



Youth Justice Strategic Policy Paper

Companion to the draft Youth Justice Administration Bill



Government of South Australia

Department for Communities
and Social Inclusion

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Introduction

Children and young people who become involved in the criminal justice system present a complex task for Government. When dealing with youth, the justice system requires a balance between a justice and rehabilitation response, delivered within a family and community context.

The *Youth Justice Administration Bill* (YJAB) is draft legislation related to the supervision of orders issued by a criminal court to children and young people. It outlines the powers and functions of the responsible Minister, the Chief Executive and Departmental Officers in respect to both custodial and community based supervision services.

The *Young Offenders Act 1993* and the *Youth Justice Administration Bill* are intended as companion pieces of legislation, therefore parity and consistency between the two has been a guiding principle during the drafting process.

This Strategic Policy Paper has been prepared to assist those who have an interest in the proposed legislation to understand the purpose, why it is needed, and how strategic policy will support the implementation of the draft YJAB.

Youth Justice system in South Australia

The criminal justice system is made up of a number of interacting parts, each of which have different functions, generally drawn from legislation relevant to criminal law. Primarily, the criminal justice system constitutes the South Australia Police, the Court system, prosecution and defence (legal services), and the agencies which administer orders from a Court (custodial and community). In South Australia, the Department for Correctional Services provides supervision for adults and the Department for Communities and Social Inclusion (DCSI) provides these services for young people, through the Youth Justice Directorate.

Terminology and Naming Conventions

Children and young people

The term 'children and young people' is the term generally applied when referring to individuals to whom the *Youth Justice Administration Bill* will apply. While in a legal sense, Youth Justice has responsibilities for the supervision of individuals between the ages of 10 years and 17 years in relation to an offence, it is acknowledged that there are significant developmental differences between a 10 year old child and older youths. The term 'resident' is also used in this Paper and refers to those children and young people who are detained in a youth training centre.

Aboriginal and Torres Strait Islander people

The Department for Communities and Social Inclusion recognises the diversity of Aboriginal and Torres Strait Islander peoples and that there are many different Aboriginal groups in South Australia. For the purposes of this paper however, Aboriginal children and young people or Aboriginal people will be applied throughout this document.

The Department also acknowledges that some Aboriginal young people in South Australia, who have been through ceremonial business or initiation, are considered to be men and women.

No disrespect is intended by the use of any of the general descriptors outlined above.

Acronyms

There are several titles that are repeated throughout, and for this reason acronyms are applied in these circumstances:

- Department for Communities and Social Inclusion (DCSI);
- *Youth Justice Administration Bill* (YJAB);
- *Young Offenders Act 1993* (YOA);
- *Family and Community Services Act 1972* (FCSA);
- Adelaide Youth Training Centre (AYTC).

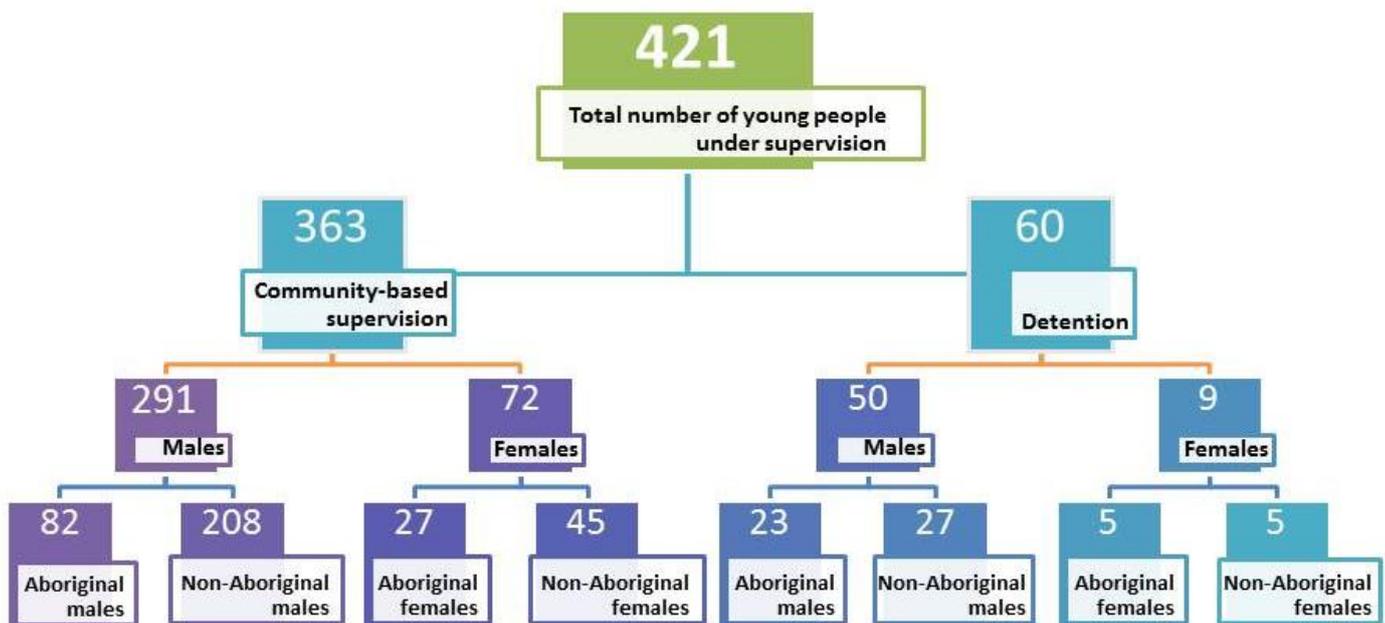
Young people in the youth justice system: What do we know?

A proper understanding of the children and young people who enter the youth justice system, and why they enter, is required to guide the development of legislative and policy responses to address youth offending.

The recent *Youth justice in Australia 2013-14 Bulletin* (The Bulletin; Australian Institute of Health and Welfare) found that, in general, South Australia's trend data is in line with national averages. This trend has seen the number of young people under youth justice supervision decreasing over the past four to five years. In South Australia in 2013-14, there were 421 young people under supervision on an average day, the majority of whom were serving community-based orders (see Figure 1). Data indicates that most young people serve only one youth justice sentence and never return (AIHW, 2015) and, in South Australia, this is most commonly a sentenced community-based order (AIHW, 2014).

Youth Justice Supervision in SA on an average day in 2013-14

Data published by AIHW – Youth Justice fact sheet no. 41 – South Australia: youth justice supervision in 2013-14



Note: This figure does not include those who were 'diverted' from a supervised order (e.g. police caution, family conference) nor does it include those who received a non-supervised community-based order. For a more detailed analysis, see the Australian Institute of Health and Welfare, *South Australia: youth justice supervision in 2013-14 Factsheet*.

As in the adult correctional population, Aboriginal children and young people continue to be over-represented in the youth justice system in South Australia. According to the 2015 Report on Government Services (RoGS), South Australia's average daily rate of Aboriginal over-representation in both detention and community supervision in 2012-13 was below the national average. However, despite some positive indications, we have more work to do.

Children and young people involved in the criminal justice system are more likely to have had contact with the child protection system, be disengaged from education, experience disadvantage and poverty, and are more likely to experience mental health issues (Richards, 2011; Homel, Friegberg, Branch & Huong Le 2015; NSW Government, 2009; Monsignor Cappel, Social Inclusion Board, 2007). The Government has a responsibility to meet the needs of the range of young people with whom we work, not only in terms of legislative policy and service design, but also in how we work with our partner agencies.

Overview of Youth Justice Directorate services

Our Vision:

“Children and young people in the justice system are inspired to change and positively participate in their community.”

Our Mission:

“Contribute to community safety by leading collaborative and evidence-informed statutory services to children and young people in the justice system to reduce re-offending and acknowledge victims of crime.”

The Youth Justice Directorate, DCSI is responsible for supervising orders issued by South Australian Courts for children who were aged 10 to 17 years at the time they committed (or allegedly committed) a crime.

DCSI, Youth Justice services are accountable to South Australian Government legislation and policies, informed by national standards and international convention and are founded on evidence-based policy and practice. DCSI, Youth Justice services are oriented towards accountability for actions and the development of community integration, whilst recognising that children and young people have specific developmental needs different to those of adults and consequently require a different and youth (criminal) justice response.

YJAB: an overview

Summary of the key objectives of the YJAB

- clearly defines the legislative powers and responsibilities of the Minister, Chief Executive and departmental officers;
- provides a legislative framework for contemporary and best practice approaches to the management of young people in custodial environments and subject to community based supervision;
- reflects the particular experiences of Aboriginal young people in the justice system;
- reflects that assessment, case planning and rehabilitation programs are key to crime reduction objectives;
- reflects the important contribution of families and communities in supporting young people;
- aligns with the objects and policy principles contained in the YOA;
- aligns with and reflects the rights of victims and promotes community safety;
- aligns with national, international protocols and agreements in respect of administration of youth justice;
- aligns with and reflects South Australian and Government strategic planning; and
- is forward thinking in allowing for growth and continuous improvement in Youth Justice

Objects and guiding principles

The objects and guiding principles of the YJAB have been developed to reflect best practice knowledge about achieving a balance between recognition of the vulnerability of children and young people, responding to their rehabilitation needs in the youth justice system and the importance of community safety.

The YJAB has been developed with consideration of national and international standards and State Government policy frameworks, including:

- South Australia's Strategic Plan;
- UN Standard Minimum Rules for the Administration of Juvenile Justice (1985) (Beijing Rules);
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990) (Havana Rules);
- UN Convention on the Rights of the Child (1989);
- UN Declaration on the Rights of Indigenous Peoples;
- Australasian Juvenile Justice Administrators: Standards and National Principles; and
- Guardian for Children and Young People model charter of rights for children and young people detained in youth justice facilities.

In line with these guiding frameworks, the YJAB will be supported through key areas of policy development. Age, gender, disability, culture, race and other particular needs must be considered in the design of service delivery. Central to the strategic direction of Youth Justice in South Australia is a commitment to ongoing development and innovation through an emphasis on evidence-based assessment, case planning and program response, which includes family and community as key participants in the process.

Rehabilitation: evidence based interventions

In South Australia, a long held policy position has been that a young person's family, both immediate and extended, forms a key role in supporting a young person to lead a non-offending lifestyle. However, there has been a significant increase in the body of evidence on the positive impact that family-based interventions can have when working with young people in contact with the justice system.

To ensure this policy position is supported in legislation, the YJAB includes a principle and objective that family inclusive practice should be applied wherever practicable. This sets a clear legislative framework, which acknowledges that children and young people live their lives in a family and community context.

DCSI applies a case management service delivery model that requires assessment of a young person's family circumstances. A young person's family or primary caregiver is invited, wherever practicable, to contribute to the planning goals of the young person.

To express a commitment to evidence-based, family focused practice, the Youth Justice Directorate, DCSI has identified the need to develop and implement a Family Inclusive Practice review. This review will involve an audit of practice, procedure and workforce training from a family inclusive practice approach, will consider action in other jurisdictions and make recommendations for future policy direction.

Working with Aboriginal Children and Young People

Key reports which inform Youth Justice legislation and policy:

- The Royal Commission into Aboriginal Deaths in Custody (1991);
- To Break the Cycle (Cappo, 2007)
- Doing Time - Time for Doing (House Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011)
- Extract New Beginnings Report (Council for the Care of Children 2013)
- A Brighter Future (Amnesty International, 2015)
- Justice or an unjust system? Aboriginal over-representation in South Australia's juvenile justice system (South Australian Council of Social Services, 2015)

While the need to recognise different cultural backgrounds is included in the overarching objects and guiding principles of the YJAB, it was also important to include Aboriginal children and young people more specifically, given the over-representation of this group in the justice system. It is also important to recognise that this is as a result of the effects of colonisation, inter-generational trauma and compounded grief and loss experiences.

DCSI is in a strong position to contribute to a more effective and integrated whole of government and community services sector approach to further reduce the over-representation of Aboriginal young people in the justice system. The principles contained in the YJAB for working with Aboriginal children, young people and their families represent a foundation for further policy development.

Included for the first time in Youth Justice administrative provisions in South Australia, is a specific principle requiring that a range of practices are considered when working with an Aboriginal child or young person. This principle is one that supports a

policy position of self-determination for Aboriginal children and young people.

The principle requires culturally appropriate assessment and case planning which is inclusive of family, kinship, and community in decision-making and requires that services are culturally relevant to the needs of the child or young person.



The YJAB will contribute to the current framework for culturally competent policy and practice within DCSI. Examples of broader policy initiatives within the Department include:

- **DCSI Aboriginal Priorities Plan (2015-18)**: has young people who are involved with or at risk of involvement with youth justice as a priority focus;
- **DCSI Aboriginal Employment Strategy (2014-16)**: sets targets for increasing Aboriginal employment within the Department; and
- **Youth Justice Aboriginal Cultural Inclusion Strategy (2015-18) and Action Plan (2015-16)**: to increase cultural competency in policy and practice responses.

Important to DCSI policy development in relation to Aboriginal children and young people is the **Youth Justice Aboriginal Advisory Committee**. This committee contributes to the strategic direction of DCSI policy and has provided feedback during the development of the YJAB.

Following the implementation of the YJAB it is intended that, in collaboration with the Youth Justice Aboriginal Advisory Committee, the development of inspection standards for Aboriginal children and young people in detention will take place. The standards will provide a policy framework for ensuring best practice service delivery for Aboriginal children and young people in a custodial environment.

Culturally and linguistically diverse populations

It is the case that children and young people in the youth justice system come from a broad range of culturally and linguistically diverse backgrounds. More recent experiences of newly arrived immigrants (including unaccompanied minors) have been a focus of Youth Justice policy and practice development. It is intended that continued relationship building and partnership with agencies who support young people from culturally and linguistically diverse populations will result in better outcomes for this group.

Community Youth Justice

In meeting the needs of the children and young people under supervision in the community, new provisions are outlined in the YJAB, while others have been retained in the *Criminal Law (Sentencing) Act 1988*. These new provisions in the YJAB recognise the significance of the work done in the community setting.

The Youth Justice Directorate, DCSI, supervises young people in the community who have been given a Youth Court order – for example, basic supervision, community service, supervised bail and home detention. Community Youth Justice uses individually tailored case-management, based on comprehensive assessment to meet the needs of each young person.

With a commitment to improve and innovate, the Youth Justice Practice Development Committee provides structured governance to ensure that practice development initiatives are linked to primary organisational goals, such as community safety and client-centred practice. This Committee will play a significant role in ensuring that the new legislation, when enacted,

is fully incorporated into on-the-ground services and in setting a framework for future development.

Adelaide Youth Training Centre

The AYTC, or Kurlana Tapa (the Kaurna name for 'new path'), is a one-centre two-campus facility which seeks to work hand in hand with residents in guiding them onto a more positive, new path.

Ensuring the care and well-being of children and young people in a custodial environment carries great responsibility. It is for this reason that the provisions contained in the YJAB will provide a comprehensive legislative scheme for the administration of a youth training centre.

Provisions relating to the use of force, the use of safe rooms and drug testing of residents are some examples where clear legislative parameters are necessary to ensure the safe and secure functioning of the facility but equally ensure the rights and well-being of residents are maintained.

The YJAB also includes provisions requiring that education and health needs are met while in custody through the co-located agency model currently in place at the AYTC.

Key to delivering the objects of the YJAB in relation to custodial management, the AYTC has in place the Behaviour Support Framework which enables young people to take greater responsibility whilst in custody to better prepare them for release. The Behaviour Support Framework includes the Progression Model which assists residents to reach short and long term goals, develop skills, address underlying patterns of behaviour and take responsibility for their choices. Through this model of behavioural support, and working closely with our agency partners, the AYTC promotes a safe custodial environment and a service response tailored to individual needs.

Training Centre Visitor

The YJAB maintains the vital role of the Guardian for Children and Young People in monitoring the conditions and well-being of young people who are detained in the AYTC. A monitoring role is fundamental to meeting international (United Nations) protocols relating to the detainment of children and young people.

These provisions, while aligned with the Guardian's powers and responsibilities contained in the *Children's Protection Act 1993*, have been amended to reflect the custodial context.

These provisions further strengthen accountability and transparency in the training centre environment and provide a framework for the Optional Protocol to the Convention Against Torture (OPCAT) should it be ratified.



Managing our population

Criminal Law in South Australia allows for young people to remain under Youth Justice supervision beyond their eighteenth birthday if they are charged with, or found guilty, of offences which occurred before their 18th birthday. This is a fundamental provision of the *Young Offenders Act 1993*. However, there are some who, beyond a certain age, would have their needs better met within the adult system. The *Young Offenders Act 1993* and YJAB consider circumstances under which a transfer may take place.

Youth programs and facilities are designed, both in the physical environment and in respect to service delivery (for example, assessment and activities) to best manage a younger population. For example, co-located agency partnerships sited at the AYTC have been designed with children and young people in mind: through the provision of the open-campus style Youth Education Centre (Department for Education and Child Development; Goldsborough Road Campus), and a key service delivery partnership with SA Health. However, all young people who come into contact with the justice system, including those over the age of 18, receive thorough individual assessment, to ensure that their individual needs are met for the duration of their community or custodial order. Furthermore, the Youth Justice Directorate engages in close and ongoing consultation and review of all operational procedures and policies to ensure that safety and security are key considerations.

YJAB: the consultation process

A broad range of stakeholders have been engaged. Consultations occurred via a number of methods, being:

YJAB Discussion Paper	<ul style="list-style-type: none"> - 27 August 2013 Discussion Paper was released requesting written submissions - 14 written submissions were received
Information Sessions	<ul style="list-style-type: none"> - Conducted 19 information sessions with over 180 individual participants from Government, non-government and community members, as well as Youth Justice staff and AYTC residents
Ministerial Roundtable Forums	<ul style="list-style-type: none"> - 22 October 2013 with over 60 attendees representing Government, non-government and community groups - 17 December 2013 with over 45 attendees representing Government, non-government and community groups
One to one stakeholder meetings	<ul style="list-style-type: none"> - Meeting with selected key stakeholders who are either directly affected by the provisions contained in the YJAB or could provide specific expertise

The first round of consultations provided a rich source of insightful ideas and considerations, which have helped shape the YJAB.

A further round of consultations has taken place with a range of agencies and interested parties, providing invaluable feedback.



How You Can Get Involved

DCSI is seeking feedback on the YJAB. All feedback will be considered as part of the final Bill. For a copy please visit the Department for Communities and Social Inclusion website:

<http://www.dcsi.sa.gov.au/about-us/departmental-legislative-framework>

Send your feedback to the Youth Justice Directorate:

DCSIYouthJusticeFeedback@sa.gov.au

Or via post:

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Youth Justice

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SA 5001

For further information about the South Australian Government's Transforming Criminal Justice Initiative please visit the Attorney-General's Department website:
<http://www.agd.sa.gov.au/initiatives/transforming-criminal-justice-0>

For more information contact:

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Youth Justice Directorate

Department for Communities and Social Inclusion

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