

**Submission  
No 2**

## **INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW**

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## **Inquiry into the adequacy of youth diversionary programs in NSW**

**Submission from Dr Garner Clancey<sup>1</sup>, University of Sydney Law School**

### **Background:**

I am currently a Senior Lecturer in Criminology at the University of Sydney Law School. I have recently been involved in projects focused on young people and their involvement in crime / the criminal justice system. I previously worked for the NSW Police Force (1999-2002) and the NSW Department of Juvenile Justice (1992-1999) and have had over 25 years of engagement in youth crime/juvenile justice-related issues in various contexts.

### **Introductory Comments:**

Before making brief comments on some of the Terms of Reference, I believe that it is critical to set discussions of this Inquiry against the backdrop of **falling youth crime in NSW**. Data obtained from the NSW Bureau of Crime Statistics and Research (File Reference jh17-15120) for use in recent research projects shows significant falls in various common youth crime categories. Table 1 shows the size of the declines according to offence categories, showing the number of incidents reported to the NSW Police Force attributed to persons of interest aged between 10 and 17 years in 1998 compared with 2016.

**Table 1: Comparison of number of youth crime incidents in 1998 and 2016**

<b>Offence</b>	<b>1998</b>	<b>2016</b>	<b>% Decline</b>
<b>Break, Enter and Steal</b>	1966	701	64%
<b>Motor Vehicle Theft</b>	2035	385	81%
<b>Robbery</b>	1016	324	68%
<b>Steal from Motor Vehicle</b>	1266	507	60%
<b>Non Domestic Violence-Related Assault</b>	2707	1694	38%
<b>Retail Theft</b>	3049	2059	33%

Source: NSW Bureau of Crime Statistics and Research (BOCSAR) File Reference jh17-15120

Unsurprisingly given these falls in youth crime, there have been significant reductions in the number of formal criminal justice interventions administered to young people in this period, as outlined below:

- The number of juvenile offenders processed by the NSW Police Force by way of caution has varied over the period from 1998 until 2016, peaking in 2008 with 12,517 offenders processed this way. However, the use of cautions has consistently declined from 2008 to

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<sup>1</sup> Thanks to Kajhal McIntyre for her research assistance which has informed the introductory comments of this submission.

2016, with only 6919 offenders dealt with this way in 2016 (a **48% decline between 2008 and 2016**).

- The number of juvenile offenders processed by the NSW Police Force by way of youth justice conference has varied over the period from 1998 until 2016, peaking in 2001 with 1690 offenders processed this way. However, the number of juvenile offenders processed by youth justice conferences consistently declined from 2008 to 2016, with only 647 offenders dealt with this way in 2016 (a **50% decline between 2008 and 2016**).
- The number of juvenile offenders proceeded against to court fell by 31% between 1998 and 2016. Between 2003 and 2008, the number of juvenile offenders proceeded against to court increased, peaking in 2008, with 26,192 juvenile offenders proceeded against to court. However, between 2008 and 2016, the number of juvenile offenders proceeded against to court consistently declined, falling to 17,233 juvenile offenders in 2016 (a **34% decline between 2008 and 2016**).

Taken together, the data suggests dramatic changes in youth offending in NSW in recent years (especially since 2008). The reasons for these declines are not completely clear, but similar declines in other jurisdictions suggest that the causes are not completely local in nature (i.e. NSW-centric). The United Nations Economic and Social Council found in 2013 that the rate at which children<sup>2</sup> were brought into formal contact with police decreased worldwide by 18% from 2005 to 2011. The decrease was larger in the Americas (-24%) and smaller in Asia (-7%) and Europe (-6%), while the rate increased in Africa (+6%).<sup>3</sup> Similarly, Berghuis and Waard found that registered juvenile crime had dropped dramatically across five Western nations over the period from 2000 until 2015. Their analysis was based on a comparison of publications from various countries, hence the national measurements are not directly comparable.<sup>4</sup> Nevertheless, their study clearly demonstrates a downward international trend.<sup>5</sup>

### Terms of Reference:

Brief comments are now provided in response to particular elements of the Terms of Reference.

1. The Police – The NSW Police Force dedicates significant resources to youth issues, including through deployment of Youth Liaison Officers (YLOs), School Liaison Police (SLPs) and Youth Case Managers (YCMs) who are based at Police and Citizen Youth Clubs (PCYCs). YLOs play a critical role in diversionary efforts in NSW and their work should continue to be supported.

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<sup>2</sup> Countries were asked to supply data on children in conflict with the law (children being persons under 18 years of age, unless under the law applicable to children majority is attained earlier).

<sup>3</sup> United Nations Economic and Social Council (2013). Note by the Secretariat on world crime trends and emerging issues and responses in the field of crime prevention and criminal justice. Commission on Crime Prevention and Criminal Justice, Twenty-second session, Vienna, 22–26 April 2013, E/CN.15/2013/9.

<sup>4</sup> Their data sources for the five nations were as follows: Germany: Polizeiliche Kriminalstatistik 2015: Kinder und jugendliche Tatverdächtigen, Wiesbaden: Bundeskriminalamt; Canada: M.K. Allen & T. Superle, Youth crime in Canada, Ottawa: Statistics Canada, Canadian Centre for Justice Statistics, 2016; UK: Youth justice statistics, 2014/2015 England and Wales, London: Ministry of Justice, Youth Justice Board; New Zealand: Child and youth prosecution tables, Wellington: Statistics New Zealand, 2016; US: Juvenile arrest rate trends, 2015, Washington, DC: U.S. Department of Justice, Office of Justice Programs.

<sup>5</sup> Berghuis, Bert & De Waard, Jaap (2017) Declining juvenile crime – explanations for the international downturn. *Justitiële Verkenningen*, 43, 5–23, p 4.

In particular, they are responsible for reviewing charges laid against young people in their Police Area Command (PAC); for issuing police cautions; for liaising with Juvenile Justice NSW regarding the holding of youth justice conferences; and monitoring diversionary measures in their PACs. The introduction of YLOs in the late 1990s had a significant positive impact on the implementation of the *Young Offenders Act 1997* and they remain critical to diversionary efforts.

2. Juvenile Justice NSW – Juvenile Justice NSW has historically had a limited role in diversion. The Youth on Track program provides Juvenile Justice NSW with a more central role in diversion. Youth on Track, a multi-agency early intervention program targeting 10–17 year olds who are at risk of long-term involvement in criminal behaviour, now operates in six different areas (listed below) across NSW. The program attempts to engage and work with those young people at risk of offending who are not under supervision of Juvenile Justice NSW.

The program focuses on intervening early, engaging families and providing targeted, individualised interventions to address the underlying causes of the young person’s involvement in crime.

The six current locations (covering 13 PACs) are:

- Blacktown
- Hunter
- Mid-north Coast
- Central West
- Coffs
- New England

It is understood that evaluations of Youth on Track will be finalised in the coming 12-18 months. These evaluations will be critical to determining the benefits (or otherwise) of this program and any attempts to expand the program should wait until these evaluations are completed (it is noted that positive comments have been made about the program by the Minister for Corrections in the 2017 Budget Estimates hearings).

No commentary is provided about the work of other organisations in this area, other than to urge greater sharing of resources across government and non-government organisations. As government devolves more services to non-government organisations, there is a risk that multiple agencies will contribute to diversionary activities resulting in potential duplication of effort. If programs are recognised as being ‘best practice’ and it is considered desirable to import them or implement them in NSW, then there should be an attempt, for example, to enter into a single licensing agreement rather than having multiple non-government organisations negotiating with program designers.

3. Aboriginal over-representation in the Juvenile Justice system – little needs to be said, as the continued over-representation of young Aboriginal people in the NSW juvenile justice system is an ongoing disgrace. According to the 2016-17 Juvenile Justice Year in Review report, approximately 54% of the average number of young people in custody were

Aboriginal; this is despite the fact that young Aboriginal people constitute less than 3% of the people of young people in NSW.

Historically, young Aboriginal people have not been offered the same opportunities for diversion as non-Aboriginal people. More needs to be done to enable young Aboriginal people to seek and receive legal advice before being interviewed by police and more programs offered that provide support to vulnerable Aboriginal children and young people, especially in rural and remote areas.

4. Evaluating outcomes and identifying areas of improvement – it is an obvious statement that greater importance needs to be given to evaluating the outcomes of diversionary programs and measures. However, evaluating outcomes in the context of multiple agencies working in a single geographical area, often with the same clients, means that it can be a difficult exercise in reality. Unless an independent organisation is conducting the research, little attention can be given to collecting the type of data that would usefully explain any changes in offending or the benefits of diversion in an area.
5. Staff capacity and training requirements – I do not offer any comments on these issues.
6. Case management options – Case management is often seen as the solution to problems associated with young people’s involvement in crime. However, numerous practical problems often arise. If young people are not mandated to attend programs or services, then it can be very difficult to encourage their participation (see the modest rates of engagement of young people in the Youth on Track Program). Moreover, the nature of the case management can be confusing for young people on the edge of the juvenile justice system. There has been a trend toward offence-focused interventions for young people engaged in crime in recent years – this can be problematic for young people who have had little engagement in crime, as they do not generally see themselves as requiring such interventions. Similarly, case management approaches often presume that the individual young person take responsibility for their offending behaviour and focus on characteristics of the young person. Their involvement in crime and other challenges they face might be the result of family violence, child protection issues, homelessness, mental illness, etc. Consequently, case management approaches should not seek to ‘treat’ the individual to the exclusion of assisting with wider risk and protective factors not in the young person’s control.
7. Bail issues - I do not offer any comments on these issues.
8. The experience of other jurisdictions – I only wish to suggest here that while the experience of other jurisdictions can provide useful insights into possible opportunities for new programs, that caution should be exercised in looking for solutions from other jurisdictions. NSW has particular geographical, historical, and administrative circumstances that might mean replication of programs from other jurisdictions is problematic in the NSW context. I would encourage greater attempts to understand what has and has not worked locally than investing energy always seeking solutions from elsewhere.