poverty is the largest common denominator for juvenile offending.<sup>4</sup>
24. The risk factors for juvenile offending are well established in research and involve: family 'dysfunction', such as family violence, parental unemployment and parental criminal history; child abuse and neglect<sup>5</sup>, including removal and placement in out of home care; physical, intellectual or learning disabilities; and mental health issues. Alcohol and other drug issues frequently play a predominant role in these factors. Thus, juvenile offenders are more likely to have been the subject of socio-economic disadvantage, neglect<sup>6</sup>, and residential instability; to have lived in crowded dwellings<sup>7</sup>; and to have experienced interrupted or sporadic participation in formal education.
25. Situational crime prevention focuses on altering the physical environment to reduce such indicators for crime (AIC 2003). We must continue to investigate and appropriately address the root causes of juvenile offending. This requires that we are accurately informed about what causes juvenile crime and that we base our knowledge and understanding from credible sources rather than sensational moral panic.

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<sup>4</sup> 'Juvenile Justice Reform - A Blueprint', Youth Transition Funders Group, accessible at: [www.ytfg.org](http://www.ytfg.org)

<sup>5</sup> 'Back on Track - Supporting Youth Re-entry from Out-of-Home Placement to the Community', Youth Re-entry Task Force of the Juvenile Justice and Delinquency Prevention Coalition, 2009.

<sup>6</sup> 'Cross-Over Kids - Childhood and Adolescent Abuse and Neglect and Juvenile Offending', Judge Mark Marien, 2012.

<sup>7</sup> 'Hotbeds of crime? Crime and public housing in urban Sydney', Weatherburn, D. Lind, B. Ku, S (1999), *Crime and Delinquency*, 45 (2).

## Reducing Juvenile Offending and Recidivism

26. Beyond prevention, in my view, a modern and enlightened justice system requires a sophisticated response to juvenile offending.
27. Oversimplification of the causes of juvenile offending arises in part out of a tension between welfare and justice approaches to crime reduction and prevention. This involves a tug of war between those who believe young people require help and guidance and those who believe young people are given too many chances and should be treated as accountable and autonomous adults.
28. The justice approach is informed by deterrence theory, which seeks to hold children to account for their actions. Specifically, offending is the result of the offender's choice and they are responsible for their actions and deserving of punishment.<sup>8</sup>
29. The welfare approach, on the other hand, focuses on behaviour change and crime reduction through interventions to address the underlying social causes of offending. Specifically, the welfare approach posits the young person's behaviour as deriving generally from factors outside of the young person's control - such as their family environment, their health, or other external factors.
30. The research that has attracted my attention indicates that progressive juvenile justice systems benefit from a combination of primary, secondary and tertiary strategies to address the discrete risk factors contributing to juvenile crime. Primary crime prevention strategies aim to prevent offending before it begins. Secondary and tertiary crime prevention is more concerned with reduction in offending and the avoidance of re-offending, topics I will address more fully below.

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<sup>8</sup> 'Understanding the Youth Justice System', Chrzanowski, A. & Wallis, R. (2011) in A. Stewart, T. Allard & S. Dennison (eds.), *Evidence Based Policy and Practice in Youth Justice Sydney*, Federation Press.

## Why Children Should Be Treated Differently

31. It is appropriate that I address why it is that I have been persuaded that children should be treated differently, and separately, within the criminal justice system. What follows is a brief excursus on the considerations that I see as determinative.
32. I have grouped these considerations into three broad categories: philosophical, scientific, and pragmatic.
33. The philosophical basis for treating children differently, or perhaps more correctly, the anthropological basis, is a wider topic. I will content myself here to a reference to the Preamble to the United Nations *Convention on the Rights of the Child* 1989, and the following quote from the great humanitarian, Nelson Mandela:  
  
*“There can be no keener revelation of a society’s soul than the way in which it treats its children”.*
34. The second category of the considerations that require a different approach to offending children is in fact based in science.
35. The growing recognition of the relevance of “brain science” has driven the need for policy and legislation to “match” the research. This issue was addressed in detail by the Principal Youth Court Judge of New Zealand, Judge Andrew Becroft, in a comprehensive paper delivered in 2014 at the Australasian Youth Justice Conference in Canberra.<sup>9</sup>
36. He pointed out that the first decade of this century has been called the “decade of the teenage brain”, an expression coined by the Brainwave Trust Aotearoa, a not-for-profit organisation working in the field of adolescent brain development ([www.brainwave.org.nz](http://www.brainwave.org.nz)).

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<sup>9</sup> ‘From Little Things, Big Things Grow - Emerging Youth Justice Themes in the South Pacific’, Judge Andrew Becroft, Principal Youth Court Judge of New Zealand, 2014.

37. In his paper, Judge Becroft said some important things:

“In recent years, a wealth of neurobiological data from studies of Western adolescents has emerged that suggests biological maturation of the brain begins, and continues much later in life than was generally believed. Many neuroimaging studies mapping changes in specific regions of the brain have shown that the frontal lobes (which are responsible for “higher” functions such as planning, reasoning, judgement and impulse control) only fully mature well into the 20s (some even suggest that they are not fully developed until halfway through the third decade of life). Brain science research also shows that when a young person’s emotions are aroused, or peers are present, the ability to impose regulatory control over risky behaviour is diminished.”<sup>10</sup>

38. Judge Becroft argues that these findings have implications for youth justice policy and will affect our perceptions of young people’s culpability for their actions and the establishment of an appropriate age of criminal responsibility. “They also affect our understanding of ‘what works’ with young offenders and what our expectations should be with respect to various responses and interventions. Finally, they change any presumption that young people are simply “mini-adults” and that the same responses to offending should be used for both adults and young people...A key challenge for Australasian Courts is how to make use of this growing body of irrefutable research...It is a constant challenge for those involved in youth justice to keep learning more about adolescent brain development, and to take this into account...”<sup>11</sup>

39. The research also demonstrates that there is a range of factors (biological, psychological and social) that make juvenile offenders different from adult offenders, which justify unique responses to juvenile crime.

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<sup>10</sup> Ibid at p 5.

<sup>11</sup> Ibid at p 6.

40. A recent paper entitled “What Makes Juvenile Offenders Different from Adult Offenders?” published by Kelly Richards has particularly attracted my interest and attention.<sup>12</sup>
41. The central theme of the paper is this:
- “Most juveniles will grow out of offending and adopt law-abiding lifestyles as they mature.”
42. The paper goes on to argue that a range of factors, including lack of maturity, the propensity to take risks and a susceptibility to peer influence, combined often with intellectual disability, mental illness and victimisation, operate to increase the risk of contact of juveniles with the criminal justice system.
43. These factors, combined with the unique capacity of juveniles to be rehabilitated, can require intensive and often expensive interventions.
44. The paper postulates that crime is committed disproportionately by young people. Persons aged 15 to 19 years are more likely to be processed by police for the commission of a crime than are members of any other population group. This does not mean, however, that juveniles are responsible for the majority of recorded crime.
45. On the contrary, police data indicates that 10 to 17 year olds comprise a minority of all offenders who come into contact with police. This is primarily because offending peaks in late adolescence, when young people are aged 18 to 19 years.
46. Thus, rates of offending peak in late adolescence and decline in early adulthood.

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<sup>12</sup> ‘What makes juvenile offenders different from adult offenders’, Richards, K. *Trends & Issues in Crime and Criminal Justice* series 409, Australian Institute of Criminology, February 2011.

47. Although most juveniles grow out of crime, they do so at different rates. A small proportion of juveniles continue offending well into adulthood. This small “core” has repeated contact with the criminal justice system and is responsible for a disproportionate amount of crime.
48. The paper refers to the Livingstone study of Queensland juveniles which identified three primary juvenile offending trajectories:
- *Early-peaking-moderate offenders*: peaking around 14 followed by a decline in offending (23% of offending);
  - *Late onset-moderate offenders*: no offending in early teens, but gradually increasing till age 16 (44% of offending);
  - *Chronic offenders*: early onset of offending with a sharp increase (33% of offending), but only constituting 11% of the cohort.
49. The paper goes on to demonstrate that juveniles disproportionately commit certain types of offence (graffiti, vandalism, shoplifting and fare evasion). Conversely, very serious offences (such as homicide and sexual offences) are less frequently committed by juveniles, as they are incompatible with developmental characteristics and life circumstances. On the whole, juveniles are more frequently apprehended in relation to offences against *property* than offences against *the person*. Juveniles are more likely than adults to come to the attention of police, for a variety of reasons, including:
- they are usually less experienced at committing offences;
  - they tend to commit offences in groups; and to commit their offences close to where they live;
  - they often commit offences in public areas, such as shopping centres, or on public transport.

50. Further, by comparison with adults, juveniles tend to commit offences that are attention seeking, public and gregarious, and episodic, unplanned and opportunistic.
51. The paper next looks in detail at the characteristics of juvenile offending and how they differ from adult offending. For present purposes, it is sufficient to list some of them:
- Risk-taking and peer influence
  - Changes due to pubertal maturation
  - Immature competence in decision-making
  - Engagement in negative activity *despite* understanding the risks involved (such as drug and alcohol use, unsafe sexual activity, dangerous driving, and other delinquent behaviour).
52. This is all food for thought, but my view is that our job is to do our best to help juveniles through these problem years, until they mature.
53. Finally, under the heading of justification for treating juvenile offenders differently, I will refer to a growing body of evidence that incarceration of children and young persons is both less effective and more expensive than community based programs, without any increase in the risk to the community.
54. Most young persons in the juvenile justice system can be adequately supervised in community based programs or with individualised services without compromising public safety. Studies have shown that incarceration is no more effective than probation or community-based sanctions in reducing criminality.<sup>13</sup>

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<sup>13</sup> Above, n 4 at p. 7

55. No experience is more predictive of future adult difficulty than confinement in a juvenile facility.<sup>14</sup>
56. Young people who go into custody mix with some other young people who are already deeply involved in criminal offending. Some will form friendships with more experienced offenders and be influenced to commit further offences as a result. This is often referred to as the “contamination” effect. A further important consideration is the “inoculation” effect. If the young person goes into custody for a day and is then released one of the outcomes is that some will conclude that being in custody wasn't all that bad, especially in comparison to their circumstances in the community. If this happens on a few occasions, even for slightly longer periods of time, the deterrent effect of going into custody diminishes greatly.<sup>15</sup>
57. Children who have been incarcerated are more prone to further imprisonment. Recidivism studies in the United States show consistently that 50 to 70% of youths released from juvenile correctional facilities are re-arrested within 2 to 3 years.<sup>16</sup>
58. Children who have been incarcerated achieve less educationally, work less and for lower wages, fail more frequently to form enduring families, experience more chronic health problems (including addiction), from those who have not been confined.<sup>17</sup>
59. Confinement all but precludes healthy psychological and social development.<sup>18</sup> Incarceration actually interrupts and delays the normal pattern of “ageing-out” discussed above.<sup>19</sup>

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<sup>14</sup> ‘Connected by 25 - Improving the Life Chances of the Country’s Most Vulnerable 14-24 Year Olds’, Wald, M. & Martinez, T., 2003.

<sup>15</sup> ‘Reducing Indigenous Youth Incarceration’ Paul Mulroney, Children’s Magistrate, Children’s Court of NSW, 2012.

<sup>16</sup> ‘Highlights from Pathways to Desistance – A longitudinal study of serious adolescent Offenders’, Mulvey, E. P., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, 2011.

<sup>17</sup> Ibid, Road Map.

<sup>18</sup> Connected by 25, supra: Wald & Martinez, 2003.

## Early Intervention

60. I turn, therefore to discuss secondary and tertiary crime prevention strategies concerned with reduction in offending and the avoidance of re-offending.
61. Secondary crime prevention aims to target at risk young people. “They may also target the reduction or avoidance of crime before it reaches the notice of the authorities or becomes more serious.”<sup>20</sup> Secondary strategies may consist of early intervention youth programs, or other programs designed to mobilise communities.

*“...developing interventions once young people have well established police records, incomplete schooling, and/or problematic peer groups is likely to be very difficult.”<sup>21</sup>*

62. One of the most effective ways of reducing juvenile offending is to begin prevention efforts as early as possible and to intervene aggressively with those who are already offending. Loeber, Farrington and Petechuk capture early intervention strategies as follows:

*“Of all known interventions to reduce juvenile delinquency, preventative Interventions that focus on child delinquency will probably take the largest ‘bite’ out of crime. ‘The earlier the better’ is a key theme in establishing interventions to prevent child delinquency, whether these interventions focus on the individual child, the home and family, or the school and community.”<sup>22</sup>*

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<sup>19</sup> ‘The Dangers of Detention: The Impact of Incarcerating Youth In Detention and Other Secure Facilities’, Holman, B. & Ziedenberg, J., Justice Policy Institute Report, 2006.

<sup>20</sup> ‘Rapua te huarahitika: Searching for solutions: A review of research about effective interventions for reducing offending by Indigenous and ethnic minority youth, Singh, D. & White, C. Ministry of Youth Affairs, Wellington, 2000 at p. 23.

<sup>21</sup> ‘Programs for anti- social youth in Australia and New Zealand: A literature review’ Centre for Evaluation of social services, Stockholm ,2003 at p. 47.  
Loeber, R., Farrington, D.P., Petechuk, D. ‘Child Delinquency: Early Intervention and Prevention’, *Child delinquency*, U.S Department of Justice, Office of Juvenile Justice and Delinquency Prevention, May 2003, p. 9.

63. The *Young Offenders Act* 1997 is a statutory embodiment of early intervention and offers three alternative options for dealing with young offenders. These options are: warnings, cautions and Youth Justice Conferences (YJCs). I will not traverse the details of warnings and cautions as they are fairly self-explanatory. However, I will provide a brief explanation of YJCs and how this option brings the individual child, family and community together to prevent future offending.
64. At a YJC, a young offender is with his or her family, and is brought face to face with the victim, and the victim's support person, to hear about the harm caused by their offending and to take accountability for their actions. At the conference, the participants agree on a suitable outcome. The outcome may include an apology, reasonable reparation to the victim and steps to reintegrate the young person into the community.
65. A YJC is a valuable alternative to court as it is not an impersonal or exclusive process where the young person and the victim are adversaries. Rather, responsibility for dealing with the young offender is partially transferred from the State to the young person, their family, the victim and the wider community.
66. In New Zealand, a similar option to YJC's exists, entitled Family Group Conferences (FGC's). The statutory process of FGC's is similar to that of YJC's, however the process allows for responses tailored to specific cultural needs to allow for stronger engagement with the process.
67. In New South Wales, the Department of Attorney General and Justice is piloting a promising new early intervention scheme - Youth on Track. The scheme has a multi-agency approach, with the involvement of the Department of Education and Communities, the Department of Family and Community Services and the Department of Health in addition to non-government organisations (NGO's).

68. Using this collaborative approach, services on the ground - such as police and schools - identify at risk youth and refer them to the Youth on Track program. An NGO case manager is allocated responsibility for working with the young person to address criminogenic factors in their lives and provide access to specialist services that will provide ongoing support to the young person.
69. The Youth on Track program is a step in the right direction for an enlightened juvenile justice system. The program is consistent with the principles enunciated in the United Nations Convention on the Rights of the Child, specifically that children and young people must be given the opportunity to express their views and to have them taken into account in matters affecting them.<sup>23</sup>

### **Diversion and Rehabilitation**

70. Tertiary crime prevention seeks to reduce re-offending by 'intervening in the lives of known offenders.'<sup>24</sup> Tertiary prevention strategies include diversion into community-based programs and other strategies for rehabilitation.

*"... much more attention needs to be paid to deciding how to conceptualise and respond to young people in trouble with the law, and to their families, communities and victims, and how to listen and respond to what these people tell us about their lives and their aspirations.*

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<sup>23</sup> 'United Nations Convention on the Rights of the Child', November 1989, entry into force 2 September 1990, available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> at Article 12.

<sup>24</sup> 'Approaches to understanding crime prevention', Australian Institute of Criminology, *Crime Reduction Matters*, no. 1, Canberra, 2003 at p.1.

*We can and should be able to create a humane system that is committed to human rights norms and practice, and one which recognises the human right of young people in trouble with the law to be treated with dignity and respect and to be provided with the conditions in which they can grow and flourish and be happy, contributing and well rounded adults - surely our responsibility as adults, and an aspiration we must have for all our children.”<sup>25</sup>*

71. As I mentioned earlier, there are a number of psychosocial and developmental processes that separate young people from adults. A wealth of research now exists establishing that adolescence is a period of rapid change, particularly in the areas of the brain associated with response inhibition, the identification of risks and rewards and the regulation of emotions.<sup>26</sup>
72. Research has shown that there is a link between decision making and memory. Many of the children and young people who engage in offending behaviour have experienced traumas that activate their memory, resulting in a response that impacts upon their ability to make appropriate decisions.<sup>27</sup> However, just as harm and trauma accumulate over time, so does a child or young person’s capacity to change in response to treatment.<sup>28</sup> Consequently, whilst environmental factors such as parents, carers and teachers can hinder development, environmental factors also have the ability to facilitate change and successful development. It is essential, therefore, that our response to offending behaviour combines therapeutic interventions with traditional criminal justice approaches.

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<sup>25</sup> ‘Juvenile Justice: responding to Australia’s children and young people in trouble with the law’, Bagen, J. *Reform* (92) Winter 2008.

<sup>26</sup> ‘Adolescent Development and Juvenile Justice’, Steinberg, L, *Annual Review of Clinical Psychology* (5), 2009.

<sup>27</sup> ‘Decision-making of out-of-home-care children who offend’, Professor Kenneth Nunn, Children’s Hospital Westmead, presentation to the Children’s Court s 16 meeting on 1 November 2013

<sup>28</sup> ‘Bad, mad and sad: rethinking the human condition in childhood with special relevance to moral development’, Professor Kenneth Nunn, *Journal of Pediatrics and Child Health*, 2011, 624 – 627 at 625

73. As Professor Kenneth Nunn so aptly put it:

*“Containment without treatment is custodial futility without any progress except maturation and chance encounters.*

*Treatment without containment is powerless without any capacity to prevent flight away from help.*

*Treatment and containment without education is recovery without skills to live in the real world.”<sup>29</sup>*

74. Diversion and rehabilitation are examples of therapeutic interventions that seek to address the complex constellation of risk factors related to offending by children and young people.

75. I will briefly canvass some of the diversion and rehabilitation programs available in NSW.

76. The *Mental Health (Criminal Procedure) Act 1990*<sup>30</sup> enables Magistrates to divert mentally disordered young people from the criminal justice system. Magistrates undertake a balancing exercise wherein they consider whether using this diversionary mechanism will produce better outcomes for the individual and the community.<sup>31</sup>

77. This therapeutic response allows Magistrates to dismiss the charges and discharge the young person into the care of a responsible person or, on the condition that they obtain mental health assessment or treatment.

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<sup>29</sup> ‘Decision-making of out-of-home-care children who offend’, Professor Kenneth Nunn, Children’s Hospital Westmead, presentation to the Children’s Court s 16 meeting on 1 November 2013.

<sup>30</sup> s 32 and s 33

<sup>31</sup> *DPP v El Mawas* (2006) 66 NSWLR 93 at [79]

78. Whilst there are substance abuse rehabilitation programs in NSW, reported access to treatment is often low.<sup>32</sup> There are two residential drug and alcohol rehabilitation programs in NSW specific to juveniles that I am aware of, but both of these are in country regions: Junaa Buwa at Coffs Harbour and the Mac River Program at Dubbo. There is nothing in the western area of metropolitan Sydney.
79. Additionally, the Triple Care Farm run by Mission Australia is the only residential rehabilitation program in NSW that addresses both mental illness and substance abuse. The two issues often go hand in hand. In my view, it is important that more services address both mental illness and substance abuse. An enlightened juvenile justice system should provide for a variety of programs addressing both substance abuse and mental disorder for children and young people.
80. Justice Reinvestment is a topic with some currency. This concept began as a policy response to the increasing prison population in the United States. In simple terms, the strategy is to divert resources from imprisonment to investment in social supports that can help reduce crime and the number of people entering the criminal justice system, in particular areas.
81. In NSW, in 2007-2008, \$103.3 million was spent on juvenile detention.<sup>33</sup> Diverting funds to bolster community and social supports is logical for a number of reasons. In particular, the money spent on imprisonment could be spent in a way that prevents crime and increases community cohesion, as communities are involved in identifying the causes and solutions to crime.

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<sup>32</sup> 'Drug Use Among a Sample of Juvenile Detainees', Zhigang Wei, Toni Makkai and Kiah McGregor, *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, June 2003.

<sup>33</sup> Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Chapter 2: Justice Reinvestment - a new solution to the problem of Indigenous overrepresentation in the criminal justice system' in *Social Justice Report 2009* (2010).

82. The concept also reinforces the philosophy of detention as the last resort as a core principle for children and young people.
83. I am aware of two projects in NSW based on the concept of Justice Reinvestment.
84. The first is Just Reinvest NSW, a promising project involving therapeutic intervention in juvenile offending based on the Bourke region, where there is a high proportion of Aboriginals. It is not, however, juvenile specific.
85. The second is a research project being conducted at Cowra by academics from the Australian National University (ANU). This project is examining a methodology for the establishment of a Justice Reinvestment program in Cowra for children from that region who are otherwise being sentenced to detention, and serving those sentences in other locations, such as Dubbo, Wagga Wagga, Gosford and Sydney. The project is being actively supported by the local Shire Council, community groups, government agencies, schools and local health services.
86. Finally, I wish to mention the NSW State Plan 2021, a ten-year plan for change within the state.<sup>34</sup> Goal 13 aims to,
- “Better protect the most vulnerable members of our community and break the cycle of disadvantage.”<sup>35</sup>*
87. Specifically, the Plan aims to address the persistence of childhood trauma by focussing on prevention and early intervention, recognising that childhood maltreatment has an impact on later offending behaviours of young people and adults.

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<sup>34</sup> NSW State Plan 2021, ‘A plan to make NSW number one’, NSW Government, available at: [http://www.2021.nsw.gov.au/sites/default/files/NSW2021\\_WEB%20VERSION.pdf](http://www.2021.nsw.gov.au/sites/default/files/NSW2021_WEB%20VERSION.pdf)

<sup>35</sup> Ibid at p.27

## Conclusion

88. In New South Wales, the juvenile justice system is moving in the right direction, notwithstanding the oversimplification of juvenile offending through popular media reporting of young offending.
89. By comparison with other jurisdictions, Australia is well-advanced in its thinking and policy approach, and to my mind New South Wales is one of those states that is in the forefront of reform and policy development. Other states are doing some things better, and some of what we do is what I might describe as current best practice. I believe, for example, that our Young Offenders Act operates well, but is perhaps not as well-advanced or sophisticated as Family Group Conferencing in New Zealand, pursuant to which some 80% of juvenile offenders are diverted from the criminal justice system. Victoria has a Koori Court that is operating well. Again, New Zealand is the front-runner in the operation of indigenous forums, with the well-established operation of ten Rangatahi Courts, for Maori children, and two Pasifika Courts for Islander children.
90. But the biggest single issue, it seems to me, that needs to be confronted in New South Wales, before our juvenile justice system can progress and develop further, is the absence of a holistic approach to problem children in our communities. At the moment we have number of government departments and agencies, together with a plethora of individual non-government agencies doing fantastic work in particular fields: Juvenile Justice, Community Services, Health, Education, Justice Health, the Police etc.
91. But what we need is a system that somehow draws together and co-ordinates what is currently an unconnected, disjointed, multi-agency approach, which is well-meaning and has some fantastic individual features, but also has some significant failings, and gaps in its coverage.