

Submission

No 12

INQUIRY INTO CHILDREN AND YOUNG PEOPLE 9-14 YEARS IN NSW

Organisation:

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Date Received: 30/04/2008

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30 April 2008

Inquiry into Young People Aged 9-14 years

I am an academic lawyer and researcher currently completing a doctorate in law at the University of Sydney. I am employed as a lecturer in the Law School at the University of Newcastle. My teaching and research are focused on child law, and the way in which lawyers represent children in child protection, family law and criminal proceedings. Aspects of my research are relevant to the terms of reference of this Inquiry, particularly Terms of Reference 1, 2 and 3. I have recorded my concerns under these headings. This submission is my own and does not represent the view of any organisation or other person.

The main concern I wish to raise is the lack of welfare services for young people who have contact with the criminal justice system in the age group being considered by the Inquiry. The age of criminal responsibility is 10 years. Whilst the majority of young people who are charged with offences are over the age of 14, there is a smaller group of children aged 10 to 14 years who experience very high levels of disadvantage, but who often do not have access to basic welfare services, including accommodation, which they may need. My research was qualitative in nature, but suggested that certain children are over-represented in this group, including Aboriginal and Torres Strait Islander children, children with mental health problems, children with developmental disability, and children with a combination of these factors.

Terms of Reference

1. The needs of children and young people in the middle years (9-14)

Children in the middle years have significant needs for physical, emotional and social support. Some children are clearly disadvantaged in that their parents are unable to provide the kinds of support they need during these years. There is much evidence to show that children who come into the juvenile justice system are more likely to be homeless, to have other family members who have had contact with the juvenile justice or criminal justice systems, to have drug and alcohol problems or come from minority backgrounds. In some countries, such as Scotland, children who have offended are seen as children in need of care and dealt with using a similar process to other children in need of care. Children and young people who offend share many

characteristics and in many ways overlaps with the group of children who come to the attention of DoCS, as children in need of care.

2. The extent to which the needs of children and young people in the middle years vary according to age, gender and level of disadvantage

The evidence suggests that children who are socially disadvantaged, in the ways I suggested above, are likely to have much greater physical, social and emotional needs than other children in this age-group. My concerns are that children in these middle years tend to be overlooked, particularly when they become visible to welfare authorities as a result of contact with the criminal justice system.

A number of metropolitan and country lawyers in my study (described below) raised significant concerns about the fact that young people charged with crimes were sometimes homeless. When lawyers obtained bail for a child, this usually included a condition that the child had somewhere to reside. In a number of cases DoCS was very reluctant to become involved with these young people many of whom were young adolescents. Some were Indigenous, and some had mental health problems. They were very vulnerable and in need of suitable accommodation. In some instances, lawyers mentioned the fact that their clients were being remanded into detention centres for up to three months as a result of having no accommodation. This situation was rightly seen as being highly problematic in relation to the overall principles of the criminal justice system and a damning reflection on welfare support for vulnerable children. It appears to be the case that DoCS avoids getting involved with children and young people who have become involved in the criminal justice system, even though there is ample evidence that children who are in need of care and protection often have experience of and contact with the criminal justice system. Such children may not be assessed (if they even reach the point of assessment following a notification) as a Level 1 priority. One metropolitan lawyer illustrated the extent of the problem:

“Often Juvenile Justice take a more active role in terms of accommodation and addressing the needs of the child. I’ve had information from various sources in terms of DoCS that unless someone is a [level] 1 and is in immediate risk of ...physical harm then they just don’t have the time to read their files or find them accommodation. We’ve left kids at the stairs of DoCS banging on the door. [E]ffectively I got left with a 10 year old last Friday, after court had shut, until 8 o’clock at night because we were driving around trying to find someone to take them and we couldn’t and we weren’t getting any assistance from anyone. Certainly that’s not my role as a solicitor but you can’t leave a 10 year old out on the street... I’m not a cryer, but I cried last Friday at the bar table, because there were ten DoCS kids that were there and just had nowhere to go and there was one little kid was like, barely waist height, and you know, hugging me all the time because I was the only person that was there to help. Like there was no-one there for him...”

If this is an issue of resources, it needs to be given urgent attention.

3. The activities, services and support which provide opportunities for children and young people in the middle years to develop resilience.

It appears that DoCS may not have the resources or focus to properly support these disadvantaged children, who are likely to be one of the most disadvantaged group of

children in this age-group. Careful consideration needs to be given to the resourcing of welfare support for this group, including accommodation and support which will make a positive contribution to the life-chances of this group of children and young people. There are some positive resources available in relation to legal services for young people: most particularly, the Children's Legal Service, in New South Wales Legal Aid. This service, however, is only available in metropolitan Sydney and cannot provide support outside of this area. In addition, Aboriginal Legal Services tend to be poorly resourced to meet the very significant needs of Aboriginal children and young persons facing the courts. Aboriginal children are highly over-represented in the group of children who come into contact with the courts, and I suspect the evidence would support the fact that they are younger when they first come before the court compared with other children. This is not surprising given the serious social and economic disadvantage which many Aboriginal families suffer. This issue is greatly exacerbated by a lack of support, including accommodation, for such children.

Recommendation

Funding of relevant services in this area could include emergency accommodation and family support services targeted to areas of need. My interviews suggest that there needs to be much better cooperation and coordination between DoCS, Juvenile Justice and DADHC in relation to meeting the needs of these children.

Description of my research

The dissertation includes an empirical (qualitative) study of how lawyers represent children in juvenile justice, child protection and family law. In 2006, I interviewed 35 lawyers who represent children across New South Wales, in metropolitan, regional and rural areas. A number of these lawyers represent children in two or all three areas of law. The lawyers were employed through the Legal Aid Commission, Aboriginal Legal Services or were private practitioners, allocated to Legal Aid panels.

I am happy to be contacted should you require further information.

Yours sincerely

Nicola Ross