



Institute of Child Protection Studies

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**ARC Discovery Grant Project: Challenges,  
possibilities and future directions: A national  
assessment of Australia's Children's Courts.  
ACT Report**

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## INTRODUCTION TO THE RESEARCH

This report summarises the findings of the Australian Capital Territory (ACT) component of the ***Australian Research Council funded Discovery Project: Challenges possibilities and future directions: a National Assessment of Australia's Children's Courts***. This project was funded by an Australian Research Council Discovery Grant. The ACT study was one of nine parallel studies – one covering each state and territory and the ninth, based on the eight others, focusing on Australia as a whole. Each study had its own set of Chief Investigators and in the ACT these were Professor Peter Camilleri and Professor Morag McArthur. A book, published by Springer, is under preparation which will outline the findings of each jurisdiction and of the national research project.

The aim of the study was to address the following research questions: (1) What is the contemporary status of, and current challenges faced by, Australia's Children's Courts in relation to both their child welfare and criminal jurisdictions from the perspective of its judicial officers and other key stakeholders? (2) What issues and challenges do judicial officers and other key stakeholders believe the Children's Court will face over the next decade? (3) What are the judicial officers' and other key stakeholders' assessments of, and degree of support for, child welfare and juvenile justice jurisdiction reforms that have recently been canvassed in Australia and overseas?

This report very briefly overviews the work of the ACT Childrens Court<sup>1</sup> and outlines the results of interviews conducted with key stakeholders in 2010. The Australian Catholic University's Human Research Ethics Committee and the Research Committee of the ACT Department of Disability Housing and Community Services<sup>2</sup> approved the research.

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<sup>1</sup> In ACT the Court is termed the 'Childrens Court' (section 288 of the *Magistrates Court Act 1930*) not the 'Children's Court' which is the term used in many other states

<sup>2</sup> On 1 July 2011 the Department of Disability Housing and Community Services, which previously contained the Office for Children Youth and Family Support, became the Community Services Directorate (CSD) as part of ACT Government restructure of all ACT Government Departments into one ACT public service. The head of the CSD is the director-general.

Stakeholders almost without exception enthusiastically participated in the research which was seen as a step towards filling a knowledge gap. This reflected one of the key findings in the ACT: there is a common and strong desire among people involved in the Childrens Court that the community does the best that it can do for the children and young people who come before the court as part of care and protection or criminal proceedings. There are differing opinions about how this can best be accomplished. Since completion of data collection for this research (December 2010) considerable changes have occurred in both care and protection and youth justice systems in the ACT which are not reflected in the findings presented here.

## **BACKGROUND TO ACT AND THE CHILDRENS COURT**

### **The ACT**

The population of the ACT is 347,800 (ABS, 2009a) with 18.6% of this population aged 0-14 years (ABS, 2009b). The 2006 census data, shows that 1.2% of the population identify as Aboriginal or Torres Strait Islander (AIATSIS, 2009). The ACT was the first Australian jurisdiction to enact legislation on Human Rights (*Human Rights Act 2004(ACT)*) which provides a human rights framework for government and nongovernment services in the ACT.

The Office of Children Youth and Family Support (OCYFS) located within the Community Services Directorate (CSD), has responsibility for both youth justice and the statutory care and protection of children and young people in the ACT. This work is legislated under the *Children and Young People Act 2008 (ACT)* (the Act).

### **History of the Childrens Court in the ACT**

The Childrens Court in the ACT is part of the ACT Magistrates Court dating back to at least 1937. Prior to the *Child Welfare Ordinance 1957 (ACT)*, NSW laws applied in the ACT (Seymour, 1988). This was replaced by the *Children's Services Ordinance 1986*. Following self-government in the ACT, this ordinance was converted into an enactment, the *Children's Services Act 1986 (ACT)*.

The *Children and Young People Act 1999 (ACT)* replaced the *Children's Services Act 1986 (ACT)*. It introduced the concept of 'parental responsibility' to replace notions of custody,

guardianship, and wardship and retained the paramount decision-making principle of 'the best interests of the child'. It also emphasised cooperation with children and families through provision of voluntary support to families and the introduction of voluntary family group conferencing as a way of families reaching agreement about ways they could continue to care for children (Part 2). Enduring Parental Responsibility was introduced as a new care provision for children in stable care for 2 years (Section 260).

### **Current legislation**

The *Children and Young People Act 2008* (ACT) included 'youth justice principles' which aimed to give greater recognition to involving children and young people and ATSI communities in decision making, timely access to legal assistance and expeditious legal proceedings, ensuring detention is used only as a measure of last resort and for the shortest appropriate period of time, and 'promoting the young offender's rehabilitation whilst balancing the rights of victims and the community's interests' (Legislative Assembly for the ACT, 2008, p.4). They are intended to be interpreted in the light of human rights instruments such as the Convention on the Rights of the Child.

The Act emphasizes that the best interests of the child or young person are paramount. Throughout the Act there is an emphasis on taking the views of children and young people into consideration and in including Aboriginal and Torres Strait Islander (ATSI) people in the care and protection of ATSI children.

In the ACT, a child under 10 is not criminally responsible for an offence. A child older than 10 or under 14 years of age can only be criminally responsible if they know that the conduct is wrong (ABS, 2009c; South Pacific council of Youth and Children's Courts, 2005, p.3).

The Chief Magistrate declares a magistrate to be the Childrens Court Magistrate for a period of up to 2 years. Other magistrates may be assigned to act as the Childrens Court Magistrate by the Chief Magistrate when the Childrens Court Magistrate is unavailable. The Childrens Court is generally procedurally the same as the Magistrates Court and is bound by the rules of the Magistrates Court. The Childrens Court is a closed court, that is, only those permitted under the legislation can attend.

## **Children and Young People involved in the Court**

Of the 385 young people adjudicated (charged or heard) in 2009-2010 in the Childrens Court in the ACT for alleged criminal offences, the highest proportion of final charges (109) was for 'acts intending to cause injury'. This was a 55% increase in that category from 2008-2009 (ABS, 2011). Of the 332 defendants found guilty, 31 were given custodial orders (including in correctional institution, in the community, or fully suspended sentence), and 301 were given non custodial orders (ABS, 2011). ACT Policing statistics for 2009-2010, show that 607 young people were taken into police custody. The proportion of young people identified as Aboriginal and Torres Strait Islander in Bimberi Youth Justice Centre on either remand or committal during the quarter to 30 September 2010 was 26% a dramatic overrepresentation of Indigenous young people (ACT Department of Justice and Community Safety, 2010).

In relation to care and protection matters in the financial year 2009-2010, 246 applications for court orders were finalised and 234 applications were commenced. 108 emergency actions were taken<sup>3</sup>. In 2009-2010, 331 children in the ACT were admitted to care orders (this includes voluntary agreements not requiring court) (AIHW, 2011). Of these children admitted to care orders, 40% were aged 0-4 years old. In the ACT, there was a decrease in the number of children admitted to out of home care in 2009-2010 with 532 children living in out of home care on 30<sup>th</sup> June 2010 (AIHW, 2011). One hundred and twenty five of these children (23%) were identified as Indigenous (AIHW, 2011), once again reflecting the over representation of Indigenous children in out of home care across Australia.

## **RESEARCH METHODOLOGY**

### **Participants**

As the ACT is a small jurisdiction it was possible to invite a broad range of stakeholders to be involved in the research. Forty six ACT Childrens Court stakeholders were interviewed or participated in a focus group between April 2010 and November 2010. These included the former and current Childrens Court Magistrates; legal aid practitioners; Director of Public Prosecutions lawyer; ACT Government Solicitor lawyer; private legal practitioners; Childrens Court Registrars; Public Advocates; Children's Commissioner; out of home care providers,

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<sup>3</sup> Information provided by Office for Children Youth and Family Support (OCYFS)

including the Foster Care Association of the ACT; Chief Executive of the then Disability Housing and Community Services (now director-general of the Community Services Directorate); Senior officers and front line workers in the OCYFS ( the statutory care and protection agency in the ACT), the Family inclusion Network; Department of Justice and Community Safety (now Justice and Community Safety Directorate) including Ngambra Circle Sentencing staff, restorative justice staff and other staff from the Legislation and Policy Branch; and ACT Policing.

### **Analysis**

With the agreement of the participants, all interviews were recorded and professionally transcribed. In this qualitative study, interviews were imported into NVivo and analysed thematically initially according to the questions asked. This is qualitative research and as such the numbers of people expressing which view point are not given: the key themes, where views are common or divergent, are outlined. The boundaries of the national research project precluded undertaking the often complex human research ethics applications needed to allow children, young people and their parents to be a part of this project.

## **FINDINGS**

This section provides a brief overview of the views of participants about the court, its current functioning, challenges and issues, how it interacts with other parts of the youth justice and care and protection systems and opportunities for change. The interviews were guided by national project research questions, and the areas described below relate to these areas of inquiry together with some locally emerging matters.

### **Philosophy and purpose of the Court**

There was a general view amongst respondents that in terms of youth justice the philosophy of the Court is to balance protection of community/ punishment/deterrence with rehabilitation/ needs /best interests of young people. Most stakeholders in the youth justice area considered that the Court and all the key players were focused on reducing recidivism in young people. Some stakeholders felt that the court appearance was an opportunity for effective intervention in a young person's life.

In terms of care and protection, there was a general agreement that the purpose/philosophy of the Court is to determine the best interests of the child when the issue has not been able to be settled by other means.

There was considerable diversity in interpretation of the term 'best interests of the child'. In the care and protection arena, the underlying debate appeared to be about people's views on attachment, permanency and contact. One group thought that another group was prioritising parents above children in their recommendations and advocacy. On the other side of the coin, some thought the importance of the relationship of children with their parents was ignored by another group. A few people raised the importance of the young people and children's views being clearly heard to assist in determining best interests. There was diversity in views about how effectively this was achieved.

### **Strengths of the Court**

Most people considered that the *case conferencing* for care and protection matters, run by the court registrars, was a positive aspect of the Court. The main reasons given were that it was less formal and parents had a chance to be heard. It was noted that the majority of matters were settled at conference. An appointment system meant that conferences generally ran to time.

Having a Court that specialised in children, with a *specialised Childrens Court Magistrate* was highly regarded. This meant that the magistrates and other legal personnel could develop their knowledge and expertise in the needs of children and young people and the service system which surrounds them.

The fact that ACT is a *small jurisdiction* was seen by some as a positive in two ways. Firstly, collaborative relationships were facilitated by the size of the jurisdiction. A number of stakeholders mentioned the magistrates' accessibility for discussions about policy and procedure, technical issues and wider service issues relevant to the Childrens Court: there is an 'openness' to look at new ways of doing things. Secondly, the small jurisdiction also means that families become well known to the judicial officers in the court and the professionals in the service system. This provides contextual knowledge of the families. It was acknowledged that this can have its complications: a magistrate or other legal



practitioner can know more than is admissible in the matter before them and cannot allow that to influence the outcome.

The particular *restorative justice* (RJ) system in the ACT was also seen as a strength in the court system for youth justice clients providing a 'tailored or individualized process for justice' (Hinchey, 2006). An important feature of the ACT model is that young people who have committed serious offences can participate in RJ: a victim does not have to make the choice between the young person being prosecuted and participating in RJ. In the ACT restorative justice can occur at every stage of the criminal justice process in the juvenile jurisdiction. ACT Policing, the Office of the Director of Public Prosecutions (DPP) and ACT Childrens Court can refer 'offences' to restorative justice in conjunction with court processes. Police can refer in the first instance to the restorative justice unit, and if they do this before charging, referral to the restorative justice unit can be diversionary. Otherwise it is parallel to the court process.

### **Changing populations**

The main changes in characteristics of court users noted in the youth justice area were: more young women coming before the court; more family violence where the young person is the perpetrator; more mental health issues in younger young people; and more multiple drug use in younger people. In care matters the main change observed by many people was the higher level of complexity in families where children were the subject of care order applications. This includes mental health, drug and alcohol, domestic violence, impacting on families and the care of children.

### **Interaction between care and protection, and youth justice**

A number of participants suggested that many young people in who appear in the Childrens Court for criminal offences were or should have been in care prior to their alleged offences and/or were currently experiencing abuse and neglect. The priorities for child protection agencies with limited resources are seen to be the care of babies and young children. Some participants suggested that older children and in particular adolescents may not be seen as a high enough priority to have their care and protection needs met and that consequently

they may be charged so that they are brought to the attention of authorities<sup>4</sup>. One lawyer explained her viewpoint on this:

Nobody is going to take any notice of them unless they're in the criminal system because a 14 or 15 year old can protect themselves. Care and Protection are overwhelmed with the number of babies and toddlers and under 10's they have. Once they're 14 they can walk the streets themselves as far as anybody seems to be concerned and you just find that the Police sometimes just – sometimes – I mean I've had Police almost in tears because of the situations they've found people in and so many Police are really young and haven't necessarily dealt with these sorts of things before.

The 'outsourcing' of residential care services was criticised by some participants as they felt that the authorities did not have a close watch on these vulnerable children. (It is an Australia-wide trend to outsource foster care and residential facilities for children and young people). It was also suggested that unless the residential services had highly skilled staff, they may find it difficult to respond to behavioural disturbances, calling police to deal with 'outbursts'. This could escalate the young person from needing care and protection into being an offender.

### **Representation**

Some participants were concerned about both the quality and extent of representation for both families and children involved in care matters and young people involved in youth justice court appearances. There was a strong sense that there was discrepancy in representation between the Director-general and parents in care and protection matters due to the unequal resources available for legal representation. Families were seen to be battling 'the enormous beast of the court'- the court system and the authorities who were bringing them to court.

Participants reported that there was marked variability amongst court users in their understanding of court processes and the implications of those processes. Although some parents and young people were thought to have a clear idea of what was happening, others seemed overwhelmed and to have little comprehension of the meaning of court outcomes. This variability was seen in both the criminal and care and protection areas.

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<sup>4</sup> After the data collection period of this research the ACT Human Rights Commissioner conducted an inquiry into the ACT youth justice system including Bimberi Youth Justice Centre( <http://www.hrc.act.gov.au>) and the ACT Government has announced comprehensive reforms including increased diversionary procedures for young people (<http://www.dhcs.act.gov.au/ocfyfs>)

It was noted that Legal Aid was limited in its resources and so legal aid funding for cases was capped at a rate much lower than private lawyers to whom legal aid referred could gain from private work. One lawyer suggested that the hourly rate was less than half what could be earned privately and yet ‘if you're dealing with kids, it takes a different skill set and it takes a lot more time’. It was suggested that for this to change, Government would need to agree that families who contested care proceedings should get representation. These would only be a small percentage of families who go through the court: most matters are settled by conferencing (in 2009-2010 16 or 6.7% of applications went to a contested hearing)<sup>5</sup>.

There were variable views expressed about the effectiveness of child representation. Sometimes the child representatives were seen as representing the interests of the parents and sometimes the parents’ and child representatives were seen as supporting the views of the Director-general in this highly contested area. It was agreed that child representation was vitally important. Participants noted that under the legislation the child representative has to make it clear whether they are representing the child’s best interests or acting under instruction. Concerns were expressed about the skills of some child representatives.

### **Training needs**

Most participants identified the need for training of all personnel in each other’s roles and ways of working. It was an experience shared by most participants that other ‘players’ in the Children’s Court did not fully understand what their role was, the resources available and the constraints on that role. Specific training needs identified related to children and young people: how to work with young people, the evidence base for intervention with young people and child development. A number of the lawyers noted that there was no specific training on care and protection matters by the legal profession. While many of the above suggestions about training were directed to legal professionals so that they could better understand the psychological, biological and social context for children and young people, it was noted that case workers and other non-legally trained people needed more training on legal processes.

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<sup>5</sup> Information provided by Office for Children Youth and Family Support

## **Court facilities**

There were concerns raised about court facilities, mainly relating to the lack of privacy in the waiting area. The main messages were that:

- effective representation and communication was compromised. For example young people give instruction to their representatives under chaotic conditions. This could be in the same area as care and protection workers communicating with families;
- young people not involved in the proceedings meet up at the Court with their mates and perhaps discuss their criminal activity over the weekend;
- families and some young people could find this environment intimidating. It was not regarded as child friendly, with the exception of the case conferencing room which was in a horseshoe arrangement rather than a formal court; and
- the environment was experienced by some as generally unsafe with the potential for violent episodes.

Another concern raised was that of young people on remand in the holding cells, waiting for their court appearance. This was the subject of a research project undertaken by the Public Advocate (Public Advocate of the ACT, 2010). The Court's practice is that young people on remand and returning to Court from the Bimberi Youth Justice Centre are heard first in Court. However, some participants referred to situations where there were numbers of cases to be heard and young people on remand waited in cells for a number of hours or waited for the Court transport unit to return them to the Youth Justice Centre. The use of technology was raised as a possible alternative for young people where there matters are only going to be mentioned or the case adjourned. However another response to this was that there would be a limited number of situations in which this could be used, as there would need to be provision for private consultation between the young person and their legal representative.

## **Aboriginal and Torres Strait Islander children and young people**

The overrepresentation of Aboriginal and Torres Strait Islander peoples in the youth justice and child protection systems was identified by most participants as problematic. A need for more workers (with legal qualifications and workers in care and protection) with appropriate cultural backgrounds to work with Indigenous children and young people was identified.

A significant development has been the referral by the court of specific cases of criminal matters of Indigenous young people to the Ngambra Circle Sentencing Court. In 2010 this function was moved into the Restorative Justice Unit of the now Justice and Community

Safety Directorate. At the time of the interviews, a strengthening process was in place to train panel members and embed policies and procedures for the Ngambra Circle Sentencing Court. In care and protection, the development of Indigenous cultural plans for children was seen as a step in the right direction though there was awareness that the expertise to make sure that the plans were appropriate was not always available. There was concern expressed that in some care proceedings with Indigenous children, parties ‘tip toe’ around the issues, ‘try too hard’ and do not address the situation that the child is in and as result children may remain at risk.

### **Other issues in youth justice**

Participants acknowledged that young people on charges also had significant welfare and wellbeing needs. The Act provides the court with a rehabilitation focus. However, as many young people are enmeshed in serious and complex life situations it was acknowledged that rehabilitation may take significant time and resources.

Although participants acknowledged that police have a range of options to deal with young people including diversionary options (cautions, referral to agencies, referral to restorative justice), they also noted situations where there were very few options other than charging the young person. The Youth Justice Centre was often used for accommodation and/or for to ensure the safety of the young person. Magistrates may have no alternative but to remand in detention<sup>6</sup>. Many participants expressed the view that remand and/or sentencing to the youth detention centre had little deterrent effect on criminal behaviour, but may provide a sense of security and structure for the young person which they do not experience otherwise.

It was noted that family violence and other criminal activities may overlap with mental health issues and there is a lack of care options for affected young people. Participants suggested that police may charge a young person who has committed very serious offences yet if they were an adult with mental health concerns they would be admitted to the psychiatric facility of the hospital; police may be reluctant to take a child or young person to

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<sup>6</sup> After completion of the data collection for this research the ACT Government announced the implementation of an afterhours bail service for young people ([http://www.dhcs.act.gov.au/home/publications/annual\\_reports/2010\\_-\\_2011](http://www.dhcs.act.gov.au/home/publications/annual_reports/2010_-_2011))

the adult mental health facility due to concerns for their safety. There was recognition of a need for a secure facility (mental health or drug and alcohol treatment) for young people.

For young people the more time between an event and the consequence the less connection they may have to it. The time delay between being charged and being sentenced can be very disconcerting for some young people. They may have matured significantly since the time of the offence and the sentencing. There are conflicting views amongst stakeholders about whether rehabilitation can and should begin prior to the finalisation of matters in the Court. Some argue that it is only when the court matter is finalised that rehabilitation work can begin with the young people and others believe that it is possible and that young people can benefit from this work prior to finalisation.

The issue of bail conditions was raised by nearly all participants concerned with young people in the criminal justice system. Young people facing charges on a range of offences may have conditional bail imposed. The young person may be obliged to fulfil as many as 10-12 conditions. Many of these will be aimed at rehabilitation – school attendance, seeing a counsellor, residency directions, curfews, who they can associate with, etc. Many of these conditions are imposed to keep the young person safe, provide structure for their lives and reduce the risk of reoffending. It was suggested that young people who offend often have many disadvantages in their lives, including impulsiveness, and they may find it impossible to keep all the bail conditions. Consequently they and they may face court again due to breaking bail conditions.

### **Care and protection specific issues**

The Director-general pays for *assessments* of children's situations, whether they are done internally in the OCYFS, or by external consultants. This system was seen to contribute to inequality between the Director-general and the families involved in court proceedings, even if the quality of the reports is very good. Because there is no provision for funding of assessments by the Court itself, the Director-general is required to pay for assessments if the Court requests it. It was noted that this situation was in contrast to the Family Court which has the resources to order its own assessments of children's needs.

*Contact* was also a contested topic and reflected underlying differences about permanency and attachment. The legislation provides for contact to be determined according to the care

plan that follows the granting of orders. This means that the Director-general can change contact arrangements as circumstances arise, and the Court is not necessarily involved in this. This is designed to limit unsettling 'toing and froing' to the Court for the child, carers and family. However, it also means that parents and others may not have the contact arrangements they wish and do not have easy access to the Court if there are disagreements between the Director-general and the family.

The lack of *support of families after the children are removed* and orders are made was a raised as a concern. It was noted that the resources appear to follow the child, not the family. When parents are not supported to deal with complex needs like mental health, drug and alcohol and poverty, other children can be born to these families and the same child protection issues can occur.

## **ATTITUDES TO REFORM**

Everyone was interested in improving the court processes for children, young people and families although the degree and level of reform desired varied between participants. Both magistrates were keen to facilitate changes to enable better outcomes for young people, children and families. One magistrate had extended the availability of circle sentencing to Indigenous young people, which had previously only been available for adults. The other magistrate at the time of interview was undertaking the required processes to establish a problem solving drug and alcohol court for young people in the ACT.

A number of people identified the adversarial framework of Australia's legal system as being a constraint to effective decision making for young people, children and families. They pointed to the possibilities of problem solving or inquisitorial approaches to decision making as offering a better way of doing this business. Particular models such as the Scottish Panel System, drug courts, the European inquisitorial tradition and an increased role for family group conferencing were identified. However there was limited motivation for wholesale change to the current system; rather there was a recognition that other models are worth noting to continue the process of improving the Childrens Court.

Other needed improvements which were identified by participants included:

- more privacy in the waiting room facilities, to enable young people and families to interact confidentially with legal representatives and case workers;
- more security in the waiting room of the court;
- better resourcing for legal representation for children, young people and families so that they can spend more time with clients;
- training for all stakeholders on the issues which relate to their work in the Childrens Court;
- more resources for early intervention for families, carefully managed family group conferencing prior to court action and support for families after children are removed from their full time care to minimize further harm to those families and other children;
- more options for young people both for diversion and disposition. In particular therapeutic accommodation which can attend to mental health and drug and alcohol needs;
- less turnover, full staffing of care and protection and youth justice agencies; and
- further attention to the community needs of Indigenous young people. The circle sentencing court and its strengthening project was seen as a way of progressing this.

There was less interest expressed in finding alternatives to the criminal business of the Childrens Court. However there was interest in increasing diversionary and therapeutic accommodation options so that some young people do not need to be before the court for welfare, mental health and drug and alcohol and other complex needs.

Subsequent to the data collection period of this research there have been changes: the ACT Government issued a discussion paper promoting more diversionary options for young people (ACT Department of Disability Housing and Community Services, 2011) and an inquiry into the Youth Justice in ACT recommended, amongst other things, more diversionary approaches and greater use of restorative practices (Roy, et al., 2011) which are being followed up by ACT Government.

## **DISCUSSION**

There appear to be two key tensions underlying the responses of participants. The first, relevant to the care and protection function of the Court, is about permanent care decisions for children. All participants acknowledged the need for individually based decisions about children's well being and safety. One group emphasised that the best interests of children were promoted by ensuring that parents had every opportunity to maintain a continuing relationship with their children. There were some in that group who thought the OCYFS, through the Director-general, exercised undue power over parents' contact with their



children. There was another group of participants who thought that parents' right to contact was unduly emphasised by other parties at the expense of the best interests of the child. This is a complex area where research is continuing and where knowledge is continually expanding.

The second key tension is the extent to which young people who offend need to be treated as offenders or as young people in need of care and protection. The legislation tries to balance the two and in practice the balancing is often limited by options for diversion or suitable care and accommodation. It was recognized that many young people who offend have suffered disadvantage and sometimes neglect and abuse. They may have been or currently already under the care of the Director-general.

From analyzing the participants' narratives it is apparent that the Childrens Court functions in two very distinct and only occasionally overlapping ways: care and protection and youth justice. Most of the participants are engaged with one or the other of the Court's functions and their understanding of the role and philosophical underpinning of the Court is from that particular perspective. There is no doubt that the Court deals with a wide range of children and young people. But what sticks in the minds of many participants are the situations where insurmountable problems exist and the way to find solutions to what many term '*societal issues*' is not apparent. Many participants were supportive of a shift from the adversarial model currently embedded in the Australian tradition for care and protection matters. There was less enthusiasm for alternative models for dealing with criminal matters which come before the Childrens Court. Particular events (an offence) bring a young person to the attention of the Court and the focus is on the offence. Many young people are in considerable need and often the youth justice system is accustomed to dealing with highly problematic situations. However the focus is on the 'deed' and while the 'needs' are looked at, the lens in which the young person is viewed is through the criminal justice framework.

The participants in this project expressed an openness to change, providing the Childrens Court Magistrate is integrally involved in the design of change and that reforms are seen as: promoting the best interests of children and young people; providing a just and fair process based on human rights and the rights of the child; and attending to the community's needs for responsible behaviour in its citizens as well as the needs of young people. The

participants were limited in their knowledge of systems and structures which could provide a different way of doing things: this was the key constraint on possibilities for change identified in the ACT.

## CONCLUSION

This research indicated that in the ACT there is immense good will and commitment among Childrens Court stakeholders to making systems work fairly for children, young people and families to promote the wellbeing and safety of children, young people and the whole community.

The conundrums that have bedevilled Children's Courts in many jurisdictions are also experienced in the ACT: Is an adversarial system the best way to make decisions about the care and protection of our vulnerable children and young people? And what is the best way to respond to children and young people who have been deeply traumatised and are now engaged in criminal activities as a consequence? There is a need to hear the voices of children, young people and their families in relation to their experiences of the Childrens Court-this is an area for further research attention.

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