



THE UNIVERSITY OF  
NEW SOUTH WALES



# Evaluation of the New South Wales Youth Drug Court Pilot Program

Final Report

Report prepared for the New South  
Wales Attorney General's  
Department

**University of New South Wales Evaluation Consortium**  
Social Policy Research Centre  
School of Social Science and Policy  
School of Public Health and Community Medicine

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2004)**

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# **Evaluation of the New South Wales Youth Drug Court Pilot Program**

Final Report for the NSW Attorney-General's Department

First submitted December 2003  
Revised March 2004

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## **Executive Summary**

The NSW Youth Drug Court (YDC) pilot program is aimed at reducing offending and drug use amongst young people who have become entrenched in the criminal justice system. Many participants have a range of other difficulties including poor educational achievement, dysfunctional family backgrounds and psychological problems. The YDC attempts to address this wide range of young offenders' needs and problems in a holistic way through intensive case management.

The pilot program started on 31 July 2000. The NSW Attorney General's Department commissioned a consortium from the University of New South Wales, led by the Social Policy Research Centre (SPRC), to evaluate the pilot program's operations over the two years to the end of July 2002.

The evaluation is based on statistical monitoring; two implementation reviews; a study of program outcomes, including analysis of data on offending and interviews with participants; a review of legal issues; and an analysis of program costs.

### **Key Findings**

#### *Program implementation and operation*

- Overall, the implementation of the program took place without major problems, apart from delays in the establishment of a dedicated stabilisation facility. While the program faced some challenges, including staff turnover and difficulties with interagency cooperation, these were mainly resolved in the course of the pilot.
- The delay in establishing a stabilisation facility caused initial problems and led to some participants spending periods of time in custody waiting for suitable placements. The opening of the Induction Unit in November 2001 was a key element in the program's subsequent successful development.
- Although there is still a general shortage of crisis accommodation suitable for YDC participants, the situation has improved significantly as a result of the opening of the Induction Unit and the development of partnership schemes with community housing agencies. However, there is still a need for both more supported accommodation and more training for participants in independent living skills.
- There might have been greater implementation difficulties if the level of program uptake had been as high as anticipated at the planning stage. In practice, the number of both referrals and acceptances was considerably lower than anticipated, mainly because there were fewer young offenders meeting the eligibility criteria and wishing to participate than was originally estimated.
- Although young women were a target group for the program, only a relatively small number were referred to the program and they were less likely than the young men to be accepted or to agree to participate. They were also less likely to complete the program successfully. There is a need for further effort to engage young women in the program.
- A substantial proportion of referrals were Indigenous and they also appeared somewhat less likely than others to commence the program. However, the small

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numbers involved and some variation between data sources in Indigenous identification make it difficult to tell whether this difference is significant.

- There have been mixed views about the need for specialist detoxification services. Waiting lists are often too long to meet immediate needs, so many participants have been detoxifying in custody using Department of Juvenile Justice services provided for this purpose.
- Initial difficulties with access to and use of residential rehabilitation programs seem to have eased.
- The educational input into the YDC program, through the flexible TAFE course run at the Liverpool Intensive Programs Unit (IPU), is operating effectively and achieving successes.
- The resources currently available to the program appear to be broadly adequate for the number of participants, but if the program were to be extended the costs of education and training would need to be met within the main program budget.
- Interagency collaboration has developed over the course of the pilot but needs continuing effort. In particular there is a need to develop more effective monitoring and data collection across the program as a whole, rather than by individual departments/agencies for their own needs.
- Program effectiveness might be improved by appointing a single manager with overall program responsibility.

#### *Program outcomes*

- In its first two years the YDC received 164 referrals of young people facing possible custodial sentences for serious offences, of whom 75 (46 per cent) were judged eligible and suitable for intensive case management. Of these, 29 (39 per cent) went on to complete the program to the Court's satisfaction, or to 'graduate'.
- Nearly half the participants chose to extend their involvement in the program beyond the initial six months, with some having several extensions. The average length of involvement was 10.4 months.
- Around two-thirds of the participants engaged in some kind of educational or vocational course while on the program, and more than half of these completed their courses.
- Nearly one-fifth also achieved an employment outcome, either part-time or full-time, although the work was often short-term or casual.
- Data problems make it difficult to be precise about levels of offending by participants. Best estimates suggest that around 60 per cent of participants appeared in court on fresh charges whilst they were on the program.
- Nearly two-fifths went on to receive some form of detention, either in the juvenile or the adult prison system, indicating that diversion from incarceration is often only temporary, but this included only two of the program graduates.
- Around 35 per cent of participants were not recorded as having offended after they left or completed the program, but the post-program offending data are incomplete and only available for a short period after the end of the pilot.

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- Graduates were less likely to re-offend than those who did not complete the program.
  - Most participants interviewed reported that their drug use had decreased compared with that three months before entering the program.
  - Graduates of the program were more motivated to reduce their drug use than those who terminated from the program.
  - Although health improvements were reported in the first round of interviews, second round interviews indicated that these improvements were not all sustained and mainly represented a short-term gain from initial program involvement.
  - There was some improvement in mental health over the longer term, particularly for young women and those who graduated from the program.
  - Given the difficult backgrounds and histories of participants, there was a high and sustained level of satisfaction with the program overall, with the Court and with casework staff.
  - Many participants saw the support and care they received from the YDC workers as the best thing about the program, while for others it was the reduction in their drug use. The worse aspect for some was the length of the program, or its intensity, while for others it was not being able to live at home.

#### *Legal issues*

- Review of the legal framework of the YDC shows that it is operating effectively within the bounds of its legislative framework.
- The Court is operating eligibility requirements as originally specified and maintaining a consistent approach to sentencing.
- There are some concerns about whether current uses of bail and custody in the YDC program can be seen as legally appropriate and fair, particularly in relation to sanctions for non-compliance. There is a strong argument for new legislation to clarify these powers and to codify sanctions.
- There are some potential problems of conflicts of interest and appropriate uses of information within the Court Team that arise as a result of the Court's non-adversarial framework. While these issues are largely hypothetical at present, further guidelines might help to avoid problems in the future.

#### *Program costs*

- The cost data supplied by the participation departments have some limitations, but best estimates suggest that a reasonable measure of per capita costs per day on the program lies between \$359 and \$452. This compares favourably with per day costs of keeping young people in custody (around \$500 without counting additional services). However, this does not take into account that many participants spend longer on the program than they might otherwise have spent in custody.
- If costs are measured on the basis of only those who complete the program successfully it appears substantially more expensive, at between \$539 and \$760 per day per graduate.

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## Recommendations

Within the framework of this evaluation it has not been possible to state definitively that the Youth Drug Court program has been achieving outcomes superior to those that might have been gained through other forms of intervention. However, the overall view of the evaluators is that the program is having an important, positive impact on the lives of many of those participating. The unit costs of achieving these impacts on a group of young people with entrenched drug use and criminal histories do not appear to be greater than those involved in keeping them in custody.

On this basis the key recommendation is that *the YDC program should continue and possibly be expanded to selected other geographical areas.*

However, this recommendation is subject to a number of issues being addressed at legislative, policy and administrative levels:

- A new legislative basis for the YDC is needed, particularly to establish a codified system of sanctions for non-compliance with program requirements and to clarify the uses of bail and custody for participants in a pre-sentence program.
- Further guidelines or practice directions need to be developed for the operations of the Court Team, to avoid potential conflicts of interest and to clarify the proper uses of information in a non-adversarial court setting.
- A number of policy issues should be reviewed in the light of the pilot program experiences, including: program eligibility criteria; the optimum period for mandatory program involvement; the application of sanctions for non-compliance with program requirements; and methods of increasing the engagement in the program by young women.
- Continuing discussion is also needed about the optimum combination of treatment options and the best use of services such as the Health day-programs.
- The purpose and application of urinalysis should be reviewed to determine whether it could become an effective tool for monitoring participants' drug use while on the program.
- Further co-location of different service elements of the program should be considered, with a view to improving communication and cooperative working. Other methods including a computer intranet for the program might also be examined.
- To ensure the continuing inclusion of effective educational and training services within the YDC program, the costs of providing these services need to be incorporated into the main YDC program budget.
- Any expansion of the program into other geographical areas would need to take into account the availability of key services such as stabilisation, detoxification and short-term accommodation, and the cost of meeting gaps in such services where needed.
- There is a need for more effective cross-departmental monitoring and recording of key program interventions and participant outcomes, based on an agreed set of indicators. This monitoring might include a single summary form completed for each participant at both entry to and exit from the program (where possible).

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- Better data are needed on offences coming to the attention of the police and the courts in order to determine accurately the level of offending by program referrals and participants and the dates when these offences have been committed. We recommend that the Departments of Juvenile Justice, Attorney-General's and the Police Service work together with the YDC Registry and the Judicial Commission to develop a more effective, unified data system for this purpose.
  - The Departments involved in the YDC should consider whether better co-ordination and management might be achieved if a single manager could be appointed with overall responsibility for the program, especially if the program is expanded.
  - Further development of the program should be reviewed in the light of findings from other interventions such as the Magistrates' Early Referral Into Treatment (MERIT) scheme.

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## 1 Introduction

### 1.1 Background

In recent years there has been considerable public debate in Australia about illegal drug use, its relationship to crime and the impact on the community. In May 1999, in response to a rising level of concern about the social and health impacts of illicit drug use, the NSW Government held a Drug Summit at Parliament House. The Summit brought together a wide range of experts and interest groups in order to create a better understanding of the causes, nature and extent of the illicit drug problem, to examine existing approaches and to consider new ideas for effective policies and resource usage.

Amongst other topics, the Drug Summit addressed issues about young people, drug use and the crime cycle. Particular recommendations in relation to young people and drug use emphasised the need for a holistic approach to “prevent, minimise and manage harm caused by drug use ... and involve young people in the context of their family, peer group, school and community” (Swain, 1999a). There was also formal recognition that the community is likely to benefit where there is a capacity to divert drug users away from the criminal justice system and into appropriate treatment (Principle 10).

The establishment of the Youth Drug Court program was one of the outcomes of the Drug Summit. The Summit recommended that the existing Adult Drug Court trial underway at Parramatta in Western Sydney be expanded to be available at other venues in NSW and that the Children’s Court be given comparable diversionary powers to the Drug Court (Recommendation 6.11: NSW Government, 1999). Recommendation 2.5 also called for a ‘pilot program for a Children's Drug Court as part of the Children's Court system, to be adequately resourced for the treatment and rehabilitation of young people with alcohol and other drug problems’ (Swain, 1999a). An extract of the Drug Summit recommendations and the Government’s response is attached to this report as Appendix A.

Following the Summit, the Youth Drug Court (hereafter YDC) was established as a two-year pilot program, commencing in July 2000 under the leadership of the Attorney-General’s Department. The pilot program has since been extended to accommodate new referrals up to 30 June 2004 in order that any decisions about its longer-term future can take account of evidence on its results, including the findings of this evaluation.

The main aim of the YDC program is to reduce among participants the level of criminal activity and other problematic behaviour associated with the misuse of drugs and alcohol. It combines intensive judicial supervision, case management, drug treatment and other relevant interventions for young people charged with serious criminal offences. The YDC operates as a dedicated court within the Children’s Court jurisdiction. The catchment area for the trial is Western and South Western Sydney, with the Court sitting at Campbelltown and Cobham Children’s Courts.

The YDC was originally conceived as similar to the Adult Drug Court, but the model was adapted to be more relevant to the particular needs of young people, while still operating within a clear judicial framework. Thus it reflects the mode of operations of

the Children's Court more widely. Unlike the Adult Drug Court, the YDC follows the 'pre-sentence' model, whereby sentencing is postponed until the young person has completed the program or ended participation in it. The judicial supervision involved takes place under the provision of the *Bail Act 1978*. The YDC constitutes an additional program in the existing suite of diversionary measures aimed at reducing rates of incarceration amongst young people, which includes schemes such as Police cautions and youth justice conferencing, established under the *Young Offenders Act 1997*.

The service delivery element of the YDC consist of an interdepartmental team (known as the Joint Assessment and Referral Team or JART), involving staff from the Departments of Juvenile Justice (DJJ), Health, Community Services (DoCS) and Education and Training (DET). A range of non-governmental organisations are also involved, providing case management funded by DoCS and health-related outpatient programs funded by the Department of Health.

An Interagency Project Management Group (IPMG) was established in September 1999 to manage the planning and implementation of the YDC, with specific subgroups responsible for court processes, treatment services and the monitoring of the pilot program. The YDC opened for referrals on 31 July 2000.

## **1.2 YDC Pilot Program Evaluation**

At the end of 2000, the NSW Attorney-General's Department (hereafter AGD) commissioned, through a selective tender process, a consortium led by the Social Policy Research Centre (SPRC) at the University of New South Wales to conduct the evaluation of the Youth Drug Court Pilot. The evaluation has been overseen by a YDC Monitoring and Evaluation Committee, with representatives from all the agencies involved and from the Cabinet Office. As well as the SPRC, the UNSW consortium includes staff from the School of Social Science and Policy and the School of Public Health and Community Medicine.

The primary aims of the evaluation were to provide regular and timely data on the implementation of the YDC program, and to evaluate its short-term impacts and longer-term effectiveness. More specifically, the objectives were:

- to determine the level of re-offending by program participants;
- to identify critical success factors and barriers to implementation of the program;
- to determine the health and social impacts on participants;
- to determine the scheme's attractiveness to eligible offenders and to measure participant satisfaction;
- to estimate the level of resources required for sustainable continuation or expansion of the program; and
- to make recommendations on the program's future development.

As agreed with AGD, the evaluation involves a number of separate research studies:

- Statistical monitoring reports
- Two implementation reviews, carried out at different stages

- An outcomes study of program participants
- A review of legal issues
- A cost analysis
- Final report on YDC effectiveness

After the evaluation began it was decided that the regular statistical monitoring reports should be produced within the YDC program itself, rather than by the evaluators. Drafts of earlier reports on the other sub-projects listed above have been submitted to AGD at various stages for comment. The first Implementation Review was also made publicly available on both the AGD and the SPRC websites (Flick and Eardley, 2001). This report incorporates the main results of these earlier studies, along with the findings of the outcomes study. As such it provides the consolidated findings from the whole evaluation.

### **1.3 Evaluation Methodology**

The YDC evaluation was planned to encompass a range of methods aimed at capturing different aspects of the pilot program's operations. These included: statistical monitoring of program referral and take-up, participants' characteristics and their progress through the program; process evaluation of the implementation and operation of the program; review of legal issues arising from the YDC's operations; a study of the outcomes of the program for participants, both in terms of their re-offending and their health and social functioning; and an analysis of the costs of running the program.

The methodological approaches taken to the different elements of the evaluation are discussed in each of the separate chapters describing the individual studies.

### **1.4 Report Structure**

Section 2 of the report provides a brief summary of the background concepts underlying the establishment of the Youth Drug Court, drawing on the literature in this area. Section 3 then provides an analysis of the statistical monitoring data collected on referrals to and participation in the program during the pilot period. Section 4 presents the findings of two reviews of program implementation and operations. Section 5 presents qualitative and quantitative findings on YDC participant outcomes. Section 6 discusses the legal issues raised in the operations of the Court. Section 7 reviews the available information on the costs of the program. Section 8 provides an overall discussion of the effectiveness of the YDC program and presents the recommendations arising from the evaluation as a whole.



## **2 Background to the Youth Drug Court Concept**

### **2.1 Drug Use and Crime Amongst Young People**

Given the relatively low clear-up rates for most criminal offences, there is a lack of reliable data to measure the dimensions of juvenile crime (Chan 1994; Mukherjee, 1997). Surveys of drug and alcohol use amongst young people in Australia consistently show a significantly higher rate of substance use among 'street youth' and juveniles in detention than among high school students (Copeland and Howard, 1997).

The link between drug use and crime, however, is not straightforward. Salmelainen's (1995) study of 247 juvenile theft offenders in detention in New South Wales found a significant relationship between the use of marijuana and the frequency of offending (breaking and entering and motor vehicle theft). Overseas studies also find higher rates of offending among heroin users (Hall, 1996). Hall's review of the literature concludes that while there is no doubt that heroin use and crime are associated, this association can be interpreted in a number of ways: (a) users are more likely to commit crime to finance their habit, (b) offenders are more likely to become heroin users, or (c) crime and drug have common causes such as social disadvantage or peer influence. Copeland and Howard (1997) similarly show that the empirical evidence is mixed in terms of whether substance use causes crime: "while there is some support for the notion that illegal drug use leads to criminal behaviour, there is little convincing evidence that this is so for the majority of such adolescents" (1997: 174). However, given the strong correlation between substance use and crime, and the high level of substance use among juvenile offenders, the availability of appropriate interventions to deal with drug and alcohol problems for this population is both rational and desirable.

### **2.2 Diversionary Alternatives**

Much juvenile crime is not serious. In most cases, association with crime is a transitory process and there are generally low rates of recidivism (Juvenile Justice Advisory Council of NSW, 1993; Coumarelos, 1994). This highlights the importance of diverting young people from the formal criminal justice system in order to avoid escalation of criminal associations and activities. Diversionary programs aim to prevent the young offender from becoming entrenched in the juvenile justice system and alienated from the community. Diversion acts as a form of crime prevention by minimising the potential for stigmatisation and secondary deviance, through rehabilitation and reintegration into the community (Naffine, 1993; Cunneen and White, 1995: 241; Wundersitz, 1997: 273). There is also evidence that diversionary programs are less expensive, less time consuming and less punitive than processing in the formal criminal justice system (Wundersitz, 1997). Recent developments in juvenile justice have therefore tended to focus less on punishment and more on victim-focused 'restorative justice' approaches to rehabilitation, and on early intervention programs to divert young people from the criminal justice system.

There are several innovative diversionary programs currently in place in NSW for young people. These include the use of cautions by police for minor offences (*Young Offenders Act*) and a youth justice conferencing scheme. Full evaluation of the operation of these programs is currently being undertaken by Professor Janet Chan of the University of New South Wales (Chan et al., 2003), but a study of re-offending

patterns by the NSW Bureau of Crime Statistics and Research has shown that youth conferencing reduces offending by 15-20 per cent compared with going to court, regardless of offenders' age, gender, criminal history and Aboriginality (Luke and Lind, 2002).

### **2.3 Drug Courts**

The drug court model is one form of diversionary practice that has been operating with some success in the United States for a number of years and is being trialled in Canada (Makkai, 1998; James and Sawka, 2000) and Ireland (Ballotta, 1999). The European Union has also been examining alternatives to prison for people convicted of drug offences (EU, 1999). While the UK has not established any specific drug courts, it has instituted a range of interventions targeted at offenders with drug use problems, including piloting of Drug Testing and Treatment orders (Turnbull et al., 2000). Drug courts are an important innovation in that they enable drug and alcohol problems to be separated from criminal behaviour. They also expand the focus of treatment from legal processes to health and social interventions (Connie, 1998).

In the US experience, drug courts are more intrusive than the usual process of conviction and sentencing, and to be successful they need to provide incentives for offenders to participate (Makkai, 1998). Success also depends heavily on the availability of and support from local treatment providers. Reported positive benefits in the early years include reduced offending and drug use by participants, cost savings in the criminal justice system and high program retention rates compared to other offender programs (Swain, 1999b), but the longer-term impact on post-program offending has been less clear, partly because of difficulties with evaluation, including a lack of long-term outcome data (Belenko, 2001).

The NSW Adult Drug Court model drew on the experience of the US drug courts and began operating in February 1999 at Parramatta. The evaluation of the Parramatta trial found that the program was successful in reducing participants' illicit drug use and their re-offending levels while they were on the program, and also improved their health and social functioning, but that the retention rate of participants on the program needed improving (Freeman, 2002). The economic analysis found little difference overall between the Drug Court and conventional sanctions in their cost effectiveness at increasing the time to the first post-program offence, although for certain offences, including shop stealing and possession or use of opiates, the Drug Court was significantly more cost effective (Lind, Weatherburn and Chen, 2002). The evaluation concluded that effectiveness could be improved by better identification of participants who could benefit from the program and early termination of those unsuited to it, a better match between offenders and treatment programs, more realistic graduation criteria and better coordination between the agencies involved.

While this was generally acknowledged to be one of the most thorough and rigorous economic evaluations of a new criminal justice initiative, there were still considerable difficulties involved in carrying it out. These included problems with the randomisation process, with access to participants, especially for follow-up interviews, and with measuring drug use, particularly through urinalysis (Freeman, 2003). Similar difficulties in the evaluation of the Youth Drug Court are discussed below.

## 2.4 Youth Drug Courts

Juvenile drug courts are a more recent development, with the first being established in the mid-1990s in the US. They grew out of the perceived success of the adult drug courts in addressing problems of criminal justice system overload in the wake of the crack cocaine epidemic of the 1980s, but the adult model was adapted to reflect the different needs and circumstances of the juvenile offender population. More than a quarter of all the US drug courts are now in the juvenile system (Belenko and Dembo, 2003).

Reflecting this early stage of development, there was little published providing reference or guidelines for the establishment of juvenile drug courts before the NSW Youth Drug Court was set up (Homel, 2000). Recently, however, the US Department of Justice has issued a monograph outlining strategies for operating such programs (Bureau of Justice Assistance, 2003). This notes that little research evidence has emerged yet about effectiveness or best practice, basing its recommendations instead on the most current thinking about the optimal design for juvenile drug courts. The Bureau of Justice Assistance (BJA) document summarises the goals of a juvenile drug court as being to:

- Provide immediate intervention, treatment and structure in the lives of young drug users through active oversight and monitoring;
- Improve young people's levels of functioning, address problems contributing to their drug use and develop their ability to live drug/crime-free lives;
- Provide young people with the skills to lead productive and drug/crime-free lives, including skills relating to education, self-worth and capacity to develop positive relationships in the community;
- Strengthen families of young drug users by improving their capability to provide structure and guidance to their children; and
- Promote accountability of both juvenile offenders and those who provide services to them.

As such, juvenile drug courts differ from their adult equivalents in their emphasis on therapeutic interventions, and in the level of engagement of families and young people in their communities. However, as the BJA monograph points out, such approaches are not new in the US juvenile court setting, where rehabilitation and family strengthening have always been fundamental (Bureau of Justice Assistance, 2003). This also applies to the Children's Courts in Australia and is one reason why some sceptics have suggested that dedicated Youth Drug Courts are unnecessary (see, for example, Hill, 1999).

Critics of the drug court model more generally have also pointed to the important cultural differences between the US and Australia in terms of both drug use itself and community attitudes towards it (for example, Wodak, 1999). In the US, prohibition and law enforcement have traditionally taken precedence over rehabilitation and treatment. In a context where statutory penalties for even minor drug offences would normally involve incarceration, many of those involved in the US criminal justice system have welcomed (and are keen to promote) drug courts as a *de facto* means of introducing diversionary strategies where they did not previously exist (Homel, 2000). As Homel also notes, drug court programs represent an attractive alternative to the

harsh conditions in US gaols, increasing the likely levels of offenders' motivation to enter such programs.

The context for the development of youth drug court programs in Australia is quite different. Diversionary schemes already exist and treatment programs are already available to most young offenders in custody. There are also significant differences between the types of drug use and levels of drug dependency of juvenile drug court clienteles in the US and Australia, with cannabis and alcohol being the primary drugs bringing young people to the courts in the US, as opposed to heroin in Australia (Homel, 2000).

### **Issues for evaluation of youth drug courts**

As juvenile drug courts have developed relatively recently even in the US, there has been little evaluation of them carried out as yet, and no published economic evaluations at all (Belenko and Dembo, 2003). The evaluations carried out so far mainly focus on initial implementation, participant characteristics, review of other services and short-term recidivism outcomes. Bearing in mind these limitations, Belenko and Dembo's review of the existing evaluations concludes that the more positive outcomes are coming from programs that are of relatively longer duration, incorporate cognitive/behavioural therapeutic techniques and ensure that as many as possible of the participants complete the program. Belenko (2001) earlier noted a number of problems with drug court evaluations in general to date, which also apply to those for juvenile drug courts. These include the following:

- Follow-up times are usually too short, limiting the extent to which any measured outcomes can be generalised to long-term effects.
- Most use only official arrest records to assess recidivism and do not take into account a fuller range of outcome measures.
- Many do not examine within-program data on relapse and recidivism while in treatment.
- There are often problems with selection of appropriate comparison groups.
- Most evaluations have not been sufficiently well funded or resourced to allow for assessment of program impacts over time.
- Few include post-program data on substance use, health, education or employment, or other important measures.
- Evaluations are often hampered by small program size, limiting the statistical power of outcome studies and increasing the costs and time needed to conduct the research.
- There are often difficulties for evaluators in accessing official client data for juveniles because of confidentiality restrictions.

Although the NSW Youth Drug Court evaluation was originally designed to overcome some of the limitations listed above, in practice it has been affected by many of the same difficulties. Methodological issues relating to the various elements of the evaluation are discussed in each of the relevant section of the report.

### **3 Analysis of Program Referrals and Participation**

#### **3.1 Introduction**

This section of the report provides description and analysis of the Youth Drug Court clientele, or potential clientele, during the pilot period. The original intention was that data monitoring reports would be produced by the evaluation consortium. Shortly after the evaluation commenced, however, a decision was taken that this function should be performed internally to the program. A series of monitoring reports were produced initially by the Department of Juvenile Justice, later by the YDC Registry and finally by the Attorney-General's Department. It should be noted that many of these data had to be extracted by hand from case files and no central inter-departmental data base for the YDC has been established to date. Formal discussions about the minimum requirements for such a database were not held until September 2002, more than two years after the program started. Consequently the amount and consistency of monitoring data available for the purposes of evaluation has been limited.

The closest to a centralised data base for the YDC is that established by the Judicial Commission. Although this was under discussion at the start of the program, it did not become operational until well into the second year of the pilot period. It is designed mainly for Court use and is limited to key participant demographics, information on Court appearances and offences, and notes for the Court Team on participants' progress for use in report back sessions.

The data analysed in this Section are thus drawn from several sources:

- the series of monitoring reports;
- the database developed in the course of the pilot program implementation by the Judicial Commission;
- data provided by the Department of Juvenile Justice; and
- summary client flow data reported regularly to the Evaluation and Monitoring Committee by the YDC Registry.

It should be noted that there are some gaps in these different sources of data and inconsistencies between them. The analysis is that of the evaluators.

#### **3.2 Program Referrals and Participants**

The YDC program is targeted at young people aged 14 – 18 years (although younger people can be eligible in some circumstances), living in Western and South Western Sydney, charged with a criminal offence (excluding sexual offences, traffic offences and serious indictable offences) for which a caution or youth justice conference is considered inappropriate, and who have a demonstrable alcohol or other drug (hereafter AOD) problem. To be eligible, young people must plead guilty, or state an intention to plead guilty, and their offence must be such that it can be finalised by the Children's Court.

The expectation was that the YDC program would mainly be attractive to young people charged with serious offences and a significant criminal history, who would thus be likely to be face a custodial control order. The level of participation required

by the YDC program was regarded as more onerous than that involved in sentences which could be imposed for minor offences (such as community service or probation orders). It was also anticipated that, even if eligible for other diversionary schemes, many of the YDC participants would not be able to engage with them because of their high level of AOD use.

The YDC Program Plan also identified certain priority groups within the overall target clientele for the pilot. These included young women and young people already in custody. It was anticipated that these categories would include a significant number of Aboriginal and Torres Strait Islander young people.

The Interagency Project Management Group (IPMG) for the YDC originally estimated that about 780 young people would be eligible during each year of the pilot program (AGD, 2000). This estimate was based on the Department of Juvenile Justice's Children's Court annual statistics for the Western and South Western Sydney catchment area.<sup>1</sup> The level of program intake was to be capped at 120 young people per year so to limit demand for increased service provision. There were expected to be around eight referrals per week from Cobham, Campbelltown and Lidcombe Children's Courts (one referral could come from another Children's Court outside the catchment area if the young person met the eligibility criteria). It was assumed that after the initial screening the Court would refer two to three young people each week for comprehensive assessment.

In practice, both referral and intake rates for the YDC have been considerably lower than anticipated. Data from the YDC Registry show that in the 24-month pilot period, to end July 2002, a total of 164 referrals were made to the Court and 72 young people were accepted on to the program after assessment (44 per cent). A further three of these referrals were accepted onto the program after the end of the pilot period, increasing the acceptance rate to 46 per cent. However, 10 referrals during this period involved the same individual being put forward for a second (or third in one case) time after having initially been rejected. Thus the net number of separate individuals referred was 154, of whom 75 (49 per cent) were eventually accepted. Table 3.1 provides a breakdown of gross referral and acceptance numbers by sex over the pilot period. The possible reasons for the lower than expected referral rate are discussed below.

**Table 3.1: Total referrals and intake to YDC pilot program (24 months), by sex**

	Male	Female	Total
Number referred	126	38	164
Number accepted	62	13	75
Percentage accepted	49.2	34.2	45.7

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<sup>1</sup> There were differing views at the time on the likely size of the client group. This is discussed further below.

Although young women were one of the target groups for the program, the percentage of young women accepted was considerably smaller than that for young men, though not inconsistent with their presence in the juvenile justice population as a whole.

Table 3.2 gives a breakdown of the reasons for not being accepted into the program, or for not commencing it, by the stages of assessment. The total numbers in this table are smaller than those implied by Table 3.1 because some assessments were still underway, either at initial or comprehensive stages, at the end of the pilot period. The main recorded reasons for non-participation in the program were because young people referred chose not to participate once the details had been explained to them at the initial assessment stage, because initial assessment showed that they did not meet the eligibility criteria, or because at the comprehensive assessment stage they were found to be unsuitable. There are a number of reasons why young people might be judged unsuitable, including having mental health or behavioural problems which are seen as too severe to permit successful engagement with the program. Anecdotally, this is regarded by YDC staff as one of the reasons for the relatively low successful program entry rate for young women. The perception is that young women facing custodial sentences are more often assessed as having such problems.

**Table 3.2: Reasons for non-acceptance into YDC program during pilot period**

Reason	Initial assessment	Comprehensive assessment
Failed to meet eligibility criteria	16	0
Failed to attend Court	4	1
Declined to participate	25	5
Judged to be unsuitable	4	13
Other	2	0
Not recorded	9	3
<b>Total</b>	<b>60</b>	<b>22</b>

The levels of both referral and acceptance have fluctuated considerably over the pilot period, as shown in Figure 3.1 below. The Court was closed in September 2000 because of the Sydney Olympic Games. There is no other obvious pattern except that the proportion of young people referred who later become program participants appears to have trended downwards in the later period.

**Figure 3.1: Monthly referrals to YDC during pilot period**

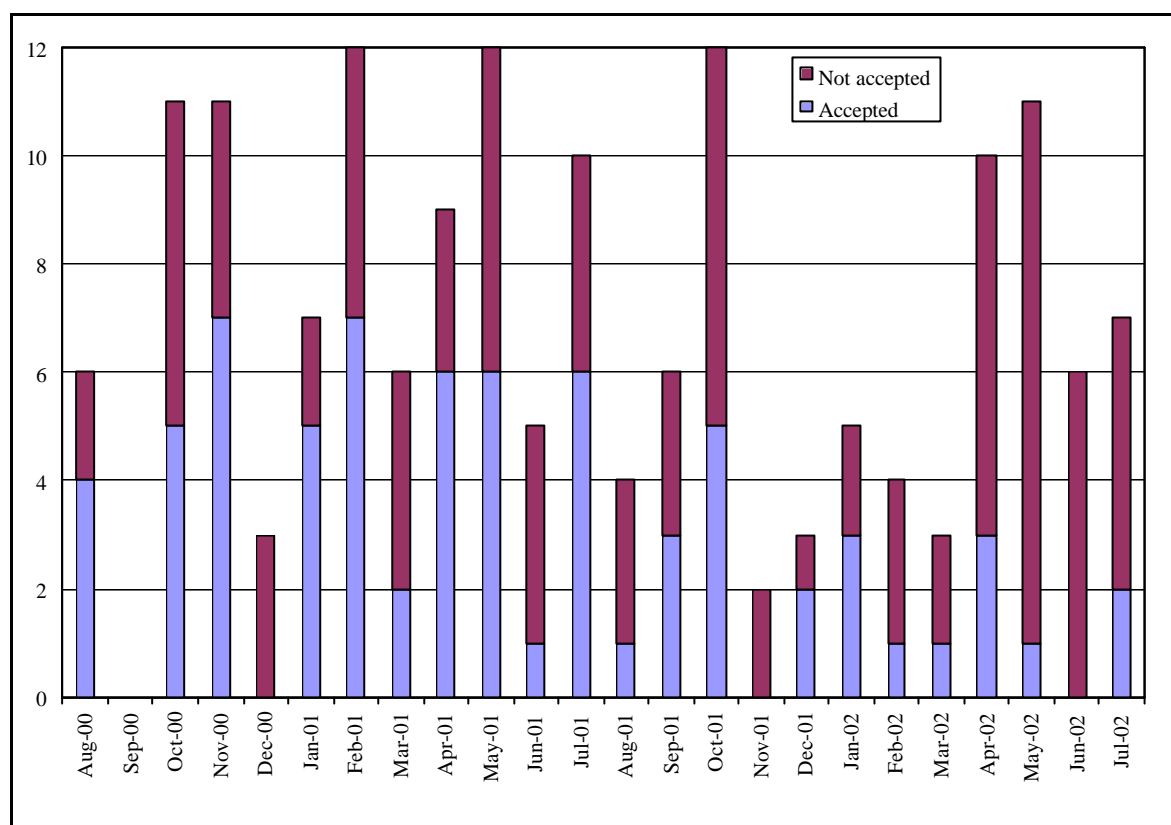


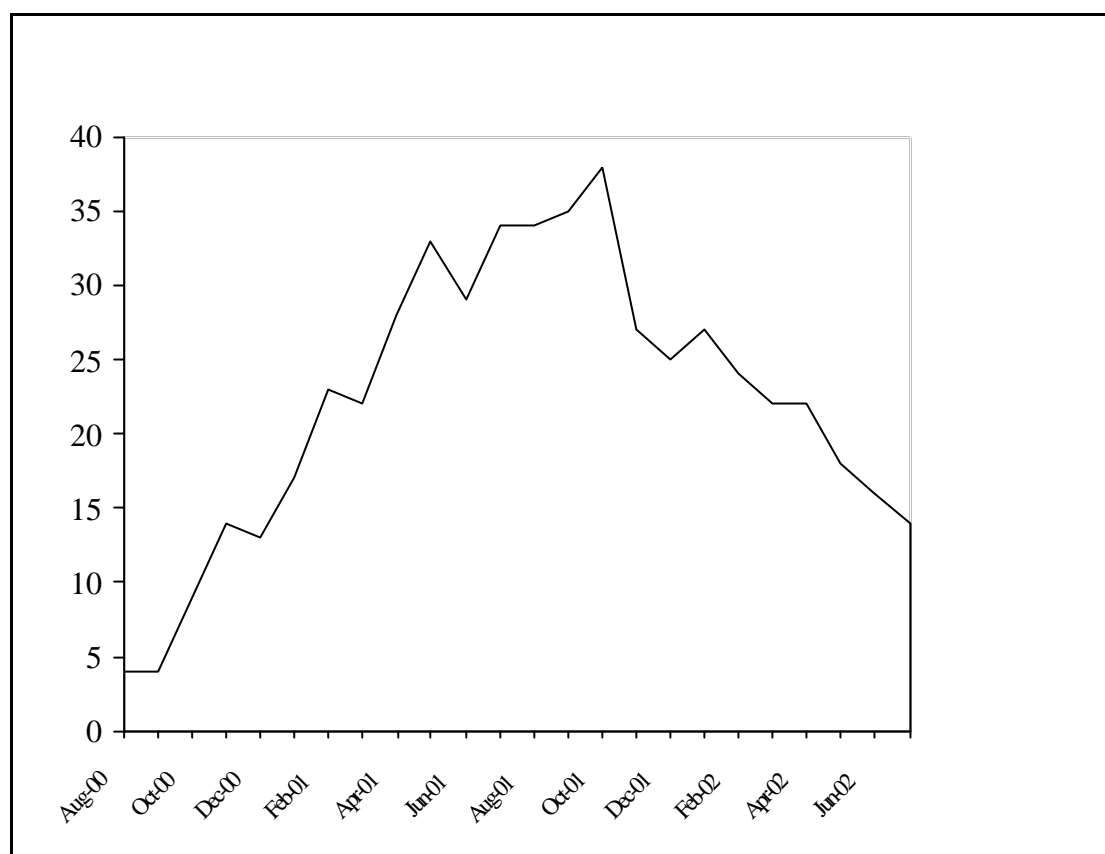
Figure 3.2 shows that the cumulative number of young people on the program each month was also dropping by the end of the pilot period. To some extent this is a result of the initial starters completing their prescribed times on the program, but it also shows that other young people were not entering the program in the same numbers to replace them. As at 5 March 2002, the total number of program entrants since the pilot began was 63, out of 128 referrals (YDC Registry, 2002). There were then 23 participants on the program, with 14 having graduated and 27 being discharged without completing. By late April the number on the program had fallen to 19, of whom only 11 were regarded as actively participating at the current time.<sup>2</sup> At the end of the pilot period there were only 14 participants on the program and some of these were also not actively engaged because they had absconded.

**Reasons for low program take-up**

What are the reasons for such a large gap between the anticipated demand for the program and the actual intake? This was a question examined in the implementation reviews produced earlier as part of the overall YDC evaluation. There seem to be a number of contributing factors.

<sup>2</sup> Of the others, one was in custody in another State, four had recently absconded and three had been on the run for some time (warrants had been issued for these seven participants).

**Figure 3.2: Numbers on the YDC program each month during pilot period**



First, it is inherently difficult to make accurate estimates of the demand for a new program, particularly one with fairly exacting eligibility criteria. It appears that in the planning process there was an overestimate of the number of young people likely to meet the criteria laid down for the YDC. In relation to this, there were suggestions from magistrates interviewed that fewer young people were appearing before the Children’s Court generally, thus potentially decreasing the pool of young people meeting the YDC eligibility criteria. This is supported by other data cited by stakeholders in relation to the Children’s Court as a whole, but it is not clear whether there has been a significant drop in serious offences.

Staff involved in the original planning of the program reported that it was the Department of Juvenile Justice’s view that there was only a small ‘hard core’ of young people in the area who were known to the Department and likely to be prime candidates for the program. However, other experts in the drug and youth justice field argued that there was a larger potential pool, including young people for whom cannabis would be the main problem drug of use.

Initially, as a number of stakeholders suggested, referrals were likely to have been slowed down by a lengthy closure of intake during the Sydney Olympics and the further closure of the Court over the following Christmas period. There were signs of an acceleration in referrals after that initial period, but the number of young people accepted onto the program later fell again.

Discussions with stakeholders suggested a variety of other contributing factors to the low take-up of the program in its first phase:

- the limited publicity given to the program at the outset;
- the program's reputation amongst young people and their representatives;
- problems with the referral process;
- the requirement to plead guilty to a serious offence;
- the residence criterion; and
- inappropriate referrals.

There was also a sense that the reduction in the availability of heroin, resulting from successful intervention in the supply chain, was also significantly linked to fewer young people appearing before the Court with heroin-related offences.

### *Limited publicity*

There was a policy decision not to aim for a high public profile for the program at that stage. This is understandable given the political sensitivity of law and order issues, but it may have had some impact in terms of program awareness among solicitors, parents and others in positions where referrals might be encouraged.

### *Program reputation*

Discussions with a range of stakeholders and YDC participants suggested that the program had a mixed reputation amongst young people in detention and in the community. Some stakeholders commented that young people who had been terminated from the program were good advocates for it and regarded it as not just a chance to stay out of custody, but also an opportunity to deal with their drug use and offending. On the other hand, there was also a perception that the program did not have a good profile because of time delays in the process of referral, screening and assessment, and the lack of guaranteed access to suitable accommodation or residential treatment. The argument was that because young people were often remanded in custody while such places were found, the program lost some of its attraction relative to the alternatives.

There was also a view that some young people who might be eligible tended to weigh up the time and commitment required and chose to serve their sentence (which could be shorter than the YDC program). Solicitors too may prefer to argue the case in court than refer the young person to the YDC, bearing in mind an assessment of the likely sentence compared to the length of the YDC program. This explanation receives some support from the fact that nearly one-fifth of all those young people referred to the Court chose not to participate, even though they were facing likely custodial sentences.

The YDC was planned as being most suitable for serious young offenders who were facing a custodial sentence. Young people facing less serious charges were not excluded from the YDC, but it was anticipated that they were less likely to find the six-month program attractive.

### *Referral process*

Some of the problems of delay in the early stages of the program were also exacerbated by difficulties with the referral mechanisms. The process is that a young person can be identified as suitable for the YDC program by the Children's Court magistrate, prosecutor, Legal Aid or legal practitioner. The magistrate considers eligibility before referral to the YDC, including the seriousness of the offence, criminal history, possibility of other forms of diversion and the likelihood of a control order. The YDC Registrar is contacted and the matter adjourned for a week to the YDC. Once referred, young people are screened for eligibility either in custody or in the community. Legal eligibility and suitability for the program are determined at the first YDC appearance after the initial screen has been conducted.

At an early stage, stakeholders reported that there were problems with referrals from Cobham Children's Court in particular. In response to this the JART manager arranged to have a program manager go to the Court several days a week to perform an intake role. The program manager's continuing role is to educate the solicitors, magistrates and young people in custody at Cobham about the program, and to advise on eligibility.

The Senior Children's Magistrate later issued Practice Direction No. 18 (Children's Court of NSW, 2001) which addressed many of the matters of YDC procedure and was aimed partly at easing these referral problems.

The second implementation review suggested that 18 months into the pilot period there was generally a good knowledge of the program in the juvenile justice community. Referral agencies, magistrates and Legal Aid solicitors seemed to have a higher level of awareness of the program than when the first review was conducted. None of the interviewees from organisations involved in referrals reported any difficulties or concerns with the process and the relatively small numbers involved had also allowed the referral procedure to remain informal.

### *Requirement to plead guilty*

The YDC program was designed as a pre-sentence scheme, in order to provide a significant incentive and motivation for young people undertaking the program to succeed, and then potentially to reduce the length of their sentence. Originally, if found eligible at initial assessment, participants had to enter a plea of guilty before starting the comprehensive assessment phase of the program.

The requirement to plead guilty to all matters was well known among the legal community as a condition of the YDC program and was suggested as one reason why some defending solicitors did not recommend that their clients apply to participate. The Children's Legal Issues Committee of the Law Society of NSW, for example, raised concerns early in the pilot period about this requirement in a letter to the NSW Attorney General dated 31 October 2000). The Committee suggested that this arrangement could operate as an inducement to plead guilty to matters that otherwise would have otherwise been defended. This condition has since been changed so that the young person is obliged to plead guilty only to the most serious charges and can plead not guilty to other offences.

*Residence criterion*

The purpose of the residence criterion was to ensure that participants lived in the proximity of program services and could expect to meet program requirements. However, some stakeholders saw the residential criterion (residence or identification with Western and South Western Sydney) as one of the most difficult to apply. It was reported that a number of solicitors and parents had called the YDC hoping to gain a place for a young person on the program but failed to meet this criterion. This also suggests that the pool of potentially eligible young offenders may not be as large as estimated.

*An increase in inappropriate referrals?*

At the time of the second implementation review, one reason proposed by some stakeholders for the drop in new entries to the program was that while the profile of the program had been raised over the previous year, there appeared to have been an increase in what were seen as inappropriate referrals. According to stakeholders, these included:

- young people who did not have problematic or high levels of drug use;
- young people with offences entirely unconnected to their drug use;
- young people with significant anger management issues (for whom it was felt a violent offenders program would be more appropriate); and
- young people with considerable mental health issues or intellectual disabilities, such that they could not meet the program requirements.

Review of the data on referrals and acceptances for the whole pilot period do not support this view, as the proportion of referrals declined by the Court on the grounds of failure to meet eligibility criteria or of unsuitability has remained the same on average over the two years (around 21 per cent of all non-acceptances on each ground).

While all these factors may have made some contribution to the low program take-up, the main reason seems to have been simply that there was an overestimation of the number of young people in the area meeting the eligibility criteria and prepared to enter such a program voluntarily, particularly in the light of the heroin drought.

### **3.3 Referrals and Acceptances Post-pilot**

In the 12 months following the end of the pilot period (to end July 2003), 82 additional referrals came to the Court, thus maintaining the same overall average levels as in the previous years (again a number of these were re-referrals for previous applicants). The monthly number of referrals has continued to fluctuate. Of these, 32 were accepted (39 per cent). This was lower than the average for the whole pilot period, but in line with that for the second year. During the course of the year a further 10 participants graduated and 18 were discharged (either by the Court or through voluntary withdrawal). This left 18 participants in the program at the end of July 2003 (taking account of the 14 who were on the program at the beginning of August 2002) and a further two awaiting assessment.

Recent discussions with YDC staff suggest that there have been no significant changes in referral processes and that the procedures and criteria are now well established in the juvenile justice community. While there is some perception that the proportion of appropriate referrals has been increasing, it is still the case that if in doubt referring bodies are encouraged to put young people forward so that the Court can test their eligibility. Thus it appears that within the criteria determined for the pilot the level of demand for program entry has reached a stable and realistic level. This means that within the particular catchment area it is unlikely there will on average be more than around 20 participants active in the program at any one time.

Our overall conclusion, therefore, is that while there were some initial difficulties with publicising the program and attracting referrals, the level of participation in the YDC in the current catchment areas now reflects the interaction between the eligibility criteria and potential participants' desire to engage with the program.

### **3.4 Profile of YDC Program Participants**

The data underlying the analysis in this section come mainly from data supplied by the Department of Juvenile Justice. The information is incomplete and there appear to be a small number of missing cases.<sup>3</sup> These, however, would be unlikely to alter the overall profile substantially.

#### **Age**

The ages of all referrals to the program at the time of initial assessment ranged from 13 to 19, with a mean of 16.5 years. Only eight were aged under 15 and only three were over 18. The mean age of young people who actually participated in the program was slightly older, at 16.6 years, and ranged from 14 to 19. Thus the target ages for the program were maintained during the pilot period, given that the magistrate has some discretion in individual cases to allow participation by young people outside the 14-18 years age bracket.

#### **Ethnicity and cultural background**

There are some discrepancies between different data sources in the proportion of referrals and participants that identified as Aboriginal or Torres Strait Islander (hereafter ATSI), but this group appears to have made up between 23 per cent and one-third of all referrals. According to the DJJ database, which provides the lower-bound estimate for ATSI referrals, 46 per cent were of non-Indigenous Australian or other English-speaking country descent, just over 11 per cent were from Southeast Asia, 10 per cent from Pacific Islander backgrounds, including New Zealand Maori, and the rest were mainly from a variety of Middle-eastern or African backgrounds. Around 42 per cent of Indigenous young people referred to the program were accepted, compared with around 48 per cent of all referrals. Given the discrepancies between data sources it is not possible to be certain whether the apparently lower level of entry into the program by Indigenous young people is significant.

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<sup>3</sup> This data set includes 144 cases with dates of referral within the 24-month pilot period. Allowing for the fact that these are unique cases and not duplicated where re-referral has taken place, this represents 154 of the 164 referrals recorded by the YDC Registry for this period.

Nearly 25 per cent of program participants were born overseas, mainly in New Zealand or various Pacific islands, or in Southeast Asian countries. Around 16 per cent nominated a language other than English as their preferred one, mainly Samoan, Khmer and Vietnamese, together with Tongan, Laotian and Turkish. The capacity of the program to meet the needs of people from different backgrounds is discussed later in the report.

### **Sex**

We saw above that over the pilot period 13 young women (34 per cent of referrals) were accepted onto the program, a noticeably lower proportion than for young men. A slightly higher proportion of female than male referrals were Indigenous and there were a few from Southeast Asian or Pacific Islander backgrounds. Of those who were accepted, five were recorded as Indigenous (38 per cent).

The program implementation reviews found that young women presented particular problems in the initial period of operation. JART members reported that while the number of young women entering the program was small, they still presented a considerable challenge. By this stage in the juvenile justice system young women are likely on average to have had more involvement in drugs and offending than young men, and often have histories of sexual abuse and other risk behaviour in terms of sexual and reproductive health. Service delivery staff reported finding young women extremely difficult to engage and to contain with the program. Accommodation and some treatment options are more limited for young women than for young men (especially for Indigenous young women), and a number of young women had repeatedly absconded from accommodation and residential treatment services. Some had been on the run for several weeks with no contact until their arrest.

These difficulties are not restricted to the YDC. The Adult Drug Court has experienced similar difficulties in relation to the women on its program. However, the wider issue of the focus on young people with the most challenging needs, especially young women, may need to be addressed in any possible expansion of the program in the future. The Department of Juvenile Justice has been developing an action plan to enhance its capacity to address young women's issues.

### **Drug use**

Throughout the pilot period the main problem drug in use by both overall referrals and actual participants was heroin, followed by cannabis, alcohol and amphetamines. The DJJ database records heroin as the principal drug of use for 54 per cent of all referrals during the pilot period, followed by amphetamines (15 per cent), cannabis (14 per cent) and alcohol (12 per cent). It should be noted, however, that where there is multiple drug use - but not to the particular level defined for poly drug use in the National Minimum Data Set - heroin is recorded as the principal drug because of the known at-risk behaviours associated with its use.

Amongst those accepted onto the program, heroin featured more strongly as the principal drug of use (59 per cent), with amphetamines following at nearly 19 per cent. Alcohol was identified as the principal drug by only six per cent. Otherwise participants were broadly similar to all those referred. In terms of the second problem drug of use, where this was recorded, cannabis was the most frequent, followed by alcohol and cocaine, both for all referrals and for those accepted on to the program.

The key difference between young women and young men was that a substantially higher proportion of the former, both referrals and participants, had heroin recorded as their principal drug of use. Amongst referrals as a whole, this applied to 80 per cent of young women, compared with 47 per cent of young men. Amongst those who were accepted onto the program, heroin was the main drug of use for more than 90 per cent of young women compared with just over half of young men.

The method of application of particular drugs is also significant. The DJJ data set records 50 per cent of all referrals injecting their main drug of use, 24 per cent inhaling it and 13 per cent ingesting it. For those accepted onto the program the rate of injection was higher, at 54 per cent. In line with the higher levels of heroin use by young women, injection rates for female participants were 70 per cent for all referrals and just over two-thirds for those accepted onto the program. Participant interviews suggested that the young women tended to have started both taking and injecting heroin at an earlier age than the young men. It needs to be emphasised again that the number of female participants was small, but it seems that young women coming to the attention of the YDC may be particularly at risk of the health and other problems associated with injecting heroin.

The DJJ database also records the scores of participants and referrals on assessment tests for severity of dependence (Sutherland et al., 1986) and readiness to change (adapted from Rollnick et al., 1992). These data are incompletely recorded, but suggest that a majority of all referrals were assessed as 'severe'. A majority were also assessed as being at the 'contemplation' stage of readiness to change. Amongst those accepted on to the program these figures were higher, with 80 per cent classed as severely dependent and 79 per cent as at the 'contemplation' state of readiness to change.

A number of stakeholders involved in the policy and planning process commented that while it was always assumed that the main target group for the YDC was to be the 'hard end' of juvenile justice clients, they expected there to be a greater spectrum of needs and were surprised that the clientele did not include more participants with lower levels of drug use and welfare needs. There was a view that while the kinds of young people coming into contact with the courts have not changed substantially, their pattern of drug use is noticeably more frequent and of higher intensity. The age of initiation into injecting drug use also seems to be getting lower, as other research has suggested (Johnson, 2001).

There was strong support amongst stakeholders for the program persisting with this particular group of young offenders. Reducing offending behaviour and drug use amongst this group would represent a good measure of the success of an intensive intervention model such as the YDC program.

### **Offending histories**

Since one of the main eligibility criteria for entry to the YDC program is likelihood of facing a control order, it is not surprising that the young people referred to the program came to the Court with a large number of charges against them. Data on previous offences come from the Children's Court Information System (hereafter CCIS), to which the evaluators have no direct access. The data presented below are derived from the YDC Statistical Monitoring Reports (Department of Juvenile Justice

2002) and are based on CCIS searches for the previous 10 years. This database does not include outcomes from District and Supreme Courts (and thus may underestimate the average length of custodial sentences) and only contains information for the most serious outcomes. This means that for each group of charges for which a young person appears in court, only one - that relating to the most serious offence and outcome - is recorded.

Full data are not available for the first year of the pilot, but Table 3.3 shows the recorded offences accruing to YDC referrals and participants in the 12-month period from 1 July 2001 to 30 June 2002, categorised by main offence type. This shows that the group towards which the YDC program is targeted were substantial offenders, having accumulated a total of 692 different finalised court outcomes. Excluding the offences accrued by those still awaiting assessment at the end of June 2002, the program participants had 63 per cent of offences, while making up less than 40 per cent of all referrals. This indicates that selection into the program is weighted towards higher-level offenders.

**Table 3.3: YDC referrals' and participants' previous offences (July 2001 to June 2002)**

Offence type	YDC participants	YDC non-participants	Awaiting assessment	All referrals	% of all offences
Property crimes	209	131	25	365	52.8
Crimes against the person	103	71	12	186	26.9
Drug crimes	28	6	2	36	5.2
Traffic offences	17	7	-	24	3.5
Other	39	28	3	70	10.1
Not recorded	9		2	11	1.6
<b>Total</b>	<b>405</b>	<b>243</b>	<b>44</b>	<b>692</b>	<b>100</b>
<b>Total % of offences</b>	<b>58.5</b>	<b>35.1</b>	<b>6.4</b>	<b>100</b>	

The young people referred during this year had also previously served a total of 87 custodial sentences between them, with an average length of sentence of seven months. Forty-eight (55 per cent) of these sentences were served by YDC program participants. The young women referred were recorded as accumulating 19 per cent of the total of offences between them, while making up 17 per cent of all referrals in that year.

The most common charges related to property offences, mainly theft of some kind, followed by offences against the person. It is noticeable that offences involving possession or sale of drugs made up only a small proportion of these main charges.

### **Living arrangements before entering the YDC program**

The YDC statistical monitoring reports record the living arrangements of participants before they entered the program. In the first year of the pilot period two-thirds were living with their parent/s and this fell to 58 per cent in the second year. The rest were living in a variety of situations, including alone, with friends or other relatives, or with a partner.

### **Employment status**

Virtually all the participants were recorded as unemployed when assessed. Two were in work (in one case sex work) and three were studying at the time of entry to the program.

## **3.5 Outcomes**

The broader outcomes from the YDC program as a whole are analysed in more detail below in Section 5. Here we simply report the numbers progressing through the treatment program to completion, or leaving before completion.

As described above, in the 24 months of the pilot program 154 individuals were referred to the program (some more than once) and 72 were accepted for it, with a further three joining after being assessed within the pilot period. By the end of August 2003, 13 months after the pilot period ended, 29 of these 75 original participants had 'graduated' (completed the program to the satisfaction of the Court), 28 had withdrawn from the program of their own volition before completion and 18 had been discharged from the program by the Court. Based on a simple ratio of graduation to participation this represents a 37 per cent 'success rate'. Although this says nothing about what happens to participants after they leave the program, or about any benefits that those not completing the program may still have gained, it is a significant achievement, given the severity of participants' drug use, their life circumstances and their previous records of criminal activity.

Table 3.4 gives a breakdown of program outcomes by sex. The number of female participants is too small to be certain about any patterns, but it appears that young women are proportionately both less likely than young men to complete successfully and more likely to withdraw from the program of their own accord. Whether this is associated with their higher levels of injecting heroin use is explored later in the analysis of qualitative interviews with participants.

**Table 3.4: Program outcomes during pilot period, by sex (numbers)**

	Men	Women	Total
Graduated	26	3	29
Discharged by Court	15	3	18
Withdrew voluntarily	21	7	28
<b>Total</b>	<b>62</b>	<b>13</b>	<b>75</b>

Note: Eight participants were still on the program at the end of the 24-month period, but their subsequent outcomes are included in the table. The number terminated by the Court includes one male participant who was likely to be terminated as he was then incarcerated in another State.

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### **Program extension**

An important indication of engagement with program is whether participants choose to extend their involvement beyond the initial six-month period. Data provided by the YDC Registry indicate that 35 of the 75 participants during the two-year pilot period chose to extend their period of participation (nearly 47 per cent). Extensions have also remained at approximately the same level up to December 2003.

The lengths of extensions range between two weeks and six months, with the average being just under 2.4 months. Many participants had more than one extension and the total number of extension given during the pilot period was 70.

Since extension does not arise until a participant reaches the nominal program end point of six months, the proportion choosing to extend is obviously much higher amongst those who do reach this point. While extension is associated with a high likelihood of successfully completing the program (or ‘graduating’), it is not synonymous with it. Of the 29 participants during the pilot period who graduated, 24 received extensions (83 per cent), while 14 of those who had extensions did not go to graduate (40 per cent).

The high level of extension also means that for those who engage at all with the program, six months has ceased to be the normal length of participation. Amongst all those who received extensions and completed their time on the program by 8 December 2003, the average total period of participation was 10.5 months. For 12 participants the total period was 12 months or more – in one case 21 months.

Overall, these data suggest that completing their involvement to the satisfaction of the Court is likely to take more than six months for most participants. In many cases it also takes at least this time to determine whether a young person is likely to persist with the program and possibly graduate. While the level of extensions is an indication of successful engagement of young people in the program, it may not be realistic to continue to describe the program as being normally of six months in length. This question is discussed further below.

### 3.6 Summary

This Section has analysed the monitoring data available on take-up, participation and movement through the YDC program during the pilot period and in the year following. The numbers both of referrals and acceptances were lower than anticipated in the planning stage of the pilot. Various ideas have been canvassed for why this was the case, but the main reason appears to be that there are fewer young offenders who fall within the eligibility criteria and wish to participate than was originally estimated. While still fluctuating, the numbers appear to have stabilised at an average over time of around 35 new entrants to the program per year and fewer than 20 on the program at any one time.

There does not appear to have been a significant increase in inappropriate referrals and the Court is keeping to the established eligibility criteria, in terms of age, levels of drug use and types of offences. Thus the low referrals numbers have not tempted the Court into net widening to boost participation.

Although young women were one of the target groups for the program, the number referred to the program has been relatively small and those who were referred were less likely than the young men to be accepted, or to agree to participate. They also appeared to be less likely to complete the program successfully when they do participate and more likely to drop out of their own volition. Both female referrals as a whole and participants were more often heroin users and injectors than the men, and the female participants seem to have started injecting earlier. Ways of increasing the involvement of young women should be considered.

As was anticipated, a substantial proportion of the referrals in the pilot period were Indigenous, although they too appeared to be somewhat less likely than others to commence on the program. Around one-quarter of the participants were born overseas and 16 per cent nominated their preferred language other than English.

Given that participants mostly have severe drug dependency and have been deeply enmeshed in the criminal justice system, the fact that more than one-third completed the program to the Court's satisfaction and that nearly half chose to extend their initial period of treatment are significant achievements. However, the length of time that those extending eventually spend on the program raises a question about what should be considered the 'normal' period of participation.

The next Section describes in more detail how the program operates and discusses issues raised in the reviews of program implementation.



## **4 Implementation and Operation of the Youth Drug Court**

### **4.1 Process Evaluation Methodology**

The process evaluation involved two reviews of program implementation and development, carried out at around eight months and 18 months into the pilot period respectively. The reviews were based primarily on interviews with key stakeholders, examination of program documentation<sup>4</sup> and observations of the Court in action.

For the first review a total of 25 interviews were conducted with YDC stakeholders during the period from late February to mid-April 2001. The SPRC consulted with the YDC Monitoring and Evaluation Committee about the selection of key stakeholders and in developing the topic guide. The stakeholders included members of the Monitoring and Evaluation Committee, the JART, the Court Team, program managers (including Juvenile Justice Officers and Juvenile Justice AOD Counsellors), representatives of the DoCS-funded services (known as case managers) and treatment providers. Interviews were also carried out at this stage with five young people participating in the YDC program.

The second review involved a total of 16 interviews conducted with a similar grouping of YDC stakeholders during the period from mid-March to mid-April 2002. It also included representatives of external agencies that had dealings with the YDC. The pool of interviewees was somewhat smaller and more focused than for the first review, as it was felt to be of greater value to concentrate interviews on stakeholders who had detailed knowledge and experience of program operation on the ground. On the other hand, this review also drew on the experiences of a larger number of participants interviewed for the outcomes study. Most interviews were carried out face-to-face and the rest by telephone. The interviews were tape recorded and transcribed in summary.

SPRC researchers also attended sittings of the Court and 'report back' sessions where participants' progress is reviewed, as well as a number of administrative or consultative meetings amongst YDC staff.

Key findings from the implementation reports submitted to AGD in June 2001 and May 2002 were fed back into the ongoing program monitoring and evaluation process during the pilot period. Thus they are likely to have had some impact on the subsequent development of the program.

### **4.2 The YDC Program Model**

The YDC model was set out in a Program Plan that was initially released in July 2000 (Attorney-General's Department, 2000), but underwent some further revisions during the pilot period. Figure 4.1 below, based on the model described in the Program Plan and revised to include subsequent changes, describes the key elements of participant

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<sup>4</sup> It should be noted that the policy and planning documentation available for this review was limited and incomplete and it has not always been possible to establish precisely the origin and timing of certain decisions about program structure and operations. There has been turnover in some key Departmental positions and there are differing narratives about decisions that were made outside the formal meeting process.

involvement in the YDC process and the stages. Table 4.1 then lists the NSW government departments and agencies involved in the YDC program, and indicates the areas of responsibility and staff/service provision linked to the respective departments.

### **Assessment**

Once a young person is screened as potentially eligible for the program, s/he is referred for comprehensive assessment by the JART (following any adversarial argument in court and based on the results of the initial screen). During this period the young person is located either in custody, in a stabilisation unit, at home or in other accommodation approved by the JART. The matter is adjourned for 14 days, during which time each departmental member of the JART conducts an in-depth assessment of the health, social and welfare needs of the young person. These assessments are then used to develop an individual 'case plan'.

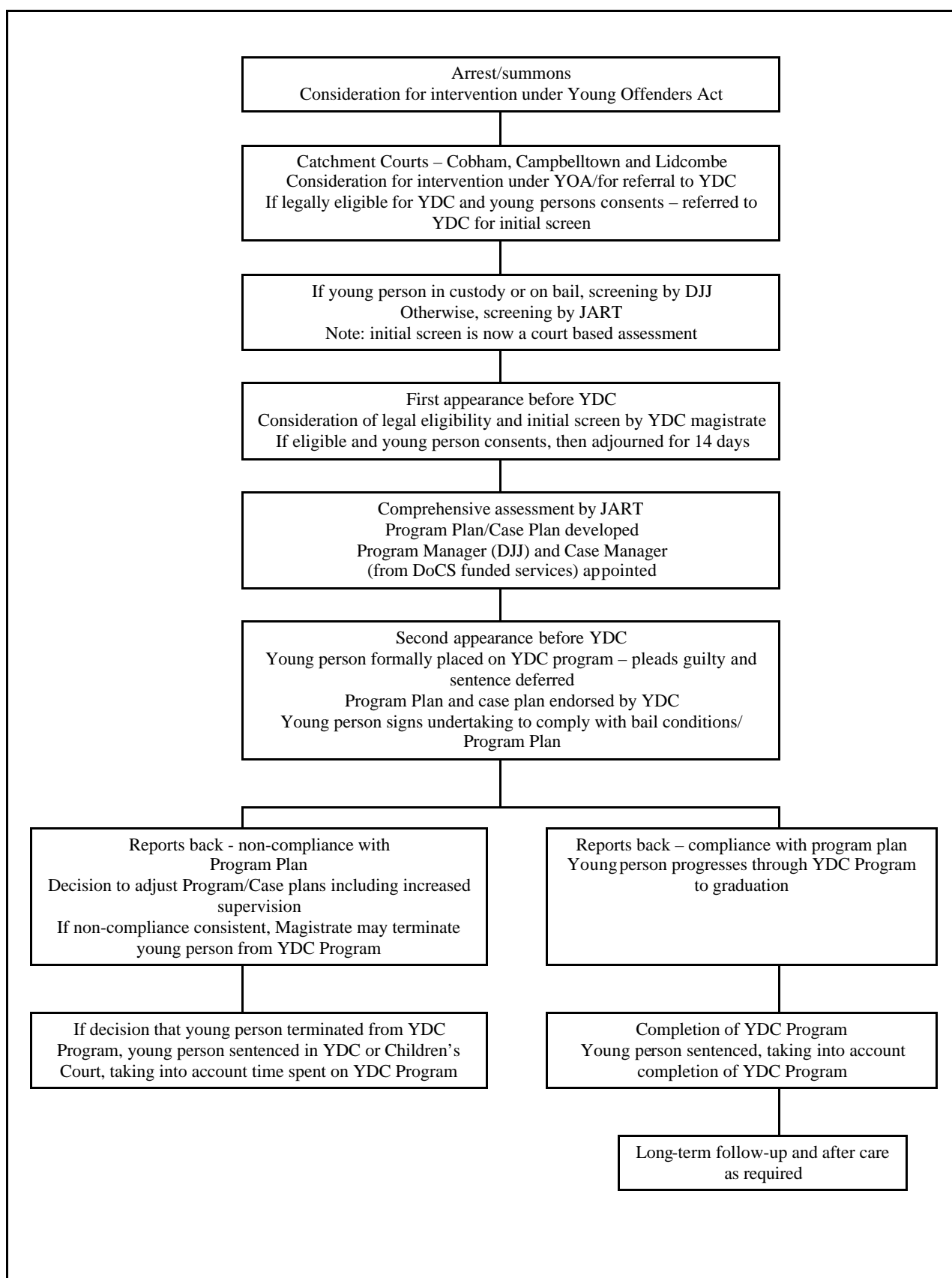
After the assessment is completed, the JART holds a case conference with the young person and any family/support persons, DoCS case managers and other program managers to discuss the case plan. A report is then compiled from the various undertaken by the JART, with a recommendation to the YDC that the young person be accepted onto the program or not.

### **Case plan**

The case plan provides a broad structure for participants' engagement with the program and forms part of the participant's conditions of bail. It generally includes one or more of the following conditions:

- to reside as directed by the JART;
- to undergo supervision by DJJ;
- to engage in a program of support/intervention by a case manager appointed by the JART;
- to participate in an alcohol and other drug residential program as directed by the JART;
- to participate in weekly individual counselling;
- to participate in weekly group-work sessions;
- to attend educational/vocational and recreational programs;
- to submit to urinalysis, as directed by the manager of the JART; and
- to attend report back sessions at Cobham/Campbelltown Courts.

**Figure 4.1: Youth Drug Court Program – processes pathway**



Source: Youth Drug Court Program Plan (Attorney-General’s Department, 2000), revised to incorporate subsequent changes

**Table 4.1: Departmental services and responsibilities in the YDC Program**

Attorney General's Department	Magistrates Registrar/Coordinator Program management and evaluation
Department of Community Services	DoCS JART member Case work services and brokerage funds: <ul style="list-style-type: none"> <li>• Indigenous Social Justice Association</li> <li>• The Junction Works</li> <li>• Marist Community Services</li> </ul> Access to accommodation
Department of Education and Training	DET JART member YDC education program
NSW Health	Health JART member Induction/Stabilisation Unit Access to detoxification and residential rehabilitation services Outpatient services (Health Day Programs): <ul style="list-style-type: none"> <li>• Open Family</li> <li>• Tharawal Aboriginal Corporation</li> <li>• South Western Sydney Area Health Service</li> <li>• Western Area Adolescent Team</li> <li>• Ted Noffs Foundation</li> </ul>
Department of Juvenile Justice	JART Manager Juvenile Justice Officers (2) Juvenile Justice Alcohol and Other Drugs Counsellors (3) Community Nurse Access to Intensive Program Unit services
NSW Legal Aid Commission	YDC Defence Solicitor
NSW Police	YDC Prosecutor

The plan is tailored to each participant and aims to address the young person's needs holistically while on the program. A case manager and program manager are allocated to the young person and work together to supervise the legal mandate and to implement, resource and coordinate the case plans in consultation with the JART and the Court.

### **Bail**

Following the comprehensive assessment and the development of a case plan, the young person returns to Court to enter a guilty plea and is formally accepted onto the YDC program. The YDC Magistrate defers sentencing for six months and places the young person on a Griffiths Remand order under section 33(1)(c2) of the *Children (Criminal Proceedings) Act 1987*. The bail conditions generally require that the young person comply with their case plan and reside as directed by the JART. The young person signs an undertaking to this effect.

When a young person enters the program, a notice is put on the police computer system to say that they are under the supervision of the YDC in lieu of a control order. If the police come into contact with the young person for any reason, they are advised to call the YDC prosecutor with details of the incident. For example, a participant's bail conditions may proscribe him/her from being in the Cabramatta town centre and the police system can provide information about any breaches of bail to be addressed in a report back session.

### **Treatments and interventions**

While case plans are based on individual needs, in practice a suite of treatments has developed which is broadly common to most participants. These include detoxification; residential or community-based rehabilitation programs; counselling programs concerned with drug and alcohol use, offending and, where appropriate, other issues such as anger management and family support; education and vocational training; health assessment and treatment; accommodation; recreation; case management; and other forms of practical support such as purchase of clothing or other items, and transport to Court or other important events.

### **Reporting back to Court**

The planned YDC model involved 2-3 phases of report back sessions. In Phase 1 the participant would report fortnightly, Phase 2 involved monthly reports and Phase 3 would commence after the participant had graduated from the program and would consist mainly of after-care. In practice, reporting back has evolved in a more discretionary way, with the frequency depending on individual needs and the level of a young person's engagement with the program at different times. The phasing has been less systematic than originally proposed. The Court Team meets prior to the report back session to discuss any major issues. In preparation for this, the case manager writes a brief report on participants' progress in relation to their case plan, and the program manager writes reports on the participant's response to supervision. These reports are read in conjunction and provide recommendations for variations to the case plan or bail conditions.

In the report back session the magistrate discusses the young person's progress (positive or negative) on the program, and any barriers to achieving the individual

program goals. The sessions are attended by the Court Team (which includes the magistrate, the prosecutor, the Legal Aid defence solicitor and the JART manager), the program manager, the case manager, the young person and any family/support persons. The young people are encouraged to speak for themselves and discuss with the magistrate what they enjoy in the program, and what they would like to change about their case plan. The report back sessions are intended to be conducted in a way that develops a sense of ownership and engagement with the program on the part of the young person. The magistrate may adjust the bail conditions to assist the young person to better engage with their case plan, or to enforce compliance after a breach. Decisions are made by the magistrate on the advice of the team.

### **Graduation and sentencing**

After the young person has been on the program for six months, the magistrate, on the advice of the Court Team and the JART, determines whether they can 'graduate', or whether an extension of the program is required. As reported earlier, the majority of participants who reached this six-month point during the pilot period chose to extend their involvement for a further period, usually of between three and six months.

When the program has been completed successfully (or otherwise terminated), a sentence is imposed under s33 of the *Children (Criminal Proceedings) Act 1987*. The operating principles of the YDC program require that the sentence must not be more severe than would otherwise have been imposed by the Children's Court. Similarly, the sentence imposed for young people who do not complete the program must be no more severe than that which would have been imposed had they not agreed to participate in it. The magistrate is required to take into account the young person's compliance with and participation in the YDC program.

## **4.3 Issues in Program Implementation and Development**

### **Stakeholders' views on program development**

There was a general view amongst stakeholders that the program has been adhering to its original operating principles. In particular it was felt to be doing well in terms of helping young people to take responsibilities for their actions. There was also broad agreement that while there were a number of teething problems, the implementation of the YDC program was generally effective and that most of these problems had been dealt with in the course of the pilot period of operation. JART members noted that as a new program the pilot was bound to face some challenges and considered that its flexibility had allowed them to respond to these challenges and to find innovative ways of working. The challenges have included responding to gaps in service provision by fostering partnerships, negotiating with existing services and providing them with training.

Stakeholders identified two main achievements of the program. The first was in the area of developing interagency cooperation and the second concerned the difference the program had made to young people's lives.

The ability of the program to work effectively across four departments and a number of external agencies is a major achievement, although there are still some significant limitations to effective interagency communication and operation. These are discussed further below.

Stakeholders saw it as important to recognise that what might appear to be small individual achievements are for many young people a huge improvement. Instances where young people are now able to have reasonable communication with their parents, for example, represent significant progress for some participants. Participants' own perspectives on their outcomes are examined in Section 5, but most stakeholders felt that the program was delivering tangible benefits for young people in the form of decreases in drug use and offending, better health, and access to education and employment. This was felt to be a particular achievement in light of the entrenched offending and drug use amongst the YDC client group.

Even if positive outcomes are not immediately obvious, many stakeholders felt strongly that the program was successful in providing young people with information and tools that they could carry with them and use at a future point in their lives, when they were more ready to make a positive change. This, of course, implies that the full impact of the program can only be gauged in the longer term.

It was also pointed out that no other similar program provided the level of support that participants receive from the YDC. This type of support would only be available elsewhere on a voluntary basis and most of the YDC client group would be unlikely to seek such support voluntarily.

Participation also brings what was referred to as 'added value'. For example, the majority of participants have received health interventions that most would not have been able to access in the absence of the program. Many have received glasses or dental work. Two female participants who were pregnant also received a level of antenatal care under the program which might otherwise have been unlikely. There were substantial health and social benefits for the mother and baby, reducing also the cost to the community if babies are born to drug-using mothers.

### *Critical success factors*

One aim of the YDC evaluation has been to identify the factors that contribute to the levels of success achieved over the pilot period. Stakeholders were asked what, in their experience so far, they saw as contributing to the achievements individual participants had made over their time on the program.

The factors identified mainly concerned attributes of the participant themselves rather than particular program interventions. This is perhaps not surprising as the program operates around the principle that different interventions work for different individuals and that a holistic, tailored program is appropriate for the client group. Several stakeholders also pointed out that it was difficult to predict young people's future outcome on the basis of early indicators of engagement and progress with the program. Successful outcomes can often be unexpected: there have been some participants who have confounded early doubts about their capacity to benefit from the program and made considerable positive changes to their lives. The following observations may, however, assist in identifying gaps in provision and priority interventions.

- Age/maturity

Participants tend to be more motivated to change if they are older or at least more mature. Turning 18 in particular can be a significant milestone. This could perhaps be

related to young people's awareness of the more severe nature of the adult criminal jurisdiction.

- Family support

Many stakeholders felt that support from families was crucial to young people's continuing stability. Reversion to significant harmful drug use was most frequent amongst those who had family members who were drug users. This was identified as an enormous hurdle for the young person to overcome and participants from such backgrounds needed an increased level of support both during and after the program.

- Ability to disengage from familiar negative environment and peer groups

The other side of family support is that the home environment is often negative. Young people seem to do better attending residential rehabilitation programs outside their normal environments, but the risk on exiting residential rehabilitation can be substantial if they return to environments and peer groups that can trigger a relapse into destructive behaviours.

### *Areas for improvement*

There were also a number of areas in which stakeholders felt the program could be doing more to meet its original aims. These included sensitivity to cultural issues, avoiding further criminalisation of young people through sanctions, assistance for young people with a range of special needs, and involving participants' families.

Stakeholders from a range of agencies identified the latter issue as one area in need of further work. Families are often hard to engage in the process: they may find it difficult to perceive change in the young person and tend to treat them as they were before they entered the program. In some cases, however, the family environment can also be a negative influence on the young person. It was felt to be important to look at more creative ways of getting families involved where appropriate, so that they can be active participants in the process of change. Although case managers had done some work with families, those interviewed reported having little time available for this work. While the Health day-programs (see below) were intended to include some work with families, the low level of contact between participants and these program meant that that this role tended to fall mainly to case managers.

Although many of the implementation difficulties were addressed in the course of program development it is worth discussing what they were (and in some cases remain), as many are relevant to the question of possible program extension or expansion. We start with the process of screening and assessment.

### **Screening and assessment**

In the early phase of the pilot program there were some problems with delay in the screening process. In May 2001 a new Court-based initial screen process was introduced to deal with these early difficulties involved in carrying out assessments when applicants were on bail in the community. The new arrangements were reported by all interviewees to be working well and to have reduced the previous problems considerably. Since the end of the pilot period, the responsibility for the initial health-related assessment has been passed to the Corrections Health Service, while the legal mandate remains that of DJJ.

For comprehensive assessments, while there were a number of issues that arose in the early stages of implementation, the process now seems generally to be working effectively. Initial problems with the timeframe for completing assessments seem to have been largely resolved through the establishment of the Induction Unit.

The second implementation review identified some concerns that the assessment process was not picking up certain needs amongst participants. One issue identified as problematic by interviewees from several departments and agencies was the approach to mental health problems. Many YDC participants suffer from depression and there was a view from the JART that symptoms may not always be well identified and treated. However, a proposal from the South Western Sydney Area Health Service (SWSAHS) for a schedule of psychometric testing to be included in the comprehensive stage of assessment proved controversial and was not implemented.

There appear still to be some unresolved issues about mental health and psychological testing. Partly this reflects variation in professional viewpoints from different departments about the kinds of treatments appropriate for the YDC client group. Given that a single coherent treatment plan must be developed for each participant, these different viewpoints cannot be equally represented in each plan. This applies also to the use of pharmacotherapies (see below), and the debate within the YDC is consistent with the wide variety of attitudes held in the drug treatment sector as whole.

### **Stabilisation**

One of the key implementation problems in the YDC pilot was the initial lack of dedicated stabilisation facilities for participants in the first few weeks of their entry into the program. The planned service delivery model included a six-bed residential stabilisation unit to accommodate young people for up to two weeks during and after the comprehensive assessment phase. It was anticipated that, where necessary, young people who had breached or required a review of their case plan could also re-enter the stabilisation unit for a short period (maximum of two weeks).

The stabilisation unit was to be located at the former site of a youth refuge at Flowerdale Road, Liverpool. However, the process of establishing the unit was held up for around 16 months because Liverpool Council initially refused the development application for the site, as a result of opposition to having a facility in the area for use by young, drug-using offenders. In the meantime NSW Health was obliged to investigate alternative locations in Western and South Western Sydney.

The result of this delay was that a crucial element of the planned service model was missing when the program began. This had serious repercussions in that it was often not possible to release program applicants from custody until a stabilisation place became available. It also added to wider difficulties with short-term accommodation options for participants who could not remain at home (see below).

In the absence of the dedicated unit, the stabilisation service operated as an interim arrangement out of two locations. NSW Health negotiated access to four beds at Nick Kearns House in Bankstown and two at PALM West in Parramatta, run by the Ted Noffs Foundation. The Nick Kearns House partnership was initially meant as a short-term arrangement over the end of year break to provide short-term crisis

accommodation for YDC participants. This partnership was extended for use by the stabilisation unit in the absence of independent premises. The stabilisation service had six staff plus a coordinator, two staff being placed at PALM West and four at Nick Kearns House.

Delivery of two different services out of the one location at Nick Kearns House turned out to be problematic. This organisation ordinarily operates as an adolescent crisis refuge and their residents participate in a program designed for their particular needs. These clients often had more independence than was seen as appropriate for YDC participants, such as the ability to leave the refuge during the day without staff supervision. This conflict in operating arrangements was reported as causing significant problems for staff in both teams and for consistency of service delivery to participants of both programs. Consequently the co-location arrangement between the stabilisation unit and Nick Kearns House was terminated by NSW Health at the end of April 2001.

The stabilisation service then consisted of 2-3 dedicated beds at PALM West for YDC participants in the comprehensive assessment phase of the program. These beds were for young men only, so there were no beds for young women in the assessment stage. Only four young women had been referred to the stabilisation unit at that point, mainly because the majority of young women referred for comprehensive assessment so far had applications for bail refused by the Court on legal grounds.

The Induction Unit, at Flowerdale Road, Liverpool, finally opened in November 2001 (more than 15 months after the pilot program began). This was seen by most interviewees to have been the most significant event in the life of the program since its inception, and nearly all were highly positive about its future impact. The majority felt that it was fulfilling its original purpose and was operating as planned, except that because of small numbers of referrals it had not been operating to full capacity. Induction Unit staff have also begun to run programs at the Liverpool Intensive Programs Unit (IPU), which has been helping to increase the collaboration and cooperation between different elements of the program.

While there is general agreement that the Induction Unit has been of significant benefit for the program in terms of assessment and stabilisation, there has still been some disagreement about its role. In particular there has been a divergence of opinion about whether the Induction Unit should fulfil other purposes, such as provision of crisis accommodation. Some members of the JART expressed frustration that the Unit could not be used for this purpose and that although there had been times when participants had been placed there for short periods, this had to be negotiated on a case-by-case basis with Unit staff. The improvement in the availability of short-term housing options has made this less of an issue more recently.

There has also been some difference of opinion about the ideal length of time a participant should spend in the Induction Unit. Young people entering the program currently spend two weeks there, with the option of extending for a limited time (of around a week). Most members of the JART interviewed felt that this was too short a time to work productively with the young person and that four to six weeks would be preferable. It was felt to be difficult to establish effective counselling groups in the current time available and to find appropriate placements for participants to move on

to after induction. JART members did not want to be in a position where they were constrained to accept the first placement available.

The role and functions of the Induction Unit are therefore another area for further policy discussion, in terms of establishing effective transitions for participants between different stages of the program.

### **Accommodation**

Responsibility for accommodation and health treatment under the YDC program lies with different Departments (DoCS and Health respectively), although these two services are often in practice closely intertwined. There has been a shortage of suitable accommodation for participants and potential participants at all stages in the process. Since some treatment facilities are residential, short-term housing needs of some participants are met through these facilities, although referral to them is based on the assessed need for an intensive therapeutic intervention in a structured environment. Because of the different areas of responsibility, these issues are dealt with separately in the report, but their interrelation should be acknowledged.

The YDC program model was based on enhancing existing services rather than developing new services specifically to service the Court (NSW Government, 1999). The aim of the program was to manage YDC participants in the community, with the NSW Health Department providing treatment interventions and DoCS providing accommodation services and case management. The accommodation was to come through the existing Youth Supported Accommodation Assistance Program (YSAAP) services, with extra funding from DoCS to support the YSAAP providers while the YDC participants were accessing these services.

The accommodation shortage seems to have arisen for the following reasons:

- It was not anticipated at the planning stage that so many YDC participants would be assessed as requiring immediate removal from their current living arrangements where they were entrenched in drug use and offending behaviour. Many YDC participants did not have family support and positive community ties.
- Some YDC participants lead highly transient lifestyles and need to be stabilised in appropriate accommodation in order to successfully engage with the program.
- Youth accommodation services often do not accept young people with AOD issues and referral from a drug court was often in itself a barrier to placing a young person with a service. Many YDC participants had previously accessed these refuges and had been excluded for drug use, violence, theft or other proscribed behaviours. Thus they were unlikely to be readmitted;
- The waiting lists for short-term accommodation beds are long and if the Court determines that the young person is at risk to/in the community, they may be ordered to wait in custody for accommodation to become available. Similar problems apply to residential treatment services. There was a perception that this could be making the program unattractive to potential participants.

In the early stages of the program, the JART and service providers were finding that until participants were placed in suitable, stable accommodation, there was little work

that could be done in implementing case plans and engaging them in other YDC services. In some cases, rather than providing stabilisations, the YDC process was replicating young people's transient lifestyle through short-term placements and, as a last resort, custody.

The maintenance of young people in custody because they could not be found suitable accommodation for a variety of reasons is problematic given that the YDC was planned as a community-based program intended to divert young people from detention. Participants reported loss of motivation and engagement with the program while in custody awaiting suitable placements (sometimes for up to one month).

In response to these problems, the DoCS-funded services established networks with YSAAP and other services in Western and South Western Sydney and some agencies agreed to accept YDC participants. However, it was reported in the first review that the cost of supplementing YSAAP services was outstripping the resources available for YDC participants through the DoCS-funded brokerage services. Securing YSAAP accommodation can involve a supplementation of \$2,000-\$3,000 per week per service

The predominant view among stakeholders interviewed one year later was that the situation was much improved. This was felt to be attributable to the hard work put in by staff, particularly the DoCS representative on the JART, in forging links and partnerships with housing agencies.

The main accommodation options that became available between the two implementations reviews were:

- Priority places, useable for crisis accommodation for YDC participants, at three existing youth refuge services (The Sidings, Bidwell Refuge and the Bridge).
- Independent accommodation secured through negotiations between DoCS and a community accommodation service in Bossley Park. This accommodation has been reserved for young women.
- A three-bedroom house secured through a partnership between Hume Housing and the Department of Housing. Young people on the program can lease from Hume Housing and have the option of extending their time after three months in the property.

In spite of these achievements, there remains a general shortage of crisis accommodation for young people in the community. Crisis accommodation is also a problem for those participants that turn eighteen while they are on the program, as adult services are often unsuitable for YDC participants.

A further point raised by some stakeholders was that while independent living accommodation is becoming available, the majority of young people on the program are some way from having the necessary skills and stability in their lives for independent living. This suggests that more emphasis needs to be given to equipping young people with independent living skills. Successful independent living, however, also requires a level of stability in the young person's life that may be difficult to achieve within the life of the program. It is often inappropriate for young people to return to their families, and most participants would benefit from a certain amount of

surveillance and support within accommodation. This type of supported accommodation is severely lacking.

#### **4.4 Drug Treatment and Service Provision**

##### **Detoxification**

Expert opinion varies on the need for detoxification services for young people and these differing views were expressed throughout the YDC planning process. In practice there appears to have been shortage of detoxification beds for YDC participants. The assumption was that where detoxification was needed, it could take place either in custody if bail was refused (there are six beds at Cobham<sup>5</sup> for young men and two at the Yasmar Centre for young women, though these are not dedicated to the YDC program), or in the community for those on bail, either through existing in-patient services or through home detoxification provided through Area Health Services. The expectation was that most of the young people entering the program would have serious criminal histories and be unlikely to receive bail for the assessment process.

However, as reported above, heroin has turned out to be the major problem drug and participants have an unanticipated intensity and level of use, leading to greater demand for detoxification. One of the continuing problems with detoxification services is the amount of time it takes to place a client into a community-based service. Most of the time detoxification is needed immediately, but services often have a waiting list of around two weeks. Given the difficulties with home detoxification, custody detoxification is often the only option.

Also, most accommodation services will only accept a young person if they have undergone detoxification. This caused problems in the early phase of the pilot, as detention centres such as Cobham are not always accepted as proper locations for detoxification. However, the opening of the Induction Unit has helped in this respect because participants are able to spend time in stabilisation following detoxification before moving on to other accommodation.

With the closure of Dunsmore House in early 2000, there is now only one adolescent-specific detoxification service in Western and South Western Sydney. This facility, Dunlea, is operated by Youth Off the Streets and is located at Merrylands. Priority access was also negotiated to two beds in Corella Lodge, along with other beds at the Centre for Addiction Medicine (CAM) in Parramatta and in the Adolescent Ward of Westmead Hospital. Not all of these facilities are ideal for the YDC clientele. Corella Lodge, for example, offers a 5-7 day program that is mainly medication-based, which is not always regarded as appropriate for young people. JART members also commented that mixing YDC participants with adults in these services could place them at some risk.

In most cases home detoxification has also proved not to be viable. Often the JART has assessed the young person as needing removal from their current living arrangements where there are child protection issues, drugs in the home and family

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<sup>5</sup> The detoxification facility at Cobham detention centre was not operating for part of the implementation period because of an industrial dispute.

members involved in crime. Because of the lack of adolescent-specific detoxification beds, YDC participants have often had to remain in custody before program entry.

The majority of stakeholders interviewed who were involved in the operation of the YDC felt that there should be detoxification beds specifically designated for YDC participants. When discussing expectations of the YDC, most assumed that as a specialist program targeting young offenders with AOD problems, it should have dedicated detoxification and rehabilitation beds. Most agreed that while the YDC program is well resourced overall, it does not always provide immediate, guaranteed access to the basic and specific treatment services necessary for its target group.

### **Urinalysis**

Urinalysis is used to inform treatment by demonstrating the level of progress with drug use reduction. The Department of Juvenile Justice developed a policy for the use of therapeutic urinalysis prior to the program commencing, but the practical application of this policy has proved contentious. Most of those interviewed had concerns about how urinalysis was used and many opposed it being treated as a measure of program compliance and as a basis for sanctions. The main concerns about urinalysis have been as follows.

- Instant urine tests have been found to be inaccurate and can pick up legal drugs. Panadeine, for example, has been detected as heroin because it includes codeine, which is an opium derivative. Young people are now advised to take Nurofen instead for pain relief.
- Excessive use of urinalysis may encourage participants to indulge in more dangerous drug taking. They may avoid cannabis as they know it stays in their system for a long time, but take ecstasy or heroin instead because it is less likely to be detected by the time they are tested.
- There is an argument that it is preferable to ask a young person whether they have been using. Stakeholders suggested that participants mostly report use honestly and that dialogue is more productive than testing.
- The purpose of urinalysis is perceived differently by different program staff, leading to inconsistent practices and responses to detected drug use.
- Perhaps as a result of these conflicting views and practices there appears to be no consistent recording of urine testing of YDC participants.

For these reasons, records of urinalysis could not be used an indicator of change in levels of drug use for the purposes of program evaluation.

### **Residential rehabilitation**

There has been some division of opinion amongst program stakeholders about whether residential rehabilitation is an appropriate form of treatment for all YDC participants. At present, most individual participant program plans include residential rehabilitation as a key part of their treatment. In the year July 2001 to June 2002, there were 95 admissions of YDC participants into 19 different residential services (many participants having attended more than one service) (Department of Juvenile Justice, 2002). Nearly one-third of all these admissions were to the various Ted Noffs Foundation PALM services.

While the majority of stakeholders believed that residential rehabilitation can be appropriate for most young people, some questioned whether alternative treatment options, such as day-programs, were given sufficient consideration. It was suggested that YDC participants were, on occasion, being put into residential rehabilitation because of a lack of any other viable accommodation option, even though this might not be the most appropriate treatment option. It was pointed out that refugees often stipulate that a young person must have completed a residential rehabilitation program before they will be considered for housing. Also, as many YDC participants 'burn their bridges' while on the program, they often have to demonstrate a capacity to change in order to avoid termination and this sometimes involves completion of a residential rehabilitation program.

No new rehabilitation services were created with the funding available for the YDC program and there is only one adolescent-specific service in Western and South Western Sydney – at PALM West. Because of the temporary location of PALM West on the Cumberland Hospital campus, no new beds could be created for the YDC through funding enhancement. The assumption was that if rehabilitation was needed, participants would go on waiting lists for existing services, enhanced with Drug Summit funding (NSW Government, 1999).

Problems of access to residential rehabilitation for YDC participants were canvassed in the first implementation review and remained an issue of some contention through the pilot period. The availability of residential rehabilitation places has fluctuated, but PALM East and West (Ted Noffs Foundation) remain the only adolescent-specific rehabilitation services in Sydney used by the YDC. YDC clients do not have priority access to these services and they have to compete for places with other young people in Western and South Western Sydney. Consequently, other services as far away as Wollongong, Newcastle, Cowra and Canberra have had to be used.<sup>6</sup> In these circumstances, it can be difficult for the case managers to implement case plans and bring participants to court for fortnightly report backs, and for program managers to supervise the legal mandate and manage health and safety risks. Stakeholders also reported problems with YDC participants mixing with adult and voluntary clients in some rehabilitation services.

One of the consequences of the shortage of rehabilitation places has been that prior to the introduction of the Induction Unit some participants have had to spend lengthy periods in custody while waiting for places in residential rehabilitation.<sup>7</sup> One young person interviewed, for example, was in custody for six weeks prior to commencing the YDC program (having been 'bail refused' for several weeks before referral to the program). Once assessed as eligible and accepted onto the program, he had to wait in custody for another six weeks until a rehabilitation bed became available. The participant was at the residential rehabilitation service for two weeks and was then expelled for breaking the rules. At the time of the interview he was back in custody waiting for another bed to become available.

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<sup>6</sup> It should be noted, however, that in some cases specific services are used even though they are at a distance from Western Sydney because they provide a specialist or culturally appropriate service suitable for particular participants.

<sup>7</sup> The legal questions arising from this are discussed in Section 6.

In the early phase of the program, before the Induction Unit opened, young women in particular were spending long periods in custody waiting for places in residential rehabilitation and there were no female-specific beds available anywhere. This sometimes created frustration with the program and may go some way towards explaining the low level of engagement by young women. One female participant interviewed in a detention centre commented:

I used to hate it - seeing the girls ring up every morning and having to wait months to get into rehab. I would get out and come back in two months later and they'd still be waiting.

Experiences with the use of these residential services has been mixed. Good relationships were reported with many of them, but some interviewees felt that on occasions the reasons for termination of YDC participants from certain services had been arbitrary and unjustified. At an earlier stage there were also conflicts between the objectives of the PALM program and those of the YDC, although these are reported to have been largely resolved. Now, once a participant begins the PALM program, they become subject to PALM rules and procedures and are case managed through that program in consultation with JART, the program manager and DoCS services.

One other issue raised in relation to residential rehabilitation concerns the transition back to living in the community. Most YDC participants were felt to be at risk when exiting residential rehabilitation. Tolerance to drugs is likely to drop substantially following a period in residential rehabilitation. This puts young people even more at risk of harm if they relapse. A structured plan is vital in encouraging stability and preventing relapse when leaving a rehabilitation program. The leap from a highly supported environment to greater independence can also be difficult and transitional housing may be needed in some cases. In essence, a strong emergent message was that transitions are a risky time for participants and they need to be given the necessary supports and structures to be able to cope with them.

### **Health day-programs**

One of the main alternatives to residential rehabilitation is the outpatient day-programs funded by NSW Health. There was widespread agreement amongst stakeholders that these services had been under-utilised for the YDC program, partly because of low program take-up, and that the resources were not being used efficiently or effectively.

There are five day-programs established within existing services and spread throughout the YDC catchment area. They also provide services to other young people referred as a result of police cautions and/or youth justice conferences. The services including counselling, group work, relapse prevention, development of social skills and community integration. It was anticipated that YDC participants would engage with the day-programs around the mid-point of their YDC program, although in practice some are referred to them from point of entry.

The providers include Open Family (specifically for Indo-Chinese young people), Tharawal Aboriginal Corporation (for Indigenous young people), South Western Sydney Area Health Service, Western Area Adolescent Team, and Ted Noffs at St Mary's. One of these programs (Tharawal) was not operational at the time of the first

implementation review in March/April 2001 and most of the others had not started operating programs as originally envisaged, largely because of the low client numbers.

The first review identified a lack of clarity amongst YDC staff about who was responsible for the coordination of these services and about their links with YDC program. Since the implementation review was carried out, the NSW Health representative on the JART has undertaken further liaison between the providers and the JART to clarify the role and scope of the services that are required from the day-programs.

Stakeholders were in general agreement that YDC participants (particularly those that are older) need to be linked into health services in the community. As anxiety and depression were identified as possible needs that are not being adequately addressed it is important that where appropriate services are available they are used.

### **Use of pharmacotherapies**

In terms of medical treatment for drug dependency, there has been only limited use of pharmacotherapies, such as naltrexone and methadone, for young people on the YDC program. Stakeholders mainly argued that maintenance therapies are not considered appropriate for young people given their unstable, unstructured lives and lack of viable family or community supports, although again there were some differing views. A typical program plan concentrates on providing detoxification where required, followed by tailored treatment interventions based on a range of psychosocial approaches.

### **Case management services**

The DoCS-funded case management services include The Junction Works Inc., the Indigenous Social Justice Association Inc. and Marist Community Services. These services coordinate, resource and implement the case plans in consultation with the JART and the supervising program manager. The services are managed internally, but with some overall coordination by the JART member from DoCS.

The case managers reported that their ability to provide casework support for participants in the initial period of the pilot program was limited by the amount of travel required within the Western and South Western Sydney area. Service providers commented that their staff were regularly travelling long distances to visit participants and take them to appointments. Also, as mentioned earlier, some YDC participants had been placed at Cowra and the Central Coast. Services were not funded to provide such a transportation service, although it is sometimes a necessary part of casework support to accompany young people to appointments.

The role of case managers is in part to ensure that young people can fulfil their case plans requirements, including attending appointments, but dependence on these workers for transport is not necessarily appropriate. The transport issue has also to some extent been exacerbated by the low program take-up, especially in the Cobham Children's Court area, as there has been a need to spread the referrals received across the three brokered services, even though the participants might not come from the particular service's area. There has been considerable discussion about this problem

since the pilot started and case managers are now encouraged to consider alternative solutions.

A number of stakeholders commented that availability of transport and brokerage funds for the YDC participants may be detrimental in terms of creating dependency on the program. In their opinion, the program should aim to support participants in developing the skills to have an independent lifestyle. However, when case managers stopped taking the participants to appointments, participant attendance was reported to have declined significantly.

In general, there has been a need for clarification of the respective roles, responsibilities and approaches of the case managers and the DJJ staff in ensuring that young people comply with the conditions of the legal mandate, which includes their case plan. Personal conflicts arising from differing views of staff responsibilities were reported to have been one reason for a high turnover of both case management and JJO staff in the program in the first year of the pilot. Further work has been undertaken following the implementation reviews to ensure that proper practices and procedures were in place to avoid these conflicts.

### **Education and training**

The Department of Education and Training (DET) did not receive any specific funding under the original Drug Summit initiatives to support their participation in the YDC pilot. Their involvement in the program came late in the process after the Director of the Crime Prevention Division of the Attorney General's Department visited drug courts in the United States and identified the importance of education in achieving successful outcomes (Homel, 2000). The position of the JART member from DET is currently funded by NSW Health and DET has received no specific additional funding to resource educational programs for the YDC.

In the early stages of the pilot, the problems of accommodation and the consequent instability of participants' lives while on the program have made it difficult for them to engage in educational activities, particularly those of a formal kind, even where such activities were available. There are few courses available or appropriate for young people at risk and particularly for YDC participants with unstable and chaotic lives. YDC participants are generally not education-ready, have very low literacy levels, have not attended school for a number of years and do not function well in a classroom environment. They also often have behavioural or emotional difficulties and low self-esteem. They therefore need a positive educational experience that is adapted to their level of readiness.

Initially, DoCS-funded case management brokerage funds were used to purchase the services of a literacy and numeracy tutor for participants, but during the first year of the pilot, the DET JART member negotiated with South-Western Sydney Institute (SWSI) of TAFE to develop a flexible course for YDC participants to better address their needs. The course has been running since April 2001 from the premises of the Liverpool IPU, funded, and now fully accredited, by TAFE. The course is not funded through the YDC budget itself, but through DET *Helping Young People at Risk* funds.<sup>8</sup> The YDC course operates for three hours per day, two days per week. It has a

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<sup>8</sup> This was a pilot program run through the Equity Division of TAFE.

literacy and numeracy focus, with ‘tasters’ of vocational programs at various TAFE colleges. YDC participants are enrolled in TAFE college, study accredited modules and can remain in the course for the duration of their YDC program. The course has rolling enrolments to match the needs and effectively engage the YDC participants as they enter the program.

The teaching of basic skills remains a priority for the YDC target group, as levels of literacy and numeracy remain extremely low. Basic skills are delivered in an environment that takes account of the unpredictable nature of the client group. The flexible delivery element of TAFE has been incorporated into the program and young people can continue the course through distance learning while in residential rehabilitation or in custody. Literacy skills are also delivered through innovative approaches such as a song writing/recording project and video projects.

One of the strengths of the program was felt to be that, as participants in an accredited TAFE program, young people are able to receive a record of attainment, creating a sense of achievement. The course run at Liverpool IPU is seen as a stepping stone to other educational or vocational possibilities, but interviewees identified a lack of suitable education options to which YDC participants could later be referred.

This educational program is nevertheless regarded as having achieved more than was initially expected. Because of the multiple needs of those that were coming onto the program, it was initially questioned whether they would succeed in gaining any education at all. Instead participants have been attending and engaging with the TAFE group. Another positive aspect of education within the program is the case managers help in identifying educational options for their clients. The burden therefore does not fall exclusively on the shoulders of the DET member of JART.

Table 4.2 presents data provided by the Department of Education on the numbers of YDC participants engaging in education and training during the financial years 2000-2001 and 2001-2002. There are no precise figures available on successful completion of courses, as many of the students completed or terminated their programs involvement whilst still studying. DET estimates, however, that at least half of those undertaking these courses completed them successfully.

Given the circumstances of YDC participants and their mainly poor record of previous education and employment, these achievements are significant. Although the figures include multiple participation by some individuals, the table indicates that well over half of those participating in the program during the pilot period received tutoring or engaged in an educational and/or training course. Nearly one-fifth also achieved an employment outcome, either part-time or full-time.

**Table 4.2: Educational training involvement and outcomes by YDC participants, July 2000 to June 2002**

Educational/Training Achievements	Number of Participants <sup>b</sup>		
	2000/01	2001/02	Total
<i>General educational/vocational outcomes</i>			
Received tutoring from JART Senior Education Officer, TAFE trial and YDC TAFE course	23	21	44
Received literacy and numeracy tutoring from other agency	13	2	15
Participated in or completed vocational TAFE courses <sup>c</sup>	10	5	15
Returned to school education/distance education	1	2	3
Participated in or completed other community/training courses <sup>c</sup>	13	8	21
Participated in work experience	1	0	1
Gained part-time employment	5	0	5
Gained full-time employment	6	3	9
Job seeking at graduation	6	6	12
<i>Vocational and training course participation by industry</i>			
Trade (including automobile, carpentry, landscaping etc)	5	3	8
Hospitality	3	2	5
Outdoor recreation (e.g. VITEL etc.)	6	1	7
Preparation for/equivalent/Year 10	5	1	6
Art (including painting, craft, music etc)	4	4	8
Computer/ IT	1	0	1
Youth work/welfare	1	2	3
Forklift operation	1	0	1
Retail skills	0	1	1

Notes:

- a. The period covered by this table is not precisely the same as the pilot period for the purposes of the evaluation.
- b. Includes participants who engaged in more than one course or activity.
- c. Information is not available on how many of those undertaking these courses completed them successfully.

Source: Data supplied by NSW Department of Education and Training, Drug Education Unit

In spite of these achievements, DET representatives commented that the initial six-month timeframe for the YDC program made it difficult to gain positive outcomes, in terms of linking participants to education and training opportunities in a productive and sustained way. For this reason the current norm of extending engagement beyond the six-month period is likely to be helpful. However, any continuation of the program beyond the pilot phase would require adequate resourcing for DET staff and programs.

Some stakeholders also commented that participants were engaging in education at a later stage in the program than expected and that therapeutic and welfare interventions (usually of a crisis nature, including accommodation) were taking priority.

Participants' own experience of the TAFE course held at Liverpool IPU were mostly positive. They particularly appreciated the flexibility and informality of the course. One participant, for example, commented:

The TAFE stuff was good because the teacher doesn't just make you sit there. He knows you haven't been to school for ages, so you don't have to sit there and do whatever he tells you – it's up to you [to do] whatever you feel like doing.

A few participants felt that their vocational interests had not been adequately followed up. One reported being taken to the local TAFE for an introduction to a particular course, but nothing eventually came of it. Generally, however, they were positive about how their educational needs had been met and about the opportunities that had been offered to them.

There was a view from some stakeholders that the development of education for participants should also include pursuing other training options. It was suggested that the vocational focus of education and training should be extended and that employers would be more likely to look favourably on someone with a specific vocational skill than those who had simply completed Year 10. Pre-apprenticeships were suggested as an avenue for young people who had less need for basic skills education. However, it should be noted that, as Table 4.2 shows, significant numbers of YDC clients did participate in vocational TAFE courses (Certificate 2 or 3 courses), or other community/training courses that are vocational in nature and include handbrake turn and forklift operation courses. Many young people in the YDC did not have the education skills to participate in regular TAFE vocational training courses. The YDC course that operates from Liverpool IPU premises was specially designed by Liverpool College of TAFE to help prepare these young people for subsequent participation in vocational courses.

Another issue raised by some participants was the practicality of being able to complete TAFE courses while on residential rehabilitation programs. One female participant was unhappy that she had not been able to attend a TAFE course or take part in any distance learning while at residential rehabilitation. The only educational activity that she could identify was pottery, from which she could not see any benefit and which did not interest her. She felt that she was not being kept busy enough and resented not being trusted to attend TAFE.

This is what I was trying to pump into the Drug Court's head – I want to do something. I want to do something with my life. I'm into hospitality and tourism. I did a course in Orange, a six-month course and I did four months of it and I wanted to finish this.

#### **4.5 Court Processes**

Many of the issues concerning the operations of the Court itself, as opposed to the treatment programs, are dealt with in Section 6 as legal questions, but there are also a number of operational issues.

##### **Court resources**

In the initial phase of the pilot program the lack of a dedicated space for the YDC hearings caused problems for scheduling at Campbelltown Court. While there is still no dedicated courtroom, the scheduling problems appear to have eased as the YDC has become established.

### **Report back sessions**

On the whole, report backs to the court have been operating as expected and there have not been any major changes in the way in which they are conducted. The informality of the process has increased as it has become more familiar to those involved.

The recording of court proceedings was raised as an issue by some stakeholders (and this is also discussed below in the section on monitoring). Everyone present at report backs takes their own notes, which are inevitably subjective. This was felt to be potentially dangerous as a young person may be sanctioned for a previous misdemeanour that has not been recorded consistently and accurately. Information from subjective notes may even be used at termination hearings, which are again heavily reliant on file notes. Legal Aid solicitors interviewed suggested that there should be a consistent formal finding for breaches of bail, and that court hearings and report backs should be tape recorded and transcribed. Children's Court proceedings are currently tape recorded, and the transcripts are available and used for appeals. It was felt that such a procedure would increase the accountability of the YDC.

One stakeholder commented that they felt uncomfortable that issues were sometimes raised in review meetings prior to report backs of which the young person was not aware. The young person may then not be aware that the YDC Court Team know about that issue during the report back.

Another interviewee suggested that it would be useful to receive more positive feedback during report backs from residential rehabilitation services. The view was that information received tended to focus on negative events, such that 'no news is good news', but positive progress and achievements might not be properly taken into account.

### **Breaches and sanctioning**

The YDC operates a system of sanctions or penalties for breaches of participants' case plans that are generally implemented through changes to bail conditions. These can include being ordered into court for more frequent reporting, increasing supervision requirements, increasing the intensity of counselling sessions and other non-punitive therapeutic options, or short periods of detention. There is also the ultimate sanction of termination from the program. These sanctions are indirectly based on the YDC Program Plan (AGD, 2000), which discusses procedures for when participants do not comply.

The legal issues involved in sanctions for breaches of program compliance are discussed below in Section 6. Operationally, opinions about sanctions were mixed. One view was that the program lacked a system of formal sanctions and that while this was the case participants would fail to take it seriously. Others felt that there were adequate measures available when needed. Some felt that there was a need for better guidelines that could provide a degree of consistency and predictability, because otherwise the process could be too arbitrary, particularly with changes in magistrates. On the other hand, even amongst those who supported greater sanctions there was a strong feeling that they should not be uniform, as it was important to be able to respond flexibly to the particular reasons for a breach and to the young person's individual needs.

In this context, there was a widespread welcome for the second Practice Direction on compliance drawn up in March 2002 by the YDC Chief Magistrate (Children's Court of NSW, 2002). This provides a useful framework within which to work on compliance, although it does not address in any detail many of the practical difficulties with operating sanctions.

Rewards were felt to go hand in hand with sanctions. Young people receive a great deal of positive reinforcement from all members of the YDC team. Positive feedback from the magistrate during report backs was found to be very important for building self-esteem, although there was some concern that rewards such as 'treats' for good behaviour might be disapproved of by the wider public.

Termination remains the last resort for the YDC team in dealing with non-compliance or repeated offending by a program participant. One stakeholder questioned whether the criteria for termination would differ according to the numbers on the program. With low numbers, for example, certain behaviours may be tolerated which might not be if numbers were higher.

### **Graduation and program extension**

There are a number of issues concerning the level of support available in the periods leading up to and after graduation, and about the appropriate criteria for graduation. There has also been some doubt amongst stakeholders interviewed whether the term 'graduation' is appropriate and meaningful for YDC participants. It was argued that YDC client group may see it as a 'middle-class construct' irrelevant to them. The participant interviews, however, did not support this concern. Although the terminology was not a topic specifically discussed with them, there was no apparent lack of understanding of the term and no participants suggested that it was inappropriate.

There are different levels of achievement attached to graduation and there has been some debate among members of the team about establishing a graded graduation system. It has been unclear, however, how different categories of graduation would be defined and what those categories would mean, since there are currently no relevant benchmarks. There have also been instances of disagreement between the magistrates and other member of the Court Team about whether particular participants have reached the point for successful graduation.

Fixed criteria for graduation do not seem appropriate, given that responsiveness to individual needs requires a case-by-case approach. Nevertheless, there are questions about how long a participant needs to stay on the program until they are assessed as suitable for graduation. It is doubtful, for example, whether a young person should be expected to remain on the program for substantially longer than the time they might otherwise have spent serving a custodial sentence. While participants should clearly not be graduated before they are ready, individual programs cannot be extended indefinitely in the hope of perfection. However, it is important to ensure that young people are not graduated before they are settled in stable accommodation.

Stakeholders also drew attention to some discrepancies in Court practices on different graduation occasions. Some have been major events, with participants receiving gifts and a strong sense of ceremony. Others are more low-key events. This discrepancy

partly reflects the different wishes of participants, but also staff perceptions of the progress and outcomes achieved by the young people. Where young people are considered to have done well, graduation tends to be more of an occasion. There is an argument that graduation 'ceremonies' should become more standardised.

It has been agreed within the Court Team that individual achievements should be recognised and recorded more formally, with goals identified and recorded. It was felt that all young people completing the program should receive a standard certificate, but should also receive additional personalised information about their individual achievements. This provides a useful record and reminder to the young person of the progress they have made. Importantly it also provides families, who often find it difficult to accept and recognise positive changes, with a concrete record of progress. It was felt to be valuable for both the young person themselves and their parents to be able to contribute to such a process, thus engendering empowerment. Furthermore, this achievement report is a useful tool for magistrates seeking positive information to feedback to young people at graduation.

The high numbers of participants extending their programs voluntarily was seen as a clear indicator of program satisfaction and success by most interviewees. As we saw earlier, up to half of program participants have opted to extend and the norm for those who engage at all is no longer six months. However, although six months was not believed to be long enough to make substantial inroads on the life of the young person, most interviewees supported the current way in which the program is presented to potential participants - that is, as a six-month program with the possibility of extension. Most felt it was unlikely that a young person would choose to enter a program that had a mandatory duration longer than this. At the current level of program intake, there were no concerns about the impact on resources of large numbers of program extensions, although this could become an issue if the size of the intake were to grow.

There are some difficulties, however, with situations where program participation is being extended beyond 12 months. Some young people are not ready for graduation even after 12 months and on a few occasions extensions have been allowed beyond this period, as noted above, even though there are some legal limits to doing this under the *Griffith* remand procedures. There was a view that this needs to be clarified, not least since different magistrates have taken somewhat different approaches to the question.

There is also some concern about how 'voluntary' some extensions have been. Magistrates have on occasions not felt that the young person has been ready for graduation and adjourned the date. There was a view that this can be counter-productive, as it removes the young person from the decision making process. It was felt that there should be greater effort to encourage participants in all cases to extend voluntarily. Compulsory extension should be last resort and should not be presented to the young person as a means of achieving a good report for the Court.

### **Aftercare**

A trend has been noted that as participants approach graduation their levels of engagement tend to fall away, such that they are often seen as 'flopping over the line' rather than completing the program on a high note. Graduation can be both a positive

time for participants and a stressful one, as they are anxious about their possible sentence. As noted earlier, these periods of transition for participants are likely to require particular attention.

Some interviewees thought that it was important for support to be withdrawn gradually and for participants to be ‘weaned off’ in preparation for the end of their program, while others felt it to be a weakness of the program that support can drop away after graduation. While some participants are reluctant to continue with YDC contact and support after their program finishes, continuing contact with case managers who have been a stabilising influence in their lives for many months may be valuable for others.

It has not been possible to determine systematically the level or consistency of after-care in the final phase, but in the interviews for the implementation reviews a number of YDC workers commented that they were unable to carry out as much after-care as they would have liked because of time pressures. Where it has been possible, this has often happened mainly because the low number of participants has allowed some resources to be diverted to this work.

### **Sentencing**

At the time of the implementation reviews, the number of sentences handed down were too small to draw any conclusions about whether magistrates were consistently following the program requirements. More recent information from the Judicial Commission database, however, suggests that there is a strong relationship between program completion and relatively light sentencing.

The database includes information on sentences handed down to YDC participants. Table 4.3 below provides a summary of sentences given to YDC clients referred within the pilot period, according to their final status on the program. Note that the unit of analysis here is the sentence and not the individual young person. Although in many cases the various charges are subsumed within one single final sentence, in some cases separate sentences are given for different offences. Thus, for example the number of sentences given to program graduates (61) exceeds the number of graduates themselves during the pilot period. It is clear from this table that graduates have all received non-custodial sentences, mainly probation, bonds and cautions, while control orders have been given to nearly half those who withdrew from the program or were discharged by the Court.

## **4.6 Program Monitoring, Coordination and Management**

### **Monitoring**

It was noted in the previous Section that the program does not have an overall system of comprehensive monitoring. While basic case flow data are now collected and reported by AGD, most departments involved tend to collect their own information, for their own program management purposes. At the time of the implementation reviews the Judicial Commission database, which was designed primarily for use by Court Registry staff, was not being used widely by other YDC staff. On the whole those interviewed failed to see a clear purpose for it from their perspective. They had either not had occasion to use it, or it had not provided them with any benefit.

**Table 4.3: Sentences imposed by the YDC on participants during pilot period**

Sentence	Program Status			Total
	Graduation	Self termination	Termination by Court	
Adjudication (Final Sentence)	9	6	7	23
Bond - Section 33(1)(b)	12	2	1	18
Charge withdrawn	3	1		5
Community Service Order - Section 33(1)(f)			1	1
Control Order Section 33(1)(g)		19	14	33
Dismissal without caution - Section 33(1)(a)	1		1	2
Dismissal with caution - Section 33(1)(a)	8	6	4	21
Fine - Section 33(1)(c)	1	1		2
Driving licence disqualification			1	1
Probation Order - Section 33(1)(e)	27	3	2	35
'Rising of the Court'			1	1
<b>Total</b>	<b>61</b>	<b>38</b>	<b>32</b>	<b>142</b>

The lack of central monitoring was generally not seen by program workers on the ground as creating any particular problems and it was felt that the program was fairly successful in self-monitoring and self-regulation. Regular meetings occur between the JART and the Court Team, between the JART members and the JJOs, between the case managers and JJOs, and between the different case managers. This process is overseen by the YDC Evaluation and Monitoring Committee.

The monitoring of participants' progress on the program is helped by the generally strong communication between members of staff and different departments. There is frequent communication about individual participants, whose progress is also monitored through the reports presented to the court at report back sessions. The Court was felt to be an important source of information about participant progress, but some concern was voiced that there was too much reliance on verbal information about progress. This may disadvantage those members of the YDC team who are not able to attend court regularly. Results of urinalysis, for example, are sometimes discussed verbally, but the results not recorded consistently in progress reports.

Consistency and accuracy of reporting was raised as an issue. One stakeholder expressed concern that there was no overriding authority for what gets recorded in the court reports. It was suggested that in order to avoid inconsistencies, such as in recording of breaches of bail, there should be a formal finding that is agreed to by the Court Team and the JART and recorded.

Some stakeholders argued for greater use of case studies of young people's experiences on the program to provide a qualitative assessment of their progress. This was considered to be useful in highlighting how different members of the YDC team perceived different events in individuals' progress, but also as a useful potential tool for looking at what worked and what did not from the young person's perspective.

While the present system may work reasonably well in a pilot scheme with the numbers of participants involved, there are likely to be some difficulties for effective monitoring if the program is extended or expanded in the future. It also creates considerable difficulties for the evaluation process, as the sources and nature of information on participants are complex and diffuse.

One possibility is that an intranet could be established for YDC staff to keep them informed about participants' progress and whereabouts, and also as a central source of information about policies and practice guidelines, along with induction material for new members of staff.

### **Interagency co-operation**

Nearly all stakeholders were positive about the improving definition and clarity of roles within the program. This seemed to have come about naturally over time, as staff became more used to working together and communication improved. By the time of the second review, initial difficulties in understanding other staff members' roles seemed, on the whole, to have been overcome. The Court Team, in particular, was felt to be operating as a coherent body.<sup>9</sup>

The interagency model continues to be one of the main strengths of the program and it is through this approach that young people can be provided with a holistic response to their needs. On the other hand, some stakeholders expressed concern about the number of different agencies, departments and individuals that are involved in the participants' lives, which was felt to create additional pressures for the young person at what is already a difficult time. Also, with so many different individuals and organisations involved, effective communication and sharing of information is vital. A strong message from the staff interviews was that the dispersed physical locations of different members of the YDC team is detrimental to the operations of the program. Most stakeholders argued strongly for case managers to be located in the same building as JJOs and the JART team, as daily contact is often needed. The level of communication necessary was not felt to be achievable by phone contact alone. Another benefit of co-location would be that participants would find it easier to contact members of staff. One case manager, however, pointed out that the

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<sup>9</sup> It should be noted, however, that the legal issues review raised some concerns about potential erosion of defendants' legal rights in a non-adversarial team setting. These are discussed below in Section 6.

geographical spread of casework organisations would make it difficult for some individuals to travel to one central location. The time and travel implications would need to be borne in mind.

A further difficulty arises from the different organisational cultures and approaches of the casework organisations involved. One suggestion for improving communication and fostering a coherent approach was that YDC case managers should all work under the same manager, but this idea was not welcomed by all those interviewed. An alternative is the case managers should all meet regularly and receive the same clinical supervision and guidelines.

The high staff turnover (particularly among case managers) referred to earlier was also identified as an operational problem in the early phase of the program, causing disruption when young people had built up productive relationships with the workers. It is not clear whether the turnover of case managers within the YDC has been higher than in similar programs, but it does seem to have impacted negatively on client relationships. Staff retention, and addressing any problems that tend to produce high turnover, would be important if the program were to be extended to other areas.

### **Program management**

There has also been a view that the program has suffered from not having an overarching, non-department-specific manager. The current management structure was described by one individual as 'a pyramid with its head cut off'. While there is a manager for the JART, which is primarily an operational body, and the magistrates play a key role in the Court Team, there is no single person who is able to provide an overview of the entire program. A number of stakeholders were strongly of the opinion that a central coordinating role needs to be fulfilled beyond that exercised by the Evaluation and Monitoring Committee. It was felt that such a position would provide the opportunity for consistent overall monitoring of the program, which is at the present time fractured due to the different agencies involved.

Some of these concerns have been addressed through the development of the JART/Court Team meetings and the more active role taken by the YDC Chief Magistrate. The former, in particular, is serving as a useful forum for team members to raise concerns and share ideas.

Most stakeholders interviewed for the reviews felt that the policies and procedures manual, which was then still in the process of being developed, would be a useful tool, particularly for new staff familiarising themselves with the workings of the program. Some frustration was expressed that it had taken more than 18 months for such a document to be produced and several interviewees remarked that the manual would have been more useful if available at an earlier stage. There was also a view from case managers that they should have been more involved in the consultation process for the manual, as they are working closely with young people on the ground and have ideas about which procedures need formalising to avoid confusion and to increase communication. While the development of a manual was discussed at length prior to the program being launched, it was decided by the interagency steering committee at the time that, as the YDC program was unlike any existing program, the manual should be developed only when program direction and working practices had been established.

One of the areas that was suggested as potentially benefiting from policy or good practice guidelines was information sharing between different agencies and departments. It appears that current practice can sometimes be arbitrary, and there is some perception that departments and individuals can be possessive of information and reluctant to share it. At present, for example, it appears that case managers do not routinely get to see medical reports on their clients. This was a source of some concern as the casework organisations pay for some health-related services out of their budgets. Because the program relies so much on collaboration and information sharing between different individuals and organisations, there is a need to standardise procedures. It may be that in some instances there are genuine privacy concerns, but these need to be identified in guidelines.

Other areas identified as needing better guidelines include the parameters for legitimate expenditure on participants from brokerage funds. Inconsistent approaches to use of these funds has caused some friction in the past, including divisions created between participants when some saw other individuals receiving items not available to them.

#### **4.7 Resources**

The predominant view among stakeholders was that current program resources were adequate for the number of participants, but that if the program intake increased significantly services would have to be reduced or more staff employed.

The workload of members of staff on the program apparently remains high. No one interviewed felt that their workload was unmanageable, although again this was attributable to some extent to the low program numbers. The workload of the JART and the case managers is significantly increased by the fact that they are in effect on call 24 hours a day. It was questioned whether staff should be continually on call and there was concern that this would lead to high levels of staff 'burn out'.

#### **Service needs**

One stakeholder identified a need for a YDC-specific group counselling program. Generic Juvenile Justice programs are currently used, but were not considered ideal. The material tends to be for use with young people that are in a pre-contemplative stage of change and it was suggested that YDC participants would feel that they were already familiar with the information. The view was echoed that material that would be of particular use would be on living skills and dealing with relapse. While it was felt that such material would be better designed internally, pressure of time has meant that progress has been limited. Counselling materials were also identified as lacking, and it was suggested that material similar to that used in residential rehabilitation, where young people can identify progress to different stages, would be valuable.

Overall it was observed that there was sometimes a mismatch between perceived service gaps and services that were reported as already being available to the program. Possible reasons for this are a lack of knowledge that these services or expertise are available, or a lack of confidence in using them. Different departments were often identified as having a sense of ownership of the program and it was felt that this could lead to unwillingness to use different services that might be available. This situation has led to an inefficient use of resources and an under-utilisation of internal and external services that could benefit participants.

One case manager also felt that the brokerage funds currently available are inadequate, as most YDC participants have high health needs and many have required In this context, it will need to be borne in mind for the cost analysis (see Section 7) that there are a number of in-kind expenditures that are not met directly from the YDC program's budget.

### **Technological support**

It was suggested in the implementation reviews that computing resources and support were insufficient for effective operation. There was then no networked system to allow the sharing of information between YDC staff, and case managers still lacked email facilities. Members of the JART pointed out that they had no internet access and one interviewee commented that as a result of this she has had to rely to a large extent on using her own lap-top computer. As we understand it, these problems have now all been addressed, but would need to be included in future planning for any possible program extension.

### **Training**

Training was an issue raised by stakeholders from all departments. Some training has been developed, such as short in-service sessions on areas such as mental health issues for JJOs and case managers, but there were concerns that there was neither the time nor resources to develop and implement effective training programs.

As the YDC team is made up of individuals from specific departments, it was felt that there was a need for cross-departmental training and sharing of departmental expertise. This would be valuable as a learning process, but would also assist in team building.

It was suggested, for example, that case managers could benefit from training on the legal mandate and their role. The YDC program operates within a legal framework, but not all members of the wider YDC team have a detailed knowledge of the legal requirements of the program as they do not come from this professional background. Again a consistency of approach is needed, requiring training. One example concerned the divulgence of protected information to the Court, under section 50B of the Children's (Criminal Proceedings) Act.<sup>10</sup> This Act provides permission for professional people to breach professional ethics in terms of passing on information about a young person's progress on the program, thus creating a limit to client confidentiality and certain obligation on YDC staff to the Court. It was suggested that the program would benefit by training case managers on these issues in the same way as JJOs, who are more likely to understand what information they need to divulge.

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<sup>10</sup> This section is headed 'Special provisions relating to drug rehabilitation programs' and provides for the disclosure of information from program staff concerning a young person's participation in the program. This information is classified as 'protected information' and can only be used for the information of the YDC team and is not admissible in any other Court, tribunal or committee. It also provides immunity for program staff from breaches of professional etiquette, ethics, or a departure from accepted standards of professional conduct, defamation and other civil proceedings.

#### **4.8 Summary**

The implementation reviews highlighted a number of areas that needed to be addressed for the program to operate with optimum effectiveness and according to its original principles. Progress has been made on all these areas, but there are still some issues to be resolved. The experience of operating the pilot program has also raised some questions about program design that would need to be examined in any discussion of extension beyond the pilot period.

Overall, the implementation of the program has proceeded without major difficulties, apart from the delay in establishing the Induction Unit. It is now well bedded down within the youth justice environment and generally regarded favourably by external agencies. As a new program reliant on interagency work across several departments, it has faced challenges, but the pilot model has proved flexible enough to adapt to these challenges.

There is a strong perception amongst stakeholders that it is achieving tangible improvements in the lives of many participants and their families. There has also been added value in terms of health care services, such as dentistry, being made available to young people who might not otherwise have accessed them.

There were no major changes in policy in the pilot period, but a number of procedures have become more formalised through team meetings and through two Practice Directions issued by the senior YDC magistrate. The Policy and Procedures Manual is also likely to be useful. Issues emerging as needing better guidance include processes for information sharing between the various departments and agencies involved, and agreement on the items on which it is legitimate to spend brokerage funds.

The main recent change in the resource base for the YDC program has been the opening of the Induction Unit in Liverpool in November 2001. This is likely to become a considerable asset for the program by easing the problem of finding suitable accommodation for new entrants while they are being stabilised. There are some differing views about the role of the Unit, which will need to be resolved. These include whether it is appropriate to use it for crisis accommodation when induction beds are unfilled, and the length of time needed for effective stabilisation and development of treatment plans.

Accommodation was an issue the first review identified as a major obstacle to the program's effective operation. Although there is still a general shortage of crisis accommodation suitable for YDC participants, particularly for young women, the situation has much improved, through partnerships forged with community housing agencies. Some of the available accommodation is designed for independent living, but participants often lack the skills and stability to make successful transitions to this kind of housing. Thus there is a need both for more supported accommodation and more training in life skills.

Although the program has been developing a good reputation, the level of referrals and acceptances has continued to be low. There do not appear to be significant numbers of eligible young offenders missing out on the program, so this is likely to remain the case for the life of the pilot unless the eligibility requirements are relaxed.

Generally these criteria are seen as remaining valid, although they would need to be reassessed in the context of program extension or expansion.

One issue identified as problematic is the assessment of mental health problems amongst applicants. There is a view that such problems are not always well diagnosed, but there are differing professional views on the appropriate uses of the range of treatment options available to participants. There is a need for further discussion of this issue.

There also continue to be mixed views about the need for specialist detoxification services, but waiting lists are often too long to meet immediate needs, so many participants have been detoxifying in custody. This is a problem in that many accommodation services will not accept detention centres as proper locations for detoxification. The Induction Unit has helped in this respect because new entrants spend time there stabilising after detoxifying and before moving on to other accommodation. Some detoxification services have only medication-based programs and these are not always seen as suitable for young people. Pharmacotherapy in general is used only minimally on the program.

Although program has a policy on the use of urinalysis to test drug use, there are concerns about inconsistencies in its application, and about the purpose and effectiveness of urinalysis more generally. There needs to be further clarification of practice if urinalysis is to be an effective tool for monitoring participant progress.

There have been some difficulties with access to and use of residential rehabilitation programs, but these problems seem to have eased. Although most participants' treatment plans include residential rehabilitation, there is still no consensus amongst stakeholders that this is necessarily the best form of treatment. The Health-funded day programs in the community have been under-used. Where residential programs are used, there can be problems in participants' transition back into the community because of reduced tolerance to drugs and vulnerability to relapse. There is a need to develop more structured plans for support during this transition.

The educational input into the YDC program, through the flexible TAFE course run at the Liverpool IPU, is operating effectively and achieving successes.

Policies on sanctions for non-compliance with program plans remain a matter of some contention, although the Practice Direction on compliance provides a useful framework. There needs to be continuing discussion about consistency in dealing with breaches.

Graduates of the program appear to be achieving positive outcomes, but some issues are arising that will need further discussion. These include a need for more aftercare for those graduates wanting it, and more formal recognition that graduation involves different levels of achievement for different individuals. The Court Team has introduced staged progress reviews over the course of the program to provide more formal feedback to participants and their families.

Most participants are now choosing to extend beyond the six-month period, which is an indication of engagement with the program. It is generally agreed that six months is usually too short a period for substantial change, but should remain as the standard

program length to avoid deterring potential participants. There are some concerns about what happens after 12 months, since remand procedures restrict extensions beyond this period. It is also important to retain the voluntary nature of extension, as making it appear an obligation may be counter-productive.

In a program involving several different departments as well as a number of external contracted agencies, program monitoring and management becomes highly complex. The YDC program is working relatively well in this respect, but there are still areas for possible improvement.

There is currently no formal monitoring system across the program as a whole and operations are reliant on different departments collecting their own information. While communication between different stakeholders and organisations has generally been good, there have been some inconsistencies in reporting and some agencies see themselves as not always being kept properly informed. These difficulties have been recognised by the participating departments and a process is underway for development common monitoring requirements.

The current arrangements work partly because interagency cooperation has developed over the life of the pilot. Many of the initial difficulties with undefined roles and responsibilities have been overcome and are further clarified in the policies and procedures manual. Some problems remain, including include processes for sharing important information between different agencies, differences in organisational cultures, and difficulties of communication caused by the disparate locations of YDC staff. Efforts to address these issues were hampered in the early stages by high staff turnover. While this has now eased, questions of staff retention would need to be addressed if the program were to be expanded to other areas.

Developments such as the regular JART/Court Team meetings and the more active role taken by the YDC Chief Magistrate have helped in cementing the practical operations of the program, but there is still a widespread view amongst YDC staff that the program has suffered from not having an overarching manager.

The resources currently available to the program appear to be broadly adequate for the number of participants. Staff workloads remain high but apparently manageable, while participant numbers remain low. Some additional needs were identified, including more YDC-specific group counselling programs and counselling material, and higher levels of brokerage funds. As the program has developed there have also been a number of areas of training needs identified, including sessions on mental health issues and on legal issues (for case managers).



## 5 YDC Program Outcomes

### 5.1 Methodology

The main aims of the YDC program are to reduce offending by participants with drug problems, to reduce their problem drug use and to improve their overall health and social functioning. Ideally, the measure of whether these aims has been achieved within the pilot program would be a comparison of re-offending rates and indicators of health and social functioning over a suitable period amongst a group of eligible young offenders randomly assigned to program intervention, compared with a non-participant control group subject to the existing juvenile justice process. This would constitute an experimental evaluation design. The economic evaluation of the NSW Adult Drug Court was based on this approach, although there were some difficulties in practice with the randomisation process (Lind et al., 2002; Freeman, 2003), as is often the case in experimental studies.

The second best option is a comparison of program participant outcomes with those of a separate group of young offenders matched by key characteristics (a quasi-experimental design).

In evaluating the YDC program we have been unable to pursue either of these methods. Our original evaluation proposal argued for a random assignment of participants to the program, based on the expectation put forward in the evaluation tender that there would be substantially more eligible referrals to the program than it would be able to accept in the pilot period. This turned out not to be the case, but random assignment was also rejected by the Court as a method of determining which applicants should be accepted.

It has also not been possible to create a matched comparison group, because the eligibility criteria for the program are such that it is thought that all the young offenders in the catchment area likely to be suitable for the program have been identified and referred to it. One alternative would have been to construct a comparison group from amongst young offenders in another Children's Court area. Aside from problems of controlling for differences in locality, access to services and court practices, this also proved impractical because creating a genuinely matched group would have meant putting the comparison group through the same level of intensive assessment as takes place in the YDC. This was beyond the resources available for the evaluation.

The one possible comparison group that remained includes those young people who were referred to the program as *prima facie* eligible but did not take part in it, either because they were eventually judged ineligible or because they chose not to participate. Again the fact that many were judged ineligible means that there are likely to be unobservable differences between this group and the participants, but where possible we have made some limited comparison with between these two groups, as noted above in Section 3.

The outcome information collected for the evaluation is therefore of two kinds. First, we have attempted to obtain during and post-program offending data for both program participants and non-participant referrals. Second, a series of interviews have been carried out with program participants during and after their involvement in the

program. The interviews involved both qualitative material and some quantitative, standardised instruments. This information has also been put together with data from participant files to create a series of case studies of individual participants that give a fuller, more holistic account of the YDC experience.

Although there are significant limitations to these data too (which are explained below), together they present a useful picture of participants' progress through the program, their experiences of it and what they gained from it, as well as what elements of the program might have been less effective than others. However, it must be emphasised again that the absence of a true control or comparison groups makes it difficult to answer the key question of whether any observed outcomes for program participants derive from the program itself or would have taken place if the program had not existed.

## **5.2 Data on Offences Committed by YDC Clientele During and Post-program**

Determining the level of offending by participants, both during and after their involvement with the program, has proved to be one of the most difficult elements of the evaluation. There are a number of sources of such information on the YDC clientele, but all proved both difficult for the evaluators to access, incomplete and inconsistent with each other. In view of the central importance of this information to any proper understanding of the impact of interventions such as the YDC, we see it as a high priority for the program in the future to improve the collection and consistency of data on offending.

The results presented below are derived from three main sources: the YDC Registry; a data set supplied by the Department of Juvenile Justice; and an extract of information from a data set of offences being compiled by the NSW Bureau of Crime Statistics and Research (hereafter BOCSAR). The latter was prepared by the Bureau at our request, particularly in order to capture information from the adult justice system, which many YDC participants enter during or shortly after their participation in the program. The DJJ system does not include information on adult offences.

However, there are inconsistencies between and gaps within these sources of information on offending both during and after program participation. The information on dates of offences and court finalisation does not always make it clear whether some offences recorded as during or post-program were in fact committed before entry to the program. This also makes it impossible to pursue any statistical estimation of relative time to first post-program offence for different groups of participants. The fullest source of information is the BOCSAR data set but this does not include dates of offences in the juvenile court system. A small number of individuals were also not recorded as having received custodial sentences, even though several of were later found to be in adult prisons. The data only run for a short period after the end of the period of pilot intake (up to the end of 2002), which limits how far conclusions can be drawn on program effects. Finally, we have no information on how long those referrals that did not take part in the program spent in custody if they received control orders, precluding the possibility of making useful comparisons between the participants and non-participants. For all these reasons, it is necessary to be cautious about the results presented below.

### **Offences committed while on program**

According to the YDC Registry, 40 of the 75 participants (53 per cent) during the pilot period appeared in court again for fresh offences committed during their time on the program. The BOCSAR data suggest that this figure is somewhat higher, at 44 participants (59 per cent). Information from DJJ suggests a higher figure again, but their data appear to include breaches of bail conditions laid down within individuals' program plans, not just new criminal charges. Nineteen of the 35 non-offenders (54 per cent), according to the YDC Registry, went on to graduate and they represented two-thirds of the 29 participants who eventually graduated having commenced during this period. If the BOCSAR estimate is used, the percentage of non-offenders who became graduates rises to 58 per cent and they were 62 per cent of all the graduates.<sup>11</sup>

In interpreting these findings it needs to be noted that participants who were terminated early from the program or who left voluntarily would have had less time to offend while on the program than those who persisted with it. Thus, since non-offending while on the program is likely to be correlated to some extent with other successful engagement with it, the participant group inevitably becomes biased over time towards those who would be less likely to offend.

### **Post-program offending**

The BOCSAR data cover the period from referral to the YDC program to the end of 2002. Table 5.1 presents our best estimates of re-offending up to the end of 2002 by all program participants during the pilot period. It should be noted again that individuals will have had differential periods of post-program offending opportunity, depending on when they were referred to the YDC. Some individuals will also have received custodial sentences following their brief involvement with the program, reducing their opportunities for offending outside custody. Finally, the table does not give any indication of the relative seriousness of offences.

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<sup>11</sup> In interpreting these results, it needs to be borne in mind that participants who leave the program after a short period have relatively less opportunity for on-program offending than those who remain on the program for longer periods.

**Table 5.1: Estimated levels of post-program re-offending by YDC program participants, to end 2002 (numbers)**

Number of offences	Final status on program				
	Graduated	Terminated by Court	Self-terminated	Current	Total
None	12	6	6	2	26
1-5	12	7	9	-	28
6 or more	4	4	9	-	17
Not found	1	-	3	-	4
Total	29	17	27	2	75

Source: Special extract from NSW Bureau of Crime Statistics and Research data set on offences in NSW, 2003

These figures indicate that around 35 per cent of participants overall were not recorded as having offended post-program, and this included just over 40 per cent of the graduates. However, this also includes a small number of participants who were still on the program at the end of 2002 and others who had only finished recently. A few participants had a large number of new offences recorded (up to 40), often committed while participants were on the run, having absconded from the program.

Graduates appeared substantially less likely to re-offend than those who did not complete the program and where they had re-offended the number of offences was relatively small. Examination of the types of offences involved also suggests that those with which the graduates have been charged are generally more minor than those of other participants (with a few exceptions). This is a further indication that successful completion of the program is, for many of those involved, associated with continuing benefits, at least in the short term. Graduation itself, however, is also likely to be linked to greater motivation on the part of particular individuals to deal with their problem drug use and criminal behaviour, so these results do not in themselves prove that lower rates of offending are a direct effect of the program intervention.

Although no direct comparisons can be made with the outcomes of other programs because of the particular nature of the clientele as well as the data problems listed above, it is still useful to put these results in some context. For example, a study of recidivism amongst juvenile justices clients in Victoria found that while half of a one-year sample of young people placed on judicial orders did not offend in the following two years, re-offending rates were substantially higher where clients had previous histories of offending and were also much higher in the first year following the order (Department of Human Services, Victoria, 2001). In NSW, Luke and Lind have found that youth conferencing reduces offending by 15-20 per cent compared with going to court, regardless of offenders' age, gender, criminal history and Aboriginality (Luke and Lind, 2002).

In terms of drug-related offending, the evaluation of the MERIT Pilot Program (an early intervention program for adult drug users) found that participants who completed the program were also significantly less likely to re-offend, and that those completers who did commit further offences took longer to re-offend than those who did not complete the program (Passey et al., 2003: 35). Non-completers were twice as likely to re-offend as completers.

In the US, Belenko and Dembo (2003) note that only limited recidivism data are available to date for juvenile drug courts. However, they do cite examples such as that of a program in Summit County, Ohio, where an evaluation found that 11 per cent of participants re-offended post-program, compared with 46 per cent of a control group. They also report that other evaluations found a 15 per cent post-program re-arrest rate for an Orange County, Florida, juvenile drug court and a 26 per cent re-arrest rate for a court in Los Angeles. Neither of these evaluations involved control or comparison groups.

In terms of sentences received by the 75 pilot participants in the period up to the end of 2002, the BOCSAR data indicate that 29 (39 per cent) went on to receive some form of detention, either in the juvenile or the adult prison system, for either the original offences that brought them to the YDC or later offences. Thus for a substantial proportion diversion from incarceration may only be temporary. However, only one graduate of the program was recorded as receiving a full-time custodial sentence for a subsequent offence, while one other received a sentence that included periodic detention.

We now move on to look in more detail at the program experiences and outcomes of a sample of participants who agreed to be interviewed by the evaluators.

### **5.3 Participant Interviews**

Interviews were carried out where possible at two points in time. Participants were first interviewed face-to-face at program entry, or as close as possible in time to their acceptance into the program. Second interviews took place, where possible, some 9-12 months later. To obtain permission to carry out this study, the evaluators had to satisfy the requirements of the UNSW Human Research Ethics Committee. Together with the privacy and confidentiality requirements of the YDC itself, this placed certain restrictions on how we were able to recruit participants.

Recruitment was voluntary and those interviewees who agreed to participate had to sign a consent form. It was also a stipulation that recruitment had to be 'at arm's length' from the evaluators. Thus we had to rely on members of the YDC team itself to explain the process and to ask participants to become involved. The YDC defence solicitor was particularly helpful in doing this. Participants were also asked to allow the evaluators access to their YDC files and other relevant data. In all, 43 agreed to participate and a further three agreed to allow access to files but did not wish to be interviewed. In practice it was not possible to carry out interviews with all of these participants. The voluntary nature of participation in the evaluation means that the interviewees are not necessarily representative of the entire participant group. In particular, there was some over-representation of those with more engagement with the program. This needs to be borne in mind in interpreting the results.

### *First round interviews*

It was originally envisaged that first round interviews would be obtained when the young person first made an appearance at the court. Participants were recruited using this method, but because of court schedules, the arm's length process, and the fact that some participants were in custody prior to court appearances, it was often not possible to carry out first round interviews on or near the time of entry onto the program. For a number of participants this was also impossible because the evaluation contract was not confirmed until some time after the program had commenced.

In many cases, the evaluators had to make repeated attempts to contact participants. We also had to stay in touch with program organisers and Juvenile Justice workers to gain current information on the whereabouts of participants (such as custody, refuges, rehabilitation centres and in some cases adult prisons) as they were often moved rapidly from one location to another in the early stages of the program. The difficulties finding suitable accommodation for some participants discussed above further exacerbated these problems in contacting and interviewing participants. In some cases, particularly when interviewing participants in custody, interviews could not be completed, or had to be re-scheduled or abandoned because of participants' other commitments or appointments. Such difficulties are not uncommon in research studies involving young offenders and drug users (see, for example, Spooner, Mattick and Noffs, 1999).

Despite these difficulties, first-round interviews were achieved with 33 young people - more than half the total of participants in the first year of the pilot period. However, the initial expectation that interviews would be carried out at baseline (entry onto the program) had to be abandoned. This has meant that participants were interviewed at a range of times after entry onto the program. This variation in interview timing has posed analytical difficulties, particularly when trying to examine changes in participants' health and social functioning in the course of involvement in the program, but it has also provided the benefit of a fuller picture of the participants' thoughts and experiences of the program at different stages.

### *Second round interviews*

Eighteen young people who participated in the first round of interviews were interviewed for a second time. This was fewer than anticipated because there was considerable difficulty tracking down first round participants to interview them for a second time. Part of the problem was a knock-on effect from the difficulties experienced in the first round of interviews. Because participants were interviewed at a range of times after entry onto the program the follow-up interviews were also staggered and often went past the planned six-month point. In many instances the participant had left the program and could not be easily contacted or located, even though we had collected a range of personal, family and other contact information at the first interview. In many cases YDC workers no longer had any contact with the young people.

The difficulties in locating and contacting participants for second round interviews included participants absconding, their whereabouts being unknown at home, and mobile and landline contact numbers, usually those of a parent and/or friend, being disconnected or permanently blocked. In instances where contact with a parent or

friend was made, and messages left, an apparent distrust of people seen as in authority led to few messages being answered or followed up by participants.

A further complication was that around 11 participants were thought to have been in NSW adult prisons at some point during the evaluation period. Negotiations with the NSW Department of Corrective Services took place during the course of the evaluation, with the Department finally agreeing to provide information on former YDC participants currently in custody. This revealed that six former participants were in adult prisons at the time. The Department agreed to give the evaluators access to these participants and interviews were completed in November 2003.

Material gathered in the second round of interviews, particularly follow-up standardised measures on health and well-being, social functioning and drug use, are presented (where appropriate) in the following sections, along with first round interview material.

### **Interview schedules**

The interview schedules were semi-structured, incorporating both standardised test instruments suitable for use with a population of juveniles and a number of open-ended, qualitative questions. Different versions of the schedule were developed for participants according to whether they were on the program, did not complete the program, or graduated from the program at time of interview. Interview questions covered the following areas:

- experiences of taking part in the program, including the referral process;
- levels of satisfaction with the program;
- explanations for non-compliance or failure to complete the program;
- current health status and living arrangements;
- current social functioning and participation;
- participation in education and training programs;
- employment status;
- levels of re-offending; and
- illicit drug use.

Interviews took approximately one hour to complete and were tape recorded to allow for the accurate reporting of interviewees' opinions and experiences.

## **5.4 Characteristics of the Participants Interviewed**

### **Age and gender**

Of the 33 young people who participated in the first round of interviews, 25 (three-quarters) were young men and eight (one-quarter) were young women. In the second round 14 (78 per cent) were men and four (22 per cent) were young women (Table 5.2).

At the time of the first interview, the average age of the group was 17.9 years, with three people aged under 17, 15 people (45 per cent) between 17 and 18 years, and

another 15 being 18 years of age or older. Of those two young people between the ages of 15 and 16 years, one was a young man and the other was a young woman. The average age for female participants was 17.7 years, slightly under that for the young men.

At the time of the second interview, the average age for the group was 18.9 years, with two young women between 16 and 17 years, one young man between 17 and 18 years, and 13 men and two women aged over 18 years. The average age for the young women was 17.8 years, slightly over a year less than that of young men, who had an average age of 19.3 years at the time of the second interview. While the average age gap between the young men interviewed and the young women was a little wider in the second round of interviews, the proportions of males to females remained comparable.

**Table 5.2: Age and gender of participant interviewees**

	Total		Male		Female	
	No.	Per cent	No.	Per cent	No.	Per cent
1 <sup>st</sup> Interviews	33		25	75.7	8	24.2
Average Age (years)	17.9		17.9		17.6	
15 to 16 years	2	6.1	1	3.0	1	3.0
16 to 17 years	1	3.0	0	0.0	1	3.0
17 to 18 years	15	45.5	13	39.4	2	6.1
Over 18 years	15	45.5	11	33.3	4	12.1
2 <sup>nd</sup> Interviews	18		14	77.8	4	22.2
Average Age (years)	18.9		19.3		17.8	
15 to 16 years	0	0.0	0	0.0	0	0.0
16 to 17 years	2	11.1	0	0.0	2	11.1
17 to 18 years	1	5.6	1	5.6	0	0.0
Over 18 years	15	83.3	13	72.2	2	11.1

### Ethnicity

Five of the young men (15 per cent) and four of the young women (12 per cent) identified as Indigenous Australians, while nine young men (27 per cent) and two young women (six per cent) identified as non-Indigenous Australians. Four men (14 per cent) and one woman identified themselves as Polynesian, while four men and one woman identified themselves as coming from a Southeast Asian background. One man described himself as of an Indian background. A further two men were of 'other' ethnicity, one young man being Fijian Indian and another who identified as Turkish, as his parents had migrated from Cyprus to Australia prior to his birth (Table 5.2). Overall, the cultural backgrounds of those interviewed were broadly similar to those of participants as a whole.

**Table 5.3: Ethnicity of participant interviewees**

Ethnicity	Total		Male		Female	
	No.	Per cent	No.	Per cent	No.	Per cent
Indigenous Australian	9	27.3	5	15.1	4	12.1
Australian	11	33.3	9	27.3	2	6.1
Polynesian	5	15.1	4	12.1	1	3.0
Southeast Asian	5	15.1	4	12.1	1	3.0
Indian	1	3.0	1	3.0	0	0.0
Other	2	6.1	2	6.1	0	0.0

At the second round of interviews, five young people, four men and one woman (28 per cent) identified as Indigenous Australians; nine people, seven men and two women, identified themselves as non-Indigenous Australian (half the sample), two men identified as Polynesian (11 per cent), and two people, one woman and one man, identified as Southeast Asian (11 per cent). While some differences from first to second round of interviews can be noted, particularly fewer young Indigenous women participating and a higher percentage of people identifying as non-indigenous Australian, the ethnic composition of the first and second round samples remained broadly consistent.

### **Employment status**

At the time of the first interview 12 men and three women, 15 of the YDC Evaluation participants in total (45 per cent), described themselves as unemployed. One young man described himself as 'employed full-time', and one young woman described herself as 'employed part-time'. Two men were engaged in 'casual or occasional work'. Six of the participants, four men and two woman, described themselves as students, and one man said he was engaged in 'home duties'. Five men did not specify their employment status and two women did not answer the question. It is not surprising that a group of young people with significant substance use issues would find it difficult to obtain, or maintain, regular full-time employment, but a higher percentage in this interview group seemed to have some employment than was suggested in the DJJ record of employment status at entry to the program (see Section 3). This is likely to be related partly to participants' involvement in training and job search while on the program. As described in Section 4 above, a number of the participants obtained employment, either part-time or full-time, in the course of being on the program, especially in the first year of the pilot.

By the second round of interviews, 12 young people, 11 men and one woman (67 per cent), described themselves as unemployed, with two women now studying and one young man doing casual work. Three people did not provide information on their employment status. There was an increase from one-half to two-thirds of participants describing themselves as unemployed between the two rounds of interviews. This suggests that the employment obtained earlier was likely only to have been of a short-term or casual nature.

### **Participants' final status and time spent on the program**

Of the 33 interviewees, 14 (42 per cent) graduated, 14 chose to terminate their participation in the program before completion, four (12 per cent) were discharged by the Court and one was not accepted. At the time of the first interview, four people had already graduated from the program, 22 were still on the program, and six had left it. This shows that the interview group included a higher proportion of graduates than there were amongst participants as a whole during the pilot period.

For second round interviews, the proportion of the sample who were graduates rose to 61 per cent, while a further 28 per cent had chosen to terminate their participation in the program before completion. Two (11 per cent) were discharged by the Court. It would appear that graduates of the program were easier to trace for second round interviews, both because they tended to have spent more time on the program and were still more closely in touch with YDC staff and because they were leading more settled lives. Those who ended their participation in the program without graduating were more difficult to locate and interview.

The average length of time spent on the program for first round interview participants was 38 weeks (approximately nine months). For young men, the average was 37.2 weeks, while for woman it was 41.5 weeks. Only one person spent less than three months on the program, with seven spending between three and six months. Eighteen young people spent between six months and a year on the program, while a further six were involved for more than a year. Overall, 24 young people in the first interview group (73 per cent) chose to extend their participation on the program past the minimum required six month period, again an indication that the interviewees were more engaged than the average participant.

There was no discernible pattern in the length of time spent on the program and participants' final status (leaving the program, either voluntarily or by order of the Court, or graduating). The one person in the first interview group who was on the program for less than three months had their participation terminated by the Court. However, another two that had their participation terminated by the court had spent over six months on the program, and another person had been on the program for over a year when the YDC decided to terminate their participation. Six people who had been on the program for three months to six months chose to end their participation with the program, while five people who had been participating in the program for over six months also chose to leave. A further three apparently chose to leave after they had been on the program for over a year.<sup>12</sup> Of those people who graduated from the program (which is only possible after at least six months of participation), only one person graduated at the six-month mark. Eleven graduated after participating for between six months to a year and a further two people graduated from the program after participating for over a year (Table 5.4). There was also no apparent relationship between gender, ethnicity or age of participants and either their final status or the length of time they spent on the program.

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<sup>12</sup> In some cases these participants had spent time absconding or in custody while still officially involved in the program.

**Table 5.4: Participants' final status by time spent on the program**

Time on Program	Total		Terminated by Court		Self termination		Graduation	
	No.	Per cent	No.	Per cent	No.	Per cent	No.	Per cent
Not put on program	1	3.0						
1 to 3 months	1	3.0	1	3.0	0	0.0	0	0.0
3 to 6 months	7	21.2	0	0.0	6	18.2	1	3.0
6 months to a year	18	54.6	2	6.1	5	15.1	11	33.3
Over a year	6	18.2	1	3.0	3	9.1	2	6.1
Total	33	100.0	4	12.1	14	42.4	14	42.4

### 5.5 Participants' Experiences of Referral and Assessment for the YDC program

In the interviews, the young people were asked about how they were referred to the YDC Program. Most described being referred to the program while they were in custody, either through a defence solicitor, a juvenile justice worker or an alcohol and drug counsellor. Some commented that they had first heard about the program while in custody through conversations with other young people who knew of or had experienced the program. Several of the young Indigenous participants mentioned that they were referred to the program by a worker from Aboriginal Legal Services.

#### Understanding of the program and the assessment procedure

Interviewees were asked to rate their understanding of the YDC program and the assessment procedure when they were first referred to the program (Table 5.5).

The young people's initial understanding of the YDC program seemed mainly to be good, with 19 of the 33 interviewed saying their comprehension of what the program was about was either very good or good (58 per cent) and a further seven saying their understanding was neither poor or good (21 per cent). However, seven young people said their understanding of the program was poor or very poor (21 per cent). Qualitative data collected in the interviews shed light on the circumstances for some of this last group. One young man commented that there were too many people involved in the program and that "[It] took me the whole six months to know who everybody was". Another said "[I] didn't really know what it was about as my head was gone with the drugs". A third commented that he did not really understand the drug court at the beginning "'Cos I didn't know that it was going to be this much work." The theme of the experience of the YDC being different from initial expectations was common among many of the participants, even if not necessarily connected to their understanding of the program. This theme is explored further below.

There were no marked differences by sex or cultural background in how well participants initially understood the program.

**Table 5.5: Participants’ understanding of the YDC program**

Understanding	Number	Per cent
Very poor	1	3.0
Poor	6	18.2
Neither poor or good	7	21.2
Good	14	42.4
Very good	5	15.2
Total	33	100

The young people’s initial understanding of the assessment procedure was also very good, with 23 of the 33 interviewed reporting their understanding as either very good or good (70 per cent), and a further six as neither poor or good (18 per cent). Only three young people said their understanding of the assessment procedure was poor or very poor (nine per cent).

### **Changes in perception of the YDC**

Many of the participants commented that their view of the YDC changed as their experience of the program grew. The most common experience was initially to see it mainly as an easy way of getting out of custody, but this often changed over time, as the following quotes from five separate individuals show.

So I went on [the YDC] so I could go on the outside. It was like this when I first came on it, but it’s worked out all right. It’s an all right program. About three or four months ago I realised that it wasn’t just about getting out of custody.

They told me that I’d have to do three months rehab and I thought that was better than doing 12 months in custody. Also, even if I do the 12 months in custody I’m just going to come out and use straight away. Drug court gives you the skills not to use [drugs]. I reckon it’s good. I know people who’ve graduated and think that it’s good. Was more about learning skills than staying out of custody – the ability to say no.

At first I wanted to do it because I couldn’t get my charges dropped without having to do a control order, but after six months I wanted to get things together and I saw this as my opportunity to.

I was only doing it for the bail... Now I’m doing it for myself.

When it was first explained I knew roughly what it was. Instead of being locked up you get to be on the outside, you’ve just got to do their program. It did sound easy at the beginning but I knew they were going to be on my back, but better than being locked up. At the beginning I just wanted to go on the program to see how I’d go on it and give it a go. But now I like the program – it’s like a foundation for me.

Another common theme was the intensity of the program. Several of the participants commented on this aspect.

At the beginning it was explained to me that I had to do counselling and things, but I didn't expect it to be as full-on as it was.

[I] thought at first that it sounded very intensive – lots of supervision. The level of supervision freaked me out a bit, but I wanted to get out of custody, and I also wanted to try and fix up my life.

[The] program sounded like an opportunity to learn rather than just spend time in jail. They stressed that it would be difficult and not an easy option. I wanted to get respect and learn some life management skills. I have learned a lot since being on the program and I've matured a fair bit.

For some, however, YDC was not seen as a quick option for getting out of custody, even at the beginning.

I wanted to get off drugs and get my life together. I didn't really care about getting out of custody – I knew I had to do time for the crime that I did.

I didn't really know what it would be like, but I wanted to get my act together. It was not so much about avoiding custody.

## 5.6 Participants' Views of the Court Processes

The interviewees reported high levels of satisfaction with the Court itself in first round interviews. They also reported that they understood court proceedings, with 29 of the 32 program participants (90 per cent) saying they understood what was happening in court all or most of the time (Table 5.6). This did not change markedly over time, with 15 out of the 16 people who answered the question in the second round of interviews (94 per cent) also reporting they understood what was happening in court all or most of the time. While there was no difference between how men and women, or participants from different ethnic groups, rated their understanding of what was happening in Court, there was a small rise in the mean rating for groups according to their final status. Those who eventually graduated from the program reported a higher level of understanding than those who chose to terminate their participation in the program, and those who chose to terminate rated their understanding better than those who were terminated by the Court.

**Table 5.6: Participants' understanding of court proceedings**

Understanding	Number	Per cent
All of the time	16	50.0
Most of the time	13	40.6
Some of the time	3	9.4
None of the time	0	0
Total	32	100

### **YDC magistrates**

Twenty-four first round participants reported they were satisfied or very satisfied with the YDC magistrates (75 per cent), with only five people reporting they were dissatisfied or very dissatisfied (16 per cent). Three (nine per cent) were neither satisfied or dissatisfied with them (Table 5.7). In the second round of interviews 14 people (78 per cent) still said they were satisfied or very satisfied with YDC magistrates. Two said they were neither satisfied or dissatisfied (11 per cent). No one in the second round of interviews reported that they were dissatisfied or very dissatisfied with the magistrates.

**Table 5.7: Satisfaction with YDC magistrates**

Satisfaction	Number	Per cent
Very satisfied	7	21.8
Satisfied	17	53.1
Neither	3	9.4
Dissatisfied	2	6.3
Very dissatisfied	3	9.4
Total	32	100

Most participants made positive comments about their experiences with YDC magistrates, reflecting the high level of satisfaction reported. These included the usefulness of being able to talk to the magistrate directly (and that the magistrate would listen), and that the informality of the magistrate and the Court made participants comfortable and able to speak their mind.

They're a lot nicer than normal magistrates... they actually talk to you and not just about you.

The magistrate is always nice to me. You don't have to look up to them. You can talk to them and just be yourself.

I like it, being able to talk to the judge and she talks to you like you're a normal person, not like in normal courtrooms - she sits down and talks to you normally. It's good.

You get to get up and have a say - you don't have to speak through your solicitor.

Going to Drug Court is all right. It is really good that the judge sits at your level.

What I like about the YDC is that it's not all formal.

Six participants felt ambivalent about their experiences of the Court, with a further two commenting that they disliked it (one of these was still positive about report backs). As one participant put it:

I hate Court 'cos they don't do anything that I want to do. They ask me what I want and then they do something completely different.

### **Report back sessions**

Participants in the first round of interviews reported high levels of satisfaction with court report back sessions, with 22 (69 per cent) saying they were satisfied or very satisfied with their experiences. Six said they were neither satisfied nor dissatisfied (19 per cent), with a further four (13 per cent) saying they were dissatisfied or very dissatisfied. This pattern continued without significant change in the second round of interviews.

Comments made about report back sessions were similar to those made about magistrates: that report backs gave participants the opportunity to speak to the magistrate and other YDC staff, and made participants feel more part of the process.

At report backs you sit at a table with the magistrate and you feel part of the process. They ask you. You can pretty much speak your mind - what you want.

Don't mind going to report backs. It's different 'cos you can actually say what you think. They treat you like a human being.

Two participants felt that report backs were “a waste of time” and a further two suggested that the frequency of YDC report backs could be reduced. For one participant this related directly to his work, as he explains:

It was a real pain in the arse having to go to report backs every two weeks, especially when I got a job. The police prosecutor didn't want to decrease the frequency until I had been on the program for at least four months. But I used to have to come in when I was working and it caused a bit of hassle with my employer. Luckily they were understanding, but I ended up having to tell them about the program and why I was on it, as they thought it was strange that I had to go to Court every two weeks. The Court should always try and work around people's working.

While close monitoring may be necessary in the early stages of a young person's participation on the program, this illustrates a situation in which the strict requirements of the YDC may run counter to a wider, holistic view – in this case the desire to improve participants' labour market position.

### **YDC defence solicitors**

As with other aspects of the YDC, participants reported high levels of satisfaction with the Legal Aid defence solicitors. In the first interview round, 28 participants said they were satisfied or very satisfied with the support they received from their solicitor (87 per cent). Three said they were neither satisfied nor dissatisfied (nine per cent), and only one (three per cent) said they were dissatisfied or very dissatisfied (Table 5.8). In the second interview round, 14 (78 per cent) said they were satisfied or very satisfied with the support they received from their solicitors, with only one person reporting they were dissatisfied.

It is worth noting that very similar results were reported in the NSW Adult Drug Court evaluation, with 86 per cent of participants there saying they were satisfied or

very satisfied with their Legal Aid solicitor, 10 per cent saying they were neutral on the subject, and three per cent saying they were dissatisfied or very dissatisfied (Lind et al, 2001:13).

Comments by YDC participants included that solicitors were helpful in explaining processes and procedures when they did not understand what was happening in court; and that they were friendly and approachable.

**Table 5.8: Satisfaction with support from YDC defence solicitors (first interview round)**

Satisfaction	Number	Per cent
Very satisfied	20	62.5
Satisfied	8	25.0
Neither	3	9.4
Dissatisfied	0	0
Very dissatisfied	1	3.1
Total	32	100

### **YDC sentencing**

While less than one-quarter of participants interviewed (seven) had been sentenced at the time of the first interview, most of these were highly satisfied with the sentence they had received from the YDC. By the second round of interviews eight people said they were very satisfied and four people said they were satisfied with their YDC sentence (67 per cent in all). One person reported they were neither satisfied nor dissatisfied with their sentence and one that they were very dissatisfied. As discussed earlier, participants who graduated or spent substantial time engaging in the program all received non-custodial sentences, usually a bond or probation.

## **5.7 Stabilisation, Rehabilitation and Accommodation**

### **Satisfaction with accommodation**

Fourteen interviewees in the first interview round chose not to answer the question asking them how satisfied they were with their accommodation (this included a number who were interviewed in custody). Comments made by the young people in response to qualitative questions suggested that many had mixed feelings about the various places they had been placed during their involvement in the program, and that these feelings often related to their experiences of rehabilitation services (these are discussed further below). However, for the 18 people who did answer the question, there was a high level of satisfaction, with 14 reporting they were satisfied or very satisfied with the accommodation arranged by the program (44 per cent of all interviewees). Only four people reported they were dissatisfied or very dissatisfied with accommodation arranged by the program (Table 5.9).

**Table 5.9: Satisfaction with accommodation**

Satisfaction	Number	Per cent
Very satisfied	5	15.6
Satisfied	9	28.1
Neither	0	0
Dissatisfied	3	9.4
Very dissatisfied	1	3.1
No answer	14	43.8
Total	32	100

Twenty-four people answered a similar question about how satisfied they were with the assistance they received to find suitable accommodation. Sixteen of the 24 people said they were satisfied or very satisfied with YDC workers' efforts to assist them in finding suitable accommodation (50 per cent of the 32 participants) but five (16 per cent) said they were dissatisfied or very dissatisfied. By the second round of interviews these proportions had changed, little with 10 people (55 per cent) saying they had been satisfied or very satisfied with YDC workers' efforts. Two people said they were neither satisfied nor dissatisfied, and only one said they were very dissatisfied.

Participants' views of their accommodation are likely to be influenced by how stable this was. In many cases interviewees reported being moved around frequently, although this was sometimes because they themselves left placements or had to leave because they had breached rules. The median number of places the interviewees reported staying while on the program was four. Typically, participants reported a stay in custody or a brief stay (usually one or two weeks) in a stabilisation service (and later at the YDC Induction Unit), and then placement in at least one or two rehabilitation centres. In some instances participants stayed in their own home, in refuges, in rented accommodation or in other accommodation considered suitable by the program.

Twenty-four people (78 per cent) in first round interviews reported staying in between two and five places while on the program. Two said they had been accommodated in one place for the length of their time on the program (one young man in his own home and another in a rehabilitation facility) while a further three people said they had stayed in six, seven or eight places while on the program. Two young men said they had been accommodated in 12 and 14 places respectively (Table 5.10). The young man who stayed in 12 places did so because he had spent brief periods at many different relatives' houses, as well as absconding from two rehabilitation centres. The other young man had absconded from the rehabilitation centres in which he was placed by the program on a number of occasions, as well as being unsettled in other accommodation (including his mother's home). Both of these participants chose to end their participation with the YDC, one after 20 months and the other after seven months.

**Table 5.10: Number of places participants stayed while on the program**

Number of places	Number of participants	Per cent
1	2	6.3
2	4	12.5
3	7	21.9
4	10	31.3
5	4	12.5
6	1	3.1
7	1	3.1
8	1	3.1
12	1	3.1
14	1	3.1
Total	32	100

### Experiences of rehabilitation facilities

The young people interviewed often indicated that they had mixed feelings about the accommodation they were placed in while on the program. This was particularly the case with rehabilitation facilities. As with comments made about first impressions of the program, people would often find it difficult to adjust to rehabilitation at first, but their attitude changed as time went by. As one young man explained,

[Rehabilitation centre name], it took me two weeks to settle in. Here it's not a bad environment – it's away from everything. It's good. When I first got here I was thinking 'how am I going to get adapted to this?'

For three young men, their positive experiences of rehabilitation programs were closely linked to good relations with particular staff: they felt that the workers understood their difficulties and had been through similar difficulties in their own lives:

[Rehabilitation centre name] was the only place that I've got satisfaction from since being on Drug Court. They helped me a lot. The workers were different there. There was one worker and he made all the difference. If he wasn't there, [rehabilitation centre name] would be nothing. He was so good 'cos he used to be a junkie himself. He understands everything. You get a lot of workers who just learn things out of a text book, and they don't know shit.

It was hard at [rehabilitation centre name]. It was all about 'give yourself to the rehab centre straight away'. [Another rehabilitation centre] was the best because the workers didn't look at you as in 'hurry up, clean yourself up straight away'. They will pull you into line but it's easier. You feel like they've been there themselves and they know what you're going through.

Most of the stories people tell you can relate to and it helps you out. One-to-one counselling is good as well. He [the counsellor] talks to you about how you're going and how you've been feeling. He knows when you're feeling down and that. My counsellor in

particular is really good. He's got a mad sense of humour. He's been through it too so he knows the go. He's done it all and used to be a smackhead. He's a good bloke.

One young man, on the other hand, felt his age and relative maturity were not properly recognised at the rehabilitation centre.

The workers treated me like a little kid. There would be other young people there running round like kids and it was not what I needed.

A young woman also suggested that there were difficulties being in rehabilitation with a mixed age group.

Not everyone there is on everyone else's level. Some people are stable and some people are not. It's hard because there are 37 year olds there, older people there and younger people. The good thing though is that there are only 14 residents.

For some participants, it was the placements that also taught life skills that they found most useful.

That taught me a bit, going to the refuge, you know, you have to wash your own clothes and look after your room, look after the backyard. Taught me how to cook.

I'm living with [refuge name] at the moment. An Intensive Out of Home Care Service. It's individual so I'm there by myself with workers 24 hours a day. It has given me the opportunity to do a lot of things and not have to worry about money and that. I have to pay board and clean and cook - getting living skills but I can do that.

Each place has had different programs. The one that I'm going to suits me best as you get a job after the first month and it's also fitness and life management based and there is also a bit of freedom in that there are no staff there on Sunday so you feel like you want to behave, not because it's enforced.

As the last participant suggested, placements that offered some flexibility and freedom were often appreciated. Another participant made a similar comment:

The rehab was better than being in lock up 'cos I could go home on the weekends and that, and I had a bit of freedom.

For some YDC participants, it was the support from the other residents in rehabilitation that they valued highly.

Most of the people at [rehabilitation centre name] I'd known from the outside and it was good because whenever we had problems we'd help each other through.

For another young man, the fact that friendship was denied caused him some difficulty.

At one rehab, me and my mate, Drug Court sent us there, but the people at [rehabilitation centre name] knew that we were friends so we weren't allowed to talk to each other. How stupid's that?

However, for one young woman the presence of other people around her with drug problems was a source of difficulty:

Everyone else's problems are running me down 'cos I'm getting involved. I said 'maybe you should listen to me, because I've got more problems now than before I came in here'. It's just the rehab... But now you're in here and everyone craves.

One young woman suggested that the YDC program should have its own rehabilitation facility, to maximise the feeling of comradeship and mutual help among participants:

...for Drug Court, that it has its own rehab with everyone who's on Drug Court together. Where everyone could watch each other's back. Instead of sending us around the place.

Several of the young people interviewed commented favourably on the YDC's Induction Unit in this context.

I like the IU – it's heaps mad. Everyone wants to come back to the IU.

The induction unit was fine. I flew through that. We had a ball and I didn't even think about drugs once in the IU... The workers at the IU are great - they really connect with the kids and I'd go back there if I could.

I was first at the Induction Unit. I really liked it there - that's the best place out of the whole Drug Court. If they told me I could do my three months there I would love to do it... All because of the staff I love it there. It's a new place too, but it's really because of the staff. I liked the older staff. Every day it's different people, but they're all mad. They are good people - you know they understand you and you can talk to them about your problems you know. They'll listen and add their bits to it. Even when I finish the program I'll go and give them a visit actually.

Often, young people wished to stay in their own homes while on the program. Many made comments to this effect, for example:

I actually wanted to do the program at home like everyone would want to, but I don't know...I'm learning things, it's just that I think that I can do it. I don't want to be here [in a rehabilitation centre].

Some participants also commented that YDC workers had helped them get into their own accommodation, such as flats or apartments. Typically, this happened after the young person had been on the program some time, and the YDC and Juvenile Justice workers felt that the young person could cope with the step towards independent

living. Similar circumstances led to some participants being able to complete the program at home, after completing a rehabilitation program. Only one participant completed the entire program while living at home, and he successfully graduated after only six months on the program.

### **5.8 Activities Undertaken While on the Program**

The participants undertook program activities at rehabilitation centres, at the Liverpool Intensive Programs Unit (IPU) and at the Induction Unit. Recreational activities undertaken mentioned by the participants included: swimming, beach visits, movies, shopping, sports (for example, tennis, basket ball and bowling were mentioned) and gym visits. There were also educational courses run at the Intensive Programs Unit, as well as a range of program related counselling and other classes which are discussed below.

Some interviewees also took part in physical programs, camps and outings, usually run by NGOs or other services working in the alcohol and drug area. Several interviewees, particularly the young men, said they enjoyed the camps and other outdoor activities associated with these programs. As one young man put it:

The best stuff I've done has been the recreation - going on camp. Been on different camps since being on the program. I've done [program name] and that's like for young offenders or people with drug and alcohol issues and they take you away on a camp and show you how to have fun without drugs.

One rehabilitation centre in particular, in a rural setting, received several mentions from participants. For one young man and woman from the city, it was the rural setting of the activities as much as the activities themselves that pleased them:

I like the fact that you get time out for yourself here. You get a lot of time here. The weekend is for ourselves, we don't do any groups or anything. At the weekend we go shopping and come back. Sometimes we watch a couple of movies and go and check the yabbies out in the dam. Very different to stuff that I done before 'cos I grew up in the city.

There was fresh air blowing in my face, kangaroos jumping around - it was unbelievable. I was so peaceful and every day was a good day from the start of the morning because it was just so beautiful. Environment and atmosphere makes a big difference. So different to being in Sydney - you know, seeing the stars.

Most participants liked the organised activities, but a few found them 'boring' or 'a waste of time'. The value was often in the distraction from thinking about drugs, but most also saw the advantage of keeping occupied, gaining employment and other skills, and education as ways of attempting to improve or change their lives.

### **Educational courses**

As described in the previous Section, educational courses were run for YDC program participants at the Intensive Programs Unit at Liverpool. Participants reported being

involved in courses based on schooling from Years 7-10. TAFE courses were also run from the IPU for some participants, while some of the young people went to TAFE courses elsewhere.

Twenty-three of the 32 participants interviewed in the first round said they had attended educational courses while on the program (70 per cent), while six said they had not attended such courses. A further three people did not answer the question. Most said they found the courses useful, with some indicating they took them very seriously:

The fact they made me go to school was the most useful thing. Most of the time I was on the program I was just studying so I didn't come in for any of the outings or anything. I think the Drug Court really helps you, because every week you're being supervised, you have to come in every week so you've got to stay on track. And if you do start slacking off they're going to start bugging you.

Some participants mentioned concentration problems, and problems with sitting still for too long, as on young woman put it, "I can't sit in a classroom because my concentration's never there". Some of the young men complained that the Year 7-level classes were not challenging enough.

Many participants commented on the helpfulness of YDC workers in accommodating their activity needs, be they educational or vocational:

They're helping me with TAFE and school and whatever I want to do. They don't sit there and say "oh you have to go to school, you have to do this". If you don't want to go to school and you want to get a job they'll get you a job.

Several participants commented on their future employment aspirations. Future vocational choices included: labouring, running one's own business (two participants), mechanics' apprenticeships (two participants), driving fork lifts (two participants), tattooing, real estate, and becoming a singer/song writer.

Participants reported that YDC workers actively assisted them in making practical steps towards their chosen careers.

Got to choose my own course, and they're letting me choose my own course now, so I reckon you get a bit of freedom to do what you want pretty much. If you're not happy with something they'll fix it up.

Some of the vocational courses which participants had undertaken with help from YDC workers included TAFE courses on vehicle painting, hairdressing and pre-employment; a hospitality/café course; and a bar and cocktail course with responsible gambling certificate. The participants taking these courses felt that this training was a significant step to them gaining employment in the future. Two of the young woman also had aspirations to work in the social services and YDC workers had assisted them in these aims.

I would like to be a youth worker and I've been finding out about it here and what I would need to do. I'm looking at it and trying to see if it's the right thing for me. I thought about this because of working with the youth all the time, just being a kid and knowing what they want. I want to help kids so they don't end up like me.

YDC workers also assisted some participants in making a 'Say No to Drugs' video at the Liverpool IPU, which two participants mentioned as a highlight of the YDC activities program for them.

In the first interview round, 19 of the 32 young people said that overall they were satisfied or very satisfied with education and training they had received while on the program (60 per cent), five of the young people said they were neither satisfied or dissatisfied (16 per cent), while a further five said they were dissatisfied or very dissatisfied with education and training while on the program (Table 5.11). In the second interview round 10 people (55 per cent) said they were satisfied or very satisfied, two people said they were neither satisfied nor dissatisfied (11 per cent), and no one reported being dissatisfied.

**Table 5.11: Satisfaction with education and training while on the program (first round of interviews)**

Satisfaction	Number	Per cent
Very satisfied	4	12.5
Satisfied	15	46.9
Neither	5	15.6
Dissatisfied	1	3.1
Very dissatisfied	4	12.5
No answer	3	9.4
Total	32	100

### **Health, living skills, and Stop Offending classes**

Some of the YDC participants talked about the health classes and their benefit. One young man commented: "It was useful to learn about the drugs and what they were doing to me". A few of the young people also mentioned the living skills classes. One young man commented that it was "good to learn to balance your money".

Two participants, a young woman and a young man, commented favourably on the benefit of the Stop Offending classes:

I enjoyed Stop Offending classes the most, 'cos it shows how we were feeling and it also shows how other people were affected by what we were doing, and you really look back and think. You act out what happens and see other people felt.

The offending group I did was good, about different offences that we've done, and doing role play - victims and how they feel. That was a good one - I liked that.

## Counselling

While there was a general consensus amongst interviewees that both the general counselling participants received and the specialist Alcohol and Drugs counselling were 'useful', there were mixed views on the relative benefits or otherwise of one-to-one and group methods.

I really like all the counselling – it's good. There's heaps of groups at rehab, and one-to-one counselling. Learning to live together and live a normal life with a daily routine. Not just - do something, get a shot, do something, get a shot. Learning to live without drugs. Groups help you express how you feel...I was a bit quiet. NA [Narcotics Anonymous] meetings were good. You can sit back and listen to everyone else and what they're going through, and how they avoid it.

The groups were useful because you could talk about your problems and the things you'd done in the past, and stop them from building up and coming back to haunt you. [Rehabilitation centre name] was the first place that I learned that talking about your problems helps and it does make you feel good afterwards. It was one of the first places that helped me come to terms with my habit. If it wasn't for [Rehabilitation centre name] I would still be saying that I hadn't got a problem – I'm not a car thief, I'm not a druggie, I don't hang around the streets all night.

However, two young women on the program did not feel comfortable talking about their drug and crime problems in a group:

The drugs and alcohol counselling was stupid too because they had groups and one-on-one but I hardly had a one-on-one. Would have preferred more one-to-one. Didn't want everyone knowing my drug problems. Most of the kids in the room didn't even shoot up - I felt the biggest junkie sitting there. I felt like real low-life scum. It's not good for your self-confidence ...

You've got counsellors telling you not to think like this or like that because it's bad, and I already felt bad enough because of all the shit I've done. I hate talking about drugs and I hate talking about crime because I feel so bad about it. Some people have a laugh about it, "I used to be a junkie, and snatch people's bags..."

One participant who thought many of the program activities were a waste of time still liked the one-to-one counselling. One also mentioned that his YDC worker became his individual counsellor and that because of this he didn't want to tell her everything, in case she might use it against him in court. Another young man said simply, "I didn't enjoy counselling because I don't think I need it". One young woman on the program said, "Counselling wasn't helpful as I didn't want to be 'counselled', I just wanted to talk as a person."

Overall, 17 young people (53 per cent) in the first interview round said they were satisfied or very satisfied with the Alcohol and Other Drug counselling they had

received. Nine said they were neither satisfied nor dissatisfied, and only three people were dissatisfied or very dissatisfied (Table 5.12). By the second interview round 12 people (67 per cent) still said they were satisfied or very satisfied with the Alcohol and Drug counselling they had received, with one person saying they were neither satisfied or dissatisfied and another that they were very dissatisfied.

**Table 5.12: Satisfaction with Alcohol and Other Drug counselling**

Satisfaction	Number	Per cent
Very satisfied	5	15.6
Satisfied	12	37.5
Neither	9	28.1
Dissatisfied	1	3.1
Very dissatisfied	2	6.2
No answer	3	9.4
Total	32	99.9 <sup>a</sup>

Note: a. Percentage total does not equal 100 because of rounding. This applies also to several other tables in this Section

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Almost half of the young people interviewed in the first round said that they had not had any general counselling while on the program (44 per cent), but for the remaining 18 who did answer the question, 11 reported they were satisfied or very satisfied with this (34 per cent of the 32, or 61 per cent of the 18 who answered the question). Six reported that they were neither satisfied nor dissatisfied (19 per cent of the 32, or 33 per cent of the 18 who answered) and only one person reported they were dissatisfied with the general counselling they had received. By the second round of interviews 10 people out of the 12 who received general counselling said they were satisfied or very satisfied (83 per cent). One person reported they were neither satisfied nor dissatisfied, and one person reported they were very dissatisfied.

**Satisfaction with Support from Juvenile Justice Officers and case workers**

Two-thirds of the first interview group chose not to respond to the question asking them to rate their satisfaction with the support they received from their Juvenile Justice Officer. The reasons for this were not clear, but it may be that in spite of reassurances about confidentiality some participants were worried that their comments might get back to the staff concerned. Of those who did answer, all eleven said they were satisfied or very satisfied with the support they received (Table 5.13). In the second interview round, 15 people said they were satisfied or very satisfied with their Juvenile Justice Officer (83 per cent) with a further person saying they were very dissatisfied.

**Table 5.13: Satisfaction with support from Juvenile Justice Officers**

Satisfaction	Number	Per cent
Very satisfied	7	21.9
Satisfied	4	12.5
Neither	0	0
Dissatisfied	0	0
Very dissatisfied	0	0
No answer	21	65.6
Total	32	100

Two-thirds of the first interview group also chose not respond to the question asking them to rate their satisfaction with the support they received from their case worker. As with the previous question, the reasons for this were not clear, but of those who did answer, 10 said they were very satisfied with the support they received from their case worker, and one person said they were satisfied (Table 5.14). By the second round of interviews 13 people (72 per cent) said they were satisfied or very satisfied with their case worker, with a further two people reporting they were neither satisfied or dissatisfied.

**Table 5.14: Satisfaction with support from case workers**

Satisfaction	Number	Per cent
Very satisfied	10	31.3
Satisfied	1	3.1
Neither	0	0
Dissatisfied	0	0
Very dissatisfied	0	0
No answer	21	65.6
Total	32	100

As with other aspects of the program, most comments from the young people about the support they received from caseworkers and Juvenile Justice Officers were positive. Many people commented that workers would always listen to them, even if they didn't always do or agree with what the young person wanted. As was noted in the previous section, it was important for many of the young people to try and do well on the program for their caseworker or YDC worker, as well as for themselves.

I can talk to my JJO – he's a legend. I want to get his hopes up.

It felt good talking to the workers. They really did understand, and whenever you asked them for help they'd always be there. Felt good when I got positive feedback instead of them telling me I'm a pain in the backside.

I felt that support had been there, and could go and talk to people if not happy, also that people on the program will listen. They usually come and see me I don't even have to go and find them. Always asking how things are going.

They let me ring my mum or my case worker whenever I want to, so that's easier. They listen. If something's bothering me and I tell them, then usually that thing goes away.

They didn't want me in custody - wanted me out as soon as possible. The fact that people were disappointed made me realise that they cared and that they were actually trying to help me.

However, other comments may provide some insight as to the reasons why the help of YDC or Juvenile Justice workers was not always sought by some of the young people on the program. Once again, it seemed to be related to not wanting to let workers down, or to a strong sense of independence and a determination to sort problems out on their own.

You get a fair bit of support from your case worker and your JJO. If I had rung them up and talked to them about the problems I was having things may have gone better, but you reach a stage where you're sort of ashamed to talk about it to your caseworker and your JJO. So in a sense there is still some of it that's down to you.

I didn't feel that I could talk to people, 'cos I thought that I wanted to sort it out on my own. Wanted to try it on my own first.

## **5.9 Participants' Health**

The extent to which the evaluation can determine how much the program has directly affected participants' health has to some extent been confounded by the methodological difficulties described at the beginning of this Section, especially the fact that both first and second round interviews were carried out at different stages of involvement with the program for different participants. Nevertheless, some useful information emerged from the interviews. It should be noted that the evaluators were not in a position to carry out direct assessment of participants' health and the results below are based on self-reporting.

### **Physical health**

Table 5.15 shows that more than half the first round interviewees (18 or 55 per cent) rated their general health as excellent or very good, with a further 11 rating their health as good (33 per cent). Thus in total, 29 rated their health as excellent, very good or good (88 per cent). Four rated their health as fair or poor (12 per cent). These results can be compared to results obtained from the (Australian) National Health Survey of 1995, where 83 per cent of the Australian population over 15 years of age rated their health as excellent, very good or good (ABS, 1995).

By the second interview round, 13 reported their health as excellent, very good or good (72 per cent). Five rated their health as fair or poor (28 per cent). Comparing the responses just for those who were in both rounds of interviews, 17 said their health was excellent, very good or good (94 per cent) and only one said their health was poor (six per cent). While there was a decrease in those reporting good health and an increase in those reporting fair to poor health from first to second interviews, these differences were not statistically significant.

**Table 5.15: Participants' general health**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Excellent	6	18.2	3	16.7
Very good	12	36.4	6	33.3
Good	11	33.3	4	22.2
Fair	3	9.1	3	16.7
Poor	1	3.0	2	11.1
Total	33	100	18	100

In the first interview round, three of the young people reported that they had contracted Hepatitis C and one of these people also reported they were HIV positive (this is not surprising for a group reporting frequent needle use). However, only one of these people reported that their health at the time was 'poor', with the other two reporting their health was 'fair' and 'very good' respectively.

The relatively high level of self-reported good health amongst the first interview group is perhaps surprising, given their significant levels of drug use in the recent past. The evaluation of the NSW Adult Drug Court found that both male and female participants had poorer health at baseline when compared to Australian population norms (Lind et al, 2001:15). It may be that many of the young people in the first YDC interview group had not been using drugs long enough to experience significant detrimental effects to their physical health and their young age made them still relatively resilient. However, the change in self-reported good health from first to second interviews (amongst those in both interview rounds), while not statistically significant, suggests that this group's good health might not be maintained post-program, on average.

It is also likely that some participants had benefited from short-term health improvements through being on the program. Twenty-four of the 32 young people in the first interview round (one interview with a participant had to be terminated before the remaining health questions could be answered) rated their general health as much better than six months previously (73 per cent). Six rated their health as a bit better or about the same as six months ago (18 per cent) and three (nine per cent) felt their health was worse or much worse than six months ago. This can be compared to results from the second interview round where seven of the 18 young people reported their health was much better than six months before (39 per cent), another seven reported that their health was a bit better or about the same, and four (22 per cent) reported their health was a bit worse than. (Table 5.16).

Results were similar when comparing just those who took part in both interviews. Thirteen (72 per cent) rated their health as much better than six months ago, four as a bit better or the same (22 per cent) and one as much worse than six months ago (six per cent). While the apparent decrease in the extent of health improvement over the two previous six-month periods is marked, it is still not statistically significant.

It seems likely that reported improvements in health in the first interview round can at least partly be attributed to health benefits gained from decreased drug use, their minor health problems being addressed by the program (such as dental work or eye examinations), better sleeping patterns, and regular eating while in custody,

rehabilitation facilities and other program-organised accommodation. Four of the young people commented on the difference in their physical health since being on the program:

The program has really helped with physical stuff as I've been off the drugs. I'm eating properly again.

I came into custody weighing 50 kilos. Now I weigh 80. My health is much better now. Some days I wouldn't eat at all. Some days I may eat at five in the morning ... Drug Court has also got my teeth fixed.

Have put on 15 kilos since coming into custody. Before I had no weight. Not eating. At one stage I was lying on the floor and couldn't make it to the kitchen because of cramps from not eating for three weeks. Now I like my food.

Every time I've come in this year I've always been able to go to sleep. Before I was always hanging out when I was coming down and feeling like shit. I haven't been sitting up pulling at hair, ripping at my hair, sweating, shaking. That's the best thing, being able to say that I slept last night.

**Table 5.16: General health compared with six months before**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Much better	24	72.7	7	38.9
A bit better	3	9.1	3	16.7
About the same	3	9.1	4	22.2
A bit worse	1	3.0	4	22.2
Much worse	2	6.1	0	0.0
Total	32	100	18	100

*Experience of physical pain*

Nineteen of the 32 participants in the first interview round reported not having experienced any physical or bodily pain over the previous four weeks (59 per cent), with a further six reporting they had experienced only mild or very mild pain (19 per cent). This result is in keeping with the general good physical health of the first interview group. However, five young people reported moderate pain (16 per cent) and two said they had experienced severe or very severe pain (Table 5.17). Of those who experienced moderate pain, two participants had back pain, one had pain in the legs, one had pain in the hips and one participant did not comment on the source of their pain. YDC staff had arranged for the participants with leg and hip pain to see a doctor, but in both cases no obvious cause was found. The participant who reported severe pain commented that it came from sporting injuries acquired before time on the program. The participant who reported very severe pain had a back problem that caused 'chronic back pain'. Thus this reported bodily pain does not necessarily seem to be directly related to drug use.

Nine out of 17 people in the second interview group<sup>13</sup> reported not having experienced any physical or bodily pain over the last four weeks (53 per cent), with a further six reporting they had experienced only mild or very mild (35 per cent). Two people (12 per cent) said they had experienced severe pain (Table 5.17). For the same young people in the first interview round, 11 reported not having experienced any physical or bodily pain over the last four weeks (61 per cent), with two people reporting they had experienced only mild or very mild pain (19 per cent). Four young people reported moderate pain (22 per cent) and one person said they had experienced severe pain. While there was an increase in the proportion of young people reporting some kind of bodily pain from first to second round interviews, this result was not statistically significant. As with the first interview round, this reported bodily pain was not directly related to drug use.

**Table 5.17: Extent of physical or bodily pain over the previous four weeks**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
None	19	59.4	9	52.9
Very mild	4	12.5	3	17.6
Mild	2	6.3	3	17.6
Moderate	5	15.6	0	0.0
Severe	1	3.1	2	11.8
Very severe	1	3.1	0	0.0
Total	32	100	17	99.9

*Health and social activities*

Twenty-two young people in the first interview round reported that their physical or emotional health had not interfered with their social activities at all or only a little (69 per cent). However, two reported that their physical or emotional health had interfered with their social activities ‘quite a bit’ and one ‘extremely’ (nine per cent). The latter commented that this was due to emotional problems, while the two people that reported ‘quite a bit’ of interference did not elaborate on their responses (Table 5.18).

In the second interview round, 11 people reported that their physical or emotional health had not interfered with their social activities at all, or only a little (61 per cent). However, four young people (22 per cent) reported that their physical or emotional health had interfered with their social activities ‘moderately’ or ‘quite a bit’ (Table 5.18). Out of the same group of young people in the first interview round, 14 had said that their physical or emotional health had not interfered with their social activities at all, or only a little (78 per cent) while two reported ‘moderate’ interference and one ‘extreme’ (17 per cent). While more were participants reported that their physical or emotional health was interfering with their social activities in the second interview round compared to the first, this result was again not statistically significant.

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<sup>13</sup> One young person did not wish to answer this question.

**Table 5.18: Extent to which physical health or emotional problems interfered with social activities over the previous four weeks**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Not at all	12	37.5	10	55.6
A little bit	10	31.2	1	5.6
Moderately	3	9.4	1	5.6
Quite a bit	2	6.2	3	16.7
Extremely	1	3.1	0	0.0
No answer	4	12.5	3	16.7
Total	32	99.9	18	100.2

### Mental health

The five questions shown in Table 5.19 to Table 5.23 are standardised mental health measures taken from the Short Form (SF) 36, a health and quality of life survey used widely within health and related disciplines. The SF 36 has a number of sub-scales including mental health. It is possible to calculate a standardised mental health score for each participant in the evaluation, and from these individual scores calculate a scaled score (0 to 100). The mean scaled score can then be compared to Australian population norms.

The mean scaled mental health score for the 32 participants in the first round of interviews was 63.8 (64.2 for the young men and 62.3 for young woman). The mean scaled mental health score for the 18 participants in the second round of interviews was 68.7 (68.0 for the young men and 71.0 for young woman). The same group of young people in the first interview round had a mean scaled mental health score of 60.2 (59.1 for the young men and 64.0 for young woman). While the mean scaled mental health score for these interviewees had improved from first to second interviews, it was not statistically significant.

While there are no SF 36 data available for people under the age of 18 years, the Australian population norm for the SF 36 mental health sub-scale for 18 to 24 year olds is 75.2 (77.5 for young men and 72.8 for young women) (ABS, 1995: 11). The mental health of the young people participating in the evaluation interviews, particularly first round interviews, was thus poorer than the mental health of 18 to 24 year olds in the population as a whole. This finding is consistent with the NSW Adult Drug Court evaluation, where it was found that both male and female participants had poorer mental health sub scale scores at baseline than Australian population norms for 18 to 24, 25 to 34, and 18 to 42 year olds (Lind et al, 2001:8). However, of the people participating in the second round of interviews, the mean scaled mental health score of the young women was close to the Australian population norm for 18 to 24 year olds. The young men in the group still had poorer mental health than Australian norms for 18 to 24 year old men. This result may in part be due to the six young men interviewed whilst in adult prisons. These young men had a mean scaled mental health score of 59.3 at the time of the second interview, but, interestingly, an even lower mean score at first interview of 46.0, when they were not yet in adult prison.

The mental health score for unemployed Australians taking part in the National Health Survey was 70.0 (72.2 for men and 67.8 for women) (ABS, 1995:15). Many of the people participating in the YDC evaluation were also unemployed, but

comparison based on these figures still indicates that the YDC interview group had poorer mental health than unemployed Australians generally. The mental health sub-scale scores of YDC participants were also analysed by ethnic background. While the numbers of people in each sub-group are too small to make any definitive statements, it is worth noting that the mean mental health score was 53.3 for Indigenous Australians, 64.7 for non-indigenous Australians, 68.0 for Polynesians, and 77.6 for people of Southeast Asian background. It would appear that the Indigenous Australians in the YDC program suffer from poorer mental health than their non-indigenous peers, while participants from Polynesian or Southeast Asian backgrounds have better mental health than the group as a whole.

It is also worth noting that the mean mental health score for people completing the program and graduating was 70.9, while for those who chose to terminate their participation it was 57.2 and for those terminated by the Court it was 61.0. Once again, the numbers are too small to make definitive statements about these differences, but it would appear that participants who completed the program experienced better mental health than those who did not.

**Table 5.19: Time spent in the previous four weeks being ‘a nervous person’**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of the time	2	6.3	0	0.0
Most of the time	4	12.5	1	5.6
A good bit of the time	4	12.5	1	5.6
Some of the time	7	21.9	6	33.3
A little of the time	10	31.3	5	27.8
None of the time	5	15.6	5	27.8
Total	32	100.1	18	100.1

**Table 5.20: Time spent in the previous four weeks feeling ‘so down that nothing could cheer you up’**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of the time	2	6.3	0	0.0
Most of the time	3	9.4	2	11.1
A good bit of the time	1	3.1	0	0.0
Some of the time	8	25.0	1	5.6
A little of the time	14	43.8	6	33.3
None of the time	4	12.5	9	50.0
Total	32	100.1	18	100

**Table 5.21: Time spent in the previous four weeks feeling ‘peaceful and calm’**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of the time	3	9.4	0	0.0
Most of the time	10	31.3	4	22.2
A good bit of the time	8	25.0	6	33.3
Some of the time	5	15.6	4	22.2
A little of the time	5	15.6	2	11.1
None of the time	1	3.1	2	11.1
Total	32	100	18	99.9

**Table 5.22: Time spent in the previous four weeks feeling ‘down and depressed’**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of the time	2	6.3	2	11.1
Most of the time	5	15.6	2	11.1
A good bit of the time	0	0.0	1	5.6
Some of the time	7	21.9	0	0.0
A little of the time	11	34.4	6	33.3
None of the time	7	21.9	7	38.9
Total	32	100.1*	18	100

**Table 5.23: Time spent in the previous four weeks being ‘a happy person’**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of the time	2	6.3	1	5.6
Most of the time	20	62.5	9	50.0
A good bit of the time	4	12.5	6	33.3
Some of the time	1	3.1	1	5.6
A little of the time	4	12.5	1	5.6
None of the time	1	3.1	0	0.0
Total	32	100	18	100.1

### 5.10 Participants' Social Functioning

The seven questions shown in the next set of tables (Table 5.24 to Table 5.30) are a modified version of the Social Functioning section of the Opiate Treatment Index – a standardised survey instrument developed by the National Drug and Alcohol Research Centre, UNSW (Darke et al., 1992). This is used widely in research on opiate-using populations, including in the NSW Adult Drug Court evaluation. Together, these questions give a picture of how socially integrated or isolated participants were, as well as providing some indication of the extent to which participants were still involved socially with other drug users.

While nine participants (28 per cent) in the first interview round reported they were in conflict with their relatives and close family members often or very often, the majority of participants (21 or 66 per cent) reported they were in conflict sometimes, rarely or never (Table 5.24). The young women in the first interview group reported such conflict more often than the young men. In the second interviews, 15 out of the 18 young people reported conflict with relatives sometimes, rarely or never (83 per cent) while three reported conflict often or very often (17 per cent). Again, the young women in the group reported such conflict more often than the men. Amongst just those who were in both rounds of interviews, 10 reported conflict with relatives sometimes, rarely or never (56 per cent) while six (33 per cent) reported conflict often or very often. It would appear that for this group, conflict with relatives had lessened quite markedly since the first interview round.

**Table 5.24: Conflict with relatives in the past six months**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Very often	6	18.7	2	11.1
Often	3	9.4	1	5.6
Sometimes	12	37.5	2	11.1
Rarely	3	9.4	8	44.4
Never	6	18.7	5	27.8
No answer	2	6.3	0	0.0
Total	32	100	18	100

Similarly, while eight participants (25 per cent) in the first interviews reported they were in conflict with friends and acquaintances often or very often, the majority (22 or 69 per cent) said they were in such conflict sometimes, rarely or never (Table 5.25). The young men in the group reported more conflict with their friends than the young

women. In the second interviews 16 out of the 18 young people reported conflict with friends and acquaintances sometimes, rarely or never (89 per cent) while only one reported conflict very often (six per cent). While young women in the group were now reporting more conflict with their friends than the young men, overall, the group reported considerably less conflict with their friends and acquaintances than in the first interview round.

It would appear that the second interview group had experienced some stabilisation in relationships with both their friends and families since the first interview round, although gender differences were still apparent, with young women experiencing more conflict with friends and family than their male counterparts.

**Table 5.25: Conflict with friends or acquaintances in the past six months**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Very often	2	6.3	1	5.6
Often	6	18.7	0	0.0
Sometimes	6	18.7	4	22.2
Rarely	10	31.3	8	44.4
Never	6	18.7	4	22.2
No answer	2	6.3	1	5.6
Total	32	100	18	100

In the first interview round, 12 participants (37 per cent) said they had four or more close friends, and 90 per cent of the group (29 participants) said they had two or more close friends. However, two reported they had no close friends at all (Table 5.26). The young men in the group reported more close friends than the young women. In the second interview round eight people said they four or more friends (44 per cent), and 16 people said they had two or more close friends (89 per cent). The young women in the group reported more close friends than the young men. Of the same group in the first interviews, half the sample (nine participants) had said they had four or more close friends, and 17 out of the 18 (94 per cent) had said they had two or more close friends. These data indicate the majority of people in both the first and second interview groups were able to make close friendships, and data from the second interview group suggest these close friendships are maintained over time.

**Table 5.26: Number of close friends**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Four or more	12	37.5	8	44.4
Three	8	25.0	5	27.8
Two	9	28.1	3	16.7
One	0	0	1	5.6
No close friends	2	6.3	1	5.6
No answer	1	3.1	0	0.0
Total	32	100	18	100.1

More than two-thirds of the first interview group (22 or 69 per cent) said they saw their friends very often or often. Only four said they saw their friends rarely or never (Table 5.27). The male participants reported seeing their friends more often than the

female participants. Similarly, two-thirds of the second interview group (12 participants) said they saw their friends often or very often.<sup>14</sup> As with the first interview group, the young men reported seeing their friends more often than the young women.

**Table 5.27: Frequency of seeing friends**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Very often	17	53.1	8	44.4
Often	5	15.6	4	22.2
Sometimes	4	12.5	4	22.2
Rarely	3	9.4	1	5.6
Never	1	3.1	0	0.0
No answer	2	6.3	1	5.6
Total	32	100	18	100

Twenty-two participants (69 per cent) in the first interviews said they were satisfied or very satisfied with the support they got from their friends when they were having problems. Another four (12 per cent) said they were ‘reasonably okay’ with the support they received from their friends. Five (16 per cent) said they were not satisfied or very dissatisfied with support from friends (Table 5.28). The women in the group said they were more satisfied with support from their friends than the young men. In the second interviews 10 people said they were satisfied or very satisfied with the support they got from their friends when they were having problems (55 per cent), four said they were ‘reasonably okay’ with the support they received (22 per cent) and only one person said they were not satisfied. This compares to 13 people in the same group saying they were satisfied or very satisfied in the first interviews (72 per cent), two saying they were ‘reasonably okay’ (11 per cent) and two people saying they were not satisfied (11 per cent). Once again, young women were more satisfied with the support they received from their friends than the young men.

**Table 5.28: Satisfaction with support from friends when having problems**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Very satisfied	5	15.6	2	11.1
Satisfied	17	53.1	8	44.4
Reasonably okay	4	12.5	4	22.2
Not satisfied	4	12.5	1	5.6
Very dissatisfied	1	3.1	0	0.0
No answer	1	3.1	3	16.7
Total	32	99.9	18	100

Over half the group in the first interview round reported they had known more than half their friends and acquaintances for more than six months (19 or 59 per cent) while 11 people said they had known about half or less than half their friends for this

<sup>14</sup> For the participants in prison, the question was modified to take account of their circumstances and asked how often they saw their friends the last time they were in the community.

length of time (34 per cent). Only one person said they had known their friends or acquaintances for less than six months (Table 5.29). The young men reported knowing more people for over six months than the young women in the group.

In the second interview round, two-thirds of the group reported they had known more than half their friends and acquaintances for more than six months (12 or 66 per cent) while four people said they had known about half or less than half their friends for more than six months (22 per cent). Again, only one person said they had known their friends or acquaintances for less than six months. These responses also suggest some increase instability in the young people’s circle of friends and acquaintances between the first and second interviews.

**Table 5.29: Number of friends and acquaintances known more than six months**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of them	12	37.5	8	44.4
More than half	7	21.9	4	22.2
About half	6	18.7	3	16.7
Less than half	5	15.6	1	5.6
None	1	3.1	1	5.6
No answer	1	3.1	1	5.6
Total	32	99.9	18	100.1

Seven participants (22 per cent) reported in the first interviews that all the people they had known in the last six months were drug users (including partners, friends and acquaintances), while one-quarter said this applied to more than half the people they knew (Table 5.30). Male participants reported that they knew more people who were drug users than female participants. In the second interviews six participants (33 per cent) reported that all the people they had known in the last six months were drug users (including partners, friends and acquaintances), while two participants (11 per cent) said this applied to more than half the people they knew. A further four people said that about half the people they knew were drug users and five people (28 per cent) said that this applied to less than half the people they knew. Only one person reported that they did not know anyone who was a drug user.

While overall these data do not suggest a high degree of social isolation amongst YDC participants, the extent to which their social life is bound up with other drug users is a matter of concern. Perhaps encouragingly, graduates reported knowing fewer people who were drug users than those who chose to leave the program, and those who chose to leave reported they knew fewer people who were drug users than those who were terminated from the program by the Court. This pattern was also observable for the some of the previous social functioning questions: graduates reported having less conflict with relatives or friends than those who chose to leave the program, who in turn reported less conflict with relatives and friends than those terminated from the program by the court. Graduates also reported having more close friends than those who did not complete the program (either voluntarily or involuntarily) and were more satisfied with their friends support than those who left the program before completion.

**Table 5.30: People known in the previous six months who were drug users**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
All of them	7	21.9	6	33.3
More than half	8	25.0	2	11.1
About half	8	25.0	4	22.2
Less than half	8	25.0	5	27.8
None	0	0.0	1	5.6
No answer	1	3.1	0	0.0
Total	32	100	18	100

## 5.11 Participants' Drug Use

### Main drug of use

More than half of the first round interviewees (18 or 54 per cent) reported using heroin as their main drug, while a further five reported that they used mainly speed or amphetamines (15 per cent). Four (12 per cent) said that they mainly drank alcohol, while three reported that cannabis was their main drug (nine per cent) and a further three mainly used cocaine. This is broadly consistent with the data reported earlier for the whole participant group. As in the participants as a whole, there was also a high level of heroin use amongst the young women, with seven out of eight using this drug, as opposed to 11 out of 25 young men.

There was no pattern observable of the main drug used by participants in relation to cultural background, with use of heroin (and other drugs) being spread across the main ethnicity categories.

There does not appear to have been a relationship between the main drug of choice and participants' final outcomes: heroin users were more or less equally divided between graduates and those who self-terminated from the program (Table 5.31).

**Table 5.31: Main drug of use, by participants' final program status**

Main drug	Total		Terminated by Court		Self Termination		Graduation	
	No.	%	No.	%	No.	%	No.	%
Heroin	18	54.5	1	3.0	8	24.2	9	27.3
Speed	5	15.2	2	6.1	2	6.1	1	3.0
Alcohol	4	12.1	1	3.0	1	3.0	2	6.1
Cocaine	3*	9.1	0	0.0	1	3.0	1	3.0
Cannabis	3	9.1	0	0.0	2	6.1	1	3.0
Total	33	100	4	12.1	14	42.4	14	42.4

\* One interviewee was not accepted onto the program

### Income for drugs

Of the 32 interviewees in the first round who answered the following questions relating to drug use (one participant was not able to complete this section because the interview had to be terminated), 22 (69 per cent) said they obtained money to finance their drug needs mainly from theft. Of these, 12 listed heroin as their main drug and four listed amphetamines. Six people, five young men and one young woman, said their drug income came mainly from drug dealing (19 per cent). Two people, one

young woman and one young man, reported that income for drugs came from sex work (Table 5.32).

**Table 5.32: Sources of income for drugs, by sex**

Source of Income	Total		Male		Female	
	No.	Per cent	No.	Per cent	No.	Per cent
Theft	22	68.7	18	56.3	4	12.6
Drug dealing	6	18.8	5	15.6	1	3.1
Sex work	2	6.3	1	3.1	1	3.1
From friends	1	3.1	1	3.1	0	0.0
Not answered	1	3.1	0	0.0	1	3.1
<b>Total</b>	<b>32</b>	<b>100</b>	<b>25</b>	<b>78.1</b>	<b>7</b>	<b>21.9</b>

**Age of first drug use and injection of drugs**

YDC participants in the first interviews were asked how old they were when they first started using their main drug. For young men, it would appear that use of heroin, speed/amphetamines and cocaine occurred from around the ages of thirteen through to sixteen, while use of alcohol and cannabis began much earlier, as was the case for one young man who reported beginning drinking when he was eight years old. Cannabis use also started earlier for the young men in this group, with those listing cannabis as their main drug reporting they started using it at the ages of eleven, twelve and fifteen. Although numbers are low, it can be seen that the young women in the group began using heroin earlier than the young men, with six of the seven saying they started using at thirteen (Table 5.33). The young men in the group began using their drug of choice at a mean age of 14.1 years, while young women began using their main drug at 13.4 years.

**Table 5.33: Age at which participants first used main drug**

Age first used drug (years)	Heroin	Speed/Amphetamines	Alcohol	Cannabis	Cocaine	Total
Male						
Eight			1			1
Eleven				1		1
Twelve			1	1		2
Thirteen	3	1	1			5
Fourteen	2	1				3
Fifteen	4			1	2	7
Sixteen	2	2	1			5
Eighteen		1				1
<b>Total</b>	<b>11</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>25</b>
Female						
Thirteen	6					6
Sixteen		1				1
<b>Total</b>	<b>6</b>	<b>1</b>				<b>7</b>

The YDC participants in the first interviews were also asked at what age they first injected any drug (not necessarily their current drug of choice). As with age for first use of drug of choice, young women injected drugs earlier than young men (Table 5.34), with the mean age of first injection being 13.6 years while for young men it was 15.3 years. The difference is statistically significant at the 0.02 level ( $t = 2.57$ ,  $df = 17$ ). This result is surprising given the small number of female participants in the

evaluation group and reinforces other findings of the evaluation that young women tend to come to the program with particularly entrenched drug use problems.

**Table 5.34: Participants' age of first drug injecting**

Age first injected (years)		Heroin	Speed/ Amphetamines	Cocaine	Total
Male	Twelve			1	1
	Thirteen	1			1
	Fifteen	3			3
	Sixteen	5	2		7
	Eighteen		1		1
Total		9	3	1	13
Female	Thirteen	3			3
	Fourteen		1		1
	Fifteen	1			1
Total		4	1		5

### Severity of drug dependence

The young people were also asked a number of questions relating to their drug use. These questions were taken from the Severity of Dependence questionnaire and are designed to gauge level of dependence on drugs and whether drug use has increased or decreased.

Two-thirds of the young people in the first round interview group (21 or 66 per cent) responded that their drug use was much less than three months prior to starting the program, with a further four people (12 per cent) reporting it as a little less. Only one person thought their drug use had increased a little. Ten (56 per cent) of the second interview group responded that their drug use was much less than three months prior to starting the program, and one reporting it as a little less. Two thought their drug use had increased a little and a further two thought their drug use was 'a lot more'. Of those interviewed in the second, 11 had reported their drug use to be a lot less in the first interview (61 per cent), two thought it a little less (11 per cent) and one person thought their drug use had increased a little. These results are encouraging in that they suggest that the majority of those who had reported much decreased drug use in the first interview had maintained their reduction in drug use by the time of the second interview.

**Table 5.35: Drug use now, compared with three months before starting the program**

Drug use more/less	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Much less	21	65.6	10	55.6
A little less	4	12.5	1	5.6
About the same	0	0	0	0.0
A little more	1	3.1	2	11.1
A lot more	0	0	2	11.1
No answer	6	18.7	3	16.7
Total	32	99.9	18	100.1

Participants in the first interview round were asked if they ever thought that their use of their drug of choice was 'out of control', but while 16 people chose to answer, half could not respond to this question. The main reason for this is that the question was asked in the present tense (for comparative purposes, as per the Severity of Dependence Questionnaire, Sutherland et al., 1986), and all participants were interviewed while on the program. This made the question irrelevant to a large number of participants, as they were not using drugs at the time of the interview. There may also be the added difficulty that participants who may have been using drugs did not wish to disclose this, as they were meant to be abstaining from drug use at the time of the interview.

Given these limitations, it is difficult to interpret the results. However, it is worth noting that of the 16 people who answered the question in the first interview round, five said they never or almost never felt their use of their drug of choice was out of control, while four responded that they sometimes felt this way. A further seven people said they often, almost always, or always felt this way, which is not surprising given one of the criteria for coming into the program is high drug use and dependency associated with criminal activity. By the second interview round, five out of 14 people who answered the question said they never or almost never felt their use of their drug of choice was out of control, while four responded that they sometimes felt this way. A further five people said they often, almost always, or always felt this way. Success on the program would not necessarily mean these feelings would diminish for some participants.

Over half the first interview group did not respond to the question 'does the thought of missing [participants' main drug] make you very anxious or worried?' Of the 14 people who did answer, half responded that they only sometimes, or never or almost never, felt anxious or worried about missing out on the use of their drug of choice, while an equal number of people reported that they did feel anxious or worried at the thought of missing the use of their main drug often, nearly always or always. By the second interview, of the 14 people who responded to the question, 10 people answered that they only sometimes, or never or almost never felt anxious or worried about missing out on the use of their drug of choice, while four people reported that they did feel anxious or worried at the thought of missing the use of their main drug often, nearly always or always. This reduction in worry about missing drug use from first to second interviews is again encouraging for the program.

When asked how much they worried about their drug use, six participants out of the 13 in the first interview round who answered the question said they did not worry, or worried only a little. Seven participants reported they worried about their drug use quite a lot or a great deal. By the second interview round, 10 out of the 15 who answered the question said they did not worry, or worried only a little. Five participants reported they worried about their drug use quite a lot or a great deal.

In reply to the question 'do you wish you could stop [the use of participants' main drug]?', four of the 11 people who responded in the first interview round said they only sometimes, almost never or never wish they could stop, while a further seven people said they wished they could stop using drugs often, nearly always or always. By the second interview round two of the 10 people who responded said they almost never or never wish they could stop, while a further eight people said they wished they could stop using drugs often, nearly always or always.

When participants were asked how difficult they would find it stopping or going without their drug of choice three of the 10 people who answered the question in the first round responded that they would not find it difficult, while the other eight people reported they would find it quite difficult, very difficult, or even impossible. By the second interview round four of the 13 people who answered the question responded that they would not find it difficult, while the other nine people reported they would find it quite difficult, very difficult, or even impossible.

While it is difficult to make definitive statements about the evaluation group's level of dependence and drug use, given that over half the group did not respond to the questions in the first round, and almost half the group did not respond to some questions in the second round, it is possible to observe that about half the people in the group that did respond to the questions had high levels of dependency, with participants in this sub-group reporting they would find it very difficult to stop their use of drugs, that they worried about their drug use, that they wish they could stop their use of drugs, and that they felt their use of drugs was often out of control. The other half of the people who responded reported they found it relatively easy to stop their use of drugs, that they did not worry much about their drug use, and that they did not feel their drug use was out of control.

In the first interviews, while only small numbers of young women responded to the above questions, it is worth noting that the young men reported that their drug use had decreased more, compared to three months prior to entering the program, than the young women. On the other hand, the young men also more often reported that they felt their drug use was out of control than the young women, while the women in the group felt more anxious about missing the use of their drug of choice than the young men. The young men said they worried about their drug use more than the young women.

In the first interview round, there were no great differences in responses according to drug of choice: heroin, speed/amphetamine, cocaine, cannabis and alcohol users all reporting a marked decrease in their drug use compared to three months before the program. However, with the caveat that numbers responding were very small, cocaine and cannabis users reported they felt their drug use was more out of control than heroin or speed/amphetamine users, and cocaine users reported a high level of anxiety around missing or stopping their drug use compared to heroin, speed/amphetamine or cannabis users. Cocaine users worried about their drug use most, followed by cannabis users, speed/amphetamine and heroin users respectively. Heroin and cocaine users wished they could stop their drug use more than cannabis or speed/amphetamine users. Cocaine and amphetamine users reported they found it more difficult to stop their drug use than cannabis or heroin users.

While numbers are too small to comment on those who were terminated from the program by the Court, graduates of the program were much less likely to report that they felt their drug use was out of control than those who left the program voluntarily. Graduates also reported feeling less anxious about missing the use of their main drug than those who self-terminated, while both groups reported a similar level of worry about their drug use. Graduates reported they wished they could stop their drug use more than those who left the program. Both groups reported a similar level of difficulty in stopping their drug use. This suggests that graduates were more

motivated to cease their drug use than those who terminated from the program, even though levels of dependence may be similar for both groups.

Many of the young people mentioned the influence of friends in their drug use, and the difficulty of staying drug free when remaining in the same social circle:

Saw it [speed] as a big problem 'cos it's all around me - all my mates use it so it's hard to say no.

Some friends are just acquaintances. Used to think they were friends. Would not see them if got out 'cos all using drugs. The last few times I got out I could have seen them and chopped in. I know people that don't, so I've just got to hang round with them.

Stopping was not hard - it all depends on who you hang around with. I was doing pretty well and I didn't really think about it until I was hanging round with my friends. When they feel like using so do you. You think it's a good idea. The wrong people and places. A lot of the reason why I've managed to stay off has been down to the Drug Court - because of going to rehab and my bail conditions. Even if the conditions weren't there now I still wouldn't use it - I just don't think about it now. Going to rehab was the thing that made the difference. I would still be using if I had not been on Drug Court. I'd be hanging round with the same people and I wouldn't have learnt the thing that I learnt at rehab. They teach you heaps of stuff in rehab and it's really detailed, like where your need for drugs is coming from. Really deep stuff.

When I wasn't on Drug Court I was doing heaps more drugs than now. I wish I'd never had it in the first place. When I'm in here I don't think about it and I don't need it, but when I'm on the outside it's different. My drugs habit has changed a bit since being on the program 'cos I haven't been hanging out with my friends much. I've wanted to hang out with them, but I'm on Drug Court.

For some it was not so much peer influence that led to drug use, but the need for a means of stress reduction, even if that stress was related to rehabilitation.

The speed was the easiest 'cos once it was out of my system for more than 48 hours it didn't worry me. Speed was never the issue for me, but the weed kept popping up 'cos I use it as a stress less thing. When I stress I run to the bong and I still do that a little bit and I want to work on that.

I was so worried about coming off it, because I didn't want to be sick and hang out for another shot ... When I'd leave rehab I'd go and have a shot.

Many of the participants explained how the YDC had helped them reduce or stop their drug use, but some expressed anxiety about whether they could maintain their achievements.

Drug Court helped to keep my mind off it while I was on it, doing stuff all the time.

Drug Court has been very good at helping me deal with that. I don't feel confident, though, that I will keep on the straight and narrow after Drug Court, because I'm just going to go back to the same old life that I had.

Learning to live together and live a normal life with a daily routine. Not just - do something, get a shot, do something, get a shot. Learning to live without drugs. Groups help you express how you feel ... You can sit back and listen to everyone else and what they're going through, and how they avoid it.

I couldn't stop it no matter what. Have been able to stop now 'cos in here you can't do it. Before would only have been able to stop for a few days. Here your head starts getting right and you think about all the shit that you've done. I couldn't do it on the outside. But now I've done it I feel like I can be all right.

YDC was very useful in helping with drug problem because of urine testing. If you were to get a positive one it would just stuff you up. If I did have drugs in system I wouldn't want the court to find out about it.

The support has been good and also learning about what the drug is actually doing to your body. This gave me a huge incentive to stop. The program has been 90 per cent helpful at helping me deal with my drug problem.

All the groups they do in rehab I've done like eight times or something, and they never help me. The groups they do here [YDC] they help me 'cos a lot of the people on Drug Court are my friends, and you get close friendships within everyone, and you find friends that aren't using anymore and stuff.

For some the YDC program did not reduce drug use, but it did introduce new ways of thinking about drug use that could lead to reduction or abstinence in the future.

I found that the program didn't reduce drug use. It heightened my levels of ways to deal with things, so I was still basically using the same amount, but I didn't have the attitude in my head that I had before.

A lot of the groups that I did at rehab and while on the program were just showing how everything escalates, and I thought that I could relate to that, 'cos mine started out just this little tiny bit, and then it was huge. The emphasis that everyone was putting into me, and it made me think "yeah".

However, for some young people who had been using for some time, the problem had become habitual, or, as this young woman put it, “a way of life”:

I had a really, really bad drug habit. I wasn't really ready to give it away, because for a long time it's just been my life. It was company. When I was sad I would have a shot and feel better. I made inquiries about the program because I wanted to get clean ... I'd lived my life for so long by myself and just done what I want to that it was hard living by other people's rules. That was the only choice I had.

But even this young woman, who left the program voluntarily, also felt that the YDC had “showed me about drug harm, and showed me a different life that I haven't known for years”. These may be thoughts and skills that she could use in the future to reduce or abstain from her drug use.

### **5.12 Participants' Offending**

The information on offences presented in this section has been provided by the Department of Juvenile Justice. Any other information referred to was gathered from the participant interviews.

#### **Offending before entering the YDC program**

As was outlined in Section 3 above, many of the participants had long offending histories prior to their participation in the YDC program. This section is concerned only with offending that led directly to participants' referral to the program.

The most serious current offence for which nine of the 33 first round interviewees (27 per cent) were charged with was robbery, aggravated robbery, or robbery extortion and other related offences, while for a further six participants (18 per cent) break and enter was the most serious offence (Table 5.36). Five (15 per cent) were charged with common or aggravated assault when they came onto the program, while three (nine per cent) were charged with motor vehicle theft and related offences. Two had theft and related offences as the most serious offence, while another two were charged with illicit drug offences. One participant was facing weapons and explosives charges.

Five of the young men and four of the young women in the group had been charged with robbery offences, while four men and two women had been charged with break and enter. Only one woman had been charged with assault, compared to four of the young men, with the remainder of the group on which there were data being made up of young men charged with motor vehicle or other theft, illicit drug or weapons offences.

Nine out of the 15 people charged with robbery/extortion or break and enter listed heroin as the drug they used most, with a further two out of the four people charged with assault also saying heroin was their drug of choice. Other offence types were spread fairly evenly across the other drugs of choice – cocaine, amphetamines, cannabis and alcohol.

**Table 5.36: Most serious current offence**

Offence	Number	Per cent
Robbery, extortion etc	9	27.3
Break and enter	6	18.2
Assault	5	15.1
Motor vehicle theft	3	9.1
Other theft	2	6.1
Illicit drug offences	2	6.1
Weapons offences	1	3.0
No information	5	15.1
Total	33	100

### Offending while on the program

According to information provided by the Department of Juvenile Justice, 22 participants out of the 32 interviewees who took part in the YDC program committed one or more offences while on the program (69 per cent). Five participants were not recorded as having committed any offences while on the program (16 per cent), and no information was available on the remaining five (Table 5.37).<sup>15</sup>

**Table 5.37: Number of offences committed while on the program**

Number of offences	Number of participants	Per cent
None	5	15.6
One	4	12.5
Two	3	9.4
Three	4	12.5
Four	3	9.4
Five	2	6.2
Six	2	6.2
Seven	3	9.4
Eight	1	3.1
No information	5	15.6
Total	32	99.9

Of the two participants who committed six offences, both of whom were young Aboriginal women, one breached bail twice and had fresh charges brought against them four times, while the other failed to appear as a first offence, was arrested on warrant twice, breached bail once and had fresh charges brought against them twice.

Three people committed seven offences while on the program. One was arrested on warrant four times and had fresh charges brought against them twice (the nature of the other offence is not known). A second person breached bail five times, was arrested on warrant once and had fresh charges brought against them once. The third failed to

<sup>15</sup> It should be noted, as mentioned earlier, that there are discrepancies between the different sources of information available on offending by the YDC clientele. For example, information on offences recorded while on the program provided by the YDC Registry suggests a lower level of offending than that supplied by DJJ. This is only partly accounted for by different definition of offences between the two data sources.

appear in court three times, was arrested on warrant three times and had fresh charges brought against them once.

The person who committed eight offences while on the program breached their bail conditions three times, failed to appear in court twice, and was arrested on warrant twice (the nature of the other offence is not known).

It is worth noting that three of the participants who committed five or more offences while on the program were young women who identified as Aboriginal. All three of these chose to terminate their participation in the program. This is a further argument for special attention to the circumstances of young Indigenous female offenders to maximise their chances of getting through the program successfully without additional offending.

When the young people were asked if the punishment or sanction they received from the YDC for breaking their bail conditions or offending while on the program made it less likely they would re-offend, thirteen of them (10 young men and three young woman) agreed that it would, while five (four men and one woman) said it would not. A further eleven people (10 men and one woman) chose not to answer the question. Several commented that the punishments or sanctions given by the YDC were fair in the light of what they had done.

### **Post-program offending**

According to information provided by the Department of Juvenile Justice, a little over one-quarter of the 32 YDC participants (nine or 28 per cent) were not recorded as having re-offended after leaving the program, up to the end of 2002. Twelve (37 per cent) did re-offend, in some instances having multiple charges brought against them after leaving the program. However, as discussed earlier, it is difficult always to distinguish matters that were before the Court before the participant joined the YDC program from offences committed later. These matters may be recorded as offences committed after exit from the program if the participant left the program before completing it. There was also no information available for 11 participants (34 per cent) after they left the program (Table 5.38).

**Table 5.38: Number of offences after leaving the program (up to end of 2002)**

Number of offences	Number of participants	Per cent
None	9	28.1
One	1	3.1
Two	2	6.2
Three	1	3.1
Four	1	3.1
Eight	2	6.2
Nine	2	6.2
Ten	1	3.1
Fifteen	1	3.1
Eighteen	1	3.1
No information	11	34.4
<b>Total</b>	<b>32</b>	<b>99.7</b>

Severity of offences recorded ranged from relatively minor (such as the use of offensive language in or near a public place or school, and driving an unregistered vehicle) through medium level offences (such as receiving stolen goods and failing to appear in court or comply with bail conditions) to very serious (such as armed or aggravated robbery, and assault with intent to rob armed with an offensive weapon).

The participants who had 15 and 18 offences recorded against them both committed seven offences while on the program. Both of these also chose to terminate their participation in the program. The person who committed eight offences while on the program graduated and did not commit any further offences after finishing the YDC program. Of the other thirteen people who graduated from the program, there is no offence information available for three of them, six did not re-offend and four did re-offend after leaving the program. It is not possible to give an accurate account of re-offending for those who left the program before completing it, as some charges may relate to offences committed earlier, as previously explained.

It should also be noted that adult offences are not covered by the DJJ data base and a number of the participants became adults in the period following their involvement in the program. Data on adult offences committed by YDC participants up to the end of 2002 has recently been obtained from the Bureau of Crime Statistics and Research. According to these data (and including those participants located in adult prisons) 17 YDC participants had been convicted of adult offences since completing or leaving the program. Nine of these had been convicted of one or two adult offences, three participants had been convicted of four adult offences, and one person – one of the young Aboriginal women mentioned previously who had great difficulty adjusting to the program – had been convicted of 11 offences. Information on number of offences was not available for a further four people.

Offences the participants were convicted of ranged from driving offences, receiving stolen goods and theft to resisting arrest, trespass, break and enter, assault, aggravated assault, and possession of illicit drugs. Three people received fines for the relatively minor offences they had committed: resisting arrest/trespass, driving an unregistered vehicle and exceeding the prescribed content of alcohol limit. Two people received periodic detention for a period of nine months for receiving stolen goods and possessing an illicit drug and break and enter respectively. The remainder of the group were imprisoned for periods of four to 12 months, in most cases for more serious offences, while two participants received sentences of over two years.

Of this group of adult offenders, six had graduated from the YDC program, nine had chosen to terminate their participation and a further two people had their participation in the program terminated by the YDC court. Four of these adult offenders were young women and 13 were young men.

The overall picture on re-offending is therefore mixed. While some participants have managed to get through a period following their program involvement without major re-offending, many others, including some program graduates, have fallen back into patterns of criminal behaviour. However, in the absence of complete information about offending and longer time span since program completion it is difficult to determine how far offending behaviour has been reduced overall compared to that prior to entering the program.

### 5.13 Overall Satisfaction with the Program

#### Fair treatment

As a gauge of the satisfaction with the program and its various component parts, the interviewees were asked how fairly they thought they had been treated on the program overall. This question was also asked in the NSW Adult Drug Court evaluation.

Thirty-two participants in the first interview round (the person who was not admitted to the program did not answer program-related questions) reported a high level of overall satisfaction, with 24 people saying they thought they were treated very fairly or fairly while on the program (75 per cent). A minority thought they were treated unfairly or very unfairly (three, or nine per cent). Four (12 per cent) were neutral on the subject. This perception did not change markedly in the second interview round with 13 people saying they thought they were treated very fairly or fairly while on the program (72 per cent). A minority thought they were treated unfairly or very unfairly (two, or 11 per cent). One person (six per cent) was neutral on the subject (Table 5.39).

These results are similar to those obtained by the NSW Adult Drug Court Evaluation, where 84 per cent of participants reported they thought they were treated fairly or very fairly, four per cent reported they thought they were treated unfairly or very unfairly, and 13 per cent were neutral on the subject (Lind et al., 2001:13). However, in the Adult Drug Court evaluation participants were asked about the fairness of the court rather than the program as a whole.

**Table 5.39: Participants' perception of how fairly they were treated**

Rating	1 <sup>st</sup> Interviews		2 <sup>nd</sup> Interviews	
	Number	Per cent	Number	Per cent
Very fairly	11	34.4	8	44.4
Fairly	13	40.6	5	27.8
Neither fairly nor unfairly	4	12.5	1	5.6
Unfairly	1	3.1	1	5.6
Very unfairly	2	6.3	1	5.6
No answer	1	3.1	2	11.1
Total	32	100	18	100.1

It was reported above that YDC participants also expressed high levels of satisfaction with most of the various components of the YDC program, including: high degree of satisfaction with YDC Magistrates, with Court sessions and report backs, with YDC defence lawyers, with accommodation provided by the program and help received from YDC workers in finding suitable accommodation. YDC participants also reported high levels of satisfaction with education and training programs organised by the program, and with alcohol and drug and general counselling they received.

There were numerous comments from participants expressing dissatisfaction about issues such as the time they spent in rehabilitation centres (and the counselling and other groups they attended there), being in custody too long, not liking or having personality clashes with workers in the system (although there were also many positive comments about YDC workers), not being able to spend time or do the program from home, and wanting to spend more time with family and partners.

However, given the difficulty of the problems, crime and drug use issues that many of the young people in the group had, there was a high level of satisfaction and positive comments overall about the fairness of the program. It would appear that, from the young people's perception at least, the program has done a good job of balancing necessary sanctions and restrictions with the need to allow the young people some flexibility, freedom and independence. In many instances the young people knew that what the YDC was suggesting was the right thing for them, even if they did not like it at the time. Here is how some of the young people saw this balance.

They are looking after my well-being but we just have different opinions about my well being. Obviously for a drug user rehab's the best solution, and because I hadn't done it before they saw that I hadn't succeeded in home detox, so rehab's the best option.

It was a big decision to come on the program and I didn't keep all promises. They would be on my back if I was late for appointments, but I felt that this was fair.

The only time though that I was pissed off at all was when I was on drugs and I didn't know right from wrong. Was always telling [YDC worker] what I thought of the program. At one point I was on really intense supervision and so I said to [YDC worker] "look, this isn't really doing much for me because I don't know how I'm going to react when I hit the community again". She went to my case conference and told them that there'd got to be some freedom there.

If I've been pissed off on the program I will always say something and they'll always try and compromise.

Very fair treatment. They let me ring my mum or my caseworker whenever I want to, so that's easier. They listen. If something's bothering me and I tell them, then usually that thing goes away.

I've been treated very fairly, especially after the way that I have treated them - some of the shit that I've said to them and the attitude that I've spoken with - and I've still got respect from them.

Inevitably, some of the young people felt this balance had not been struck in a way they were fully satisfied with.

Wasn't treated unfairly, but nothing special either. They did take notice of what I was saying but they weren't prepared to budge. Didn't explain very well why I couldn't go home. It's almost like sometimes they just say things to keep you quiet and happy.

If they had been more on my case I probably would have thrown it in a lot earlier. Because at the beginning I was doing it easy... When they actually started to jump on me and say, "Right you've got to do this, this and this", and it wasn't that hard, but I'd never had anything like that before and I had serious thoughts of just terminating the program and just getting sentenced anyway ... I

think there should be a lot more sanctions because the way I look at it was that it was good for me then, but the way I look at it now is that if they had stopped me a long time ago I wouldn't be sitting here now.

The case plan - what I wanted I couldn't have. Most of the stuff in it they were saying that I had to do. They did listen to what I wanted, but were saying that it wasn't the best for me. I said, for example, that I didn't want to have to do the education class - that I wanted to do Year 10 correspondence. They reckoned that I wouldn't do the work at home. I said that this was unfair, as I would have done it with my girlfriend who was also doing it.

I felt that I was doing what they asked of me and doing well and they were not flexible with me. They should be more flexible and listen to us more. They should be more prepared to give us a chance of trying something else when we say that something is not working for us.

I could talk to people on the program, but the way I am I just keep everything to myself. They look at it from their view to see what's good for me, but they don't look at it from my view.

YDC has made me more stressed out because they want to know every thing about your life - even your boyfriend and they think they can run your life and tell you what limits to take. You're your own person and you don't need someone looking over your shoulder all the time. It's a pain in the neck and that's why I'm thankful for myself that I'm jumping off this stupid program. It's only for people who want to give it up.

It was noted above that some young Aboriginal women struggled with complying with the program's requirements (and had a relatively high level of offending while on the program). Three of the young women themselves made observations about this in the context of the fairness of the program. Two were highly critical of the program.

It's worse than I thought it would be. They treat you all differently. The boys can breach a lot of times and still get bail and get out that day, but because so many girls kept breaching they were taking it out on every single one. They kept me and this other Koori girl in here for a month on remand before we went to court again and we were the only two. It's corrupt too, I think. I know that they're treating boys differently because I asked them, "Oh how long did you spend in custody? Oh two days." A lad the other day got bail from court, went to the rehab on the Friday, took off on the Saturday, got picked up Saturday night and got bail on the Sunday and got out on the Monday. [Q. Why do you think they treat the boys differently?] I wouldn't have a clue. I know that the boys are more motivated than the girls - they listen more - that could have something to do with it, but other than that I don't know.

My opinion's not taken account of because the ball's in their hands. They can terminate you whenever they want, they can refuse you bail, let you out or make you go to rehab. It's like you have to bow down and kiss their feet, kiss their arse for them to do what you want, but I won't do that.

The third young women, who voluntarily left the program, saw it as more of a personal failing, an opportunity given to her of which she was not able to make the best.

I have never been off drugs for so long. Drug Court helped me. I kept on leaving rehab and it was just an easy way out for me to get out of lock up. I'd had enough just going to rehab and leaving and letting the Drug Court down, because they'd given me so many opportunities and I felt like I was letting them down, because they had a lot of faith in me and really wanted me to get off drugs. I just kept on taking advantage of it. I felt bad going back to the court, facing them and expecting another chance. Knowing that I'd let them down and let myself down, I just felt so bad about it. They were probably going to give me another chance me I said no - I just want to go and get sentenced and I get out next month. If I had stayed on Drug Court I would have had to stay on the program until 6th Feb. I wanted to do the program, but I just hate feeling like I'm doing it for something else. I want to do it, because I went and did it, and got myself into rehab. I hate feeling like I'm trapped and I have to do it. Always felt like I let Drug Court down.

One of these young women also offered a suggestion that she felt might improve the YDC experience for young people of Indigenous descent:

Having an Aboriginal solicitor would make court better because I could have talked about my real main problems. It's not racism, it's just that when I spoke to the Aboriginal worker in [custody] it felt good because he really knew where I was coming from and it felt comfortable.

### **Participants' views of the best and worst aspects of the YDC program**

Many of the young people commented on the support and care they received from the YDC workers as the best thing about the program, while for others it was not being on drugs any more or the chance to help themselves. The worst thing for some was the length of the program, or the intensity and difficulty of the program, while for others it was not being able to be at home, or for one person having to be around other drug users:

IU was the best thing about YDC - good people over there. Worst thing was always being uncertain. Different to how I thought it would be in that there are too many mix-ups and not very professional.

I have been able to talk to [YDC magistrate] and things have changed. I told them all what I thought of it. But they didn't listen

'cos they're stuck up. Very, very, very satisfied with Legal Aid. Case worker is just dead set unreal.

The only thing that is not helping is that I can't see my brother. It's part of my bail conditions – they've denied me that privilege. He's got drug issues. We haven't been separated since he's been born, and this is the longest period that I've been without him and it's just killing me. I'm not going home until I finish the program and he's at home.

Best thing was that they used to buy me stuff. That was the best thing about it that they would give me stuff just for being me. They came to me one day and asked me what I needed and I said nothing, so they asked me what I wanted and I said new clothes and we went shopping. Worst thing was just the time it took. Program was a bit harder than expected. Really time consuming.

The program was harder than I expected but in retrospect this was a good thing. Best thing about the program was the pressure that you were put under. I would never have lasted the six months if there had not been this pressure. Worst thing is that there are so many appointments.

Didn't really see them as good or bad experiences - you just go there and they tell you what they want from you. Most of the time I just got positive comments - this was helpful.

Best thing about the program is that give you the opportunity to take steps to help yourself. Give you chances. Worst thing was the TAFE stuff at Liverpool IPU... I just went because I had to.

Best thing about Drug Court was having a good caseworker. This was really important 'cos you've got to have someone there who you can trust and rely on, and I could do this with her. Worst thing - going to group while people were there under the influence, because when you're trying to get off drugs the most crucial time in doing that is the first six months, and six months is the period that YDC runs for and just going to group and seeing people stoned just makes you want to do it. Time period of Drug Court right how it is at the moment, as some people might not want to stay on for longer than six months.

The best thing about Drug Court is support and the worst thing is not being allowed to go home.

It was the support that made the difference and having people to talk to. Without my JJ [juvenile justice officer] I wouldn't have got this far. Being able to talk to my dad has also helped a lot.

The best thing about Drug Court is that I'm not using, but I didn't do anything really exciting so nothing really sticks out. Wasn't all

happy times. Most useful was sending me to rehab. The worst thing was having your freedom taken away. But you've got more freedom than being locked up - you just feel fully supervised.

Several participants mentioned the realisation that the YDC was trying to help and support them was a pivotal moment in a change in their attitude to the YDC, whether or not they eventually graduated from the program:

I terminated myself from Drug Court because I was going through a tough time then ... I didn't want to hear about it. They told me that I had a chance of going into custody. I decided to come back on to get my life in order. You can't really stress out on them because they want the best for you. I chose to get back on it.

The program has been helpful as they look out for me. I didn't think they were in the beginning but they really are. Now I'm not thinking about the drugs all the time and more focused on other stuff like my health.

Program was better than I expected. I had fun while I was on the program and I thought it would be boring that I'd have to sit down and talk to these idiots, but it was actually a good experience - I met a lot of people, had a lot of support and made a lot of friends through workers.

They pushed me and eventually I thought everyone wants me to do it ... Even though you've got to want to do it, if you're pushed and shown that a lot of people care. I wanted to do it in the end because I could see that a lot of people really did care. Without Drug Court I probably would have ended up a full-blown junkie selling myself in King's Cross for a cap.

Some of the young people were very aware that the YDC could only help them if they wanted to help themselves, if they were ready to make a serious effort at changing their patterns of crime and drug use:

At the beginning of the program I was not ready to give up all the drugs and the thieving, and it was an easy option to get bail ... Drug Court needs to look at kids in different ways and needs to find out if the kid really wants to help himself, and if he doesn't let him hit the bottom and then pick him and help him, because you can't help someone when they're going down. You're better off just letting them go, but not too far, because they might do something real bad and real stupid.

Drug Court is good for kids that really want to change. I've seen kids on Drug Court and they don't want to change until they really reach rock bottom, and I was the same way, I was really stubborn. I wouldn't even listen to anything my mother said, so Drug Court stood no chance.

Half of the fact I am doing well is because of Drug Court and half is because of myself. I know I'm going to do this.

Drug Court was a big part of my success, but I was part of it too. I had the will power to do it.

But for one person the message was very simple:

The best thing about Drug Court is that they give you a chance to be on the outside with your family. They give you a second chance.

#### **5.14 Case Studies of YDC Participants**

Information from both first and second round interviews, together with background material from case files, was used to trace the trajectory through the program of a selected group of participants. While they are not statistically representative of the whole participant group, and include a somewhat higher proportion of graduates than the participant group as a whole, they provide a range of experiences that are otherwise not untypical. This section allows the reader to gain a more personalised and individual view of some of the young people's journeys through the YDC program. The names of the individuals have been changed, as have certain aspects of their characteristics and/or stories, in order to avoid possible identification.

##### **'Dave'**

Dave was 18 when he entered the YDC program. He had had a long history of poly-substance abuse, beginning at 14 years of age, and in particular was highly dependent on heroin - his main drug of choice. It was the opinion of those who were involved in Dave's assessment that he was using drugs to self-medicate in order to cope with trauma that he had experienced as a result of emotional abuse and domestic violence within the family. Involvement with an entrenched substance-using peer group was also thought to have led Dave into increased levels of offending.

Dave presented with a three-year history of offending. The charges for which he came onto the program included possession of an unauthorised firearm, resisting a police officer and possession of prohibited drugs. Dave reported his involvement in criminal activities prior to the program as not resulting from a need to procure money for drugs, but more as a need to obtain money during periods of financial hardship.

Dave was already taking part in a residential rehabilitation program at the time of his acceptance on to the YDC program. In fact Dave believed that due to the severity of his offences he would not have been accepted on to the program had this not been the case. Dave's assessment took place in the rehabilitation center, after which time he was discharged following an incident of violence. He was, however, allowed to live at home with the family on the condition that he could produce clean urine samples. During his first interview Dave admitted that he had only a limited memory of this time, as he had relapsed back into heroin use quite badly. After only about a month at home Dave overdosed and his bail was breached. There followed a spell in custody while another suitable rehabilitation program was found.

This time Dave entered an adult rehabilitation program. Despite being discharged for a month for fighting, he was reaccepted and went on to successfully complete the

program. Dave also voluntarily extended his YDC program by two months in order to complete his residential rehabilitation program. He was on the program for a total of eight months. When Dave left the rehabilitation centre he went into shared accommodation which his Juvenile Justice counsellor helped to identify and secure.

Dave was very positive about the effect that the program had had on his life. He believed that without it he would have been spending a considerable time in custody (he estimated two years). Without incarceration or the support of the YDC,

I would have been dead, or at least there wouldn't have been a lot of me left.

Dave attributed his success on the program to his maturity and the fact that he had reached a point in his life where he was ready to change.

I was just past it you know. I had gone to rock bottom and was not going any further.

The YDC program had provided the added impetus that was needed, and the adult rehabilitation had been a particularly useful experience. Although Dave thought that this rehab would not be right for all young people, he felt that he was treated as an adult there, and was finally taken seriously. He also found the one-to-one counselling that was offered there more valuable than the groups that he had been attending at juvenile rehab.

The program was much harder than Dave imagined it would be, and he was unprepared for the intense level of supervision.

While Dave was mainly positive about the program, he did feel that more could have been done to help relations with his family and he was disappointed that more family counselling was not offered. Dave encountered a feeling of isolation and separation from his family while he was residing at the residential rehabilitation, and sometimes felt angry that his family was criticised and that he was told that he could not be at home. It was also hard to leave residential rehabilitation and then graduate from the program a week later. Dave would have preferred more time to stabilise in the community.

Dave also felt that it would have been much better if he had been able always to see the same magistrate at report back sessions. He felt that this would have helped in a proper assessment of his progress. Dave would also have liked to have had more opportunity for vocational education and experience that he could present to an employer.

The first interview with Dave took place two months after his graduation from the program. He was still living in the same accommodation that had been found for him when he was on the program and was happy there. He was unemployed at the time, but was continuing to attend a course to obtain a forklift licence and hoped to secure some factory work. Dave had ceased using heroin, though admitted recreational use of alcohol. He was reasonably positive about the future and reported having an improved relationship with his family, whom he now saw much more frequently than before he entered the program.

Dave's second interview took place about nine months after his first interview. He admitted to a significant lapse in heroin use, although he said he was not using at the time of the interview. He had referred himself for medicated detoxification treatment through a hospital, but found the experience unsatisfactory. The medication which he was prescribed made him feel worse, and in the end he detoxed on his own. He felt that knowledge he had gained from the YDC program helped him through this period, particularly through an understanding of what was happening to him physically. While not currently using heroin he believed that he was treading a thin line and could easily lose control. Use of other drugs such as alcohol and cannabis had increased as a result, Dave believed, of his decrease in heroin use. While no specific health issues were raised Dave alluded to episodes of self-harm and depression.

Dave was continuing to work casually, often for friends. He aimed to return to college the following year to complete his year 10 as a bridge to a graphic design course. He was claiming Centrelink benefits and was exempt from mutual obligation activities as had been classified as unfit for work while at residential rehabilitation on the YDC program. Dave felt that if he had not been receiving money from Centrelink he would not have been able to support himself and would have had to turn again to crime.

Dave had moved from his old shared accommodation, as he was not happy living with people he did not know, into private accommodation on his own. He was about to move into his girlfriend's house in the same area. She does not use drugs and knows little about his past.

Dave was not keen to have any more contact with drug court staff, but acknowledged that the program helped to "get the ball rolling" and provide the support that was needed.

During his time on the program, Dave only breached his bail conditions once. The sentence he received for his most serious offence was 18 months probation without conviction. This was a long way from the two years which he expected to receive in the absence of the program. While Dave does not appear in official records as having offended since leaving the program, he admitted to taking part in some criminal activity since the previous interview. While the details were not revealed, he was adamant that they were "nothing like my old charges."

### **'Claire'**

Claire entered the YDC program when she was 17. She is an Aboriginal young woman and a State ward. She developed a heroin problem at the age of 13. This escalated at the age of 15 and she had her first court appearance at 14. Claire was only on the program for four months and self-terminated after this time. She felt primarily that she wanted to get her sentence out of the way. Claire came to the program with a string of offences, including larceny, robbery, common assault and malicious damage.

Claire had experiences of four different residential rehabilitation program while involved in the YDC program. She left the first program straight after the assessment. She returned to the same rehabilitation centre, but left again – this time after only three hours. On the third occasion she had a more positive experience of a different center located outside Sydney. Claire indicated that she had good relationships with

the workers there and experienced real moments of inner peace. She also was able to experience a long period without drugs, which she found very positive.

I haven't been that straight for so long. All of last year I didn't give myself a break.

However, Claire was eventually discharged from the centre after apparently having difficulties with some of the residents. After writing to the centre she was accepted back, but she felt that the situation had changed and no longer felt comfortable around the worker who been responsible for her discharge. Claire left the rehabilitation centre of her own volition and was picked up by the police two weeks later. Concern that she was going to be put back into custody despite not having committed any offences was part of the reason that Claire decided to abscond rather than wait for drug court staff to pick her up.

Claire's drug use decreased while on the program, but her opportunities for using drugs were limited by the amount of time she spent in custody.

Although Claire did not complete the YDC program, she felt that it had been of some benefit to her. She was very concerned about her drug use prior to the program, and was pleased that the program had given her a glimpse of a different life. However, she also believed that she had not been entirely ready to give everything up: "For a long time it's just been my life".

One of the biggest issues for Claire was that she felt that rehabilitation was not the best option for her and could not understand why the drug court program seemed to be based mainly on rehabilitation and little else. Because of this she felt that she had not had a lot of say in the content of her case plan. Claire reported finding it hard to be in one place and to live in a structured environment.

I'd lived my life for so long by myself and just done what I want to that it was hard living by other people's rules.

She also felt that not enough was available in the rehabilitation programs to stimulate her mind and occupy her time. She believed that more educational opportunities should have been available.

While Claire was grateful for the support that she received while on the program she also felt that she would have liked more contact with drug court workers.

Claire was clear that she felt that she had let the program down and that because this was continually the case she felt that leaving the program was the right decision for her.

I'd just had enough of going to rehab and leaving and letting the drug court down because they had a lot of faith in me and wanted me to get off the drugs. I just kept taking advantage of it. I felt bad going back to the court, facing them and expecting another chance.

The first interview with Claire took place at the female Juvenile Detention Centre. Despite not completing the program, or a residential rehabilitation placement, Claire indicated that she was confident that she could remain drug free in the community.

For her the YDC had helped in that it had showed her about the harms caused by drugs and also the possibility of a different life that she had not known for years. She felt that she had had more control in her life this year – more controlled drug use and no offending.

While she was on the program Claire breached her bail conditions on six occasions. On four of these occasions she was arrested on warrant, and each time found herself back in custody while she awaited other rehabilitation placements. On the other two occasions Claire was charged with new matters.

In total Claire was on the program for 113 days and of those spent 94 in custody. As she had already served a significant amount of any possible sentence this affected her motivation for continuing on the program. After leaving the program Claire was sentenced to an 18-month bond with supervision for many of the offences she was charged with prior to entry onto the program. For the charges of aggravated and non-aggravated robbery she received a sentence of five months juvenile detention.

#### **‘Andrew’**

Andrew also identifies as Aboriginal and has had a lengthy involvement with cannabis that began at the age of 15. The frequency and intensity of his offending increased when he began to engage in the use of amphetamines, which he started using daily when he was 16. Offences for which Andrew was referred to the program included armed robbery, malicious damage, common assault and break and enter. Andrew had eight charges on entering the program. His program assessment identified a need to work on anger management.

At the time of the first interview Andrew had recently extended his time on the program.

Like many YDC participants Andrew was in Cobham detention centre before coming onto the program. His assessment took place while he was in custody.

Andrew completed a three-month residential rehabilitation program, during which time he was discharged several times for episodes of violence and relapse. He also spent a period of time in a refuge. Once he had completed residential rehab he was allowed to live in the community with his father, with whom relations had improved.

While in the community Andrew attended TAFE courses run at Liverpool IPU. He reported continuing Year 9 work at home with the help of his father. Andrew also took part in recreational activities, including camps organised by Vitel.

Andrew was working at increasing his fitness by attending the gym and had a personal instructor. While on the program he also had an operation to remove pins from his leg, the results of a previous car accident.

Andrew admitted to having a continuing cannabis problem, as he uses cannabis to cope with stressful situations. However, his use of amphetamines has decreased substantially, though he admitted to relapsing two or three months previously with another drug court participant.

Andrew identified one of the primary motivating factors for entering the program to be a desire to improve relations with his family. This has been a positive outcome for Andrew and relations with his father had improved considerably. His father has been able to see a big improvement in his son's attitude, and they were now living together after a period of four or five years with no communication.

Andrew expressed mixed views about the groups that he had been involved in while on the program. He felt that the offenders' group was very beneficial, but was frustrated by what he saw as the repetitiveness of the alcohol and drugs groups. Having already been through a residential rehabilitation program, he felt the content of those groups was already familiar.

He did not feel ready to leave the supported environment of the program after six months and had been on the program for nine months at the time of the first interview. He suspected that if he had left after six months he would have returned almost immediately to a life of crime and drugs. This was the case even though the program had been much harder work than he had anticipated.

Andrew appreciated the informality of the court, and the way that the whole picture is looked at when decisions are made.

They don't just look at one page and say "lock him up". They look at the whole thing – that's what I like about it.

The support for him was what made the difference. Having someone that he felt he could talk to was very important.

His main grievance at the time of the first interview was that he felt that his second extension on the program had been involuntary.

I had a bad time at court the other day as I felt they were making me extend without really telling me shit.

Since the first interview Andrew has graduated from the program. At the time of the interview he had independently enrolled himself on a TAFE course directly related to a particular interest he has. He was philosophical about his chances of relapse at the end of the program.

I feel confident yes and no at the moment about doing all right after the end of the program – just a matter of putting theory into practice. I should be all right.

Andrew did not breach his bail conditions or offend while on the program and has no offences on record since graduating. Andrew received a sentence of six months bond with supervision for the offences he committed before entering the program.

### **'Tracey'**

Tracey was one of the youngest Youth Drug Court participants in the interview group. She was 15 when she entered the program and was a State ward. Tracey first used heroin, including by injection, when she was 13. Tracey was on the program for a full year and was the first female graduate.

Before coming onto the program Tracey had charges of armed robbery, standovers, shoplifting, and several of breaking and entering. Most of these charges had been dealt with prior to entering the YDC program, but there were some outstanding and she was in danger of facing a control order.

Tracey was living in a foster placement in the month before she came onto the program. During her time on the YDC she had two residential rehab placements and also lived in a refuge for a time. She revealed that she was using drugs while she was at the refuge and had not really wanted to give them up at that time, so that was not a positive experience for her. She then lived in a DoCS-funded Out of Home Care service that was available to her as a State ward aged under 18. She benefited from 24-hour supervision and support in this placement.

During her time on the program Tracey admitted “stuffing up” on several occasions and having to return to custody until a different placement was found for her. She estimated that she had spent about two months in custody out of the 12 months she was on the program. These months were not continuous, but short periods of time spread over the year.

During her time on the program Tracey attended tutoring classes at Liverpool IPU, which she enjoyed.

While she reported her health as being good at the time of interview she revealed having hepatitis C, which was inactive but being treated.

Tracey’s path through the program was long and rocky. She continued to use drugs in the first few months and recognised that she did not want to identify that she had a problem or to give up using. The final six months signalled a change, however. What she felt changed her was the support that she got from the program, the experience of overdosing, and knowing that the workers cared.

They pushed me and eventually I thought. “Everyone wants me to do this. Here I am in hospital and I’ve got nothing to be proud of.” Even though you’ve got to want to do it, if you’re pushed and shown that a lot of people care it helps.

Although she found her spells in custody frustrating, she was also aware that workers were trying hard to find suitable placements for her. She realised that ideally she would not be in custody and that the workers did not actually want her to be there.

The best thing that Tracey identified about the program was having a good caseworker. She felt that this was a vital component of her success and that it was particularly important to have someone she felt she could trust and rely on.

One of the hardest things for her was attending groups where participants were drug affected.

When you’re trying to get off drugs the most crucial time in doing that is the first six months, and six months is the period that the YDC runs for and just going to group and seeing people stoned just makes you want to do it.

She also felt that she already knew a lot of the information that she was being given in groups, although she did concede that it had been useful to share experiences with other young people.

Tracey believed that her future without the drug court would have been very bleak.

Without Drug Court I probably would have ended up a full-blown junkie selling myself in King's Cross for a cap.

The first interview with Tracey took place after she had graduated. She had come a long way from her situation at the beginning of the program. She reported not having used drugs for nearly a year and was currently employed part time as a check out operator. She had some clear plans for the future, include working in real estate. She was planning in the near future to take her Year 10 and a real estate course at TAFE.

She felt strongly that it was wrong for participants to have to wait in custody for residential rehabilitation placements, and suggested that the program should have its own rehab and that there should also be refuges dedicated to young people on the drug court program. She commented:

I used to hate it – seeing the girls ring up every morning and having to wait months to get into rehab. I would get out and come back two months later and they'd still be there waiting.

Tracey had good relationships with her workers and continues to keep in touch with them.

Tracey was involved in series of armed robberies in the early months on the program and felt that she was lucky not to have been terminated. She had been under the influence of drugs and said she had been involved against her will. Sometimes she had been granted bail, but failed to fulfill the conditions.

Tracey received a sentence of 18 months bond with supervision for her aggravated robbery charges and a 12-month bond without supervision for her break and enter offences. Although Tracey was not recorded as having any new offences since graduating in late 2001, she re-entered the YDC program in December 2002, indicating that she continues to have problems

### **'Suzy'**

Suzy was referred to the YDC when she was 18. She had a lengthy involvement with illicit substances, particularly heroin, which she began using at the age of 15. Her substance abuse was thought to be closely linked to her peer and familial contexts, and was considered to be the main reason for her offending behaviour. The offences for which Suzy was referred to the program were aggravated robbery and common assault. At the time of the interview Suzy had extended her program for a month.

Suzy was in custody when she was accepted onto the program. She had to wait for a considerable time there while a bed was found for her at a detoxification unit that also served as a rehabilitation centre. She absconded from that placement after a week and then handed herself in and was taken to a detoxification unit. On exiting the unit she was not allowed to return home, as it was not felt to be in her best interests. Instead

she was taken to a refuge and from there to another residential rehabilitation service for adults, where she remained for a month. Of her own volition she decided to enter a further rehabilitation program, as she did not feel sufficiently confident to return to the community. Once a place became available she moved to an adolescent rehabilitation centre and spent some time there before moving into independent living accommodation.

In addition to attending TAFE classes at Liverpool IPU, Suzy had recently started to attend classes involving art and music. At the time of the interview she was planning to undertake a pre-employment course in order to learn some vocational skills and was also hoping to start a hospitality course to gain some job experience.

Overall Suzy responded positively to YDC interventions, engaged well while in rehabilitation and generally made good progress.

Although Suzy's motivation for changing her lifestyle was high, she was initially reluctant to attend a residential rehabilitation service. She also felt that her time in custody waiting for a bed was detrimental to her motivation. She commented:

I was in [detention centre] for a month waiting for a bed. That made me feel a bit unsettled. When you're locked up you just want to know what you're going to get – what your sentence is going to be and then you're all right, but with this they just make you wait.

However once she was there, she believed that her time at rehab and what she learned while she was there was a turning point for her. She believed that she would still be using if she had not come onto the YDC.

I would still be hanging round with the same people and I would not have learnt the things that I learnt at rehab. They teach you heaps of deep stuff at rehab.

Some of her experiences with one-to-one counselling while in the community were less positive. She felt that she would have liked more positive input from the counsellor rather than someone she perceived as just there to listen. It was reported, however, that she built up a beneficial relationship with her counsellor at her final rehabilitation placement. She also found the changes in YDC workers unsettling, and had experienced three different Juvenile Justice Officers at the time of the interview. It was reported by YDC workers that Suzy suffered a relapse that coincided with her caseworker leaving the program.

Her experiences of court were generally positive and she reported that her report backs made a difference to the way she felt about the program. However, she often felt frustrated by the long waiting times for court appearances, once waiting three hours.

It was felt by Suzy herself, and her workers, that she gained considerable insight into her drug use while on the program and was able to identify triggers such as stress at home with her family.

The first interview with Suzy took place in her own accommodation, which she had secured with the help of the program. At the time she was not using drugs and felt much healthier than when she came onto the program. She was making plans for a pre-employment course and a hospitality course, and was helping her mother with the family business. She later graduated from the program. Suzy did, however, experience a period of instability and relapse after the interview and before she graduated. She was encouraged to return to residential rehabilitation, but did not do so.

While on the program Suzy breached her bail conditions and was arrested on warrant on three occasions. On completion of the program she received a sentence of a two-month bond without supervision for her robbery charges, but soon afterwards was imprisoned for two years for two further aggravated robbery charges brought against her since leaving the program.

### **5.15 Summary**

This Section has provided the results of the study of participant outcomes from the YDC program. There were significant methodological limitations to the study which make it difficult to assess at a quantitative level how far the program has achieved outcomes, in terms of reduced offending and improved participant health and social functioning, greater than those which might have been achieved through conventional approaches to juvenile justice.

In particular, gaps and inconsistencies in the main sources of data on offending make it difficult to be precise about participants' criminal behaviour following involvement with the program, or about relative lengths of time to first post-program offences for different groups of participants. The best estimates suggest that up to 60 per cent of participants appeared in court on fresh charges while they were on the program, aside from minor breaches of bail conditions. More than half of those who did not offend while on the program went on to graduate from it.

Around 35 per cent of participants overall were not recorded as having offended post-program, and this included just over 40 per cent of the graduates. However, this includes a small number of participants who were still on the program at the end of 2002 and others who had only finished recently. A few participants had a large number of new offences recorded (up to 40), but graduates appeared less likely to re-offend than those who did not complete the program. This is a further indication that successful completion of the program is, for many of those involved, associated with continuing benefits, at least in the short term. Graduation itself, however, is also likely to be linked to greater motivation on the part of particular individuals to deal with their problem drug use and criminal behaviour, so these results do not in themselves prove that lower rates of offending are a direct effect of the program intervention.

Nearly two-fifths went on to receive some form of detention, either in the juvenile or the adult prison system, for either the original offences that brought them to the YDC or later offences. Thus for a substantial proportion diversion from incarceration may only be temporary.

The study also collected detailed information on program impacts and experiences for a group of 32 participants (just over two-fifths of all those who participated during the pilot period). The interview group included a somewhat higher proportion of young

people who remained on the program and graduated than is found amongst the participants as a whole, and this needs to be borne in mind when interpreting the results. Otherwise, the interviewees were broadly typical of participants as a whole.

Overall, there was a high degree of satisfaction and approval for most elements of the YDC program from those who participated in it, although some also had criticisms of certain aspects. Results from second round interviews indicate that a high degree of satisfaction with both the program and YDC staff was maintained by participants over the longer term. Many commented that their views of the YDC changed from being simply a way of avoiding custody as their experience of the program grew.

Satisfaction with YDC magistrates, court processes and Legal Aid solicitors was also high and, again, second round interviews suggested that these views were maintained over time. Participants appreciated the informality of the court processes and being able to talk directly with magistrates. This made participants more comfortable and more able to speak their minds.

Interviewees were also positive about the support they received from case workers and Juvenile Justice Officers. A commonly expressed feeling was that they owed it to their case workers and JJOs to try to do well on the program, as well as for themselves. On the other hand, this sometimes led to young people concealing things from the workers out of shame, or not wanting to “let them down”.

Many saw support and care they received from the YDC workers as the best thing about the program, while for others it was not using drugs any more or the chance to help themselves. The worse thing for some was the length of the program, or the intensity and difficulty of it, while for others it was not being able to live at home. Several participants mentioned realising that the YDC was trying to help and support them as a pivotal moment in a change in their attitude to the program, whether or not they eventually graduated. Some were very aware that the YDC could only help them if they wanted to help themselves and if they were ready to make a serious effort at changing their patterns of crime and drug use.

The negative comments from interviewees included dissatisfaction with the time they spent in rehabilitation centres (and the counselling and other groups they attended there), being in custody too long, not liking or having personality clashes with workers in the system, not being able to do the program from home, and wanting to spend more time with family and partners. However, given the problems many of the young people in the group had, there was a surprisingly high level of satisfaction and positive comments overall about the fairness of the program that were maintained over time. It would appear that, from the young people’s perception at least, the program has done a good job of balancing necessary sanctions and restrictions with the need to allow participants some flexibility, freedom and independence. In many instances the young people knew that what the YDC was suggesting was the right thing for them, even if they did not like it at the time.

Participants undertook a wide range of program activities at rehabilitation centres, at the Intensive Programs Unit and at the Induction Unit. These included recreation, counselling and education and training. Some also undertook physical activities on camps. Most participants liked the organised activities but a few found them 'boring' or 'a waste of time'. The value was often in the distraction from thinking about drugs,

and most saw the value in keeping occupied, gaining employment and other skills, experience and education to attempt to improve their lives. Seventy per cent of the young people interviewed said they had attended educational courses while on the YDC program, and there was a high level of satisfaction with the specially tailored educational programs.

While there was a general consensus that both Alcohol and Drug and General Counselling run by the program was useful, there were mixed views on the benefits or otherwise of one-to-one versus group counselling. More than half were still satisfied overall with counselling provided.

Although the methodological limitations make it difficult to determine the extent of health improvement that can be attributed to the program, nearly three-quarters of those in the first interview round rated their general health as much better than six months before. This is likely to be related at least partly to benefits gained from decreased drug use, having minor health problems being addressed by the program (particularly dental work), better sleeping patterns, and regular eating while in custody or in rehabilitation facilities. However, second round interviews indicated that this health improvement was not sustained over the longer term, suggesting this was often an initial, short-term program benefit.

In terms of mental health, participants scored lower on a standardised measure than both the general population and young unemployed Australians, although there is no population norm for the YDC age group. However, there was some improvement in mental health over the longer term, particularly for the young women. It appeared the mental health of Indigenous participants was lower than that for others, while those who graduated from the program scored higher.

While measures of social integration suggested that the interviewees were not especially socially isolated or experiencing major problems in social functioning, a high proportion mainly had friends who were other drug users, presenting a challenge for the program. However, graduates reported knowing fewer people who were drug users than those who chose to leave the program, and those who chose to leave reported they knew fewer people who were drug users than those who were terminated from the program by the court. This pattern was also observable for some of the other social functioning indicators.

Over half the interviewees reported using heroin as their main drug, while a further 15 per cent reported that they used mainly speed or amphetamines. This is consistent with the pattern for the participants overall. Participants' final outcomes did not seem to be related to the main drug used, with heroin users more or less evenly divided between graduates and those who did not complete the program. As found earlier for the participants as a whole, young women were both more likely to be heroin users and to have started injecting drugs at an earlier age than the young men.

It was difficult to determine accurately the level of drug use and dependency at the time of the interviews, but most said their use had decreased compared to three months before entering the program. Although there were some gender differences in responses about drug use, there were no noticeable differences according to drug of choice, with heroin, amphetamine, cocaine, cannabis and alcohol users all reporting a marked decrease in their drug use.

While numbers are too small to comment on those who were terminated from the program by the Court, graduates reported both having more control over their drug use than others and more often wishing they could stop. Graduates also reported feeling less anxious about missing the use of their main drug than those who self-terminated, while both groups reported a similar level of worry about their drug use. This indicates that graduates were more motivated to cease their drug use than those who terminated from the program, even though levels of dependence may be similar for both groups.

Although the interview group included more graduates than amongst participants as a whole, the level of during- and post-program offending seemed somewhat higher amongst the interviewees than the data available suggested for participants more generally. Seventeen of the participants interviewed had been convicted of adult offences since completing or leaving the program. Severity of post-program offences recorded ranged from the relatively minor to serious charges (such as armed or aggravated robbery, and assault with intent to rob armed with an offensive weapon). Young Indigenous women were amongst those that committed the most offences and also all chose to leave the program before completing. There is an argument that further special attention is needed for young Aboriginal women to maximise their chances of getting through the program successfully.

Overall, while it is not possible to say that similar outcomes could not have been achieved in other ways, these results are encouraging for the program, given participants' entrenched drug use and criminal histories. There is a clear indication that although many young participants have not yet reached the point where they are prepared and able to change their behaviours, a substantial proportion have been getting significant benefits from the program, such that both their drug use and their offending has been reduced.



## 6 Legal Issues

### 6.1 Introduction

As part of the evaluation, the UNSW consortium was asked to review the legal structure of the YDC program during the pilot period. In particular this review was concerned with whether there was a need for specific new legislation, if it were decided that the program should continue beyond the trial period or should be extended to other geographical areas. The legal issues review was submitted in draft to the Attorney-General's Department in January 2002. This Section of the report presents a revised summary of the earlier review, taking into account comments received and developments that have taken place in the YDC program since the end of 2001.

There are two over-arching legal questions to be considered in reviewing the procedures and operations of the YDC. First, are its procedures lawful? Second, are its procedures fair? The lawfulness question applies principally to the use of custody, sanctions and bail by the YDC Court, and to potential conflicts of interest within the program. The fairness issue concerns the program's eligibility requirements, the application of sanctions, and participants' knowledge and understanding of the program. There are also some broader issues concerning the special needs of some participants, the interaction between the YDC and other diversionary programs, and access to legal advice.

Related to the above issues, the key research questions specified in the evaluation framework included (but were not limited to) the following:

- Are the referrals to the YDC appropriate in accordance with the program guidelines and the *Young Offenders Act 1997*?
- Is there any evidence of 'net widening'?
- Is there evidence of discriminatory treatment on the basis of age, ethnicity, culture, gender, family status, disability, etc.?
- Are the procedures fair?
- When and how does a YDC magistrate decide the young person has 'failed'? Will breaches be policed fairly and in accordance with the stated principles?
- Are sentences imposed subsequent to the program appropriate to the compliance status of the young person and no more severe than those that would have been imposed if the young person had not taken up the YDC option?
- Do young people have any problems understanding the processes of the YDC?
- Do young people have access to legal advice? Are they fully informed of the implications of pleading guilty or consenting to referral? Are the appeal mechanisms adequate?
- Are there issues of legal interpretation that arise from cases dealt with in the pilot program?

## 6.2 Principles Underlying the Review of Legal Issues

As an analysis of legal issues, this review was based on two principles - *human rights* and *natural justice*. These ideas provide a necessary and useful measure of the program's fairness. They allow a structured analysis of the information provided to participants, the role of eligibility requirements, the nature and use of bail and custody, and sentencing procedures.

The importance of human rights for children in Australia has been recognised most recently by the Australian Law Reform Commission (ALRC) (1997) in its report *Seen and Heard: Priority for Children in the Legal Process*, which emphasised the significance of making the juvenile justice system, in particular sentencing, "more consistent with the rights of young people as set out in CROC [*Convention on the Rights of the Child*]" (1997: 19.1). The Convention, the most ratified human rights convention under the auspices of the United Nations (191 countries, as at November 2001), identifies the right of a child to have their views expressed and considered in decisions affecting them (Article 12) and that detention of children is to be used as a measure of last resort and for the shortest appropriate period of time (Article 37). The principles of the Convention, and the ALRC report, are mirrored in some New South Wales legislation, in particular the *Children and Young Persons (Care and Protection) Act 1998*.

Natural justice is a fundamental part of the rule of law. Synonymous with procedural fairness, it has been defined to include the right to a fair hearing, the chance to present one's case to the decision maker, the right to have a decision made by an unbiased or disinterested decision maker and the right to have that decision based on relevant evidence (*Salemi v Mackeller*, No 2, 1977, 137 CLR 396). These concerns are codified in s6(a) of the *Children (Criminal Proceedings) Act 1987*. Consistent with both human rights and the long tradition of the common law, it is assumed that natural justice should be an essential element of the YDC's procedures.

## 6.3 Methodology

The review was based on the following sources:

- Semi-structured interviews with: YDC magistrates and other members of the YDC Court Team, including the prosecution and defence lawyers and the Registrar; the Joint Assessment and Referral Team (JART) Manager; other Legal Aid staff and representatives of a local youth legal advice centre; and staff of the Adult Drug Court. The interviews were carried out in November and December 2001. These stakeholders were asked general questions about the operation of the Youth Drug Court, then prompted to consider particular legal issues;
- Observations of Court hearings and report backs;
- Qualitative interviews carried out with YDC participants as part of the evaluation's outcomes study; and
- Examination of relevant legislation and literature pertinent to the YDC and wider youth justice issues.

Stakeholders were interviewed after the program had been running for approximately 16 months, in order to allow sufficient time for issues to emerge and for practical experiences to be reported.

#### **6.4 The Legal Framework of the Youth Drug Court**

The YDC operates as an arm of the Children's Court of New South Wales, as established by the *Children's Court Act 1987*. As such, the YDC has all the powers of the Children's Court, but with the special responsibility of administering the YDC program. The YDC does not, however, have a legislative basis independent of the Children's Court, although several relevant Acts allow for its operation, in particular the *Children (Criminal Proceedings) Act 1987*.

The main basis for the Court's actions is s33(1)(c2) of the *Children (Criminal Proceedings) Act 1987*. Section 33 lists the penalties the Children's Court can impose on a young person found guilty of an offence. These penalties include a fine, a bond, community service and a control order (detention) of up to two years. Subsection 1(c2) allows the Children's Court to adjourn sentencing for up to 12 months and to grant bail, under the *Bail Act 1978*, for the purpose of assessing the young person's rehabilitation, amongst other things. This procedure may be labelled 'sentence-bail'. The relevant provisions of the *Bail Act* include ss 36 and 36A. Section 36 establishes the general conditions that can be imposed for 'conditional bail'. These can include, amongst other things, fixed location and reporting requirements. Section 36A sets out additional conditions for entering into agreements to take part in rehabilitation and treatment programs.

Aside from legislation, the Court is guided by the Program Plan issued by the Attorney-General's Department (AGD, 2000). The YDC Program Plan outlines the general policies and practices of the Court, including eligibility for admission to the program and procedures for regular 'report backs' to the Court on participants' progress. Two Practice Directions (Nos. 18 and 19) issued by the Senior Children's Court Magistrate (Children's Court of NSW, 2001, 2002) also provide guidance for the YDC's operations, relating to procedures to be followed during Court hearings. At present, the YDC thus draws on several sources for its legal authority, including a combination of legislation and executive direction.

For the purposes of this review the requirements placed on YDC participants need to be restated. These involve compliance with a detailed individual plan of case management, involving drug treatment, counselling, group work, education and other prescribed activities. They also include adherence to bail conditions that may involve regular and frequent reporting to authorities, a requirement to reside in a specified place and possible curfew provisions. All the stakeholders interviewed commented that the program was deliberately onerous and demanding, requiring more from participants than other forms of control or supervision exercised by the Children's Court or the Department of Juvenile Justice.

In highlighting the demanding nature of the program, respondents referred to the following features:

- the intensive nature and role of JART assessment and supervision;
- the requirement to complete a prescribed program plan;
- the high level and frequency of supervision by the Department of Juvenile Justice;
- the frequency of appearances before the Children's Court; and

- the active involvement of a Magistrate in the participant's ongoing treatment.

Two factors mitigate the demanding nature of the program – the fact that it is voluntary and that it is therapeutic, in providing access to health and social welfare services and support. These two features, emphasised in the Program Plan (AGD, 2000), are significant legitimising factors in the establishment and operation of the Court. However, the intensive supervision involved in the program also has certain implications that need to be considered when examining its legal framework:

- It is critical to ensure that participant consent is fully informed and voluntary;
- It is likely that many participants will find such an intensive program difficult to comply with; and
- Breaches of compliance are perhaps more likely to be detected in the YDC program than in other court-supervised programs or schemes, because of the YDC's intensive nature.<sup>16</sup>

These issues are considered further in later sections. We look first at eligibility for the program.

### **6.5 Eligibility for the YDC Program**

The Program Plan for the YDC (AGD, 2000) outlines the eligibility requirements that a potential participant must fulfil to be considered for admission to the YDC program. The main requirements are:

- a plea of guilty (since amended to a plea of guilty to the main offence for which charged);
- the possibility of a control order being imposed;
- an offence which is not a 'serious criminal offence';
- an offence which cannot be appropriately dealt with through another diversionary program; and
- a connection with the catchment areas of the Cobham and Campbelltown courts.

The rationale for the first two requirements seems clear. A guilty plea is necessary to enliven the Court's power to punish. Therapeutically, it may also be important for the participant to 'accept' their wrongdoing. The possibility of a control order is said to be important in order to target the program (and its resources) at those young people more enmeshed in the criminal justice system, and to ensure a participant does not face a harsher penalty than might otherwise be imposed.

Apart from the policy question of whether these requirements are necessary (some stakeholders held the view that the program was not originally intended to focus only on 'hardened' offenders, but had been compelled to do so because of the eligibility requirements), several legal issues arise. The first of these concerns the requirement for a guilty plea.

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<sup>16</sup> Note that this was a supposition raised in the course of stakeholder interviews but there is no evidence available on whether it is the case.

### **Does the requirement for a guilty plea create a possible inducement?**

There was a widespread view amongst the stakeholders interviewed for this review that the requirement for a guilty plea in order to access the program introduced a possibility of 'inducement'. That is, there appeared to be a reward (in the form of hard-to-access resources and drug rehabilitation services) for pleading guilty that could induce or overly encourage a person to plead guilty to an offence when in fact innocent. Leaving aside the reality of the expectation of a 'reward', the inducement was seen as a serious possibility, and there was some evidence from the participant interviews to support this concern. One participant, for example, reported being in custody for three months with an outstanding charge before entering the program. The participant reported pleading guilty to the charge (despite having been advised of a good chance of being found not guilty) in order to hasten his entry to the program.

Although guilty pleas may be important in order for the criminal justice system to function, the possibility of inducement threatens the finality of judicial decisions by raising doubts about the truth of the verdict or underlying statement of fact. This is one reason why the courts in Australia consistently refuse to accept plea-bargaining.

Several issues including concerns about inducement in the YDC were expressed by the Children's Legal Issues Committee of the Law Society in a letter to the Attorney General in October 2000, and the rules were subsequently amended to require only a guilty plea to the major offence listed. Some stakeholders still felt that the risk of inducement remained.

This makes it important to ensure that potential participants are fully informed of both the onerous requirements of the program and the consequences of a (child) criminal record (although in practice most young people referred to the YDC come with substantial previous records, as discussed in Section 3.4 above). Another solution proposed by stakeholders was to require defence lawyers to make a statement to the Court, in the best interests of the child, when there are reasonable grounds not to accept a guilty plea. However, this proposal conflicts with the role of the defence lawyer to advocate for the client as advised by them, within the confines of ethical behaviour. Their role is not to decide what is in the best interests of a child: in the event of a client electing to plead guilty when they are not, the duty of the lawyer would be to withdraw from the case on the basis that they would be misleading the Court.

### **Does the requirement to plead guilty make eligibility too restrictive?**

The requirement for a guilty plea also places some restrictions on the pool of young people eligible to join the program. Those potentially ineligible because of this criterion include young people on long-term bail or remand awaiting a hearing and those who have pleaded not guilty but have subsequently been convicted. The exclusion of these groups is perhaps appropriate for a pilot program, but the options may need to be reviewed if the program were to be extended. Young people on remand may be in a similar position to those on bail within the program and could benefit from the access to rehabilitation services. The differences between the two are that the Court does not have a power to impose program requirements on the former, as s33 of the *Children (Criminal Proceedings) Act* does not apply where a defendant has neither pleaded guilty nor been found guilty of an offence. This lack of power is a relevant concern, although rehabilitation bail is already available to the Court directly

under s36A of the *Bail Act 1978*. On guilty pleas, the real issue is whether the YDC is a program focused on 'penalty' or 'need'. Other eligibility criteria, such as the charge or antecedents, may be sufficient when a plea is not possible on legal grounds.

### **'Facing a control order'**

There were also differing interpretations, amongst the stakeholders interviewed, of the intended meaning of the requirement for potential participants to be 'facing a control order'. The range of meanings extended from 'possible' to 'likely'. A proper understanding of this requirement is important for the lawful function of the program. At the 'possible' end, the YDC is open to a large range of young people, as many offences include control orders as a possible penalty. At the 'likely' end, the program applies to a significantly narrower pool of young people.

The onerous nature of the YDC is relevant here. There may be a concern about accepting those onto the program who are unlikely to face a 'heavy penalty', such as custody. This leads to the question of whether the YDC should be viewed more directly as an alternative to control orders, in a similar way to community service orders.

### **Eligible offences**

Some stakeholders also expressed concern about the offences regarded as 'too serious' to allow access to the YDC. These are outlined in the Program Plan and include offences usually involving violence. Several respondents noted that there do not seem to be strong legal or therapeutic reasons for excluding these offences from the program and expressed the view that these young people may have particular need for the services provided by the YDC.

The main reason for the offence criterion is that 'serious children's indictable offences' are effectively excluded from the jurisdiction of the Children's Court by s28 of the *Children (Criminal Proceedings) Act*. This only allows the Children's Court to hold committal hearings for such offences, which must be determined in a higher court. Serious children's indictable offences include homicide and armed robbery. Some stakeholders argued that such offences need not be excluded and that the YDC may have a stronger claim to jurisdiction because of its rehabilitative function, which is particularly important in juvenile justice.

There was also reference to the important role of the police in determining what offences young people are charged with, and therefore whether they would become eligible for the YDC. It was suggested by one stakeholder that in some instances police are not aware that charges could be laid which reflect the objective seriousness of the offence but still permit access to the program. However, in a trial program there seemed to be limited scope for influencing police in this manner.

The counter argument to including young offenders with offences of violence, however, is that first that the community could be at risk by their being allowed out of custody and, more immediately that program staff may have difficulties coping with them and could be at risk. This raises issues of occupational health and safety liability for the relevant departments and agencies. Staff reported that, for a time, a number of young people were being referred who had high levels of associated violence. This added another specialist layer to the treatment necessary for this group. Decisions had

to be made about the appropriateness of a community-based order for young people with violence issues and it was reported that there on occasions there was a serious risk of violence to program staff and to the community.

Some young people with significant anger management issues reported high levels of cannabis use. This is often used to suppress anger rather than necessarily being directly connected with their offending behaviour. Members of the Court Team indicated that young people with significant anger management problems are now being screened out at the assessment stage, in recognition of difficulties in the past of working with this group.

### **Interaction with the *Young Offenders Act 1997* and 'net widening'**

An interaction between the YDC and the *Young Offenders Act 1997* arises because of the eligibility requirements of the YDC and because both are important juvenile diversionary schemes. The *Young Offenders Act* (YOA) provides for diversionary schemes of cautioning or 'conferencing' for young offenders as an alternative to criminal convictions. The Program Plan (AGD, 2000) states that a participant must not be eligible for a caution or conference under the YOA to be eligible for the YDC. The main justification for this requirement is that the *Young Offenders Act* is directed at less serious offenders while the YDC is targeted at offenders with a more entrenched criminal background.

One of the questions posed for this review was whether there was any evidence of 'net widening'. The danger of net widening is that the YDC program might be used as an alternative to other diversionary programs (such as cautioning or conferencing) rather than as an alternative to the more serious court interventions. Stakeholders generally agreed that the eligibility requirements for the YDC have been applied in a fairly consistent way and there seems no evidence of net widening taking place so far. The danger of net widening is clearly reduced if the program is viewed specifically as an alternative to a control order. On the other hand, the magistrates interviewed saw the criteria as having been relaxed to some extent since the Court began in order to increase the level of participation, and also saw themselves as having some flexibility and discretion.

Although stakeholders saw the eligibility criteria as being applied consistently, opinions were more mixed on whether they were all appropriate. There was some feeling that both types of programs should be available to all offenders and, in particular, that young people with serious drug problems should not be denied access to services just because their degree of criminality only deserved a caution. Other stakeholders, however, saw reasons to maintain the 'exclusive' operation of the programs. First, counselling and rehabilitation services are already available through conferencing under the *Young Offenders Act*, including some specifically designed to be shared across different programs (although some interviewees saw these as very limited), and the YDC does not give privileged access to these services. Second, there was a perception that the danger of 'contamination' is real in the YDC program for first time or young offenders, because participants regularly mix with each other. Third, the YDC program could be seen as too onerous for possible first time offenders.

It is this eligibility requirement that illuminates most clearly the differing conceptions of what the YDC is or should be. One view sees the program as a rehabilitation service administered by the courts (with a small element of custody). The other view sees it as a custodial sentence with therapeutic purposes.

Whatever the validity of these differing views, there are some important legal implications. If the former view is correct, then the YDC should be an alternative to the *Young Offenders Act* programs, as its requirements and obligations do not raise serious concern, especially for those granted bail. If the second view is true, then access should be limited to when a control order would otherwise be imposed.

### **The implications of *Regina v. SDM***

*R v SDM* [2001] NSWCCA 158, and a related decision *R v Blackman and Walters* [2001] NSWCCA 121, were decisions of the New South Wales Court of Criminal Appeal and concern the application of guideline judgments to juvenile offenders. Guideline judgements are designed to encourage consistency and make potential offenders aware of the likely sentence for particular offences. As the NSW Law Reform Commission has defined them in a recent paper, "Guideline judgements are judgements formulated by appellate courts that go beyond the facts of a particular case to suggest a sentencing scale, or appropriate sentence for common factual situations, to trial courts." (NSW Law Reform Commission, 2001: 17). Since 1998, a system for formulating guideline judgements has acquired statutory recognition. These judgments are not wholly binding, but if judges do not apply the guideline they have to provide reasons for their decision.

The decision in *SDM* emphasised that guideline judgments do apply to juveniles, even though concerns were raised during the consultation period that they could run contrary to the rehabilitative focus of sentencing young offenders. The Court in *SDM* noted that youthfulness was a relevant consideration in sentencing, but that children are not excluded from the application of guidelines.

The relevance of the decision for the YDC is in its potential effect on eligibility for the program, because the relevant guideline judgment (*R v Henry* [1999], NSWCCA 111) made imprisonment more likely for armed robbery. The decision in *Blackman* is relevant in considering the significance of rehabilitation in juvenile justice when identifying exceptional circumstances to justify the imposition of a non-custodial sentence.

*SDM* was identified as having an initial impact on the type of young people accepted onto the YDC program because young people charged with armed robbery were looked at more cautiously. However, it appears that *SDM* and *Blackman* do not radically impact on the operation of the YDC. They merely emphasise the importance of considering the subjective features of the young person very closely when assessing eligibility, in order to determine whether admission to the program is appropriate. Interviews suggested that the Court is not rigid in its approach to those charged with armed robbery and is accepting referral where it feels it is appropriate to provide an opportunity for rehabilitation. One young person charged with armed robbery has graduated from the program and was in employment at the time of the review. However, there were still concerns expressed that young people with more

serious offences may have difficulties getting onto the program and that this would reduce the potential pool of participants.

### **Requirement to reside within a limited catchment area**

A few of those interviewed, mainly from the Legal Aid service, saw this eligibility criterion as having sometimes been applied too rigidly or inconsistently. The current policy states that to qualify a participant must reside in Western Sydney or be able to demonstrate a substantial connection with the area. One example was given of a young person who was otherwise suitable and had an uncle in the catchment area. Because no evidence of the connection was available for a time, the young person was refused entry onto the program. Another young person was, however, accepted onto the program despite not fulfilling the geographical eligibility criteria (although they lived close to the boundary of the catchment).

The restricted availability of YDC services to those in a particular geographical area could be argued as raising questions of fairness, but it is hard to see how this can sensibly apply to a pilot scheme. It could, however, be a more serious issue if the program becomes established as an ongoing service.

## **6.6 The Uses of Bail and Custody During the YDC Program**

An important concern that emerged from the stakeholder interviews was the use of bail and custody by the YDC. As noted above, in the early phases of the pilot program some participants spent substantial periods in custody while on the program, even though it is designed as an alternative to incarceration. While it is likely that in the absence of the program few would have been given bail, in the context of the aims of the YDC this still raises some legal concerns.

As defined by the *Bail Act 1978*, bail is an order of a court that an accused may be 'at liberty', when they might otherwise be in detention. The basic tenet of the *Bail Act*, as laid out in ss 8 and 9, is that people are normally entitled to bail or at least to a presumption in favour of bail. Also, decisions about bail are not meant to encompass elements of punishment. Rather, the factors to be considered are the likelihood of the applicant returning to court and the protection of the community.

Periods of custody while on the YDC program are based on a refusal of 'sentence-bail' under the *Bail Act*. In particular, there must be a breach of conditions established under Sections 36 and 36A of the Act. In other words, 'sentence-bail', imposed as an order under the *Children (Criminal Proceedings) Act*, is administered by use of the *Bail Act*.

Custody in this context is the forced and legal detention of a person against their will. The deprivation of liberty in this manner has long been a carefully controlled power in the common law tradition. The control is seen most clearly in the common law tort of wrongful imprisonment, which provides a remedy and compensation for unlawful detention, and the writ of *habeas corpus*, which is the power of a superior court to compel a person to appear *bodily* before the court, effectively freeing them from custody. Custody, or detention, is also addressed in human rights treaties from the Universal Declaration of Human Rights (Article 9) to the Convention on the Rights of the Child (Article 37). These treaties emphasise the importance of avoiding arbitrary

detention and specify that custody is a 'last option' for punishment, especially for children.

Normally custody is imposed on YDC participants only after a bail condition is breached and further bail has been refused. However, bail may also be refused in the following circumstances:

- after the initial referral to the program by the Children's Court, either during comprehensive assessment by the JART to determine eligibility and while waiting for rehabilitation places to become available; or
- while awaiting other suitable accommodation.

Thus refusal of bail can give rise to custody in circumstances other than a breach of conditions. Custody for YDC participants usually means placement in one of a number of juvenile detention centres.

### **Is the use of bail lawful?**

One question of legality is whether s33(1)(c2) allows periods of detention in custody, especially in light of subsection (1)(g) on control orders. As mentioned, the *Children (Criminal Proceedings) Act* does not allow imprisonment of children under subsection (4). Only subsection (1)(g) grants the Court power to detain children as a penalty. This power under paragraph (g) is strictly curtailed by subsection (2) to apply only when other penalties, including the YDC program, are not appropriate. It is further limited by s35 because reasons for issuing a control order must be provided. If the power to detain has been sequestered to paragraph (g) and its use conditioned, there is an issue of whether the Court can 'detain' for extended periods under paragraph (c2).

Against this, it can also be argued that there are times when YDC participants need to be in custody for short periods because they have no settled accommodation, or because to return to their home and social environment may be against their own interests. In practice these are the main reasons for the use of custody in the YDC program. The question is at what point do these necessary short-term remands in custody begin to change into something more, resembling detention under a control order.

Underlying this question is whether participation in the YDC program should itself be seen as a penalty or not. The difficulty is that, ostensibly, it is a 'break' before sentencing to allow for the possibility of rehabilitation. However, the experience of this break by participants may be akin to a penalty or punishment. The factor that blurs this is the use of the *Bail Act*, as the Act is not meant to be the source of punishment. The difficulty comes in drawing a line that distinguishes between bail and penalty. Relevant factors in drawing this line could include the period of time spent in custody, the reasons for custody being imposed and the extent of participant agreement to its imposition (although it can be argued that participants have little choice in practice).

### **Is the use of bail fair?**

There was concern expressed by some stakeholders about the potential longer-term consequences of bail breaches. The view was that breaches of sentence-bail while on the YDC program could affect future bail applications, because non-compliance with

a case plan may be recorded as a breach of bail on a participant's criminal record. While many breaches are not officially reported or acted on, those that are recorded might be considered in bail applications relating to any future offences. This becomes even more significant in the light of new legislation on bail for repeat offenders.

Under s32(1)(a)(i) of the *Bail Act*, an accused's criminal record, including breaches of bail, is considered by a court to determine the subjective likelihood of their re-appearance in court following a grant of bail. Under s32(1)(c)(ii) a court also considers the accused's compliance with reasonable bail conditions in the past to assess the objective welfare and protection of the community. The point is significant bearing in mind the profile of YDC participants. Typically, they are repeat offenders and face the likely prospect of further interaction with the criminal justice system in the future.

Stakeholders raised several concerns. First, it was argued that there is often no meaningful relationship between a young person's actions while on a rehabilitation program and the danger to the community or the likelihood of their return to court in the future. Thus it could be against natural justice for breaches of sentence-bail in the YDC to be considered as equivalent to other bail breaches on a young person's record, or even to be considered in future bail applications at all. Whether this is true will depend, of course, on the particular actions that lead to a bail breach.

Secondly, the potential disadvantage faced by a young person as a result of recorded bail breaches may be disproportionate to the offence. The possibility of repeated refusals of bail due to breaches of a therapeutic program plan is at odds both with the aims of the YDC and with broader notions of proportionate punishment. There is a potential incongruity in that indiscipline during a control order might only extend the period of control, while indiscipline in a YDC program could have ongoing repercussions. Furthermore, an important issue of fairness arises in light of s36(7)(b) of the *Bail Act*, which requires courts to ensure that an accused fully understands the obligations and consequences of bail. In this context, the concern is whether participants are fully aware of the potential longer-term consequences of breaches of their program plans. Section 36(7)(b) sets a clear and high standard of fairness that needs to be maintained as long as the *Bail Act* is used, so participants need to understand clearly the possible effect on future bail applications.

The interviews carried out so far with YDC participants suggest that there is not a high level of awareness of the potential longer-term consequences of breaches of bail (although this point was not specifically addressed in the interviews). This is not to say that considerable efforts are not made by the legal aid solicitor and others to make such consequences clear. Most of the participants interviewed were highly satisfied with the level and quality of legal advice they had received and freely admitted that where they did not understand legal procedures it was usually because of not paying sufficient attention or still being affected by drugs, rather than as a result of not receiving proper explanations and information.

However, the longer-term consequences of YDC bail breaching do need to be considered in the light of the demanding nature of the program referred to earlier, including the increased likelihood of breaches being detected. One young participant, for example, saw the bail conditions imposed on her at the beginning of the program as far too restrictive and felt that she was almost set up to fail.

They had me on very strict bail conditions like reporting to the police daily, curfews - things that I knew I couldn't do, so I just went back to the same old ways.

### **Advantages of the Bail Act**

As well as highlighting these concerns about the use of the *Bail Act*, respondents also identified certain advantages in being able to use it as a means of encouraging compliance:

- It is a pre-existing scheme, well understood by courts, police, lawyers and the Department of Juvenile Justice.
- The Court's powers are clear and flexible.
- Importantly, it leads to a fast and efficient procedure for apprehending participants who have left their placement. This procedure, which requires the police prosecutor to apply to the YDC Registrar for a warrant for arrest, can be close to immediate, and some stakeholders believed that it can be particularly helpful in a therapeutic context.
- The process can be much speedier than alternatives, such as that for breaches of probation.
- It was also argued that the danger of rejected bail applications in the future may be overstated if most participants for the YDC are likely to be ineligible for bail on objective grounds because of the danger they pose to the community (although this is clearly an untested assumption).

Although there were mixed views about the way the *Bail Act* is used in the YDC program, most stakeholders expressed concern about the length of time some participants spend in detention, given that the YDC program is meant to be about reducing incarceration. Fundamentally, as discussed in Section 4, this problem seems to derive from the shortage of appropriate accommodation for participants in the program and, in some cases, a shortage of residential rehabilitation places for young people, given that participants have often 'burned their bridges' with services through previous poor behaviour.

### **Alternatives to the use of bail**

Some stakeholders raised possible alternatives to the use of the *Bail Act*. These included the program being seen as similar to a community service order (that is, as **Implications of the Bail Amendment (Repeat Offenders) Act 2002 (NSW)** or the use of a bond scheme. Another suggestion was that s41 of the *Children (Criminal Proceedings) Act*, which became law in December 2003, amends the *Bail Act* to remove the presumption in favour of bail for repeat offenders. Section 9b of the Act specifies that this refers to those who are on bail, parole or serving a non-custodial sentence at the time of committing the offence and those previously convicted of an indictable offence or of failing to appear in court. These issues are discussed in more detail below in the section on sentencing.

It is not clear as yet what impact this new legislation will have on the operations of the YDC. Since many YDC participants are repeat offenders and some commit further offences while on bail undergoing the program, there appear to be a number of potential implications for the program. First, it may be more difficult for some previously eligible young offenders to get bail in order to participate in the program,

or to continue participation if they offend while on the program. On the other hand, some young people who are held on remand because of the amendments, but who previously would have been granted bail, may perhaps be considered as potential candidates for the YDC because of the period in custody, when previous to the amendments they would have been considered eligible to be dealt with through one of the other diversionary programs under the *Young Offenders Act*. In practical terms, initial assessments of eligibility for the program may have to be held more often in juvenile detention rather than in the community.

It remains to be seen how the courts will interpret this legislation in relation to young offenders and how their decisions will affect young people's interest in taking part in the program.

### **The legal basis for custody**

Usually, custody for young people in the Children's Court is determined by the *Children (Criminal Proceedings) Act 1987*. While s33 (4) of the Act states that the Children's Court may not sentence a person to imprisonment, the Act does establish a regime for the use of control orders (detention) by the Court. Sections 33 (2) and 35 require control orders to be considered only when other penalties in s33 are wholly inappropriate, and reasons for such control orders must be provided. These restrictions appear to be consistent with the requirements of the Convention on the Rights of the Child and represent a fair procedure for the imposition of onerous burdens on young offenders.

As mentioned above, custody in the YDC program is not based on the broader power of the Children's Court to issue control orders. It is instead based on the Court's bail powers, enlivened by a penalty under s33(1)(c2) of the *Children (Criminal Proceedings) Act*. The legal protection provided by the *Children (Criminal Proceedings) Act* is that sentencing cannot be adjourned for more than 12 months. This places an upper limit on the power of the Children's Court to detain a person in custody as part of the YDC program. However, periods in custody may become significant well before the 12-month limit.

The problem is compounded when a participant is granted bail but has to remain in custody until suitable accommodation becomes available. This situation is different from the more general experience where an accused cannot comply with a bail condition, such as security, since in the former case the participant is in no way responsible for the failure to comply.

As discussed above, problems of suitable short-term accommodation at the point of entry to the program have largely been addressed through the opening of the Induction Unit. Development of a variety of other accommodation options for participants has also progressed, but this resource question remains one to bear in mind in any discussion of expansion of the program.

The Court has also addressed the legal problem of custody through a variation in the wording of bail conditions. The condition now requires a suitable placement position to be available for the participant and bail is not granted until such a position is available. While this may resolve the legal complication of a grant of bail and custody, the problem of excessive time in custody remains.

A further question of legality is whether the Court retains the discretion to refuse bail under s31(1)(c2). The subsection puts together two orders – adjournment and bail. It is arguable that choosing to use paragraph (c2) compels both an adjournment and a grant of bail. Legally, s14 of the *Bail Act* states that the power to grant bail includes the power to refuse bail. However, there is a concern that in a section that tightly controls the use of detention the bail provision is limited to the release of participants only. Arguably, if the section is read in two parts, it allows a person to be remanded in custody for 12 months before sentencing, especially given the broad discretion granted by s31(1)(c2)(iii).

### **Is the use of custody lawful?**

Although, as is suggested, the Court does have the legal power to order detention under the *Bail Act*, there are still some concerns about the *lawfulness* of more than short periods of custody, particularly in the light of international conventions. As outlined earlier, the Convention on the Rights of the Child defines rights for children in custody in Article 37. The Article requires detention to be used only as a measure of last resort and only for the shortest appropriate period. As discussed earlier, the limits placed on the issue of control orders by the Children’s Court in s33 (2) and s35 of the *Children (Criminal Proceedings) Act* are in accordance with the requirements of the Convention. Comments by stakeholders, however, suggest that these extended periods in custody may not reasonably be described as ‘short’. Since they are not directly linked with punishment, it may also be difficult to describe them as appropriate.

While not invalidating domestic legislation, comparison with international standards and norms can highlight whether domestic procedures are appropriate or lawful. The conflict between the Convention and the use of custody by the YDC may reveal procedures that require improvement.

The structure of the Adult Drug Court provides an interesting contrast in that there is a clearly established and legislated timetable for periods in custody (ss 7(3) and 16(2)(f)).

### **Is the use of custody fair?**

A further point raised by some stakeholders concerns the fairness of these periods of detention in the context of a rehabilitative program. It should be noted that ‘custody’ for a YDC participant is basically the same as ‘remand’. It takes place at the same institutions and indeed, participants may proceed from ‘remand’ to ‘bail - awaiting placement’, but experience no change in their location.

While most stakeholders suggested that ‘contamination’ (in the sense of the criminality of some young people affecting the less criminally experienced) was not a significant problem, given the serious criminal profile of many YDC participants, there were other concerns. One was that participants could be negatively influenced by other young people on remand about the value of taking part in the YDC program. Another was the availability of drugs amongst the remand population, which could present a temptation to participants. This means that extensive custodial time could threaten effective rehabilitation and lead to further breaches, continuing the problems discussed above.

## **6.7 Sanctions for Non-compliance with Program Requirements**

As described above, the YDC operates a system of sanctions or penalties for breaches of participants' case plans that are generally implemented through changes to bail conditions. These can include being ordered into court for more frequent reporting, increasing supervision requirements, increasing the intensity of counselling sessions and other non-punitive therapeutic options, or short periods of detention. There is also the ultimate sanction of termination from the program. These sanctions are indirectly based on the YDC Program Plan (AGD, 2000), which discusses procedures for when participants do not comply.

Although the nature and use of sanctions is strictly more a policy question than a legal one, the application of sanctions within the program raises certain legal issues, especially in any transition from pilot to permanent program. There are three main questions:

- are sanctions appropriate for the YDC?
- if they are appropriate, what should be the legal basis for sanctions?
- how should sanctions operate?

### **Are sanctions appropriate?**

There was a widespread view amongst stakeholders that strong sanctions are necessary to make the program effective, but opinions varied as to how they might best be achieved. Stakeholders had few problems with the Court's use of changes to case plans as a form of sanction. One concern, however, was whether it was appropriate to use counselling or other therapeutic interventions for this purpose.

There was also some concern about the use of termination as a sanction. First, young people may not be sufficiently mature to fully appreciate the consequences of their actions. Secondly, participants cannot fully know the consequences because a final sentence has not yet been imposed. Thus, in the absence of procedures like indicative sentencing (see below), some stakeholders thought termination could be unfair as a sanction.

Detention is commonly used as a sanction in the NSW Adult Drug Court, although a suspended sanctions scheme has also been introduced, such that custody might not be imposed immediately in the event of breaches of compliance but only after a certain number of penalties have accumulated. This is meant to provide an incentive for participants to anticipate a custodial penalty and thus avoid it through compliance.

While detention is not specifically available as a sanction within the YDC, the breaching of bail conditions can in practice result in the participant returning for a period into custody. Stakeholder opinion was divided on detention as a sanction. Some commented that detention was inappropriate in a therapeutic program, especially one designed for young people. It was also noted that detention imposes additional costs on agencies that must provide custodial facilities. Many, however, saw short periods of detention as a necessary 'stick' to compel compliance and as critical for the Court's effective operation. Several noted that their opinion had changed after experience of the YDC. This was because of frustration at the failure of participants to comply with the program, a perception that participants thought the

program had ‘no teeth’ to compel compliance and that the entrenched offending and drug use of most YDC participants required firm action from the Court.

However, it is not clear that detention would necessarily be effective as a tool for increasing compliance. The interviews carried out with participants suggest that while for some the threat of custody might be enough to prevent them from breaching their case plans, for others the prospect of a return to custody was an insufficient deterrent. Some male participants in particular were not troubled by the thought of a brief spell in Cobham Detention Centre - two interviewees even saw it as an opportunity to catch up with friends. It is also possible that the waiting periods spent in custody by some might tend to increase immunity against detention as a sanction.

### **The legal basis for sanctions**

While the introduction of a codified system of sanctions should be a policy decision, certain legal issues can inform the decision-making process, in particular the impact of sanctions on natural justice. As discussed in more detail in the context of custody, the imposition of penalties by the Children’s Court is guided by the *Children (Criminal Proceedings) Act*. The use of control orders is particularly restricted. Consistency with this broad legislative structure would require that other penalties imposed by the Court have a similarly clear and bounded existence. It would also need to be a legislated power, with clear rules of application and decisions that could be appealed.

The operation of sanctions in the YDC, as currently structured, is without such legislative limits or controls, other than the protections provided by the *Bail Act*. There is no legislative basis for them apart from a refusal of bail under s50 of the *Bail Act*. Section 50 allows the revocation of bail or the re-imposition of bail on new conditions. On revocation of bail, s50 (3) also allows a judicial officer to commit an accused to prison. This interacts problematically with s33(4) of the *Children (Criminal Proceedings) Act*, which does not allow imprisonment. Ultimately, the question is whether the procedures under s50 can allow the Children’s Court to impose detention otherwise than in accordance with a control order under s33(1)(g) of the *Children (Criminal Proceedings) Act*.

An underlying issue is whether sanctions can be applied in a pre-sentence scheme. As discussed in the context of custody, there is a blurring of ‘remand’ and ‘penalty’ in the procedures of the YDC. There is an important question of natural justice associated with whether a participant can be punished twice – once while on the program, through sanctioning, and a second time at final sentence. While final sentencing is discussed in more detail below, sanctions are implicitly a punishment. As such, they may represent an additional ‘sentence’ imposed on the offender.

Also, there is an important difference between the YDC and the Adult Drug Court in the sanctioning of participants. The Adult Drug Court has already imposed a sentence and has thus determined a penalty. Its sanctions operate within that penalty or sentence. Secondly, there is a clearly legislated power that the Adult Court exercises when sanctioning participants under s10 and s16(2) of the *Drug Court Act 1998*. These sections are central to the lawful operation of sanctions. Section 10 specifies the burden of proof required (balance of probability) to prove that there has been a breach of a program plan by a participant, and s16(2) outlines the sanctions available,

of which paragraph (f) is the most important. This paragraph allows the Adult Drug Court to imprison a participant for up to 14 days for breaches. As outlined above, the YDC does not have such conditions under s50 of the *Bail Act*. The burden of proof under s50(3A) is that the Court is 'satisfied' the person has failed, or is about to fail. The sanction under s(2)(b) is to 'revoke ... bail and otherwise deal with the person according to law'.

The appropriateness of sanctions can also be considered in light of the decision in *Griffiths v The Queen* (1976) 137 CLR 293, a decision of the High Court of Australia about taking account of the rehabilitation of offenders in sentencing through adjourning the sentence hearing. In *Griffiths*, the High Court heard an appeal from a middle-aged man who, having a long list of antecedents, pleaded guilty to several charges of break, enter and stealing. After being remanded for sentence, Goran J of the District Court of New South Wales adjourned the hearing for 12 months, on the condition that the offender agreed to enter into an equivalent to a good behaviour bond, to see if Mr Griffiths could rehabilitate himself over that time. The Attorney-General appealed the sentence to the Court of Criminal Appeal for its inadequacy. The appeal court upheld the appeal, questioning both the leniency and the procedure of the lower court (*Regina v Smith* [1975] 1 NSWLR 229). In particular, the court said,

[S]uch sentencing practice takes the judge who embarks upon it significantly beyond the ordinarily accepted judicial role. It places him [sic], in effect, in a supervisory relationship with the man or woman who may have been dealt with according to this practice, and it commits to the judge who follows this course a degree of involvement with the progress of the criminal during such period as may be specified. (*Regina v Smith* [1975] 1 NSWLR 229 at 232 per Street CJ)

The Court of Criminal Appeal also stated,

In our view this is not a permissible sentencing procedure, it cannot be supported as a mere exercise of the undoubted power of adjournment... The power of adjournment is not properly exercised if the adjournment is ordered as an integral part of the sentencing process (*Regina v Smith* [1975] 1 NSWLR 229 at 232 per Street CJ).

The High Court unanimously upheld Mr Griffiths' appeal from this decision on the ground that there was no 'sentence' for the Attorney-General to appeal. Significantly, several judges found that the absence of any 'adverse effect' on Mr Griffiths by the decision of Goran J's meant that there was no sentence. However, it is arguable that the majority of the High Court only supported Goran J's procedure to the extent it was not a sentence - that is that there was no adverse effect. The High Court's decision does not cover a scheme that involves sanctions during the period of supervision or adjournment. There was no recognition of an ongoing power of punishment.

It is possible, particularly from the judgments of Barwick CJ, Stephen J and Aitken J, that anything that imposes an 'adverse effect' on the offender would constitute a sentence, and therefore the criticisms of the Court of Criminal Appeal would remain relevant. The comments of the Court of Criminal Appeal become even more important if custody as a sanction is added to the adjournment. Critically, Aitken J

notes that when an offender is brought back before the court for a breach of the recognisance (bond), they are then sentenced for the original offence, not the breach.

It is a central design feature of drug courts, including the YDC, that judges exercise considerable ongoing supervisory involvement in participants' progress. Nevertheless, it needs to be considered whether punishment, in particular before a sentence is actually imposed, is a valid component of a Griffiths-type scheme (which the Youth Drug Court is). In particular, care should be taken to determine first whether sanctions in a pre-sentence scheme inherently create a two-sentence procedure and secondly whether such a procedure is lawful. This concern is magnified if one of those sanctions is custody, without legislative limits on how long that custody might be.

### **The operation of sanctions**

A common suggestion by stakeholders was that sanctions should be a court-centred process. A participant should always be directed to court before a sanction is imposed. Apart from relieving JART or Juvenile Justice Officers from the task of directly imposing sanctions, this suggestion is important as it allows courts to retain control of this important power. Also, it reduces the expectation of participants that the only attendance at court is for bail refusal hearings (a factor which stakeholders thought limits the likelihood of a participant actually appearing). It was suggested that these 'sanction hearings' would occur over and above the Court's regular report back sessions.

A further view was that program compliance would be aided by a system that included *rewards*, not just sanctions, so that in many cases the withdrawal of a reward would itself constitute the sanction. This form of behaviour modification is appealing in that it fits better with a therapeutic regime and avoids some of the legal difficulties inherent in applying sanctions as punishments before a sentence has yet been handed down for a particular offence. On the other hand, it also introduces the possibility of unfairness in the YDC could be offering certain advantages not available to other Children's Court cases. There is also a question of possible impact on the victims of crimes committed by young people. Many victims may support attempts to rehabilitate offenders and thus prevent further offending, but some might be less sympathetic where the perpetrator appears to be receiving a reward through special access to YDC resources.

A significant concern raised by some stakeholders is the availability of appeal from decisions on sanctions. At present, the Program Plan states that no appeals can be made from the YDC. The legislative basis for this seems unclear, especially as the *Bail Act* controls sentence-bail and s45 of the Act gives the Supreme Court a power to review bail decisions in lower courts. Support for this policy on appeals, however, is found in the decision of *Griffiths*, where Barwick CJ notes that if a person agrees to enter into a recognisance (bond), as long as not compelled to by the judge, then there can be no appeal from such an order.

The Adult Drug Court has a similar, but legislative, limit on rights of appeal, particularly from sanction hearings (s10, *Drug Court Act*). Stakeholders noted that this restriction is a concern and limits the controls typically in place in the legal system for punishment. Critically, the appeal system allows higher courts to ensure consistency and proportionality in punishment decisions. While, as mentioned earlier,

there were some concerns raised by stakeholders about consistency of approach amongst the magistrates on the YDC, the more significant point is that the traditional methods for ensuring consistency are also absent from the YDC and this absence might be compounded by the introduction of formal sanctions.

For sanctions to be lawful and fair, they need to operate in a predictable and consistent way. However, even though there was general agreement that some system of graduated sanctions, similar to that of the Adult Drug Court, would be helpful, not all stakeholders thought that legislation is the best way to achieve this consistency. Instead, some felt that a policy of specified sanctions administered by the Court through clear practice notes might be a more appropriate mechanism. There was also a view that if custody were to become one of the sanctions, there might need to be a special unit created in detention centres in order to avoid YDC participants mixing with other detainees. It was recognised, however, that such a move would be unlikely within current resources.

## 6.8 Sentencing

One of the significant issues for the Court in operationalising the principles of the YDC program is the relationship between participation in the program and final sentence. This question underlines several important concerns: the choice between a pre- and post- sentence scheme, the possibility of indicative sentencing and the role of final sentencing.

### Pre-sentence versus post-sentence programs

One source of the difficulties with the *Bail Act*, as discussed above, is that the YDC operates as a 'pre-sentence' as opposed to a 'post-sentence' program. The distinction is that 'pre-sentence' means a sentence is yet to be imposed on a participant, while 'post-sentence' means a sentence has been handed down but usually suspended for a period of time. The YDC is formally characterised as a pre-sentence scheme, as under s33(1)(c2) of the *Children (Criminal Proceedings) Act* the imposition of a sentence on an offender is adjourned until the end of the program. The distinction is seen most clearly in the differing practices of the YDC and the NSW Adult Drug Court. As a post-sentence scheme, the Adult Drug Court imposes a sentence at the beginning of the program that is suspended and then reviewed at the end.

While the choice between these is, again, a policy question, it has legal ramifications. The advantage of a pre-sentence model is that it allows the Court to exercise flexibility in the final sentence, taking into account movement towards rehabilitation - a reflection of the original decision in *Griffiths*. One difficulty with pre-sentence schemes, however, is that participants cannot be sure when deciding whether to enter the program what the consequences will be, hampering a proper assessment of the alternatives. Some of the stakeholders interviewed noted that this is particularly important in considerations of the likely length of time to be spent in custody.

The benefits of a post-sentence model are that it allows more certainty for the participant about what to expect and can provide a clear incentive to continue. On the other hand, although the Court has the option of suspending the final sentence for successful graduates, the post-sentence model does not allow as much flexibility as the pre-sentence model in taking account of significant progress by participants during the program.

As discussed earlier, keeping the YDC as a pre-sentence program requires the use of bail, or bail-like conditions, in order to give the Courts judicial power over participants. Without this power, the Court has no way to compel participants to comply with program plans. If the Court is to become permanent and to remain a pre-sentence program, the Court's power over participants should be clarified, either as based on the *Bail Act*, or on some alternative.

If a post-sentence scheme is considered, the critical issue is how successful (or unsuccessful) participation on the program should be evaluated. One option suggested by stakeholders was for a discount to apply to the original sentence only on successful completion of the program, with termination producing no discount of sentence. Another was for the reviewing magistrate to be required to see the original sentence as a 'maximum', but with broad discretion to re-determine the sentence. However, there is the legal possibility that a court has no means to alter sentences once imposed. The issue here is not the time spent in custody, but rather what 'sentence' is entered on a participant's criminal record. Pre-sentence programs like the YDC may avoid a custodial sentence appearing on a participant's record by characterising the time on the program as probation, rather than imprisonment, and imposing an alternate sentence.

### **Indicative sentencing**

The middle ground between the pre- and post-sentence models is 'indicative sentencing'. Based on a pre-sentence model, indicative sentencing requires a magistrate to enter a 'likely' penalty to be imposed on a participant if the participant did not enter the program or was terminated from the program. Indicative sentencing, however, has an ambiguous basis in law. First, there is the possibility that different magistrates may come to different conclusions on sentence and the magistrate monitoring the participant's progress may not be on duty in court on the day of final sentence. Secondly, it is unclear the extent to which a subsequent magistrate is bound to recognise the indicative sentence as a maximum that cannot be exceeded.

Some stakeholders interviewed thought that indicative sentencing would be useful for the Court because it could contribute a degree of certainty to the process: clients could be clearly advised of the consequences of actions, and potential participants could make decisions from a position of knowledge. However, several expressed concern about indicative sentencing, suggesting that it was inappropriate in a rehabilitation-based program to have a sentence imposed as a stick, that it was fundamentally unfair to participants because it did not fully clarify their legal position, and that it reduced the flexibility available to the judicial officer who handed down the eventual sentence.

One suggested reason for a reticence in providing participants with sentence information during the program is a fear that participants will calculate and compare time on the program with the period of detention that might be otherwise be expected. This could affect young people's motivation for entering or staying on the program, particularly if the indicative sentence was no greater than the time they were already spending in custody in the course of the program.

This is a valid concern, but it seems likely that young people and their representatives already attempt to weigh up the relative benefits of participation. Interviews with participants suggest that most see time in custody while on the program as being taken

into account at final sentence. Some who had spent considerable periods of time in custody while on the program had even asked their defence lawyer to calculate the number of days and estimate how this might impact on their final sentence. In some cases, this was a reason to terminate from the program, as ongoing participation was no longer likely to result in any substantial further reduction in final sentence.

This concern therefore needs to be balanced against the requirement that for the sake of fairness participants should be adequately informed about their likely punishment.

### **Final sentencing**

Another legal issue in the operation of the YDC is the nature and role of final sentencing. Currently, at the end of participants' involvement with the program they are sentenced for their original offence, but taking into account any subsequent movement towards rehabilitation. In this way the Court is operating exactly as in *Griffiths*. Some stakeholders were concerned that participants in the YDC program are not fully aware of either the existence or significance of final sentencing. It was the opinion of several stakeholders that participants often thought their time on the program *was* the penalty imposed (although this has not in practice emerged as an issue in the participant interviews).

Legally, the procedure established by s33 of the *Children (Criminal Proceedings) Act* is clear – sentence is adjourned for 12 months while a rehabilitation program is undertaken, pursuant to the *Bail Act*. The problem is that the relationship between sentence-bail and final sentence is unclear. At present it is at the discretion of the magistrate to determine what the final sentence should be and there appear to be no clear guidelines for how this discretion should be exercised. The critical issue is how 'success' and 'failure' on the YDC program should affect sentencing. Stakeholders noted that the current policy is that a young person should be 'no worse off' for poor participation than if they had never joined the program. The analysis of sentences, discussed above in Section 4, suggests that this policy is being upheld.

In some cases observed by the evaluators, magistrates have explained when sentencing participants what the usual minimum sentence for the offence in question would be, and made it clear that they are receiving 'discounts' for time already spent in custody, a guilty plea and their level of participation in the program. However, stakeholders noted that it can be difficult for magistrates, when sentencing participants who have not performed well on the program, to avoid being affected by knowledge of their behaviour (see further below on 'Conflicts of Interest').

A related issue is the significance of 'termination' – when a participant is discharged from the program before graduating because of repeated failure to comply with his or her case plan, or because of further offending. The procedures of the YDC now require termination to be a separate hearing in which the Court Team adopts a more adversarial stance than normal in team meetings. If a magistrate decides to terminate a participant from the program, the young person proceeds immediately to a final sentence hearing.

In terms of the *Children (Criminal Proceedings) Act* and the *Bail Act*, how should the termination hearing be viewed? It could be a special bail hearing to revoke sentence-bail, or it could be a hearing to re-determine the penalty imposed under s33. The

question is how the termination hearing affects the final sentence. It is noted below that YDC magistrates are more aware of participants' behaviour and actions than would normally occur in other Children's Court proceedings. The nature of a termination hearing is likely to focus the Court's attention on these matters. It may then make sentencing a difficult decision if participants are to be no worse off. It could be argued that the sentencing magistrate should not be the same one as conducted the termination hearing, or even that only judicial officers outside the YDC should conduct sentencing in these cases, but this could reduce the value of the ongoing supervisory role of magistrates in the YDC.

The concept of 'graduation' also needs to be considered, particularly in the light of final sentencing. Graduation itself has no legal basis. It is not part of the penalty imposed under s33 of the *Children (Criminal Proceedings) Act*, nor is it a fulfilment of bail conditions under s36A of the *Bail Act*. While its therapeutic purpose may be beneficial, there may be a concern on natural justice grounds about the relationship between graduation and final sentencing. There is no necessary link between graduation and a lenient final sentence, although Aitken J in *Griffiths* notes it would be unfair for a sentencing judge not to allow a beneficial link to exist. It is important that participants are made aware of this distinction.

A final note on sentencing, which covers both indicative and final sentencing, is the need to consider the possible benefits of a two-step process in sentencing. As examined by the High Court in *Drinsdale* [2000] HCA 54, in the context of suspended sentences, and supported by the Court of Criminal Appeal in *R v Blackman and Walters* [2001] NSWCCA 121, the separation of sentencing into discrete steps can be important. These decisions emphasise the need in determinations of suspended sentences first to identify whether a custodial sentence should be imposed, and secondly whether the sentence should be suspended. Combining these two steps may be seen as concealing the significance of the custodial sentence. Similarly, in the YDC, an indicative sentence followed by a final sentence may allow the court to focus first on the 'objective' factors of the offence and then secondly on factors of rehabilitation that could reduce this sentence.

## **6.9 Conflicts of Interest in the YDC Court Team**

The report referred earlier to the dilemma for defence lawyers in advising young clients on whether to plead guilty of an offence for which they might not be convicted, or to plead innocent and thus lose the chance of admission to a possibly beneficial program. Here we discuss this and other potential conflicts of interest that can emerge in the YDC because of the particular role and operations of the Court Team. A conflict of interest here refers to a member of the Court Team having two or more obligations to uphold that may be inconsistent with each other, such that separate professional duties may require different or opposite actions.

As stated earlier, the Court Team comprises the Court's Magistrates, prosecutor, defence lawyer, Registrar and the manager of the JART, and is responsible for the court-related aspects of the program, in particular admission, changes to case plans and terminations. The team meets before each sitting day of the Court and discusses the cases of each participant that will appear before them on that day, in terms of their case plan, recent events and the general progress of their rehabilitation.

The stakeholders interviewed saw the role of the Court Team in the YDC Court as critical for the effective operation of the program, especially given its therapeutic basis. It allows the team to discuss the best interests of the child in a collegial, non-adversarial, co-operative and information-sharing environment.

Despite the apparent effectiveness of this arrangement, there are several issues that arise because of the legal context in which the team operates. While the YDC has its own separate procedures and functions, it is still part of the Children's Court and must abide by its rules. There is a tension in the operation of the Children's Court between a system that caters for the best interests of the child and one that is adversarial - that is, a conflict between two opposing and partisan sides. The Court's adversarial basis is a product of its common law English tradition, in which the adversarial approach to 'truth finding' was adopted in preference to a more inquisitorial or 'judge-driven' approach. The indicator of an adversarial approach in a court is the clear and distinct roles of the prosecutor, defence lawyer and magistrate in the presentation and operation of hearings. In the Children's Court, the adversarial approach is blunted to a great extent by a widely-accepted emphasis on the interests of the child in proceedings. Nonetheless, the Court is still influenced by its past and retains a degree of adversarial process.

The potential conflict that exists in the YDC Court Team structure is between members' duty to the Court Team and their professional or formal duty to their client, the community or the justice system. Stakeholders suggested several examples of how this potential conflict can manifest itself in the Court's operations:

- The magistrate is provided with information about minor breaches or rehabilitation problems at team meetings that are not usually made available to a judicial officer and could be objected to by defence lawyers as irrelevant if presented in open court. They must then sentence a participant without allowing such information to influence their decision.
- The prosecutor may be made aware of crimes committed by a participant because of a report from a rehabilitation service and must decide whether or not to prosecute for these other offences. In such instances participants need clear legislative protection against the consequences of incriminating revelations if they are to be encouraged to disclose honestly.
- The JART member may become aware of assessments made by service providers about a participant's attitude and motivation that may lead to termination, but is supposed not to divulge that to the participant, while knowing that the defence lawyer cannot hide such information from their client.
- In addition to the example given above, the defence lawyer may be given instructions from a client to remain silent about a particular charge which conflicts with discussion about what is in the best therapeutic interests of the participant.

A narrow view of conflicts of interest would identify, at a minimum, the position of the defence lawyer as potentially compromised by their role in the Court Team. A broader view might encompass two further issues. First, there is an issue of fairness in the burden placed on individual members of the Court Team. Such potential conflicts create a significant pressure on personnel, on top of the difficult obligations of juvenile justice in general. Some stakeholders said they found these conflicts the main

source of stress arising from their work in the YDC. Secondly, such conflicts of interest raise an issue of natural justice by threatening the impartiality of the court process from the perspective of the participant. Stakeholders noted the possible confusion for participants if they see team members in multiple and changing roles.

Fortunately, these problems seem to be largely hypothetical at present. The view of most stakeholders was that no serious conflict of interest problems have actually emerged as yet in the court's operation, and all were confident that discussion and openness provided a solution to most situations. Our interviews with participants also suggest that while they do have some problems with court hearings, including a lack of understanding of the procedures and, sometimes, a feeling of exclusion, they do not see their legal rights as compromised by the team approach.

Several suggestions were made by stakeholders of ways to manage potential conflicts. First, it was argued that it should be made clear to all concerned that any information disclosed in Court Team meetings may be used by team members in their professional capacity, whether as prosecutor, defender, magistrate or service manager. This emphasises professional obligations over the requirements of the YDC and suggests that the court should not attempt to subvert or deny these broader responsibilities. It can also satisfy a natural justice concern that it is unfair for an accused if a magistrate relies on information of which the accused is unaware. An accused has a right to hear all 'evidence' presented to a judicial officer that may affect the officer's decision. Team meetings are one of the ways YDC magistrates obtain information and such information should also be provided to participants. In this context, the presence of a defence lawyer at team meetings may in itself be insufficient. On the other hand, this is unlikely to encourage honest disclosure of offences by participants.

Secondly, it was suggested that it should be made clear when a Court Team member *must* adopt a more adversarial role. Stakeholders argued that this should occur at three key points in time:

- when a young person is accepted into the program;
- at a termination hearing; and
- at final sentencing.

These three points in the process are important because they concern issues that are not merely therapeutic. At each point significant legal issues arise, such as the interpretation and application of eligibility criteria, or significant consequences, such as a control order following sentencing. They are times when each team member's professional obligations must come to the fore. 'Adversarial' in this context refers to the need for members to adopt a more partisan approach, with a clear focus on individual professional obligations rather than group consensus.

Stakeholders also argued that the implicit conflicts of interest involved in the YDC process cannot all be resolved through legal or structural means. A critical element is the personnel holding these positions. Stakeholders were unanimous on how well the current team members exercised their responsibilities with full awareness of the court's special demands. Two issues were raised in this context about the possible transition to a permanent program. First, it is vital that the court continues to be staffed by personnel with the same high level of awareness of YDC, juvenile justice

and rehabilitation issues. Secondly, there is some concern about the ability to find sufficient capable staff if the program were to be expanded.

Two remaining questions were discussed with stakeholders in the interviews for the review of legal issues. The first concerns legal advice and information for participants, while the second relates to the special needs of some participants and any evidence of discriminatory practices within the YDC program.

### **6.10 Providing Legal Advice to Young People**

Several stakeholders noted that providing advice to young people about the YDC can be difficult. Given that nearly all participants access Legal Aid lawyers, the issue is not so much about dissemination of information to private practitioners, although this is a relevant concern. The real question is the advice lawyers that can provide to their clients about the court. The critical issue for advice in this context, according to stakeholders, is the likelihood and duration of custody (as discussed above). Several stakeholders found this to be a particularly difficult issue to advise on. First, there is a lack of information about the 'typical' YDC experience upon which to base advice (this is not surprising in a relatively new and small program). Secondly, as also discussed earlier, there can be times when an adviser may feel that the program could be beneficial for a particular young person but may judge that the chances of their getting a control order are quite small. Thirdly, it is difficult to help young people weigh up the decision when the YDC program seems a long and onerous commitment without a clear benefit. These problems are compounded by the more general problem within the juvenile justice system of limited time and opportunity for a Legal Aid lawyer to discuss legal issues with clients before a hearing.

Stakeholders had several suggestions to deal with these difficulties, including use of indicative sentencing and clearer guidelines on the link between participation and sentence.

### **6.11 Special Needs and Discrimination**

Stakeholders did not feel that any specific legal issues had arisen so far in the areas of discrimination or cultural awareness. While the implementation of the program has thrown up some difficulties with appropriate service provision for female and Indigenous participants, stakeholders were of the opinion that these do not reflect procedural or systemic problems with the YDC, except to the extent that they are difficulties experienced by the criminal justice system as a whole, such as access to adequate resources to overcome disadvantage.

There were, however, a number of comments about the difficult position of young people with a mental illness who may wish to enter the YDC program. At present the program excludes those judged, for reasons such as severe mental illness or psychological incapacity, as not being able to make effective use of the services, and some stakeholders saw it as beyond the YDC and the JART to deal with these types of problems. Most noted that the court had little experience of participants with mental health problems.

Others pointed out that it is hard for drug-dependent young people with a mental illness to access services generally. This can be because mental health services require the drug problem to be resolved first, or because drug rehabilitation services require

the mental illness issue to be overcome. There are few 'joint service providers' that will treat both drug and mental illness problems, especially for children (one example being 'PeaPod' at St Vincent's Hospital). One benefit of the YDC, according to respondents, is that the JART's comprehensive assessment process is good at identifying mental illness issues, something that is not always done well in juvenile justice.

The underlying issue of lawfulness here concerns the extent to which the Court ought to cater for young people with this problem. Given the law's sensitive approach to disability discrimination, in particular indirect discrimination (*Anti Discrimination Act 1977, Disability Discrimination Act 1992 (Cth)*), it could be argued that the criteria by which such young offenders are excluded from the program should be reviewed in the context of possible extension to determine whether the restrictions are not reasonable in all the circumstances of the program. However, it seems unlikely that in the absence of appropriate, specific services the YDC could be expected to cater for participants with severe mental health problems.

## **6.12 Summary and Discussion**

This Section has presented a review of the legal issues arising in the YDC pilot program. Our general conclusion is that the Court is operating effectively within the bounds of the legislative framework applying to it and no major problems or legal challenges have arisen so far. However, there are several areas that are problematic in terms of lawfulness and fairness, and would need to be addressed, possibly by legislation, if it is decided that the program should be continued beyond the pilot period or extended to other geographical areas. In addition, there are certain operational areas that would benefit from the development of further practice directions and/or policy guidelines.

These concerns are summarised below, and we also address the specific questions posed in the evaluation framework.

### **Eligibility criteria**

The Court appears to be applying the eligibility criteria as laid down in the AGD's Program Plan and there is no evidence to suggest that 'net widening' is taking place, such that young offenders are being taken on to the program who might otherwise be eligible for cautioning or conferencing under the *Young Offenders Act 1997*. What is less easy to determine is whether any young offenders are falling *between* the two levels of treatment. Some YDC stakeholders regard the eligibility criteria as too restrictive, both in terms of the exclusion of young people in otherwise similar circumstances but who have pleaded innocent and then been found guilty, and in terms of those with more serious ineligible offences but similar needs.

The eligibility criteria might need to be reconsidered on these grounds in terms of the purpose and scope of the program if it is decided to retain or expand it. Some current restrictions may not be necessary or justifiable outside of a pilot scheme, but there may still be valid arguments for restrictions that limit the numbers eligible for the program to a level consonant with available resources.

A more immediate problem is the possibility of inducement created by the requirement to plead guilty. There is a concern, with some limited supporting

evidence from participant interviews, that the attraction of the program for some clients might lead them to plead guilty to an offence of which they were either innocent or that they would at least have otherwise defended.

### **Bail and custody**

The uses of bail and custody are perhaps the most difficult legal issues facing the YDC. The *Bail Act* has certain advantages for enforcing compliance with the YDC program, in that it has widely-understood and accepted procedures that allow swift recovery of participants who have absconded from placements or otherwise breached bail conditions. Arguably the *Bail Act* does allow the imposition of custody through bail refusal in these circumstances within a Griffiths-type scheme, even though it is not meant to be used as a means of invoking punishment. However, there is a question about whether *extensive* periods of custody can be lawful, bearing in mind the limitations on powers of detention imposed on the Children's Court by the *Children (Criminal Proceedings) Act*, as well as international conventions on the treatment of children. These problems are compounded where custody is used because no suitable alternative accommodation is available, or when waiting for places in rehabilitation, and where there has been no direct breach of bail conditions on the part of the young offender.

Another difficulty with the use of bail as the power under which participants are held on the program is that recorded breaches of what are often deliberately onerous and intensively-policed bail conditions may have longer-term consequences for future bail applications. There is a good argument that the consequences may be disproportionate to the breaches and that breaches in these circumstances (particularly those of a therapeutic program) should be seen as irrelevant to future applications.

Although the majority of stakeholders interviewed did not see new legislation as necessary for the effective operation of the YDC program, some clarification is needed of the ways in which bail and custody are used, whether through legislation or through practice directions, especially if the program is expanded.

The *Bail Amendment (Repeat Offenders) Act 2002* came into effect after the legal issues review was carried out and it is not clear as yet how it will affect the YDC program. However, there are some potentially serious implications for the program's clientele and court decisions under the Act concerning young offenders will need to be monitored.

### **Sanctions for non-compliance**

Although there are currently procedures for sanctioning non-compliance with individual program plans, there is a view that these are inconsistently applied and ineffective. Most respondents interviewed for this review accepted the need for a system of effective and graduated sanctions as necessary to promote compliance with program requirements. One difficulty is that sanctions can be seen as unlawful or unfair, in imposing a double punishment on participants who will later be sentenced for their original offence.

If a codified system of sanctions were to be introduced, there is a strong argument for putting this in legislation in order to clearly delineate the court's powers and to allow an appeal mechanism. Some stakeholders, however, argued that legislation was

unnecessary and preferred a schema of sanctions operated by the court under a set of clear Practice Directions.

Some of the problems of possibly unlawful punishment could also be avoided by incorporating a reward system (withdrawal of which would constitute one form of sanction), which also fits better within a therapeutic regime. If detention becomes one form of sanction, there is an argument for creating a separate YDC unit within the main juvenile detention centres, but this has clear resource implications.

### **Sentencing**

Sentencing patterns in the pilot period indicate that these are in line with the program requirement that sentences should be no more severe than if the participant had not taken up the YDC option. It appears that the practice emerging is for magistrates at the time of sentencing to inform the participant of the minimum likely sentence applicable to the offence and then to apply specific discounting for achievements on the program and time already spent in custody. This is the intention of the pre-sentence model and has the advantage of allowing the Court substantial flexibility to reflect participants' progress towards rehabilitation. However, it can be difficult for magistrates, when passing final sentences, to avoid being influenced by their knowledge of the participant's behaviour while on the program.

One disadvantage of the pre-sentence model is that it does not allow participants certainty about what they can expect at the end of their involvement in the program, and can lead to some seeing the program itself as the sentence, thus involving a perception of 'double punishment'. Amongst the stakeholders interviewed there was some support for a two-stage, 'indicative sentencing' model that would potentially combine a degree of certainty for participants with sufficient flexibility for the court in varying final sentences. Indicative sentencing, however, has an ambiguous position in law and may not be binding on magistrates.

It is suggested that sentencing policy needs to be reviewed once there is a greater accumulation of cases.

### **Conflicts of interest**

There are potential conflicts of interest in the Court Team structure because information can become available to members through group case meetings that would not normally be afforded to all parties in an adversarial court setting. Court Team members are aware of the need for careful management of the shifts between team consensus and individual professional responsibility. However, in order to avoid future problems (especially if the program is expanded) and to reduce personal stress for staff, there is a need for clearer guidelines on the use of privileged information. It may also help to specify the key points (assessment of eligibility; termination hearings; final sentencing) when an adversarial framework of justice should take precedence over consensual decision making.

### **Legal advice, participants' awareness and informed consent**

Knowledge of procedures, rights and punishment is a fundamental part of any criminal justice system. This is magnified in the YDC since it seeks to be a voluntary program. The assumption of voluntariness can only be upheld if participants exercise a choice to join the program from a position of clear knowledge and obvious

awareness. The knowledge of possible consequences, limited rights and alternative punishments is critical.

Interviews carried with participants so far suggest that they are mainly satisfied with the quality of both legal advice and general information they receive about the YDC program. The level of detailed understanding of the program and of the court procedures involved seems to be fairly low, but this is likely to be the case for most court procedures.

This is not surprising given the youth and circumstances of participants, and they themselves often recognise that they are at fault in not paying attention or taking care to absorb information. However, it does raise questions about the validity of informed consent, especially in two areas; the potential consequences of breaches of program requirements for future bail applications; and the uncertainty about final sentencing in a pre-sentence program.

### **Special needs and discrimination**

There is no evidence of discriminatory treatment emerging within the YDC program on the basis of age, ethnicity, culture, gender, family status or disability. There are some practical difficulties with service provision for female and Indigenous participants, but these appear to reflect a more general shortage of appropriate resources within the juvenile justice and social welfare systems.

There are some concerns about whether it is appropriate to exclude young offenders with severe mental health problems, as well as those of drug use, from participation in the YDC program. At present the program lacks the specific resources necessary to meet this need properly, but there are few other sources of support for these young people. This is a question that should perhaps be considered at a policy level in discussion about the program's possible extension and expansion.

### **The need for legislation**

There is a strong argument that the YDC needs a new legislative basis within the *Children (Criminal Proceedings) Act*. This is particularly the case if it is determined that a more formal system of sanctions, including detention, is needed. Although the content of such legislation is largely a policy question, the aim would be to codify a sanction scheme for the YDC. In this respect, some stakeholders thought that the Adult Drug Court could be a useful guide. While many stakeholders argued the need for a clear legislative basis in general for the YDC, it is the question of sanctions that most clearly requires a legislative solution. Some stakeholders noted, however, that any such extension in the powers of the Children's Court should be restricted to the YDC only.

Overall, the need for legislation should be considered in relation to the possible transition of the YDC scheme from its pilot status to a permanent program. Most stakeholders thought that the Court does not need specific new legislation to operate, although better guidelines were needed. There were seen to be few advantages in having a separate legislative basis, unless it involved access to additional resources. Current legislative powers, perhaps augmented and clarified by the greater use of Practice Directions, seemed to provide sufficient guidance for the Court's day-to-day

operation. However, this is not the case once the possibility of sanctions is considered, particularly if the concerns about the operation of the *Bail Act* are to be addressed.

## **7 Analysis of Program Costs**

### **7.1 Introduction**

The cost analysis component of the evaluation involved identifying and quantifying the expenditure associated with the YDC program in order to provide the basis for assessing its budgetary impact, in aggregate and across different Departments. As specified in the original UNSW evaluation proposal, the main focus is on attempting to answer the following questions:

- What is the breakdown in expenditure under the YDC program, including within the criminal justice system, across the different types of drug treatment services, and across other health service providers and brokerage services?
- What is the average cost per case in the YDC program compared to those of other similar juvenile justice programs?

The extent to which these questions can be answered depends on the availability and quality of expenditure data provided by the various Departments involved in the YDC program. The data that underpin the cost analysis reported here were provided by relevant officials from these Departments, but were subject to several limitations that are noted below.

The scope of the cost analysis has been negotiated between officials and the evaluation team as the evaluation has progressed. These negotiations resulted in agreement that the analysis would cover the first 18 months of the program, i.e. the period from July 2000 to December 2001.<sup>17</sup> It was also agreed that this overall period would be broken down into three six-month periods: July – December 2000; January – June 2001; and July – December 2001. Use of these three sub-periods not only provides an indication of how stable program costs have been in the initial phase of program development, but also helps to isolate the extent and nature of one-off set-up costs. Departments were asked provide information on the nature and extent of set-up costs, although this proved difficult in practice and an indirect approach has been adopted.

### **7.2 Conceptualising Costs**

The evaluation of the Adult Drug Court undertaken by the NSW Bureau of Crime Statistics and Research contains a sophisticated cost effectiveness analysis (Lind et al., 2002). This report identified two alternative approaches to estimating costs. The first involves identifying the unit costs associated with the resources utilised by each specific activity involved in the program and summing these across all activities to obtain a global cost estimate. This can then be expressed per participant or averaged across all participants. The second approach involves deriving a total cost figure based on budgetary reporting of the resources allocated to the program and then expressing these as an average across all cases.

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<sup>17</sup> It should be noted that although the program did not officially commence until the end of July 2000 it is reasonable to take the starting point for expenditure from the beginning of that month since some initial set up costs would have been incurred at least by that date.

In reflecting on the merits of these alternative approaches, the report commented as follows:

There are a number of methods by which costs can be calculated. They range from micro costing (in which resource use is costed at the level at which resource use occurs) to macro costing (in which budget allocations are divided amongst the use of resources). The former method is potentially time consuming and costly to undertake, while the latter may only provide an estimate of the average cost per case and may not provide any indication of the fixed and variable costs of service provision. This can result in inaccurate estimates of the costs of expanding or contracting a service. (Lind et al., 2002, Section L15.2: 5)

Conceptually, the former (micro) method is preferable, in part because its starting point is the actual resources used at each stage of the program, but also because it provides a more flexible framework that allows a range of different cost structures to be built up according to the actual activities that constitute the intervention. However, this approach is also costly to conduct and depends upon the availability of reliable unit cost data at the activity level.

In the absence of such information (and of the time and resources required to produce it), the only recourse is to the second (macro) approach, that builds up an implicit cost structure from knowledge of the resources assigned to the program, as captured in the relevant budget documents and the numbers who receive treatment under the program. It is possible within this latter approach to make an allowance for the fact that not all participants receive the same array of specific services (or benefit from the same number of activities), although only to a limited extent.

As noted in the above quote from the BOCSAR report, a major problem with the latter approach to the cost issue is that it is strictly only capable of producing estimates of *average costs*, and these may provide a misleading guide to the *marginal costs* associated with an expansion (or contraction) of services under the program. Ideally, it is the latter that enter into economic calculations about the efficient (or effective) use of resources under the program (compared to alternative possible uses of the resources). It is, however, possible under the macro approach to take some account of this issue by distinguishing between costs that are one-off and those that are ongoing. While both cost components enter into the calculation of average costs, only the latter are relevant to the estimation of marginal costs.

From the outset, the UNSW Consortium has been clear in indicating that its cost analysis would fall within the macro approach as outlined above. However, emphasis has also been given to try to identify any clear set-up costs that will not be ongoing, in an attempt to approximate the distinction between average and marginal costs introduced above.

### **7.3 The Cost Framework**

#### **Cost identification**

In principle, the YDC costs can be split into fixed costs (or overheads) and variable (or operating) costs, where the latter can be further broken down into costs incurred

by agencies directly involved in the YDC and those with an indirect involvement in the program. As noted above, it has not been possible to identify all of the fixed costs, but the analysis has included the costs associated with specific aspects of the program. Other fixed costs have been included only where they can be clearly identified and quantified, although an attempt has also been made to identify any one-off set-up costs – particularly where these were substantial.

Total costs (C) can be expressed on an average basis by dividing by the number of days (D) they cover, C/D, or by the total number of program participants (PP) over the period, C/PP, or by the total number of person-days (PD), C/PD. These are related, since  $PD = PP \cdot d$ , where  $d$  = the average duration of program participation for all participants. Thus,  $C/PD = C/(PP \cdot d) = (C/PP) \cdot (1/d)$ . Another calculation of interest is the average cost for graduation from the program (PG), which can be calculated as the product of C/PD and  $d^*$  where  $d^*$  = the average duration of program for graduates. Neither of these is necessarily the ‘right’ way of expressing the costs – they give different indications depending on the particular element of interest. For all of these cost calculations, averages have been broken down into the cost components identified below, and comparisons will be made between the entire 18-month period and the three separate six-month periods within it.

### Cost breakdown

The costs identified above can be further broken down into the following elements:

- *Operating costs - staffing*: these include the costs associated with the Joint Assessment and Referral Team (JART), court staff and other staff involved in the YDC program.
- *Operating costs – equipment and support*: these include equipment, facilities and travel.
- *Operating costs – other*: including the sources, types and amounts involved.
- *Set-up costs*: to be identified where possible (sources and amounts).

The cost information is relevant to all of the services provided as part of the YDC program by each of the following agencies: the Attorney General's Department (AGD), including the NSW Legal Aid Commission (LAC); the Department of Juvenile Justice (DJJ); the NSW Health Department (DoH); the Department of Education and Training (DET); the NSW Police Service (PS); and the Department of Community Services (DoCS) and its three contracted service agencies.

### Assumptions and limitations

A number of assumptions have had to be used in relation to these data and there are also several limitations that need to be explained at the outset. First, the cost of being held in custody while on the program has been included, based on the number of days individual participants spent in custody and average daily male and female custody costs. This is important because although the program is aimed at reducing incarceration, some participants still spend significant periods in custody while on the program, as discussed earlier in the report. Records of days in custody were only available to the evaluators for July 2000 to November 2001. Days in custody were imputed for December 2001, based on total days in the program, weighted by sex. The figures for the cost in detention are from the DJJ accounting system, MIMS, for the

financial years 2000/01 and 2001/02. The estimated costs were different for the two centres, Cobham and Yasmar, in 2000/01 but the same for 2001/02. They also represent average costs for all young people in detention.

The costs listed for DoH include the costs of operating stabilisation beds at the Ted Noffs Foundation (TNF) PALM West facility and at Nick Kearns House before the opening of the Induction Unit in 2002. TNF was not separately funded to provide the beds and the costs were met from existing DoH payments for service, but they represent an opportunity cost, as these services might otherwise have been used by other non-YDC clients. For this reason they are included in the calculation. The Nick Kearns House expenditures involved actual invoiced payments.

Expenditures on residential rehabilitation for YDC participants (as distinct from stabilisation) have been included separately. Again these are an opportunity cost: no additional funds were made available to the rehabilitation services from YDC funds, but YDC participants used places that might have otherwise been used by other young people. As it has not been possible to establish precisely what the actual opportunity costs are, a formula has been used based on likely average useage and average costs in the main types of residential services used.

It is also evident that there are some areas where the reported costs may not accurately reflect the full cost of the program. In particular it is not clear that the coverage of set-up costs is complete and it is possible that some of these costs are incorrectly included in the recurrent cost estimates (particularly those covering the initial period).

Finally, it is important to recognise that several important cost components that do not fall directly on Government are not included in the analysis. Most important of these are the costs incurred by those who participate in the program (and their families and friends), and the costs that are averted as a result of the intervention. We do not have any data source from which to calculate or estimate either of these.

The cost of actually providing the service is only one aspect of cost analysis. The information on the average cost of providing the service does not indicate whether or not the service is efficient (since only one form of the intervention is examined and costed), nor whether the service is cost effective (since the costs are not related to outcomes at this stage).

Nor is it possible to determine on the basis of costs alone whether or not the net benefits of the service are positive – the normal test applied in cost/benefit analyses. The cost analysis does, however, in conjunction with other parts of the evaluation, shed some light on the overall cost/benefit calculus of the YDC.

#### **7.4 Results**

Table 7.1 summarises the estimated costs of the program over its first 18 months of operation (bearing in mind the limitations discussed above). As indicated above, these costs have been broken down into three six-month periods and are shown classified by cost type. Total program costs over this period amounted to \$5,384,546, including the opportunity costs for stabilisation and residential rehabilitation noted above. This is broken down across the three sub-periods into amounts of \$1,310,980, \$1,850,640 and \$2,222,926, respectively.

In relation to identified set-up costs, a total of \$137,889 (2.6 per cent of total program costs) is included for this item (most of it occurring in the first six month period). This total may not in fact include all the start-up costs incurred before the program was ready to accept participants. For example, the costs accumulated before any participants were in the program, when staff time was taken up with training and establishing procedures, would normally be included in establishment costs, but do not appear to have been done in this case. Although costs are fairly evenly spread across the three periods, the program was not fully operational for much of the initial period, which suggests that the figures for the first six months may contain some element of what can legitimately be described as set-up costs.<sup>18</sup> Also, the period of reporting commenced in July 2000 and any start-up costs before this date are excluded. Because new YDC agency allocations commenced in 2000-2001, there was no capacity to recruit staff before this for program development.

Over the whole period, staff costs account for \$2,172,685 or 40 per cent of total costs.<sup>19</sup> The other major cost components are operating costs at \$762,750 or 14 per cent of the total, and brokerage costs (over and above brokerage staff costs) of \$465,893 (nine per cent). In addition, the estimated costs of custody while participants are on the program (\$975,274 or 18 per cent) are significant. Most cost components have remained a fairly stable proportion of total costs over the period, although there are some exceptions. The most notable of these are the increase in the costs of brokerage staff (from \$118,333 to \$208,108), the rapid increase in the costs of the Health day-programs (which started at zero but then almost doubled over the final twelve months of the period to \$147,500), and the costs of providing stabilisation beds which doubled in the second six-month period and then began to fall back as the Induction Unit came into use. It should be noted again, however, that some of these stabilisation costs are opportunity costs rather than actual additional expenditure.

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<sup>18</sup> They might also reflect high fixed costs. The relationship between set-up costs and fixed costs is unclear from the data available. Conceptually they overlap, but only partially.

<sup>19</sup> It is arguable that some of the other costs could be alternatively be defined as staff costs, although reallocation makes no difference to the bottom-line calculations. Currently staff costs refer to government agency costs, which presumably the agencies have some discretion on spending. The brokerage fees were contracted costs, which the providers could spend as they decided.

**Table 7.1: Total Youth Drug Court costs, July 2000 to December 2001**

	July to December 2000			January to June 2001			July to December 2001			Total to December 2001
	Startup	Recurrent	Total	Startup	Recurrent	Total	Startup	Recurrent	Total	
	\$									
JART staff	0	194,009	194,009	0	316,702	316,702	0	383,845	383,845	894,556
Court staff	0	154,461	154,461	0	154,461	154,461	0	149,065	149,065	457,986
Other staff	3,653	104,878	108,530	1,500	103,958	105,458	367	104,208	104,575	318,564
Brokerage Staff	0	118,445	118,445	0	175,026	175,026	0	208,108	208,108	501,579
Facilities	5,000	0	5,000	0	5,000	5,000	0	5,000	5,000	15,000
Equipment	4,000	0	4,000	0	0	0	0	0	0	4,000
Travel	14	10,077	10,091	0	11,177	11,177	0	9,374	9,374	30,641
Day Programs	0	0	0	0	49,167	49,167	0	98,333	98,333	147,500
Stabilisation	0	75,295	75,295	0	158,289	158,289	0	111,601	111,601	345,185
Brokerage	72,388	90,138	162,526	0	249,868	249,868	0	183,169	183,169	465,893
Residential rehabilitation		103,113	103,113		123,735	123,735		123,735	123,735	350,583
Operating costs	0	249,868	249,868	0	249,868	249,868	0	263,013	263,013	762,750
Incidentals, stationery, tolls	0	667	667	0	667	667	0	667	667	2,000
Telephones	250	2,648	2,898	0	3,680	3,680	0	2,596	2,596	9,174
Conferences	0	0	0	5,717	409	6,126	0	66	66	6,192
Capital	20,000	0	20,000	0	0	0	0	0	0	20,000
TAFE class			0			0		28,844	28,844	28,844
Juvenile expenses <sup>1</sup>		12,749	12,749		12,749	12,749		12,749	12,749	38,248
Other grant			0	25,000		25,000			0	25,000
<i>Approximate costs</i>										
Custody <sup>2</sup> - male		54,308	54,308		202,659	202,659		367,322	367,322	624,290
- female		35,019	35,019		130,678	130,678		185,286	185,286	350,984
<b>Total cost</b>	105,305	1,205,675	1,310,980	32,217	1,818,423	1,850,640	367	2,222,559	2,222,936	5,384,546
Total start up costs										137,889
Total ongoing costs										5,246,658

Notes: 1. These include food, clothing, laundry, leisure, travel, medical expenses and psychological services

2. 1356 days x \$406 for Cobham (males) by the proportion of participant days in each period; 684 days x \$519 for Yasmarr (females) by the proportion of participant days in each period.

Table 7.2 provides a breakdown of total costs over the 18 months by Department or agency. It indicates that the three biggest contributors to total program costs were NSW Health (30.4 per cent), the Department of Community Services (20.9 per cent) and the Department of Juvenile Justice (15.7 per cent). Together these three Departments accounted for more than two-thirds (67.5 per cent) of the total costs of the program.

**Table 7.2: Total costs by all agencies and cost type, July 2000 to December 2001**

	Attorney General's Department <sup>1</sup>	Department of Juvenile Justice	NSW Health	NSW Police <sup>2</sup>	Department of Community Services	Department of Education	Total
JART staff		675,786	111,000		107,770		894,556
Court staff	351,198			106,788			457,986
Brokerage staff					501,579		501,579
Other staff	143,681		144,000		13,772	17,111	318,564
Facilities					15,000		15,000
Equipment					4,000		4,000
Travel			2,512	17,915	10,214		30,641
Day Programs			147,500				147,500
Stabilisation			345,185				345,185
Residential rehabilitation			350,583				350,583
Brokerage					465,893		465,893
Operating expenses	98,482	104,268	560,000				762,750
Incidentals, stationery, tolls				500	1,500		2,000
Telephones			2,005		7,169		9,174
Conferences			475	5,717			6,192
Capital expenditure	20,000						20,000
TAFE class						14,422	14,422
Juvenile expenses		38,248					38,248
Other grant (evaluation)		25,000					25,000
Total agency cost <sup>3</sup>	613,361	843,302	1,663,260	130,920	1,126,897	31,533	4,409,273
Custody							975,274
Total with custody <sup>4</sup>							5,384,546
Percentage contribution <sup>4</sup>	11.4	15.7	30.9	2.4	20.9	0.6	100

Notes: 1. For AGD 'other staff' includes a payment to the Legal Aid Commission towards the salary of the defence solicitor.

2. Police costs do not include any value placed on arrest, transport to detention or remand in police custody, because it is assumed that these police costs are the same within and outside the program.

3. Does not include approximate cost of custody \$975,274 (see Table 1).

4. Costs of custody are presented separately and not included under DJJ expenditures, because DJJ did not include the costs in the data provided. We have estimated them on the grounds that they were incurred costs of running the program. In theory, if the program were fully effective as an alternative to incarceration, the costs would not be incurred. They could be included in the DJJ costs, but since they are estimated costs they are of a different nature to the other DJJ expenditures. Their inclusion would change the weighting between Departments and the total for the three large Departments would constitute a higher proportion than currently indicated.

### **Client numbers**

The information on client numbers was obtained from the participant database developed and maintained within the Department of Juvenile Justice. This database allows each referral or participant's involvement with the program to be mapped thorough its various stages, from the time of first referral to the YDC, to the initial and comprehensive assessments, to acceptance on the program, and through to final exit from the program due to termination, self-withdrawal or successful graduation. This information has been statistically manipulated so that it can be used to calculate the total number of days of each client's association with the program over the eighteen-month period for which we have the cost data, and for each of the three six-month periods within it. Each client's involvement in the program extends from the date of their initial assessment to the latest date for which their status was entered into the database (although only the costs of the periods that fall within the 18 months enter into the average cost calculations). It should be noted that the term 'client' used here refers to both those young people who were referred to the YDC and those who actually became participants. The former are included in the cost calculations as they incurred expenditure within the program even though they did not become participants.

Table 7.3 summarises the client flow data by showing the numbers of clients in each six-month period, their status on the program (as determined at their status date) and the number of days spent on the program in each sub-period. The pattern of development of the program is clearly evident, particularly the growing number of young people who were either continuing on the program or completed it in later periods. It is worth noting that unsuccessful referrals also spend some time involved in the program for assessment purposes and do thus incur some costs, even though the number of days on average is relatively small. The number of days spent on the program by participants who were discharged or withdrew by their own choice without completing, on the other hand, was substantial.

**Table 7.3: Number of clients and days on program by status, July 2000 to December 2001**

Status During Period	July to December 2000		January to June 2001		July to December 2001		July 2000 to December 2001	
	clients	days	clients	days	clients	days	clients	days
Unsuccessful at initial screen	7	7	21	21	9	9	37	37
Unsuccessful at comprehensive assessment	4	94	6	153	8	154	18	408
Discharged	3	217	4	412	5	553	12	1,924
Self-withdrawal	0	0	3	182	10	1,038	13	2,021
Completed	0	0	3	405	7	848	10	2,553
Continuing on program	13	826	31	3,096	25	3,582	25	4,654
Total	27	1,144	68	4,269	64	6,184	115	11,597

Note: The final column of the table shows the totals over the whole period for unsuccessful referrals, those discharged or self-withdrawing and those completing. It should be noted that the total days spent on the program during the whole period 18-month period for these categories of client are not a sum of the days in the three separate six-month periods because some individual clients changed their status from 'continuing on the program' in one period to a different status in another period. Thus, for example, the total number of days for those completing the program over the whole period is greater than the sum of the days in this status for the three separate periods, because it includes days spent 'continuing on the program' in periods before the one in which they completed. For the same reason, neither the number of clients nor the on-program days in the row labelled 'continuing on the program' can be summed across the row, because it represents a status out of which people shift from one period to the next. Thus the client numbers and days in the final column (July 2000 - December 2001) for this row represent only the total days spent on the program by those who have entered the program at some point during the 18-month period and were still on the program at the end of it.

Table 7.4 examines the participant flow data over the 18-month window for which the cost analysis component of the evaluation is being undertaken. It should be borne in mind that the mean and median duration estimates relate to all participants who participated in the program at some stage during each period, and thus cover both complete and incomplete spells.<sup>20</sup> The table again highlights how the program evolved after a slow start in the initial six-month period. In the first half of the calendar year 2001, the numbers on the program at any one time increased from 13 to 31 and remained at around this level in the following six months. The number of successful completions was still low by the end of 2001, although the completion rate continued to rise after that date, as discussed above in Section 3.

<sup>20</sup> With this type of program the mean number of days would typically exceed the median as it does in the first two periods, due to a small proportion who stay a long time in the program. In the third period, the median exceeds the mean, as an effect of the cut-off date.

**Table 7.4: Youth Drug Court client flows, July 2000 to December 2001**

	July to December 2000	January to June 2001	July to December 2001	Total July 2000 to December 2001
Participants on program:				
- at beginning of period	0	13	31	0
- at end of period	13	31	25	25
Total clients during the period	27	68	64	115
Participants who graduated from program <sup>a</sup>	0	3	7	10
All clients - mean days	42.4	62.8	96.6	100.8
- median days	33.0	35.0	113.5	43.0
Participants who graduated from program (20) <sup>a</sup> - total mean days				289.2
- total median days				279.0

Note: a: As at 3 May 2002, an additional 10 participants had graduated from the program after the end of the costing period. Their days in the program were included in the calculation of total average days. Thus the mean for days on program is not directly comparable to that derivable from Table 7.3.

The table also indicates an increase in the mean (and median) program duration over the three six-month periods, from just over 40 days initially to almost 100 days by the second half of 2001. However, this does not in itself indicate a trend in longer durations on the program (although other evidence does suggest that this is happening). The numbers here are mainly an artefact of the maturation of the program, such that by the end of the second period it was possible for participants to have been on the program for a full year (which is the maximum currently allowable under bail provisions). This program maturation effect has produced a marked change in the distribution of participant numbers over the period, as can be seen from the change in the ratio of mean to median duration. Thus, in the first six months, the relatively large number of participants who stayed for short periods caused the median duration to fall below the mean; by the third six-month period, however, this situation had been reversed, with the median above the mean, indicating a more symmetrical distribution in which the number of short stays was matched by the number of very long stays.

Since any new participant coming on to the program now has an equal opportunity of remaining on it for the full available time (leaving aside individual characteristics or program experiences), one might expect this change in duration to have diminished since December 2001. As we have seen, an increasing number of participants choose to extend their initial six-month participation if they reach that point. However, it would be necessary to undertake a similar cost analysis for the 12 months that follow the period examined here to monitor further changes in what appears to be an evolving program. It may take some time before any reliable cost estimates emerge from this process.

### **Deriving average costs**

As explained above, the type of cost analysis conducted here involves estimating the average daily cost of providing the program to those participants or potential participants referred to it. This in turn involves combining the total cost figures shown

in Table 7.1 with the information on client days that has been derived from the client flow information provided in Table 7.4. The resulting estimates are shown in Table 7.5

The first row shows the total recurrent program costs, as presented in Table 7.1. Row 2 shows the total number of client days spent on the program in each sub-period, where the time spent on the program extends from the time of initial assessment to the date of leaving the program or the end of the sub-period for those still on the program. Row 3 repeats the information in row 2 only for those who actually graduated from the program in each sub-period (or were still on it at the end of the cost analysis period). Rows 4 and 5 then estimate the average cost per client day for all clients (as in row two) or for participant completions (as in row three) in each period.

In terms of total clients of the program, the average daily cost begins at a high level (\$1054) in the first six months, primarily because of the small number of clients (and program durations) during this initial period. Once the program becomes more mature, the average daily cost declines significantly, to \$426 (period 2) and \$359 (period 3). For the three periods together, the overall estimate of the average daily participant cost is \$452 – although it is well below this, at \$387, if the initial six months are excluded. These average cost estimates are substantially higher if they are estimated only on the basis of the days spent on the program by those who successfully complete it in each period (or are still on it at the end of the cost analysis period). In this case, the average costs for the three periods are \$3,037, \$764 and \$539, respectively. Here the average daily cost over the last two sub-periods is \$621 – still well above the earlier estimate.

We favour basing the average costs on the first method, primarily because this is more comprehensive in coverage and is not susceptible to variations in how each participant's exit from the program is captured in the client flow data base. If we accept this as the best estimate of the average daily cost of providing the program to participants, it is then possible to estimate the average cost of graduating from the program as the product of the average daily program delivery cost and the average period to graduation. The mean number of days to graduation for all YDC graduates was 289 days (note: this figure includes the time to completion of those who did not complete until beyond the eighteen month window used throughout the analysis), implying that the total cost per graduate lies between  $289 \times \$359 = \$103,868$  (if the lowest daily cost figure for the final six months is used, assuming costs and numbers in the program had stabilised somewhat) and  $289 \times \$452 = \$130,748$  (if the higher daily cost figure is used).

If, instead of the mean, the median number of days on the program is used, both total cost estimates decline further slightly, because the median duration (at 279 days) is lower than the mean figure of 289 days. In this case, the total cost figures are  $279 \times \$359 = \$100,274$  and  $279 \times \$452 = \$126,224$  respectively. The argument for preferring the median would be the tail-effect of few young people staying on the

program for a prolonged period, but since this is in practice constrained by bail limitations, the mean is probably more appropriate in this instance.<sup>21</sup>

If we were take a stricter measure based on the total costs divided just by the participants who graduated, the total per capita cost estimates would increase considerably, to between \$155,827 and \$219,837 per graduate, based on the mean number of days to graduation, or slightly less using the median.

**Table 7.5: Estimated costs per YDC client, July 2000 to December 2001**

	Total clients	July - Dec 2000	Jan - June 2001	July - Dec 2001	Total	Jan to Dec 2001
Recurrent costs		1,205,675	1,818,423	2,222,559	5,246,658	4,040,983
Total client days (initial assessment to exit or still on the program)	115	1,144	4,269	6,184	11,597	10,453
Total days for clients who completed or were still on the program	32	397	2,380	4,122	6,899	6,502
Daily cost per total client days	115	1,054	426	359	452	387
Daily cost per total days of clients who graduated from the program	20	3,037	764	539	760	621
Total cost per client <sup>1</sup>						
Mean 289 days x \$359 (\$452 or \$387)				103,868	130,748	111,723
Median 279 days x \$359 (\$452 or \$387)				100,274	126,224	107,857
Total cost per client who graduated from the program <sup>1</sup>						
Mean 289 days x \$539 (\$760 or \$621)				155,827	219,783	179,613
Median 279 days x \$539 (\$760 or \$621)				150,435	212,178	173,398

Notes: 1. These are average days to completion, including the period beyond the cost period (including Jan to May 2002)

Each of these figures seems high at first sight. However, it is important to bear in mind that these costs must be compared with the cost of caring for YDC participants in custody, since this would be a likely alternative in many cases if the YDC did not exist. These should include court costs, as well as those of any health, education or AOD services provided to young people while in custody. We have not been able to

<sup>21</sup> However, as shown in Section 3, the average length of time spent on the program has been increasing, with some extenders exceeding the 12-month period.

obtain any estimates of these additional costs. We also cannot estimate the total cost of custody without knowing the average period spent in custody for comparable participants. However, we do know that estimates of the average daily operating costs of youth custody in 2000/01 were \$406 (males at Cobham) and \$519 (females at Yasmar), while a more recent average estimate is \$508 per day for both sexes.<sup>22</sup> These daily custody estimates are somewhat higher than our preferred estimates of the daily cost of providing services under the YDC program, which are between \$359 and \$452 per client day, but it should be borne in mind that many YDC clients would have spent a shorter time in custody than on the program.

These comparisons suggest that purely in expenditure terms the YDC program may be relatively cost effective, compared to the obvious alternative. This does not take into account any other benefits deriving from the program, including reduced offending by at least some of the participants, as well as improvements in their health and social functioning. On the other hand, as noted above in Section 4, there are areas of service provision, including short-term accommodation, treatment services and education where the program appears to be under-resourced at present. Unless program funds can be reallocated to provide more efficient service delivery, meeting these needs would be likely to increase costs significantly.

## **7.5 Summary**

This Section has presented findings of the analysis of costs incurred for the first 18 months of the pilot program. There are various alternative ways of measuring unit costs in the program and these produce a variety of cost estimates. Our estimates so far suggest that a reasonable measure of per capita costs per day on the program (between \$359 and \$452) compares fairly favourably with per day costs of keeping young people in custody (around \$500 without counting additional services). However, a true comparison would need to take into account the relative time similar young people would spend in custody in the absence of the program. On the custody side, information is missing at present about the additional costs of court time and other services provided to young people in detention centres.

If costs are measured on the basis of only those who complete the program successfully it appears substantially more expensive, at between \$539 and \$760 per day per graduate. Even so, this comparison does not take into account other benefits deriving from the program.

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<sup>22</sup> Information provided by DJJ.



## **8 Conclusions and Recommendations**

The NSW Youth Drug Court has been an innovative program aimed at reducing offending and drug use amongst a small group of young people who have become involved in the criminal justice system at an early age. Often these young offenders have a range of other difficulties including poor educational achievement, dysfunctional family backgrounds and psychological problems. The approach has been to address the wide range of young people's needs and problems in a holistic way through intensive case management, involving cross-departmental and interagency co-ordination of expertise and resources. The program has been achieving tangible improvements in the lives of many participants, although it is possible that such improvements could have been achieved without the particular YDC program interventions.

Interagency co-ordination of the kind required for the YDC to operate effectively is almost always difficult because of the different ways in which departments and agencies operate, differing professional viewpoints and areas of expertise, and problems of communication. In this context establishing the YDC program has been a considerable achievement. The program has been implemented without major difficulties and most of the developmental challenges have been addressed in the course of the pilot. Some issues remain, however, and would need to be addressed if a decision is taken to extend or expand the program.

In this concluding Section we draw together the overall findings to address the key evaluation questions concerning program outcomes, operations, attractiveness to participants and resources. We also put forward some recommendations in relation to future program development.

### **8.1 Program Outcomes**

The main indicators of effectiveness for the YDC are the extent of participants' engagement with the program, reductions in their offending and drug use, and improvement in their health and social functioning. There have been methodological limitations to the evaluation in terms of being able to provide definitive measures of achievement against these indicators. To some extent these limitations are similar to those experienced in evaluations of drug courts in the US and elsewhere. Frequently data are often not available in the form or over the necessary periods of time to show whether program outcomes are sustained and whether they would have been achieved in any case without the particular intervention. In the case of the YDC, there are problems with data on post-program offending for the clientele that need to be addressed for the purposes of future program monitoring.

Many of the quantitative results summarised below therefore have to be treated with some caution and other findings are inevitably more qualitative in nature. In spite of these limitations, the data collected provide a useful picture of program impacts and experiences both for participants as a whole and for a sample group of participants who agreed to be interviewed for the study (around two-fifths of all those who participated during the pilot period).

### **Program engagement**

In the first two years of its operation as a pilot program the YDC received 164 referrals of young people from the Western Sydney area facing possible custodial sentences for serious offences, of whom 75 (46 per cent) were judged eligible and suitable for intensive case management. Of these, 29 (39 per cent) went on to complete the program to the Court's satisfaction, or to 'graduate'.

Over this period nearly half the participants chose to extend their involvement in the program beyond the initial six months, with some having several extensions. The average length of time on the program is now around 10.4 months and a few participants have been involved for more than 12 months. This is an encouraging sign of engagement by young people in the program, but it suggests that may be unrealistic in the future to view the 'normal' period of participation as being six months. There is also a strong view from program staff that six months is generally too short a period to achieve sustainable results, particularly in areas like education and training.

The problem with formally lengthening the normal period of mandatory involvement, however, is that the program might become less attractive to potential participants, particularly where the custodial sentence they might otherwise face could be significantly shorter than their time on the program.

There are some concerns about involvement for periods of more than 12 months, since remand procedures normally restrict extensions beyond this period. It is also important to retain the voluntary nature of extension, as making it appear an obligation may be counter-productive.

### **Activities undertaken**

Participants undertook a wide range of program activities at rehabilitation centres, at the Intensive Programs Unit and at the Induction Unit. Aside from drug rehabilitation itself, these included various forms of counselling, recreation, and education and training. Well over half the participants engaged in some kind of educational or vocational course, including a special, flexible TAFE-based program specifically designed for the YDC clientele. The Department of Education and Training has estimated that more than half completed these courses satisfactorily. Nearly one-fifth also achieved an employment outcome, either part-time or full-time, although the work was often short-term or casual. Seventy per cent of the young people interviewed said they had attended educational courses while on the YDC program and most found them valuable and satisfying. Overall, the educational element of the program is one of the areas of tangible success. At present there is no specific funding for education and training within the YDC budget and this would need to be addressed if the program continues.

### **Offending**

Data problems make it difficult to be precise about the levels of further offending by program participants and it has not been possible to compare these outcomes with those achieved by similar young people who did not take part in the program. The data on offences also only cover a short period after the pilot and do not allow any assessment of longer-term outcomes.

The best estimates suggest that up to 60 per cent of participants appeared in court on fresh charges while they were on the program, aside from minor breaches of bail conditions. More than half of those who did not offend while on the program went on to graduate from it.

Around 35 per cent of participants overall were not recorded as having offended between leaving the program and the end of 2002, and this included just over 40 per cent of the graduates. However, this includes a small number of participants who were still on the program at the end of 2002 and others who had only finished recently. A few participants had a large number of new offences recorded, but graduates appeared less likely to re-offend than those who did not complete the program. This is a further indication that for many of those involved successful completion of the program is associated with continuing benefits, at least in the short term. Graduation itself, however, is also likely to be linked to greater motivation on the part of particular individuals to deal with their problem drug use and criminal behaviour, so these results do not in themselves prove that lower rates of offending are a direct effect of the program intervention.

Even within the short period up to the end of 2002 nearly two-fifths of participants went on to receive some form of detention in the juvenile or the adult prison system, for either the original offences that brought them to the YDC or later offences. Thus for a substantial proportion diversion from incarceration may only be temporary.

### **Drug use**

There was also evidence of sustained reduction in drug use by a significant proportion of participants. It was difficult to determine accurately the level of drug use and dependency at the time of the interviews, but most said their use had decreased compared to three months before entering the program. Although there were some gender differences in responses about drug use, there were no noticeable differences according to drug of choice, with heroin, amphetamine, cocaine, cannabis and alcohol users all reporting a marked decrease in their drug use. Over half the interviewees reported using heroin as their main drug, while a further 15 per cent reported that they used mainly amphetamines. This is consistent with the pattern for the participants overall. Participants' final outcomes did not seem to be related to the main drug used, with heroin users more or less evenly divided between graduates and those who did not complete the program.

While the numbers were too small to comment on those who were terminated from the program by the Court, those who went on to graduate from the program reported lower levels of anxiety about missing their main drug of use and of feeling their drug use was out of control than those who terminated themselves from the program. Graduates also reported stronger desires to stop their drug use more than those who left the program voluntarily. Both groups reported a similar level of difficulty in stopping their drug use. This suggests that graduation tends to be linked to levels of motivation.

### **Health and social functioning**

Although methodological limitations make it difficult to determine the extent of health improvement that can be attributed directly to the program, nearly three-quarters of those interviewed in the first round rated their general health as much

better than six months previously. This is likely to be related at least partly to benefits gained from decreased drug use, having minor health problems addressed through the program (particularly dental work), better sleeping patterns, and regular eating while in rehabilitation facilities, in custody or in other accommodation arranged by the program. However, second round interviews indicated that this health improvement was not sustained over the longer term, suggesting that this may be a short-term gain from initial entry into the program.

In terms of mental health, participants scored lower on a standardised measure than both the general population and young unemployed Australians, although there is no population norm for the particular YDC age group. However, there was some improvement in mental health over the longer term, particularly for the young women. It appeared the mental health of Indigenous participants was lower than that for others, while those who graduated from the program scored higher.

While measures of social integration suggested that the interviewees were not especially socially isolated or experiencing major problems in social functioning, a high proportion mainly had friends who were other drug users, presenting a challenge for the program. Graduates reported knowing fewer people who were drug users than those who chose to leave the program, and those who chose to leave knew fewer people who were drug users than those who were terminated by the Court. This supports stakeholders' comments that the social milieu in which participants operated was often a key influence on their behaviour. This pattern was also observable for some of the other social functioning indicators.

## **8.2 The Program's Attraction for Eligible Offenders**

Although the program has been developing a good reputation within the juvenile justice community, the level of referrals and acceptances has been considerably lower than anticipated at the planning stage for program. There do not appear to be significant numbers of eligible young offenders missing out on the program and the main reason for low take-up appears to be that there are simply fewer young offenders who fall within the eligibility criteria and wish to participate than was originally estimated. While fluctuating, the numbers have stabilised at an average over time of around 35 new entrants to the program per year, and fewer than 20 on the program at any one time.

There does not appear to have been a significant increase in inappropriate referrals and the Court is keeping to the established eligibility criteria, in terms of age, levels of drug use and types of offences. Thus the low referrals numbers have not tempted the Court into 'net widening' to boost participation. Generally these criteria remain valid, as they keep the focus on the group of young people with substantial and entrenched drug use and criminal behaviour. There was also strong support for this continued focus from program stakeholders, although there were some differing views about how far the program can work effectively with young people with significant mental health problems.

Although young women were one of the target groups for the program, the number referred to the program has been relatively small and those who were referred were less likely than the young men to be accepted, or to agree to participate. They also appeared to be less likely to complete the program successfully when they do

participate and more likely to drop out of their own volition. Both female referrals as a whole and those who participated were more often heroin users and injectors than the men, and the female participants reported having started injecting earlier. Ways of improving the engagement of young women will need to be considered if the program is extended.

As was anticipated, a substantial proportion of the referrals in the pilot period were Indigenous, although they too appeared somewhat less likely than others to commence on the program. Around one-quarter of the participants were from non-English speaking backgrounds.

The participant interviews found a high degree of satisfaction and approval for most elements of the YDC program, although some also had criticisms of certain aspects. Results from second round interviews also indicated that this satisfaction was sustained over the longer term. Satisfaction with YDC magistrates, court processes, Legal Aid solicitors and case work staff was also high, and again, second round interviews confirmed these views were maintained over time. Participants appreciated the informality of the court processes and being able to talk directly with magistrates with a sense that they would listen. This made participants more able to speak openly.

Many saw the support and care they received from the YDC workers as the best thing about the program, while for others it was not using drugs any more or the chance to help themselves. The worse thing for some was the length of the program, or the intensity and difficulty of it, while for others it was not being able to live at home. Several participants mentioned the realisation that the YDC was trying to help and support them as a pivotal moment in a change in their attitude to the YDC, whether or not they eventually graduated from the program. Some were very aware that the YDC could only help them if they were ready to make a serious personal effort to change their patterns of crime and drug use.

Negative comments from interviewees included dissatisfaction with the time they spent in rehabilitation centres (and the counselling and other groups they attended there), being in custody too long, not liking or having personality clashes with some staff, not being able to live at home, and wanting to spend more time with family and partners. However, given the difficulty of the problems, crime and drug use issues that many of the young people in the group had, there was a surprisingly high level of satisfaction about the fairness of the program overall which was maintained over time. It would appear that from the participants' perception the program has been effective in balancing the necessary sanctions and restrictions with a degree of flexibility, freedom and independence for the young people. In many instances participants reported recognising that what the YDC was suggesting was the right thing for them, even if they did not like it at the time.

### **8.3 Critical Success Factors and Barriers to Program Implementation**

The implementation reviews highlighted a number of areas that needed to be addressed for the program to operate with optimum effectiveness and according to its original principles. Progress has been made on all these areas, but there are still some issues to be resolved. The experience of operating the pilot program has also raised some questions about program design that would need to be examined in any discussion of extension beyond the pilot period.

### **Program implementation**

Overall, the implementation of the program has proceeded without major difficulties, apart from the delay in establishing the Induction Unit. The program is now well bedded down within the youth justice environment and generally regarded favourably by external agencies. As a new program reliant on interagency work across several departments it has faced challenges, but the pilot model has proved flexible enough to adapt to these challenges.

There were no major changes in policy in the pilot period, but a number of procedures became more formalised through team meetings, through two Practice Directions issued by the senior YDC magistrate, and through the production of policy and procedures manual. Issues emerging as needing better guidance include processes for information sharing between the various departments and agencies involved, and agreement on the items on which it is legitimate to spend brokerage funds.

The most important change in the resource base for the YDC program was the opening of the Induction Unit in Liverpool in November 2001. This has provided a location for stabilisation of new entrants to the program. There are some differing views about the role of the Unit, including whether it is appropriate to use it for crisis accommodation when induction beds are unfilled and the length of time needed for the development of treatment plans.

### **Accommodation**

Accommodation for program participants was an issue identified early in the pilot as a major obstacle to the program's effective operation. Although there is still a general shortage of crisis accommodation suitable for YDC participants, particularly for young women, the situation has improved since then through partnerships forged with community housing agencies. Some of the available accommodation is designed for independent living, but participants often lack the skills and stability to make successful transitions to this kind of housing. Thus there is a need both for more supported accommodation and more training in life skills.

### **Detoxification**

There are mixed views about the need for specialist detoxification services for the YDC client group, but waiting lists are often too long to meet immediate needs. Thus many participants have been detoxifying in custody. This is a problem in that many accommodation services will not accept detention centres as proper locations for pre-housing detoxification. The Induction Unit has helped in this respect because new entrants spend time there stabilising after detoxifying and before moving on to other accommodation. Some detoxification services have only medication-based programs and these are not always seen as suitable for young people. Pharmacotherapy in general is used only minimally on the program.

### **Urinalysis**

Although program has a policy on the use of urinalysis to test drug use, there are concerns about inconsistencies in its application, and about the purpose and effectiveness of urinalysis more generally. There needs to be further clarification of practice if urinalysis is to be an effective tool for monitoring participant progress.

### **Residential rehabilitation and day programs**

There have been some difficulties with access to and use of residential rehabilitation programs, but these problems seem to have eased. Although most participants' treatment plans include residential rehabilitation, there is no consensus amongst stakeholders that this is necessarily the best form of treatment, but the Health-funded day programs in the community have been under-used in spite of efforts to improve knowledge amongst staff about their availability and functions. Where residential programs are used, there can be problems in participants' transition back into the community because of reduced tolerance to drugs and vulnerability to relapse. There is a need to develop more structured plans for support during this transition.

### **Sanctions for non-compliance**

Policies on sanctions for non-compliance with program plans remain a matter of some contention, although the Practice Direction on compliance provides a useful framework. There needs to be continuing discussion about consistency in dealing with breaches.

### **Graduation**

Graduates of the program appear to be achieving positive outcomes, but some issues are arising that will need further discussion. These include a need for more aftercare for those graduates wanting it, and more formal recognition that graduation involves different levels of achievement for different individuals. As part of this process the Court Team has introduced staged progress reviews over the course of the program to provide more formal feedback to participants and their families.

### **Program monitoring and management**

In a program involving several different departments as well as a number of external contracted agencies, program monitoring and management becomes highly complex. The YDC program is working relatively well in this respect, but there are still areas for possible improvement. In particular, there is currently no formal monitoring system across the program as a whole and operations are reliant on different departments collecting their own information. While communication between different stakeholders and organisations has generally been good, there have been some inconsistencies in reporting and some agencies see themselves as not always being kept properly informed. These difficulties have been recognised by the participating departments and a process is underway for development common monitoring requirements. This will be essential if the program is extended or expanded.

The current arrangements work partly because interagency cooperation has developed over the life of the pilot. Many of the initial difficulties with undefined roles and responsibilities have been overcome and are further clarified in the policies and procedures manual. Some problems remain, including include processes for sharing important information between different agencies, differences in organisational cultures, and difficulties of communication caused by the disparate locations of YDC staff. Efforts to address these issues were hampered in the early stages by high staff turnover. While this has now eased, questions of staff retention would need to be addressed if the program were to be expanded to other areas. There is also a strong argument for co-location of key services within the program.

Developments such as the regular JART/Court Team meetings and the more active role taken by the YDC Chief Magistrate have helped in cementing the practical operations of the program, but there is still a widespread view amongst YDC staff that the program has suffered from not having an overarching manager. This is another question for discussion if it is decided that the program should continue or expand.

### **Resources**

The resources currently available to the program appear to be broadly adequate for the number of participants, although issues of accommodation and access to treatment services will need to be addressed further if the program continues. Funding for education and training will also need to be secured. Staff workloads remain high but apparently manageable while participant numbers remain low. Some additional needs were identified, including more YDC-specific group counselling programs and counselling material, and higher levels of brokerage funds.

### **8.4 Legal Issues**

Review of the legal framework of the YDC shows that it is operating effectively within the bounds of its legislative framework and no major problems or legal challenges have arisen. However, there are several areas that present some problems in terms of lawfulness and fairness, and would need to be addressed, possibly by legislation, if it is decided that the program should be continued beyond the pilot period or extended to other geographical areas. In addition, there are certain operational areas that would benefit from the development of further practice directions and/or policy guidelines.

### **Eligibility criteria**

The Court has been adhering to the eligibility criteria specified in the original Program Plan and there is no evidence to suggest that 'net widening' is taking place, such that young offenders are being taken on to the program who might otherwise be eligible for cautioning or conferencing under the *Young Offenders Act 1997*. What is less easy to determine is whether any young offenders are falling *between* the two levels of treatment.

There is a view that these criteria may be too restrictive in excluding some young people who have pleaded innocent and then been found guilty, and some with more serious, ineligible offences but similar needs. The eligibility criteria might need to be reconsidered on these grounds in terms of the purpose and scope of the program if it is decided to retain or expand it. Some current restrictions may not be necessary or justifiable outside of a pilot scheme, but there may still be valid arguments for restrictions that limit the numbers eligible for the program to a level consonant with available resources.

A more immediate problem is the possibility of inducement created by the requirement to plead guilty. There is a concern, with some limited supporting evidence from participant interviews, that the attraction of the program for some clients might lead them to plead guilty to an offence that they would otherwise have defended.

### **Bail and custody**

The uses of bail and custody are the most difficult legal issues facing the YDC. The *Bail Act* has certain advantages for enforcing compliance with the YDC program, in that it has widely-understood and accepted procedures that allow swift recovery of participants who have absconded or otherwise breached bail conditions. Arguably the *Bail Act* does allow the imposition of custody through bail refusal in these circumstances within a Griffiths-type scheme, even though it is not meant to be used as a means of punishment. However, there is a question about whether *extensive* periods of custody can be lawful, bearing in mind the limitations on powers of detention imposed on the Children's Court by the *Children (Criminal Proceedings) Act*. These problems are compounded where custody is used because no suitable alternative accommodation is available, or when waiting for places in rehabilitation, and where there has been no direct breach of bail conditions.

Another difficulty with the use of bail as the power under which participants are held on the program is that recorded breaches of what are often deliberately onerous and intensively-policed bail conditions may have longer-term consequences for future bail applications. There is a good argument that the consequences may be disproportionate to the breaches and that breaches in these circumstances (particularly those of a therapeutic program) should be seen as irrelevant to future applications.

Although the majority of stakeholders interviewed did not see new legislation as necessary for the effective operation of the YDC program, some clarification is needed of the ways in which bail and custody are used, whether through legislation or through practice directions, especially if the program is expanded.

The *Bail Amendment (Repeat Offenders) Act 2002* came into effect after the legal issues review was carried out and it is not clear as yet how it will affect the YDC program. However, there are some potentially serious implications for the program's clientele and court decisions under the Act concerning young offenders will need to be monitored.

### **Sanctions for non-compliance**

Although there are currently procedures for sanctioning non-compliance with individual program plans, there is a view that these are inconsistently applied and ineffective. While a system of effective and graduated sanctions is necessary to promote compliance with program requirements, sanctions can be seen as unlawful or unfair in imposing a double punishment on participants who will later be sentenced for their original offence.

If a codified system of sanctions were to be introduced, there is a strong argument for putting this in legislation in order to clearly delineate the court's powers and to allow an appeal mechanism. Some of the problems of possibly unlawful punishment could also be avoided by incorporating a reward system (withdrawal of which would constitute one form of sanction), which also fits better within a therapeutic regime. If detention becomes one form of sanction, there is an argument for creating a separate YDC unit within the main juvenile detention centres, but this has clear resource implications.

## **Sentencing**

Sentencing patterns in the pilot period indicate that these are in line with the program requirement that sentences should be no more severe than if the participant had not taken up the YDC option. It appears that the practice emerging is for Magistrates at the time of sentencing to inform the participant of the minimum likely sentence applicable to the offence and then to apply specific discounting for achievements on the program and time already spent in custody. This is the intention of the pre-sentence model and has the advantage of allowing the Court substantial flexibility to reflect participants' progress towards rehabilitation. However, it can be difficult for Magistrates, when passing final sentences, to avoid being influenced by their knowledge of the participant's behaviour while on the program.

One disadvantage of the pre-sentence model is that it does not allow participants certainty about what they can expect at the end of their involvement in the program, and can lead to some seeing the program itself as the sentence, thus involving a perception of 'double punishment'. Amongst the stakeholders interviewed there was some support for a two-stage, 'indicative sentencing' model that would potentially combine a degree of certainty for participants with sufficient flexibility for the court in varying final sentences. Indicative sentencing, however, has an ambiguous position in law and may not be binding on magistrates.

It is suggested that sentencing policy needs to be reviewed once there is a greater accumulation of cases.

## **Conflicts of interest**

There are potential conflicts of interest in the Court Team structure because information can become available to members through group case meetings that would not normally be afforded to all parties in an adversarial court setting. Court Team members are aware of the need for careful management of the shifts between team consensus and individual professional responsibility. However, in order to avoid future problems (especially if the program is expanded) and to reduce personal stress for staff, there is a need for clearer guidelines on the use of privileged information. It may also help to specify the key points when an adversarial framework of justice should take precedence over consensual decision making.

## **Legal advice, participants' awareness and informed consent**

Knowledge of procedures, rights and punishment is a fundamental part of any criminal justice system. This is magnified in the YDC since it seeks to be a voluntary program. The assumption of voluntariness can only be upheld if participants exercise a choice to join the program from a position of clear knowledge and obvious awareness. The knowledge of possible consequences, limited rights and alternative punishments is critical.

Interviews with participants suggest that they were mainly satisfied with the quality of both legal advice and general information they received about the YDC program. The level of detailed understanding of the program and of the court procedures involved seemed to be fairly low, but this is likely to be the case for most courts. This is not surprising given the youth and circumstances of participants, and they themselves often recognise that they are at fault in not paying attention or taking care to absorb

information. However, it does raise some questions about the validity of informed consent, especially concerning the potential consequences of breaches of program requirements for future bail applications and the uncertainty about final sentencing in a pre-sentence program.

### **Special needs and discrimination**

There is no evidence of discriminatory treatment emerging within the YDC program on the basis of age, ethnicity, culture, gender, family status or disability. There are some practical difficulties with service provision for female and Indigenous participants, but these appear to reflect a more general shortage of appropriate resources within the juvenile justice and social welfare systems.

There are some concerns about whether it is appropriate to exclude young offenders with severe mental health problems, as well as those of drug use, from participation in the program. At present the program lacks the specific resources necessary to meet this need properly, but there are few other sources of support for these young people. This is a question that should be considered at a policy level in discussion about the program's possible extension and expansion.

### **The need for legislation**

There is a strong argument that the YDC needs a new legislative basis within the *Children (Criminal Proceedings) Act*. This is particularly the case if it is determined that a more formal system of sanctions is needed. Although the content of such legislation is largely a policy question, the aim would be to codify a sanction scheme for the YDC.

Overall, the need for legislation should be considered in relation to the possible transition of the YDC scheme from its pilot status to a permanent program. Current legislative powers, perhaps augmented and clarified by the greater use of Practice Directions, may provide sufficient guidance for the Court's day-to-day operation at present. However, this is not the case once the possibility of sanctions is considered, particularly if the concerns about the operation of the *Bail Act* are to be addressed.

## **8.5 Program Costs**

The evaluation has included an analysis of the costs incurred during the first 18 months of the pilot program. There are various alternative ways of measuring unit costs in the program and these produce a variety of cost estimates. Our estimates so far suggest that a reasonable measure of per capita costs per day on the program (between \$359 and \$452) compares fairly favourably with per day costs of keeping young people in custody (around \$500 without counting additional services). However, a true comparison would need to take into account the relative time similar young people would spend in custody in the absence of the program. On the custody side, information is missing at present about the additional costs of court time and other services provided to young people in detention centres.

If costs are measured on the basis of only those who complete the program successfully it appears substantially more expensive, at between \$539 and \$760 per day per graduate. Even so, this comparison does not take into account other benefits deriving from the program, including reduced offending by at least some of the participants, as well as improvements in their health and social functioning.

There appear to be sufficient resources going into the program at the present client level, although there are still issues about accommodation needs, access to some treatment services and educational costs. To meet these needs fully in the context of a continuing program would mean some significant increase in overall program costs, unless some existing resources can be reallocated to improve efficiency of service delivery.

## **8.6 Recommendations**

While it is not possible at present to state definitively that the Youth Drug Court program has been achieving outcomes superior to those that might have been gained through other forms of intervention, the overall view of the evaluators is that the program is having an important, positive impact on the lives of many of those participating. The unit costs of achieving these impacts on a group of young people with entrenched drug use and criminal histories do not appear to be greater than those involved in keeping them in custody.

Our key recommendation therefore is that *the program should continue and possibly be expanded to selected other geographical areas.*

However, this recommendation is subject to a number of issues being addressed at legislative, policy and administrative levels:

1. A new legislative basis for the YDC is needed, particularly to establish a codified system of sanctions for non-compliance with program requirements and to clarify the uses of bail and custody for participants in a pre-sentence program.
2. Further guidelines or practice directions need to be developed for the operations of the Court Team, to avoid potential conflicts of interest and to clarify the proper uses of information in a non-adversarial court setting.
3. A number of policy issues should be reviewed in the light of the pilot program experiences, including: program eligibility criteria; the optimum period for mandatory program involvement; the application of sanctions for non-compliance with program requirements; and methods of increasing the engagement in the program by young women.
4. Continuing discussion is also needed about the optimum combination of treatment options and the best use of services such as the Health day-programs.
5. The purpose and application of urinalysis should be reviewed to determine whether it could become an effective tool for monitoring participants' drug use while on the program.
6. Further co-location of different service elements of the program should be considered, with a view to improving communication and cooperative working. Other methods including a computer intranet for the program might also be examined.
7. To ensure the continuing inclusion of effective educational and training services within the YDC program, the costs of providing these services need to be incorporated into the main YDC program budget.
8. Any expansion of the program into other geographical areas needs to take into account the availability of key services such as stabilisation, detoxification and

short-term accommodation, and the cost of meeting gaps in such services where needed.

9. There is a need for more effective cross-departmental monitoring and recording of key program interventions and participant outcomes, based on an agreed set of indicators. This monitoring might include a single summary form completed for each participant at both entry to and exit from the program (where possible).
10. Better data are needed on offences coming to the attention of the police and the courts in order to determine accurately the level of offending by program referrals and participants and the dates when these offences were committed. We recommend that the Departments of Juvenile Justice, Attorney-General's and the Police Service work together with the YDC Registry and the Judicial Commission to develop a more effective, unified data system for this purpose.
11. The Departments involved in the YDC should consider whether better co-ordination and management might be achieved if a single manager were appointed with overall responsibility for the program, especially if the program were to be expanded.
12. Further development of the program should be reviewed in the light of findings from other interventions such as the MERIT scheme.



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## **Appendix A: Recommendations from the NSW Drug Summit for a Youth Drug Court and Government Response**

Extract from *NSW Drug Summit 1999: Government Plan of Action* (New South Wales Government, 1999, July).

### **Drug Court expansion**

**6.11 The current Drug Court trial be expanded to be available at other venues in NSW and the Children's Court be given comparable diversionary powers to the Drug Court.**

See also 2.5, 7.1, 9.17 and 11.28.

### **Government response**

The Government supports this recommendation.

#### *Youth Drug Court*

The Government is committed to extending the Drug Court program to young people and plans to implement a Youth Drug Court in Western Sydney on a two year pilot basis from July 2000.

The Youth Drug Court will be based largely on the adult Drug Court. It will combine intensive judicial supervision and case management of young offenders who are charged with criminal offences that result from drug misuse. These young people will be referred to programs aimed at eliminating or reducing their drug misuse and related criminal behaviour and increasing their ability to function as law abiding members of the community.

For the purposes of the pilot program, it is envisaged that the Youth Drug Court will be conducted within the existing framework of the Children's Court with Drug Court type powers.

The Youth Drug Court would use a team similar to the adult Drug Court but modified for young people. It is envisaged the team would include legal representatives, juvenile justice officers and health representatives.

The pilot would involve the development of eligibility criteria and a reward and sanction philosophy suitable to young people. Unlike the adult Drug Court, it will target alcohol abuse as well as illicit drugs.

The Youth Drug Court will include enhanced and new treatment services tailored especially to the needs of young people, including culturally appropriate services. Research suggests that young people will need more intensive general lifestyle interventions through education, employment, housing, and peer/parent relationship services.

The Government is seeking Commonwealth funding under the National Illicit Drug Strategy in order to provide enhanced services in Western Sydney for young people with drug problems dealt with in the Youth Drug Court and under the Young Offenders Act (see 6.5). These services would include:

- additional rehabilitation beds for young people in Western Sydney
- an extra five full time youth and family workers operating in Western Sydney
- expansion of the Department of Juvenile Justice Intensive Program Units operating at Blacktown and Liverpool (which provide intensive counselling and group therapy, usually as an alternative for a detention order to serious young offenders)
- a trial scheme of integrated services and support to be run by the Department of Community Services which will purchase treatment, counselling, housing, education, and other support services for young offenders.

In developing the program, the Government will work closely with key stakeholders including the Commissioner for Children and Young People and the Senior Children's Court Magistrate.

As with the adult Drug Court, the Youth Drug Court will be subject to full evaluation.