



## Youth Coalition of the ACT

Submission to the Legislative Assembly  
Standing Committee on Legal Affairs  
Inquiry into Sentencing Options

July 2005

## **The Youth Coalition of the ACT**

The Youth Coalition of the ACT (Youth Coalition) is the peak youth affairs body in the Australian Capital Territory and is responsible for representing the interests of people aged between 12 and 25 years of age and those who work with them. The Youth Coalition works to actively promote the well being and aspirations of young people in the ACT with particular respect to their political, cultural, economic and social development.

The Youth Coalition is represented on many ACT advisory structures and provides advice to the ACT Government on a range of issues related to young people and youth services.

The Youth Coalition works collaboratively with a range of other service providers and organisations, a key role being the provision of coordination and analysis of the implications of ACT policy and program decisions for young people and youth services.

As the peak body for the youth sector, the Youth Coalition facilitates the development of strong linkages and promotes collaboration between the community, government and private sectors to achieve better outcomes for young people in the ACT.

The Youth Coalition has a history of experience and broad range of knowledge upon which we have drawn to prepare this submission. The Youth Coalition maintains networks and runs forums for our members, young people and interested organisations and individuals. We host a monthly forum where we discuss current issues, listen to guest speakers, participate in limited consultative processes (and learn about other opportunities to participate), and share information. We also hold a bi-annual Policy Forum and Conference and other forums and working parties as issues arise. We aim to inform our members of new developments, funding opportunities, reform processes and other issues through our regular E-Bulletin service, website, fax stream services and other avenues.

As well as its usual activities, during 2004 and 2005 the Youth Coalition conducted a number of consultations with young people to inform:

- the ACT Homelessness Strategy;
- the ACT Graffiti Strategy;
- the Alcohol and Other Drugs Project;
- policy regarding young carers and young parents; and
- a response to the ACT Government Position Paper for a Commissioner for children and young people.

These consultations were undertaken using a pathfinders (peer research) model. The Youth Consultation has also consulted with youth and community services to

inform our ACT Government Budget Submissions, our Policy Forum and bi-annual Conference, and our Policy Platform.

For the purposes of this submission, the Youth Coalition consulted with a range of service providers. We also drew upon previous Youth Coalition consultations, including one involving young people affected by homelessness, and one involving young carers. The Youth Coalitions 2005/06 Budget Submission provided the background and made recommendations for a variety of mental health initiatives, and as such, we resubmit this work throughout the submission.

## **Summary of Recommendations**

### **Recommendations**

Research and develop programs and interventions that are effective in reducing involvement in crime.

Review the mechanisms available to the ACT courts to ensure that magistrates are kept informed of the latest research and information regarding alternative sentencing options and programs.

Develop a community education campaign around the outcomes of alternative sentencing options.

Suggest debriefing following incarceration.

### Recommendations

Similar unit to research unit in the NSW department of juvenile justice to inform best practice.

Mechanism whereby you can inform courts of offenders' related issues and specific needs prior to sentencing.

Police youth liaison officers

Reporting of alternatives to custodial sentences not 'going soft' on offenders.

Contact with criminal justice system should be kept at a minimum as evidence points to the fact that it does more harm than good.

Non-custodial options should not be not considered because they are not available.

## **1. Introduction**

While preparing a submission to the recent ACT Legislative Assembly Standing Committee on Health and Disability's *Inquiry into Mental Health and Accommodation*, we consulted with a range of youth services regarding the issues facing their clients. During these consultations, many services spoke about how the combination of a young person's dual diagnosis (a definition is below) and homelessness often led to their involvement in the criminal justice system. In an attempt to accurately reflect the issues that many young people in the ACT are currently facing, we will focus the content of this submission on sentencing options and outcomes for young people experiencing dual diagnosis and/or homelessness

### **1.1 Dual diagnosis - an influence that leads to crime**

Dual diagnosis is the co-occurrence of mental health and substance abuse issues. Directly or indirectly, abuse of illicit substances and mental disorders have a close association with each other and together they are potent influences that lead to crime (FF for DLR).

On 19 August 2002, at the House of Representatives Standing Committee on Family and Community Affairs, Dr Richard Matthews, Chief Executive of the Office of Corrections Health Service of NSW reported that:

*According to national mental health index 78.2% of male prisoners and 90.1% of female prisoners suffered a mental illness*

There is no doubt that offenders with substance abuse and/or mental health issues make up a significant proportion of the ACT offender population, both for adult and young offenders (Pathways to Prevention).

Both dual diagnosis and homelessness are significant issues which affect many young people face in Canberra. Studies have found that between 48% and 82% of homeless young people have a diagnosable mental illness (Council to Homeless Persons, 2005).

### **1.2 Lack of Community Services = Burden on Juvenile Justice**

While the Youth Coalition believe that there is a lack of youth-specific mental health and alcohol and other drug services for young people in Canberra, particularly for those with mild to moderate mental health issues. Furthermore, the accommodation situation in Canberra whereby waiting lists for EA1 is up to 12 months, and therefore there are longer stays in Youth Supported Accommodation Assistance Program Services.

## **Summary paragraph**

We are disappointed to note that ... Bill Stefaniak...  
Trust in the process of the committee

### **A human rights basis**

The Youth Coalition believes that all people, irrespective of their age, gender, race, ethnicity, class, sexuality, or disability have an equal right to those experiences and resources which support a satisfying quality of life. In particular, every individual has the right to equal, non-discriminatory access to services (Youth Coalition, 2004).

As the first jurisdiction to adopt human rights in local law, the ACT has the responsibility to uphold them in a consistent and equitable manner. The Human Rights Act recognises that everyone has the right to enjoy their human rights without distinction or discrimination of any kind.

The Human Rights Act 2004 (ACT) recognises that people also have other rights under domestic and international law, for example, under other treaties to which Australia is a party (ACT Human Rights Office, 2004). Examples include the United Nations Convention on the Rights of the Child (UNCROC) (ratified by Australia in 1990), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). (ratified by Australia in 1975). Article x of the UNCROC recognises that children should be deprived of their liberty only as a last resort and for the shortest amount of time appropriate and article x that children should have a say in decisions that affect them.

It is essential that the rights and interests of children and young people are protected at all times, especially when they are involved in the criminal justice system, where there is the risk that their rights may be taken away (regardless of the intent of the system). The Youth Coalition does recognise that the protection of the rights and interests of children and young people must be balanced with the protection of other members of the community from real harm.

### **The Children and Young People Act (1999)**

As raised in our 2003 response to the Sentencing review, the Youth Coalition recognises the need for youth justice matters to be considered in line with the main principles underpinning youth justice as outlines within the Children and Young People Act (1999), specifically:

Section 68 (b) the young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;

Section 68 (d) young offenders should be dealt with in the criminal law system in a manner consistent with their age and maturity and have the same rights and protections before law as would adults in similar circumstances;

Section 68 (e) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community.

Incarceration of an individual is too easily accepted as an appropriate response to broader societal issues and significant shortfalls in fundamental services and structures within the ACT community (Youth Coalition/ACTCOSS)

However, the Youth Coalition believes that sentencing for both young people and adults should be targeted at rehabilitation, and mindful of key conventions, rules, guidelines and legislation. We also believe that the justice system should not be used to compensate for inadequacies in services, initiatives or programs.

### **Sentencing options**

The Youth Coalition believes that custodial sentences are inappropriate for the majority of young people coming into contact with the juvenile justice system (Youth Coalition, 2003).

The Beijing Rules highlight that strictly punitive approaches are not appropriate in the administration of juvenile justice, where considerations should always be outweighed by the fundamental interest of safeguarding the well being and the future of the young person. The Youth Coalition views custodial sentences as a last resort where concerns regarding the safety of the public cannot be met otherwise, and understands that the courts make these decisions after considered deliberation (Youth Coalition, 2003).

The high occurrence of young people involved in the juvenile justice system who have multiple issues, such as dual diagnosis, which directly contribute to their offending behaviours, means that there is a real need for non-custodial, and in particular, treatment and rehabilitation based sentencing options.

These issues are also raised in the paper the Youth Coalition submitted in response to the *Sentencing Review – Issues Paper*, which has been attached for the Committee's reference (*Attachment B*).

## **Evidence to show detriment of custodial sentences**

Evidence shows that non-custodial sentences are more effective in reducing recidivism than custodial sentences.

Severe penalties are associated with an increased likelihood of a juvenile re-offending. For example, in the period 1986 to 1994, only 12.4% of young people appearing in the Children's Court who received a nominal penalty re-offended. The recidivism rate increased to 79.3% of offenders who received a custodial order.

*In other words penalties that were 'less harsh' decreased the likelihood of re-offending. Beyond Bars Factsheet Youth Justice*

More

Reference to mandatory detention – how it goes against human rights principles and overrides judicial discretion

## **Evidence to show the success of these**

More

## **Who gets to go to jail? Social construction of crime.**

*Tough penalties do not address the systemic social and health problems underlying juvenile offending. Poverty and neglect are the strongest predictors of juvenile crime and these are not addressed by punitive responses to crime. An increase of 1000 in the numbers of children subject to neglect could be expected to result in an additional 256 young people involved in crime. Putting resources into social service programs, programs to improve school retention rates, and programs to improve literacy would have a much more profound impact on lowering the crime rate than implementing harsh penalties. Beyond Bars Factsheet.*

Especially in context of young people with mental illness/dual diagnosis – their access to community services due to resources available to them.

## **Young People's participation in the Juvenile Justice System**

Article 12.1 of CROC sets out the children and young people must have appropriate involvement in the decisions and actions affecting them. For many young people, this is simply not the case:

## QUOTE

CROC also sets out that children and young people should be fully engaged in the process which must not be intimidating and using easy language. Language in relation to sentencing can be confusing and alienating:

## QUOTE

Not homogenous group – first appearance and probability of reappearance has been shown to be higher for indigenous defendants and males (Transitions from J to A, 2005), higher for younger age groups

### **Cyclical nature of sentencing**

### **Inappropriate detainment at Quamby**

### **Inappropriate detainment due to homelessness**

An inability to secure ‘appropriate’ accommodation has often meant that young people are remanded in custody as a direct consequence of their homelessness, with Quamby recording 90 overnight and 13 weekend stays in (year?). It is our understanding that if a young person charged by the police has no ‘fixed’ address they are likely to be remanded to Quamby overnight. The young person’s accommodation status may also affect the decision of the court, where remand in Quamby may be more likely. This conflicts greatly with principles of diversion underlying the delivery of youth justice.

Bail orders requiring young people reside in a youth refuge or in the family home are in danger of being broken if issues related to behaviour management or conflict existing within the family home are not addressed. This emphasises the fact that it is essential for magistrates to take into consideration individual issues when making bail orders. We discuss this further below (see ).

### **Inappropriate detainment due to Dual Diagnosis**

The Youth Coalition is particularly concerned that a large number of young people are inappropriately placed at Quamby due to a lack of appropriate supports and services in the community. The increase in young people detained at Quamby presenting with mental health, drug misuse and dual diagnosis issues (and intellectual disabilities, who are survivors of sexual/physical abuse and who are involved in the care and protection system) is a consequence of continuing gaps in services for families and children in the whole spectrum of intervention. If these service needs are not addressed, Quamby will continue to be an inappropriate service response for young people with challenging and complex needs.

Incarceration in Quamby will not change the factors within the broader community which contributed to a young person's behaviour.

#### IF POSSIBLE QUOTE

We believe that too many young people are being released back into the community only to face exactly the same situation as when they were sentenced. For many young people, this means enduring homelessness, dual diagnosis and a lack of support for their issues.

#### IF POSSIBLE QUOTE

Therefore, the social context of young people's offending behaviours must be considered. In order for young people to re-enter the broader community successfully, there must be consideration of the issues that resulted in their involvement with the juvenile justice system. The Youth Coalition believes that there should be investment in therapeutic programs which target the offending behaviour and its causes, and assists the young person to positively participate in community life.

#### **Recommendation**

therapeutic programs to assist young offenders to re-enter the community and create meaningful links and a sense of belonging.

#### **Judicial Discretion**

The Youth Coalition recognises the difficulty many magistrates face in sentencing young people.

Firstly, magistrates must consider the social factors that contributed to the young person offending.

Magistrates must consider social factors such as mental health and/or substance abuse issues, homelessness, family circumstances, educational needs and so on in determining sentences for young people. We understand that courts do not typically collect information about factors correlated with juvenile recidivism - for example whether the young person is at school/in a job; whether they have alcohol and other drug abuse; whether they are living at home/in care etc.

We believe that this information should be collected so that sentencing decisions can place greater emphasis on rehabilitation and treatment for the issue that is the cause of the offending behaviour rather than punitive measures.

#### **Recommendation**

Secondly, magistrates must be aware of the non-custodial sentences available to them.

Magistrates dealing with young offenders must be made aware of the range of available sentencing options. They should be informed properly and systematically of the alternatives to detention. This requires regular flows of information from government departments and other organisations about relevant community programs.

### ***Increasing the knowledge base***

The Youth Coalition believes that it is important for government, courts and Corrective Services to be kept updated on all sentencing options (both national and international) and practises which have been subject to sound evaluation.

Further, we believe that a research unit should be established in the Children's Court. **This unit could research evidence of best practice, etc etc.**

For example, the Youth Coalition believes that there is a need for more research on transition between juvenile courts and adult courts to inform magistrates decisions.

### **Recommendation**

The evidence on existing alternative sentencing options should be promoted to the broader community, to increase knowledge and understanding about the outcomes of such options.

### **Recommendation**

Very few of Australian criminal justice programs have been rigorously evaluated (T from J to A, 2005). This needs to be undertaken so that magistrates can be informed about what types of programs have been shown to be successful with certain population groups and which have been unsuccessful.

Finally, services and programs must be resourced in order to support these sentences.

There are existing gaps in alternative sentencing options to both the ACT Courts and Corrective Services, for those individuals with multiple issues (ie mental health, drug and alcohol), or individuals who require special consideration (Youth Coalition, 2003). We resubmit the following:

*This is evidenced by the continual number of young people with multiple issues being inappropriately detained at the Quamby Youth Detention Centre due to what is believed to be a lack of appropriate options and services (such as when a young person may require therapeutic intervention). In these cases the Detention Centre may be used by the court in an attempt to keep the young person and the community 'safe', although the issues pertinent to the young person's offending behaviours would be best met through an alternative, however unavailable option. (Youth Coalition, 2003)*

The Youth Coalition believes that there should be an emphasis on treatment and rehabilitation of juvenile offenders affected by dual diagnosis rather than a more punitive approach.

### **Services and initiatives need to be available to support non-custodial sentencing**

Even though the *Children and Young Persons Act 1999* provides magistrates with a wide range of sentencing options, there is a lack of programs and services to give effect to these options. In our consultations, services identified a lack of:

- youth-specific dual diagnosis services (there is no dual diagnosis service in the ACT);
- youth-specific drug and alcohol rehabilitation programs;
- adolescent psychiatric inpatient unit and step-down facility;
- mild to moderate mental health services; and
- early intervention and prevention initiatives.

Our consultations also revealed that some services have specific eligibility criteria which may exclude certain young people from accessing their programs – this included YSAAP programs.

We resubmit the following from our 2002/03 Budget Submission:

*[T]he increase in the number of young people with mental health issues, intellectual disabilities, drug and alcohol issues and care and protection presenting before the children courts as a result of criminal matters, and entering Quamby Youth Detention Centre (Office of the Community Advocate Annual Report 2001 – 2002 and The Government's response to recommendations 1 and 3 of Coroner Somes' inquest into a death at Quamby) indicates a number of fundamental shortfalls in current policy and service delivery.*

### **Sector Viability**

Of course, services are limited in their capacity by the resources available to them.

The ACT Government has deinstitutionalised mental health services in Canberra. The Youth Coalition (2004) supports this position as it offers "freedom, choice, autonomy, mobility, privacy, safety, and proximity to family, friends and town of origin." However, we are disappointed to note that in general, the savings resulting from deinstitutionalisation have not been redirected to mental health services in the community. This lack of funding has contributed to a lack of appropriate services in the community, resulting in an increased burden on the juvenile justice system.

### **Lack of funding**

Services are seriously under funded, especially the non-government organisations which struggle to support consumers and their carers (Burdekin, 1993).

In the 2005/06 ACT Government Budget there was no funding directed to mental health or alcohol and other drug services and initiatives. We were particularly disappointed to note that the lack of funding in these areas considering the commitment that the ACT Government has made to early intervention and prevention.

### **Recommendation**

That the ACT Government commits funding to mental health and alcohol and other drug services and initiatives in the 2006/07 Budget, consistent with its commitment to early intervention and prevention.

### **A reliance on community programs**

Community programs and services are vital components to supporting young people experiencing homelessness and/or mental illness. Cupitt et al (1999) found Governments to be relying increasingly on non-government organisations to provide services but were treating them as peripheral in the allocation of funds.

This is particularly true for mental health as mild to moderate mental health issues tend to be left to youth services to deal with due to the prioritisation by specialist mental health services of moderate to severe clients. However, their ability to respond to both increased demand for services for young people is a continuing concern for the Youth Coalition, as outlined in our Budget Submissions for 2004/2005 and 2005/2006. Issues include:

- staff training;
- recruitment and retention;
- salary increments; and
- pay rates (Youth Coalition 2004, 2005).

These issues are of vital importance to the sector and need to be addressed so that it can continue to develop to become a cohesive and viable community sector in the ACT.

### **Recommendation**

That the ACT Government addresses sector viability as significant and important issue which affects the ability of the sector to deliver programs and support all young people. In particular, that the ACT Government make a commitment to increase salary increments and pay rates for the Youth Sector.

### **Early intervention and prevention**

Cupitt et al (1999) recommended 'added emphasis in health budgets' for mental health prevention. This need has also been identified and within the priority actions of the ACT Mental Health Strategy and Action Plan 2003-08 'prevention of mental health problems' and 'increased capacity for early intervention'(p45, 64, 65).

Our consultations indicate that there is a real need for early intervention and prevention initiatives for dual diagnosis. There are few resources currently being directed to this issue. We commend programs that provide early intervention and prevention and believe that more funding should be directed towards similar initiatives.

The Youth Coalition believes that number of young people going through the juvenile justice system would decrease if services were available to provide prevention and early intervention.

The *Blueprint for Young People 'at risk'* refers to *What works in reducing young people's involvement in crime?* by the Australian Institute of Criminology. The report emphasises the importance of early identification of young people 'at risk' of offending and addressing their problems through targeted interventions.

*The AIC research gives the ACT Government valuable information on the features successful crime prevention programs for young people should include. It provides a basis for assessing programs already in place in the ACT to prevent crime.*

### **Recommendation**

That the ACT Government directs funding towards early intervention and prevention programs for mental health and substance abuse.

It is well-known that multiple factors amplify the risk of recidivism, thus highlighting the importance of holistic responses from the community and government (criminal trajectories).

Mapping ACT Government Funded Programs for Young People at risk noted that support could be reviewed in the following areas:

- flexible support for disengaged young people aged 12 to 15 and 16 to 17 years in schools, colleges, and vocational education and training;
- educational assistance for young people in substitute care;
- age specific support for young people aged 16 to 17 years;
- drug and alcohol treatment support for young people up to the age of 18 years;
- centralised, broad-ranging follow up and support for young people from the ages of 12 to 25 years who have risk factors in their lives;
- follow up support for young people up to age 18 years when they complete youth justice orders;
- support to reintegrate young people in the youth justice system back into formal education and training;
- age specific support for young adults aged 18 to 25 years in the justice system; and
- support for young people who have been in the youth justice system and have turned 18 years old, to discourage them from moving to the adult justice system.

There are few services tailored to provide centralised support and ongoing assistance to young people when they leave the youth justice system. Assistance is provided to young people once they are placed on community or detention orders by the courts, but this is confined to the time the young people are on the orders. Services for young people with life risk factors are available, but could be more tailored to the needs of young offenders.

There are no specific programs for young adults who have offended in the justice system and are at risk of reoffending. These young people can access five programs in the adult justice system. This appears to be a gap in services. Young adults may have different needs to older adults.

#### Discussion Paper – Developing a blueprint for young people at risk

Young people aged 16 to 17 years who are initial or minor offenders Young offenders in this age grouping may have either a low or high risk of further offending, and some will never reoffend. They can be difficult to target and support when they are outside the formal education and the justice system. Diverting these young people away from the justice system is a priority. Programs targeted at particular needs, that address areas of risk, and encourage them to continue with education and training have been shown to be effective. Young people in this group, who are not enrolled in education and training programs and have risk factors in their lives, should be targeted for additional

support. Young people aged 16 to 17 who are persistent or serious offenders. Offenders in this age grouping have a high risk of reoffending and imprisonment. They will, in many cases, have a history in the juvenile justice system and have participated in many rehabilitation programs. Intensive interventions in these young people's lives should assist in keeping them out of prison and juvenile detention. Involving them in activities that improve their skills and employment prospects is important to their long term rehabilitation.

Pathways to Prevention: developmental and early intervention approached to crime in Australia

Sentencing Review: Issues The Review considers that ensuring adequate continuity of care for these offenders represents a significant challenge for the ACT government agencies that work with them. Anecdotal evidence from these agencies indicates that the problems confronting many of these offenders are very deep-seated and are not quickly resolved. In addition, young offenders with substance abuse and/or mental health problems may also be the victims of abusive family relationships, have delayed development and have difficulties accessing appropriate accommodation. Where offenders serve time interstate, ACT agencies have little ability to influence service delivery by NSW agencies to those offenders or to ensure that their care is adequately coordinated. Where offenders are given non-custodial sentences with conditions relating to treatment, there can be difficulties in monitoring offender compliance with those conditions. Users of illicit drugs who commit property and other offences – treatment combined with reparation may be a better sentencing option. Treatment within criminal justice system for an addiction should be independent of correctional and other processes

### **Seen and Heard**

The Inquiry has received extensive evidence of the problems and failures of legal processes for children. Of particular concern is evidence of

- \* discrimination against children, despite Australia's obligations under the International Covenant on Civil and Political Rights (ICCPR) to guarantee equal treatment before the law<sup>[12]</sup>
- \* failures, to some degree by each of the institutions of the legal process, to accommodate the changing notions of children's evolving maturity, responsibilities and abilities, and in particular a consistent failure to consult with and listen to children in matters that affect them
- \* the marginalisation of children involved in the legal process, whether by teachers, social workers, lawyers or judges, when decisions that are of significant concern to children are being made
- \* a lack of co-ordination in the delivery of, and serious deficiencies in, much needed services to children, particularly to those who are already vulnerable

- \* the systems abuse of children involved in legal processes, particularly the appalling state of care and protection systems throughout Australia and the manner in which child witnesses are treated
- \* the increasingly punitive approach to children in a number of juvenile justice systems
- \* the discriminatory impact of certain legal processes resulting in the over-representation of some groups, particularly Indigenous children, in the juvenile justice and care and protection systems
- \* the concentration of specialist services and programs in metropolitan areas, disadvantaging rural and remote children in their access to services, the legal process and advocacy
- \* inconsistencies in legislation dealing with legal capacities and liabilities of children.

1.31 Appropriate participation by children in legal processes is often difficult because legal processes are not designed for children. In making our recommendations, the Inquiry has had regard to the barriers that an adult legal system presents for children. Our emphasis is on appropriate and effective participation for children. The Inquiry does not advocate wholesale involvement of children in all legal matters or processes. However, where children are mature enough and willing to participate in the legal process, that participation should be on the basis that children are the beneficiaries of all of the law's protections.

Children involved in care and protection systems may have some of the most extensive dealings with legal processes. These processes include the investigation of suspected abuse and neglect, involvement in courts and continued dealings with various aspects of the system after the court processes are finished.

The major issues of concern about sentencing expressed to the Inquiry included

- \* insufficient and/or inappropriate programs for the rehabilitation of young people and, in particular, the limited availability of drug counselling and rehabilitation for young offenders
- \* the limited range of sentencing options in particular jurisdictions
- \* the discriminatory impact of sentencing policies on young people from rural and remote communities who have access to a limited number of rehabilitative options and who are detained far from their families and communities
- \* legislation in Western Australian and the Northern Territory that sets mandatory minimum sentences for certain offences and consequently prevents all relevant factors affecting the particular child being taken into consideration when sentencing
- \* the shift to more punitive sentencing regimes for young offenders which governments seek to justify by reference to a juvenile crime wave,

notwithstanding that there has been no significant increase in juvenile crime in Australia for the past decade.[\[9\]](#)

Factors that should be considered when sentencing include: the nature and seriousness of the offence, age, maturation, parental or significant other support, environment, education, activities, drugs or substance abuse, programmes or options for support on sentencing, any disability and special needs of the individual. [\[31\]](#)

The factors which should be taken into account in sentencing include the youth's

- \* previous history, whether the offence is isolated or chronic
- \* reason for committing the offence
- \* state of mind at the time of the offence
- \* care and protection issues which impact on the youth's behaviour
- \* admission of responsibility and preparedness to make restitution
- \* capacity for rehabilitation.[\[32\]](#)

### **Training the magistracy**

19.89 19.91 The judicial training proposed in recommendations 236 and 247 should include training on the range of sentencing options available in each jurisdiction, the benefits of each option and the circumstances in which they are likely to be most effective.

19.92 The Inquiry agrees with submissions advocating training for magistrates in the relevant factors in sentencing and the weight which should be attached to them, as a means of achieving greater consistency and fairness in sentencing decisions.[\[162\]](#)  
any young people are incarcerated instead of being given appropriate treatment for their mental illness.

[167\]](#)

19.98 In a submission to the Inquiry, the Mental Health Legal Centre recommended

Once the child has been placed, whether on a non-custodial program, in a correctional centre or a care and protection residential set-up, there should be ongoing assessment and treatment. Again, this should not be conducted on an ad hoc basis, but in a way that ensures problems are identified, and treated, in as many cases and at early and constructive a stage as possible.

As suggested above, permanent, trained staff should be employed by the courts and institutions which have responsibility for children post-sentence to provide assessment, support and treatment to all children encountering the system, irrespective of their means or level of legal representation.[\[168\]](#)

The Inquiry endorses these proposals.

19.102 Submissions expressed concern about the lack of appropriate sentencing options for young offenders who are substance abusers. In Victoria there are no youth-specific residential rehabilitation centres. Young substance abusers are required to attend adult oriented programs with adults.[\[172\]](#)

19.103 The Youth Advocacy Centre highlighted the lack of adequate programs and support services for these offenders in Queensland.

When representing a drug-addicted client there are few options available to the legal representatives and their client. There are no detoxification units for children and drug counselling is expensive and virtually non-existent. The magistrates often say in court that the child must attend drug and alcohol counselling as directed by the Department of Families, Youth and Community Care but readily acknowledge that they know the department "ignores this". Therefore children are frequently sentenced to custody due to the

Young people released from detention commonly face difficulties re-integrating into the community, particularly in continuing education or training or obtaining employment. They can also encounter problems with simple tasks in day-to-day life. One submission to the Inquiry pointed out

[s]ome young people who are locked up for several months find it difficult on release to walk into a shop and make a purchase.[\[304\]](#)

20.129 A number of submissions raised concern over the lack of assistance given to offenders after detention.[\[305\]](#) One submission noted

[t]he lack of ongoing support creates a huge chasm between the structure of the detention centre and the unstructured world outside.[\[306\]](#)

Young people, in a survey conducted as part of the Inquiry, said

[b]oys are still not told of all the support they can get on the outside.[\[307\]](#)

Should have more support for boys when they leave JJC [Juvenile Justice Centre].[\[308\]](#)

20.130 Submissions and evidence presented at public hearings emphasised the importance of community re-integration programs in rehabilitating young people in detention and preventing them from re-offending.[\[309\]](#) Support for young people during and after detention is important. However, support after release is particularly important for the detainee's re-integration into the community.

Experience suggests that most programs within detention centres...will only affect their behaviour if the external environment supports them on release.[\[310\]](#)

## **Research and Evidence**

The Youth Coalition supports the longitudinal research study currently being undertaken by the Office of the Community Advocate regarding transitions by young people in and out of Quamby.