



**BUREAU OF CRIME STATISTICS AND  
RESEARCH SEMINAR**

**FUTURE DIRECTIONS FOR JUVENILE  
JUSTICE IN NSW**

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**10 MAY 2012**

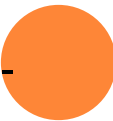
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Discussant**

# OUTLINE

- Looking at the bigger picture - Australia's international commitments to children in trouble with the law and how we're doing
- What do we really know about children in trouble?
- Contemporary responses to young people in trouble
- Brief comments on some implications of recent BCSR research
- Other foci for research that may provide a more rounded picture
- A vision for the future?
- Questions (for Don and me) and discussion



## LOOKING AT THE BIGGER PICTURE - AUSTRALIA'S INTERNATIONAL COMMITMENTS TO CHILDREN IN TROUBLE WITH THE LAW AND HOW WE'RE DOING

- Diversion
  - Use of alternatives to criminal justice responses wherever possible and appropriate
  - Children's participation in decision making (Article 12, CROC)
  - Custody (including on remand) as a last resort
  - Victim participation
  - UN's annual criticisms of our criminal justice responses to indigenous young people and lack of progress in reducing 'over-representation'
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# WHAT DO WE REALLY KNOW ABOUT CHILDREN IN TROUBLE?

- A little from quantitative research
- More from qualitative and quantitative research
- Health surveys paint an alarming picture of children in custody and on community orders



# NATURE OF OFFENDING BY CHILDREN AND YOUNG PEOPLE

## Children and young people


- are inexperienced and less skilful than adults
- tend to commit offences in groups (which leads to greater visibility and risk of detection)
- Tend to commit offences in public spaces
- Tend to be gregarious and attention seeking
- Tend to commit offences in ways that are episodic, unplanned, and opportunistic
- Tend to commit offences close to where they live



## YOUNG PEOPLE IN TROUBLE?

- Less than 10% of all 10-18 year olds, and
- Around 14% of all Indigenous 10-18 year olds
  - are dealt with by way of fine, infringement notice, warning, caution, youth justice conference or court
- Total number of young people dealt with in all of these ways has steadily declined since 2001, although this decline has been reversed in the last couple of years
- Police commenced court proceedings against only 17% of these 10-18 year olds, but against 50% of these Indigenous 10-18 year olds
- Indigenous young people constitute around 50% of the 400 or so young people in detention every day in NSW (remand and control)
- Almost one quarter of all Aboriginal young people appearing in court between 2007 and 2011 were there for breach of bail conditions (compared with one fifth of all non-Aboriginal young people appearing in court over the same period)

YOUNG PEOPLE IN CUSTODY:  
INDIG ET AL, *YOUNG PEOPLE IN CUSTODY  
HEALTH SURVEY*, JUVENILE JUSTICE AND  
JUSTICE HEALTH 2009

- High levels of mental illness and drug and alcohol abuse.
  - High likelihood of developing chronic diseases.
  - Around one quarter had parents with a history of incarceration, drug and alcohol dependence and low socio-economic status.
  - High rates of mental illness, drug and alcohol abuse
  - High incidence of early school leaving and anti-social behaviour.
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## ABORIGINAL CHILDREN IN CUSTODY (INDIG ET AL, 2009)

- Many of these social determinants, health problems and risk behaviours are significantly worse for Aboriginal young people in custody.
- Custody provides an opportunity to assess health needs, provide social and emotional support, and improve life skills and health status for this highly disadvantaged population





# ORAL LANGUAGE COMPETENCE

Pamela Snow et al's work (2012 and earlier)

- Oral language competence development in early life often seriously disrupted for children and young people in the juvenile justice 'system'
- Oral language competence plays a significant role as a protective/risk factor in the developmental years
- Good oral language competence is strongly related to the achievement of important interpersonal, academic and vocational goals for children and young people
- Lack of oral competence has serious implications for juvenile justice programs, particularly police cautions and youth justice conferences
- Responsibilities of adults, in early childhood work and in schools and educational institutions to ensure that a risky start in life does not result in social marginalisation and offending



# CONTEMPORARY JUVENILE JUSTICE RESPONSES

- policing young criminals, or
- responding to and working with developing children and young people plagued by significant disadvantage?



## THE LAWS – A COMPLEX WEB

- International conventions, particularly CROC
- *Bail Act 1979*
- *Fines Act 1996*
- *Young Offenders Act 1997*
- *Children's Court Act 1987*
- *Children (Criminal Proceedings) Act 1987*
- *Children (Criminal Procedures) Amendment (Youth Conduct Orders Act 2008*
- *Criminal Proceedings (Mental Health) Act 1986*
- Evidence, Sentencing, Criminal Procedure and other Acts relevant to legal practice generally
- *Children (Community Service Orders) Act 1987*
- *Children (Detention Centres) Act 1987*

# THE DEVELOPMENT OF POLICY

- Not always a linear or logical process
- In the 1980s and 1980s usually followed a path from research recommendations to 'Green Paper' to 'White Paper' setting out policy, and implementation
- In recent years, often a response to well publicised incidents involving children and young people
- Does not always acknowledge or incorporate obligations under international human rights instruments



# THE CHANGING LANDSCAPE – COHERENT?

- Major reviews and pilot schemes in 2011-2012:
  - NSW Law Reform Commission review of *Bail Act 1978* (particular emphasis on impact of legislation on children) – report due to be released in late March
  - Formal response of Coalition Government to Noetic Report (2010) not yet available
  - ‘On Track’ - a strategic analysis by Juvenile Justice policy officers of the national and international research-based evidence and best practice on ways to prevent young people from becoming involved in crime
  - an evaluation of youth justice conferencing, being carried out by the Bureau of Crime Statistics and Research
  - Department of Attorney General and Justice review of *Young Offenders Act 1997* and *Children (Criminal Proceedings) Act 1987*
  - Ongoing evaluation of Youth Conduct Orders scheme in pilot areas

## CHANGING LANDSCAPE

### Major reviews and pilot schemes in 2011-2012:

- NSW Law Reform Commission's reports on
  - young people with cognitive and mental health impairments in the criminal justice system, and
  - the *Bail Act 1978* (particular emphasis on impact of legislation on children) – report due to be released in late March
- Formal response of Coalition Government to Noetic Report (2010) not yet available
- 'On Track' - a strategic analysis by Juvenile Justice policy officers of the national and international research-based evidence and best practice on ways to prevent young people from becoming involved in crime
- 5 studies by Bureau of Crime Statistics and Research
- Department of Attorney General and Justice review of *Young Offenders Act 1997* and *Children (Criminal Proceedings) Act 1987*
- Ongoing evaluation of Youth Conduct Orders scheme in pilot areas

# BRIEF COMMENTS ON IMPLICATIONS OF RECENT BCSR RESEARCH AND DON'S PRESENTATION

- Re-offending as the 'key question'?
  - Relevance of age/crime curve?
- Youth justice conferences and re-offending – objectives of scheme?
- Need for qualitative research to 'flesh out' the figures in qualitative research
- Recognise that no system of juvenile justice can be designed to address the fundamental issues – need to think and act outside this square
- Comments on specific studies



# 1. REOFFENDING GENERALLY

- Appropriateness of combining outcomes from all responses?
- Reframe the results?
  - Nearly half of all the young people who were cautioned, participated in a youth justice conference or appeared in court in 1999 did not re-offend within 10 years
  - Over 90% of these young people did not end up with a custodial penalty
- The results for Aboriginal children are much more worrying, even when presented in this way:
  - Less than 20% did not re-offend within 10 years, but
  - 70% did not end up in custody
- Unpick and explain the offences for which children are re-appearing –
  - Drink driving (13%)
  - Assault (9%)





## 2. EFFECTIVENESS OF YOUTH JUSTICE CONFERENCES IN REDUCING REOFFENDING COMPARED WITH COURT APPEARANCES

- Objects of YOA and C(CP)A and implications for practice?
- Complexity of referral criteria – not simply admissions, age and seriousness of offence
- Differences in outcomes across locations (courts, YJC/Police LACs) not reported
- Assumption that all YJCs are the same?
  - Participant characteristics
  - Victim participation rates
  - Time to conference
  - Time for conference
- Alternative explanations (p 16)?
  - Conferences less effectively administered than in first few years?
  - Changed profile of young people participating in conferences?
  - Relevance of conference/court experience for future offending (see, eg, Maxwell et al, 1999, NZ)



## 2. THE FOUR STUDIES FOCUSING ON YOUTH JUSTICE CONFERENCING, AND

### 3. THE SURVEY ON PUBLIC SUPPORT FOR RESTORATIVE JUSTICE

- The whole picture?
- Limitations of quantitative research in this area
- Understanding of original intentions of framers of YOA?
- Recognition of the complexity of the YOA scheme and its operation in practice?
- YJC the smallest and least resourced but most studied part of the legislative scheme
- Possible implications of these studies



## A) COMPLIANCE WITH SANCTION HIERARCHY

## B) DO YOUTH JUSTICE CONFERENCES TAKE LONGER TO FINALISE MATTERS THAN COURTS?

- Very few children and young people were cautioned on three or more occasions in 2009-10
  - Repeal the limitation on cautions?
- Is the comparison appropriate?
  - Taussig indicates that police decisions to refer to a conference are often well outside the 14 days stipulated in the YOA.
- No information about possible administrative and legislative reasons why court referred conferences may be taking longer than police referred conferences?
  - Identification of victims much more difficult/time consuming for court than police referred conferences



## NOW AND THEN

2012 (Taussig)


Broad aims of study :

Describe the characteristics of

- YJC referrals
- YJC outcome plans
- YJC attendees



## 1999 (Trimboli)

- (1) whether offenders, their families and victims who participate in conference proceedings are satisfied with:
    - the process; and,
    - the outcomes of the proceedings;
  - (2) whether children who are alleged to have committed an offence are being informed about their right to obtain legal advice and where that advice may be obtained;
  - (3) whether children who are being given this information have obtained legal advice; and, at what point the advice was obtained;
  - (4) whether conference proceedings lead to an acceptance of responsibility by the child;
  - (5) whether the child's family, extended family and the victim attend conference proceedings;
  - (6) whether time-frames specified under the Act for the holding of conferences are being met;
  - (7) whether children who go to conferences have the benefit of a caution first; and,
  - (8) whether the young person's parents/carers were present with the child when the child was cautioned.
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## Trimboli (2000)

- Well informed about complexity of YOA scheme
- Used mixed methods (quantitative and qualitative)
- Not just about satisfaction
- Found general although uneven compliance with YOA but room for improvement:
  - High rates of satisfaction for both victims and offenders with preparation, process and outcomes of YJCs
  - Victim participation rate for first 18 months was almost 75%
  - High proportion of parental participation
  - Conference time lines not being met

## Taussig (2012)

- Does not appear to be well informed about complexity of YOA scheme or previous research on YOA and conferencing
  - Impossible to properly compare with Trimboli
  - Used quantitative methods only
  - Don's slides give only some of the results
  - Other more worrying results that indicate slide in commitment to YOA:
    - Victim participation rate for 2010 down to 41%
    - Police most common participant
    - Low proportion of parental participation
    - Time lines still not being met
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# ORIGINAL RATIONALE FOR DIVERSION AND RESTORATIVE JUSTICE

- Encourage young person to accept responsibility for offending by coming face-to-face with the victim
- Keep less serious offenders out of court and stop them from getting a criminal record
- Increase efficiency of system, enabling courts to spend more time with serious and repeat offenders
- Involve victims and family of young people in process and outcome



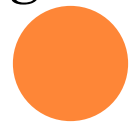
# THE YOUTH JUSTICE CONFERENCING SCHEME: ORIGINAL VISION AND CURRENT PRACTICE

- Agency with administrative responsibility for the conferencing scheme must
  - be neutral
  - be independent of specific interest groups,
  - have an established infrastructure across NSW to enable the scheme to be effectively administered.
- Both the NSW Police Service and the NSW Department of Juvenile Justice met the latter criteria.
- NSW Attorney General's Department (1996) argued
  - police are responsible for apprehending and charging young people, and
  - officers of the Department of Juvenile Justice are responsible for advocating the interests of young people,
  - neither is sufficiently independent of the criminal justice process.
- an independent unit was established within the Department of Juvenile Justice to be specifically responsible for administering the conferencing scheme.
- Unit worked directly and collaboratively with police, lawyers (Youth Hotline) and courts to engender Chan's (2005) 'sympathetic interpretive community'
- **This unit was dismantled in 2008**



## A VISION FOR THE FUTURE?

- Recognise that no system of juvenile justice can be designed to address the identified underlying issues – poverty, failing families, socio-economic disadvantage
- Think (and act) outside the square
- Acknowledge that colonisation, dispossession and government policies past and present are strongly related to the outrageously high and ever increasing over-representation of Aboriginal children and young people in juvenile justice



## A VISION FOR THE FUTURE?

- Seriously consider the adoption of a version of Justice Reinvestment shaped to the NSW context
  - Move funds from JJ to identified communities with high proportions of Aboriginal young people who have long experiences with all parts of the juvenile justice system
  - Provide communities with the power and resources to support Aboriginal young people in particular
  - Tackle challenging circumstances with long term measures tailored to local needs

( Justice Reinvestment Campaign 2012)
- Revisit *Pathways to Prevention: Developmental and early Intervention Approaches to Crime in Australia* (Homel et al, 1999)

