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HOBART SPECIALISED YOUTH JUSTICE COURT PILOT

Abbreviations

CPS – Child Protection Services

DHHS – Department of Health and Human and Services

DoE – Department of Education

HSLO – (DoE) home school liaison officer

YJS – Youth Justice Services

SYJC – Specialised Youth Justice Court
Acknowledgements

On behalf of the Magistrates Court I would like to thank the Evaluation Reference Group for providing initial advice on this evaluation, and the Pilot Steering Committee for overseeing the process and providing feedback on earlier drafts of this report. As a Court employee who was involved in the Pilot, I cannot and do not claim complete impartiality in the evaluation that is presented in this report. I am confident nonetheless that the report represents the range of views held by the professional participants in the Pilot.

During the course of the evaluation, I have been assisted by many people.

I particularly wish to thank the young people and the professional stakeholders who agreed to be interviewed for this evaluation.

I would like to thank Stuart Oldfield and Veronica Young (Department of Health and Human Services) and Toni Lee (Save the Children) for facilitating access to the case study participants; Dianne Lloyd for her assistance with the voice recordings; and Jarrod van Arkadie and Katarina Gauden for collating information on the case study participants and transcribing the stakeholder interviews.

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Hobart, September 2013
Executive summary

The Specialised Youth Justice Court Pilot commenced operation in the Hobart registry of the Magistrates Court of Tasmania in January 2011. The evaluation period ranges from commencement until September 2012. The Pilot will formally end with the Magistrates Court’s acceptance of this report in October 2013. If the recommendations of this report are accepted, the SYJC will continue in the Hobart registry of the Magistrates Court, and be adopted in Launceston in 2014.

The Specialised Youth Justice Court operates as a specialist list in Hobart, but it is not a separate or distinct court. Over the course of its operation it has been presided over by a designated or ‘specialist’ youth justice magistrate, with a relief magistrate presiding over a small youth justice case load and available to cover situations where the primary magistrate has not been available.

The Pilot has operated without any specific or additional budgetary allocation to the Court or any of the agencies involved in its development and implementation. Rather, the operational arrangements were absorbed by existing budgets and integrated into established business practices.

The Hobart Specialised Youth Justice Court consists of two related streams. Firstly, there is a general stream in which all youth justice matters triable summarily are listed. This is, in effect the Youth Justice Division of the Magistrates Court, a court constituted by a magistrate to hear and determine criminal charges against people under the age of 18. The Pilot altered the legal landscape in Hobart by allocating a primary and a relief magistrate to the Youth Justice Division, as distinct from the eight magistrates who presided prior to the Pilot.

Secondly, the Pilot introduced a ‘Special List’ as a subset of the general youth justice list that would hear and determine complex matters assessed as needing a therapeutic jurisprudence approach. The Special List is concerned with vulnerable young offenders, such as those with drug and alcohol and/or mental health problems or other serious vulnerability. The Special List uses regular judicial case supervision to try to improve the circumstances of the offender, and support them to develop the skills and resilience needed to escape cycles of disadvantage and offending behaviour.

The specific aims of the Pilot were to achieve:

- Improved timeliness to finalisation of youth justice matters
- Encouragement of more consistency in the court’s decisions
- Greater development and application of expertise in youth justice matters
- Better coordination of youth justice support services to the court
- Increased collaborative approaches between the agencies involved in youth justice.
The Hobart Specialised Youth Justice Court Pilot achieved all but the first of its five formal objectives. It has been able to demonstrate greater consistency in decision-making about young offenders; the court has harnessed greater psychosocial expertise in youth justice matters, especially with regard to complex cases; it has ensured better coordination of agency services brought to the court; and has seen greatly increased collaborative work among those agencies to develop optimal interventions for the young offenders.

The Pilot’s failure to achieve overall improvements in timely finalisation was the direct result of its having achieved the other four objectives. Making more consistent court decisions, bringing greater expertise to the court, ensuring greater coordination of matters to the court, and assuring greater inter-agency collaboration could not have been achieved without the dedication of a considerable amount of additional time, both within and outside the courtroom. This was the case for the Special List in particular, with more coordination of youth justice services and collaboration between agencies, the added judicial supervision of offenders under supported bail programs, and the greater number of review appearances, all of which contributed to an increase in the time taken to finalisation.

Some additional findings from the evaluation are:

1. The Pilot contributed to better working relationships between court, prosecution, defence, youth justice and other social service agencies.
2. The Pilot increased the non-legal courtroom workgroup members’ understanding of judicial processes.
3. The Pilot increased all courtroom workgroup members’ awareness of service availability in the juvenile justice and welfare sectors.
4. The Special List offered a more therapeutic response to complex young offenders.
5. The designation of a specialist magistrate contributed to greater specialisation in youth justice matters.
6. The initial scheduling arrangements (number of youth justice days) were insufficient for a sustained impact on the timeliness of finalisation of youth justice matters.
7. The Pilot’s operation and evaluation were compromised by the absence of a project management framework and associated processes such as data collection methods and reporting schedules.
8. The governance role and management responsibilities of the Pilot Steering Committee were not always clear.
9. The involvement of both Child Protection Services and the Department of Education in the courtroom workgroup was highly beneficial.
10. The courtroom appearance of Child Protection Services with the children under their care is a promising method of dealing with dually-listed young people (that is, those involved in both youth justice and child protection proceedings).
11. The involvement of Save the Children in the courtroom workgroup, and its role in the Special List in particular, was highly beneficial.

12. The lack of formal and regular involvement by Alcohol and Drug Services (Department of Health and Human Services) impeded the court’s capacity for interventions for young offenders with substance abuse problems.

13. The success of the Pilot has been largely attributed to leadership; the attendant risk of its being single-person dependent is raised as a caution for the continuation of the Specialised Court.

The SYJC represents the real possibility of hope for change in young defendants. The youth justice professionals involved in the implementation of the Pilot recognise that the solutions are not simple, and that the causes of youth offending are often deeply entrenched and interdependent. But before the Pilot, the responses of the youth justice court were insufficient to engender any particular hope for better outcomes.

A great strength of the Pilot is that it has given all participating agencies confidence that the court now has the potential to change the offending lifestyles of the young people appearing before it and to have a real influence on their long-term wellbeing. The potential benefits to both public safety and the youth justice budget may also be considerable.
Recommendations

1. That the Specialised Youth Justice Court continues to operate in Hobart.

2. That the Specialised Youth Justice Court should be commenced in the Launceston registry of the Magistrates Court in 2014.

3. That the Specialised Youth Justice Court encompasses, at a minimum:
   a. designated and relief specialist magistrates
   b. designated prosecutors and defence counsel
   c. a regular courtroom workgroup consisting of, at least, specialists from Youth Justice Services, Child Protection Services and the Department of Education
   d. a Special List for young offenders with complex needs.

4. That the Court continues to work with Alcohol and Drug Services (DHHS) and other service providers to more directly engage young offenders in rehabilitation as needed.

5. That the Hobart Specialised Youth Justice Court continues to be scheduled for at least ten days per month, as established under the Pilot.

6. That the scheduling arrangements be regularly reviewed to ensure sufficient court days are being allocated for the timely disposition of youth justice matters, and to ensure that court days are not avoidably lost.

7. That the Steering Committee and Working Group, as established under the Pilot, continue.

8. That the Court provides the Steering Committee and Working Group with a suitable level of administrative support.

9. That the Steering Committee reviews its terms of reference in light of this evaluation.

10. That the Steering Committee continues to meet at least twice-yearly.

11. That the Working Group continues to focus on capturing feedback about the court’s overall performance.

12. That the Working Group continues to meet at least twice-yearly.

13. That monthly statistical performance reports be provided to Court administration.

14. That an overall Specialised Youth Justice Court information strategy, including data collection and reporting methods, be developed.

15. That training and professional development in matters relevant to the improved operation of the court be made available to the courtroom workgroup members at least twice-yearly.
16. That the Magistrates Court and the Legal Aid Commission of Tasmania develop strategies to ensure young defendants have optimal access to the legal advice and representation to which they are entitled.

17. That the Court improves, where possible, the (Hobart) courtroom 9 waiting area amenities for defendants and their support people.

18. That the Department of Justice establishes an in-court liaison/coordination service to provide young defendants with access to diversion and support services, and information about court procedures, the specialised language of the court and their rights before the court; and to provide the Specialised Youth Justice Court with state-wide administrative support.

19. That the following documentation be developed:
   a. A program manual containing:
      i. The Specialised Youth Justice Court philosophy and objectives
      ii. Court operating principles and procedures
      iii. The specific roles and requirements of the agencies represented in the courtroom workgroup
      iv. Governance, including the roles, responsibilities and reporting requirements of the committees
      v. Reporting and review methods and schedules.
   b. Accessible information for defendants and their support people, and other court users.
Part 1. Project description and evaluation methods

SCOPE

OBJECTIVES

Overview

Objective 1: Improved timeliness to finalisation of youth justice matters

Objective 2: Encouragement of more consistency in the court’s decisions

Objective 3: Greater development and application of expertise in youth justice matters

Objective 4. Better coordination of youth justice services to the court

Objective 5: Increased collaborative approaches between agencies

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Scope

In January 2011, the Hobart registry of the Magistrates Court of Tasmania piloted a Specialised Youth Justice Court. The Specialised Court (SYJC) did not operate as a separate or distinct court, nor was it subject to any special legislation or practice directions. Rather, it was a modification of existing arrangements in the Youth Justice Division of the Magistrates Court. Under the Pilot, the SYJC was constituted by a set of operational initiatives that experience and research suggested would have potential for greatly improved outcomes in youth justice.

At its commencement, the Court decided it would assess the Pilot after twelve months of operation to determine whether it should continue, be expanded to include child protection hearings, and/or extended to Magistrates Court locations in the north of the state.

During the early stages of the evaluation, however, the Steering Committee decided to extend the Pilot for a further twelve months to enable sufficient data to be gathered to measure its effectiveness.

Another early decision was to eliminate consideration of the hearing of child protection matters within the SYJC. The Pilot had a sufficiently demanding charter, particularly in the budgetary circumstances, and there was no real and pressing need for such a conjunction of jurisdictions.

The purpose of this report is to capture the rationale behind the project, the operation and outcomes of the Pilot during the evaluation period, and to present recommendations on the future viability of the SYJC.

With the Court’s acceptance of this report, the Pilot will come to an end. If the recommendations are accepted, the SYJC will continue in the Hobart registry of the Magistrates Court, and be adopted in Launceston in 2014.

Objectives

Overview

The Pilot has sought to enhance the effectiveness of the Youth Justice Division of the Magistrates Court with regard to the objectives of the Youth Justice Act 1997 as set out under section 4. The Act provides clear direction regarding court practice as well as to the youth justice service system more generally.

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1 Section 159 of the Youth Justice Act 1997 (Tas) created the Magistrates Court (Youth Justice Division) as the criminal jurisdiction applying to persons under the age of 18 years at the time of the alleged offence.
The main objectives of this Act are –

(a) to provide for the administration of youth justice; and

(b) to provide how a youth who has committed, or is alleged to have committed, an offence is to be dealt with; and

(c) to specify the general principles of youth justice; and

(d) to ensure that a youth who has committed an offence is made aware of his or her rights and obligations under the law and of the consequences of contravening the law; and

(e) to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation; and

(f) to enhance and reinforce the roles of guardians, families and communities in –

(i) minimising the incidence of youth crime; and

(ii) punishing and managing youths who have committed offences; and

(iii) rehabilitating youths who have committed offences and directing them towards the goal of becoming responsible citizens; and

(g) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that is culturally appropriate and recognises and enhances his or her cultural identity; and

(h) to ensure that, whenever practicable, a youth who has committed, or is alleged to have committed, an offence is dealt with in a manner that takes into account the youth’s social and family background and that enhances the youth’s capacity to accept personal responsibility for his or her behaviour.

In hearing and determining summarily all criminal charges against young people, the Youth Justice Division of the Magistrates Court under section 5 of the Act exercises its power ‘with proper regard to’ the following ten general principles of youth justice (s 5(1)(a–j)):

(a) that the youth is to be dealt with, either formally or informally, in a way that encourages the youth to accept responsibility for his or her behaviour;

(b) that the youth is not to be treated more severely than an adult would be;
(c) that the community is to be protected from illegal behaviour;

(d) that the victim of the offence is to be given the opportunity to participate in the process of dealing with the youth as allowed by this Act;

(e) guardians are to be encouraged to fulfil their responsibility for the care and supervision of the youth and should be supported in their efforts to fulfil this responsibility;

(f) guardians should be involved in determining the appropriate sanction as allowed by this Act;

(g) detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary;

(h) punishment of a youth is to be designed so as to give him or her an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;

(i) punishment of a youth is to be appropriate to the age, maturity and cultural identity of the youth;

(j) punishment of a youth is to be appropriate to the previous offending history of the youth.

The general principles of youth justice as set out in section 5 are directed at an assessment of the particular offending behaviour and the broad needs of the offender. In hearing all criminal charges against children, the court is able to apply five further principles ‘as the circumstances of the individual case allow’, as set out in s 5(2)(a–e).

Effect is to be given to the following principles so far as the circumstances of the individual case allow:

(a) compensation and restitution should be provided, where appropriate, for victims of offences committed by youths;

(b) family relationships between a youth, the youth’s parents and other members of the youth’s family should be preserved and strengthened;

(c) a youth should not be withdrawn unnecessarily from his or her family environment;

(d) there should be no unnecessary interruption of a youth’s education or employment;

(e) a youth’s sense of racial, ethnic or cultural identity should not be impaired.

The Pilot has sought to actualise several general principles of youth justice, including that ‘the community is to be protected from illegal behaviour’ (s 5(1)(c)), ‘detaining a youth in custody should
only be used as a last resort’ (s 5(1)(g)), and ‘punishment of a youth is to be appropriate to the age, maturity and cultural identity of the youth’ (s 5(1)(i)).

Generally, the Youth Justice Act 1997 seeks to provide youths who are alleged to have committed offences with the same entitlements as adults who are alleged to have committed offences. The Act also seeks to encourage youths to take personal responsibility for their actions (s 5(a)).

Under previous arrangements several magistrates would hear and determine youth justice matters with several prosecutors and several defence lawyers appearing. Described as a ‘siloed’ service system, it lacked genuine coordination and collaboration. The Pilot promised greater coordination in an effort to improve youth justice services to young offenders, improve the implementation and execution of court orders, promote learning and expertise across agencies and, in the longer term, reduce costs to participating agencies.

The Pilot focused on enhancing the effectiveness of the court, working towards five specific objectives:

1. Improved timeliness to finalisation of youth justice matters
2. Encouragement of more consistency in the court’s decisions
3. Greater development and application of expertise in youth justice matters
4. Better coordination of youth justice support services to the court
5. Increased collaborative approaches between the agencies involved in youth justice.

The Pilot also set out to consider whether the SYJC, as it operated under the Pilot, should continue in Hobart and be adopted in the north of the state.

The evaluation examined the effectiveness of the Pilot against these objectives. There were no specific measures of the Pilot against provisions of the Youth Justice Act 1997. Nor did the evaluation set out to measure social or individual outcomes (such as improved offender wellbeing, improved education retention or reduction in truancy, or improved social functioning), although such objectives may be implicit in the Pilot’s purpose. Similarly, the evaluation did not specifically examine the performance of the various operational elements, except as they might have contributed to achieving the stated objectives.

As a project management framework was not used for the Pilot, the stated objectives are not aligned to specific performance indicators. As such, the reported outcomes do not always fit neatly with the objectives. Additionally, a number of other outcomes are considered significant. While the absence of a project management framework does not diminish the achievements of the Pilot, the lack of detailed planning documentation to some degree compromises the capacity of the evaluation to measure the levels of success.

The following sections detail firstly the rationale behind each of the Pilot objectives, and then the arrangements put in place to realise them.
Objective 1: Improved timeliness to finalisation of youth justice matters

The timelier processing of cases to finalisation has been a long-held aim of the Youth Justice Division of the Magistrates Court. As detailed in Part 2 of this report, the Magistrates Court has responded to this identified need over time by reviewing its business practices (for example, the consolidating of individual defendant matters), but has been unable to achieve a sustained reduction in time to finalisation. The Court considered, therefore, that the arrangements put in place under the Pilot would afford an opportunity to again address this matter.\(^2\)

Objective 2: Encouragement of more consistency in the court’s decisions

The Pilot has sought to achieve greater consistency in decision-making in youth justice matters, including sentencing. A key to achieving more consistent outcomes was putting in place more consistent court arrangements. Greater consistency in the operational aspects of youth justice matters was predicted to benefit all parties throughout a case. These arrangements are detailed below as the key operational components of the Pilot.

Objective 3: Greater development and application of expertise in youth justice matters

A considerable number and range of parties are typically involved in any juvenile justice case. Those parties – including government agencies, non-government organisations, and family and friends – are variously engaged during the stages of a case, as illustrated in Figure 1.

![The Juvenile Justice Continuum](image)

\(^2\) The Australian Bureau of Statistics uses the term ‘timeliness to finalisation’ in the finalised defendants data set. The ABS defines finalised defendants as:

… a person or organisation for whom all charges have been formally completed so that the defendant ceases to be an item of work to be dealt with. If a person or organisation is a defendant in a number of criminal cases dealt with and finalised separately within the courts during the reference period they will be counted more than once in the reference period, either within the same court level or across court levels.

Each agency brings expertise to certain aspects of a young person’s situation, but may not have a particularly good understanding of the expertise brought by others. For example, a lawyer might not be familiar with the operations of child protection, or how support operates for drug and alcohol dependency, disability or mental illness; conversely, a youth justice worker may not fully understand the various legal processes affecting their client, or the interventions potentially available through the education system. Further complexity exists in situations of dual diagnosis or comorbidity, for example, young offenders facing problems of drug abuse along with mental illness, or disability along with housing stress.

The Pilot sought to break down these silos and focused on harnessing and sharing expertise to more effectively meet the needs of the young people who came before the court. Clearly, this objective relates closely to the objectives of better coordination and increased collaboration.

**Objective 4. Better coordination of youth justice services to the court**

Former Northern Territory Chief Magistrate, Hilary Hannam, recently referred to youth justice in Australia as ‘… a non-system, a system that’s collapsing or broken’ in which, in all jurisdictions:

> There’s no one agency responsible for youth justice. It’s fragmented across a number of departments and ministers. There’s a real paucity of people with the right expertise … and extreme lack of specialist services, especially for the more difficult youths that are the recidivist offenders.³

The Pilot sought to address this fragmentation by bringing together agencies with youth justice responsibilities to share their expertise in a specialised court environment.

Young offenders can be involved with multiple service delivery agencies at any given time. A significant proportion of young offenders are involved with the child protection system, and offenders can also be simultaneously involved with education authorities, inter-agency support teams and non-government welfare organisations. A coordinated service approach among agencies means that young people are more likely to receive consistent information and advice. It may also mean that young offenders will be less likely to become exasperated by providing repeated accounts of their offending, welfare, health and education histories.

As well as seeking to increase agency workers’ understanding of each other’s specialisations, the Pilot has sought to improve delivery alignments, such that the programs and services for which each agency is responsible could be brought to the court. The court’s coordinating role could then in turn provide the management of the young person’s case in a more aligned, shared and timely manner.

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Objective 5: Increased collaborative approaches between agencies

As a product of increasing participating agencies’ understanding of each other’s specialisations, and coordinating the delivery of their services and interventions, the Pilot has sought to encourage collaboration, such that more effective solutions might be found.

Geoff Aigner of Social Leadership Australia observes:

Collaboration, as many who have ‘been there and done that’ know, is difficult work. This is because collaboration is not about just working together, it’s about co-creation. And co-creation requires a different way of working and different skills. It’s more challenging. It’s also more time-consuming.

Improved coordination and collaboration can involve competing philosophical, legal and community agendas; in the context of the Pilot there are often legal, prosecutorial, rehabilitative, educational, health and welfare paradigms at play, typically under separate agency agendas. The Pilot sought a ‘joined-up’ approach to formal and informal sharing of experience, expertise and research to address problems associated with juvenile offending. A ‘joined-up’ approach is considered ‘particularly suitable for complex and longstanding policy issues, sometimes referred to as ‘wicked problems’, (which) defy jurisdictional boundaries and resist bureaucratic routines’.

Key operational components

Overview

The Pilot altered the normal arrangements of Youth Justice Division of the Hobart Magistrates Court by bringing all youth justice matters under a single magistrate, and scheduling those matters on two designated days each week. The Pilot introduced a Special List for offenders identified as being particularly vulnerable to cycles of disadvantage and offending behavior, who would potentially benefit from a therapeutic jurisprudence approach. Finally, the Pilot brought to the court, arrangements whereby key agencies were always represented and, as much as possible, by the same individuals.

The Pilot operated without a distinct or additional budget allocation or extra resources. In a tight state fiscal environment, it was intended that the Pilot would achieve its outcomes by agencies working ‘smarter’ and more collaboratively. In reorganising their business practices to align with the Pilot, participating agencies absorbed costs within normal budgets.

At the outset, it was expected that the internal reorganisation of the multiple youth justice courts into the SYJC would deliver advantages in case management because a single magistrate would have continuity of responsibility for youth justice cases. The focusing of court resources into specially

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allocated court sessions would also allow participating agencies to focus and streamline their resources, producing some beneficial economies of scale. It has not been possible to quantify the organisational costs and benefits of the Pilot in this evaluation, although observations and recommendations can and have been made.

**Designated magistrate and scheduling arrangements**

Before the introduction of the Pilot, eight Hobart-based magistrates presided over and sentenced young people in the Youth Justice Division. Under the Hobart Pilot, Deputy Chief Magistrate Michael Daly predominantly presided over the SYJC. Magistrate Catherine Rheinberger presided over a small youth justice case load and undertook the role of relief magistrate when DCM Daly was unavailable.

DCM Daly played an instrumental role in preparing the Court and relevant stakeholders for the commencement of the Pilot. As the designated Pilot magistrate, DCM Daly was also responsible for establishing the procedural and operational guidelines for the Pilot and for ongoing consultation with stakeholders.

During the Pilot’s evaluation period, from January 2011 to September 2012, a total of 739 young persons listed as defendants appeared in the SYJC. This translated into 1846 youth justice lodgements being brought before the court.

The new arrangements involved DCM Daly hearing nearly all those matters, including the ‘complex case’ individuals he referred to the Special List.

While taking on the role of designated magistrate in the SYJC, DCM Daly continued to preside over a criminal case load in the Court of Petty Sessions, and over cases in the child protection, civil and other jurisdictions of the Court. All child protection matters where the child also had matters in the Youth Justice Division were also transferred to the SYJC.

*Table 1: Youth justice lodgements under the Hobart Specialised Youth Justice Court Pilot, 1 January 2011 to 30 September 2012*

<table>
<thead>
<tr>
<th>Year</th>
<th>Lodgements</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011 (all)</td>
<td>1159</td>
</tr>
<tr>
<td>2012 (to 30 September)</td>
<td>687</td>
</tr>
<tr>
<td>Total to 30 September 2012</td>
<td>1846</td>
</tr>
</tbody>
</table>

Between October and December 2010, the youth justice case loads of the other magistrates were gradually transferred to DCM Daly. By June 2011, 94% of all first appearances in the Youth Justice Division were before DCM Daly. Figure 2 shows DCM Daly’s youth justice case load at various stages of the transfer.
As DCM Daly’s youth justice case load increased during the first six months of 2011 his adult criminal case load decreased in roughly proportionate terms. As the presiding specialist magistrate in the Pilot, DCM Daly had in fact an approximately equivalent case load in adult summary criminal matters.

Another scheduling arrangement under the Pilot was the dedication of five days per month to the SYJC. Hearings under the Pilot were normally held in courtroom 9 of the Hobart Magistrates Court complex – a courtroom designated, but not specifically designed, to hear youth justice matters. The SYJC would ordinarily sit on Tuesdays and Thursdays, with rollover courts (continuing cases) commencing at 10.00am and intake or plea appearances (new cases) at 2.15pm.

**Dedicated courtroom workgroup**

From the outset the court has been committed to a collaborative and multi-agency approach. The Pilot introduced the practice of having the same (legal and non-legal) personnel in the courtroom on youth justice sitting days, providing a reliable flow of information and expertise to the court.

Prior to the Pilot, Police Prosecution Services agreed to provide a dedicated prosecutor to the court; similarly Legal Aid provided a dedicated defence lawyer; Youth Justice Services, a dedicated youth justice worker; and the Department of Education, a home school liaison officer (HSLO). These key agency representatives were to be present at all SYJC sessions, irrespective of the young
person’s level of engagement with their agency. These arrangements were for all youth justice matters, not just those under the Special List.

Representatives of Save the Children commenced their involvement with the court in May 2011. Child Protection Services have been represented whenever a young person in their care and protection has been present in the court. Tasmania Police, through the Southern Early Intervention Unit, have also been involved with the court from its earliest stages. Together the representatives from these participating agencies are referred to as the ‘courtroom workgroup’.

Prior to the Pilot such services provided to the court were frequently unstructured and ad hoc, causing frustration for both the court and the service provider. For example, before the introduction of the Pilot, there was no individual or team from Youth Justice Services specifically dedicated to court appearances. There was no guarantee that a youth justice worker with knowledge of a particular defendant’s history would be present when their matter was heard. Similarly, before the Pilot, while there were designated ‘youth justice’ days in the Youth Justice Division, youth justice matters were not always adjourned to one of those days. Consequently, young offenders could be sentenced on a ‘non-youth-justice’ day and Youth Justice Services were not always available for attendance.

The following section summarises the inter-agency arrangements that have contributed to the Pilot.

**Participating agencies**

**Tasmania Police:** The police agreed that their Inter-Agency Support Teams would share more information with the court; that disclosure of charges and evidence to accused young people would be improved; and that they would attempt to reduce, wherever possible, the time between the commission of the offence and the lodgement of the police file (thereby reducing the time before the first appearance). Tasmania Police, through the Southern Early Intervention Unit and Inter-Agency Support Teams, has been instrumental in the Pilot from its commencement.

**Legal Aid Commission of Tasmania:** Under the Pilot a designated Legal Aid lawyer represented all legally-aided young people in court, and was generally available as a duty lawyer to individuals who arrived at court unrepresented and any who had not engaged their own lawyer. (The initial dedicated lawyer was replaced for a short period by another lawyer.) The quality and accessibility of representation and the dedicated role of the Legal Aid lawyer have been critical to the performance of the Pilot.

The **Department of Health and Human Services** (DHHS) has a major role in the delivery of youth services in Tasmania, with oversight of Youth Justice Services, Child Protection Services, Forensic Health Services, Child and Adolescent Mental Health Services, and Alcohol and Drug Services, all of which have variously contributed to the Pilot.
As observed by Travers et al, the separation of the youth justice and child protection services within DHHS produces some institutional tensions. These organisational units work with young offenders and their families under separate legislative regimes. In practice, and to a very large extent, their clients share similar social backgrounds and family situations; many are also the same individuals.

**Youth Justice Services and Child Protection Services** sit within the Children and Youth Services section of DHHS.

Youth Justice Services (YJS) is required to manage and execute the sentencing orders delivered to young offenders. Child Protection Services (CPS) is responsible for keeping children from harm as provided by the *Children, Young Persons and Their Families Act 1997*.

YJS is statutorily involved in cases where there are pleas and findings of guilt and where pre-sentence reports (under s 33 of the Act) are required, and where community-based and custodial sentences are imposed. Under the Pilot, YJS also provided support at pre-plea stages and in the absence of any formal requests for pre-sentence reports.

Under the Pilot, a dedicated team of youth justice workers have routinely appeared in court. The youth justice worker usually has extensive knowledge of the young person appearing for sentencing, including any current orders they may be on. They are able to report to the court on the young person’s compliance with those orders.

As a result of the Pilot, YJS engaged more with young offenders and at an earlier stage of court proceedings. These changes meant that any child protection matters could be identified early and CPS also engaged with the court. YJS also sought to broker closer case management relationships among the other DHHS agencies mentioned above.

There was early recognition that the Pilot would place additional resource pressures on YJS through more requests for pre-sentence reports, for assessments of mental health or disability (under s 105 of the Act), and the overall increased emphasis on case management both before and after sentence.

During the Pilot’s first year, CPS altered their operations to provide a greater staffing presence at the court, providing same-day information and reports where the young person was known to them. Eventually, a child protection worker was designated to the Pilot, with specific responsibility to attend court to assist with dually-involved young people (i.e. persons involved in both youth justice and child protection).

**Department of Education:** The Department of Education (DoE) was involved in the development of the Pilot from the outset. One of the first measures undertaken by the Pilot (January 2011) was to authorise a departmental HSLO, pursuant to section 31(2) of the *Youth Justice Act 1997*, to receive youth justice listings. The officer was also authorised to attend closed court

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6 M Travers, R White and M McKinnon, ‘The Children’s Court in Tasmania’ (2013), R Sheehan and A Borowski (eds) *Australia’s Children’s Courts – Today and Tomorrow* (Springer) 31. All citations are from the unpublished manuscript kindly provided by the authors.
sessions. The aim was to facilitate greater involvement of the department in the case management of offenders.

YJS and DoE have at times had a problematic relationship, at least in Hobart, with both agencies engaging with the needs of the same young person, but approaching case management and welfare responses differently. With statutory responsibilities, YJS has been more inclined towards the corrective role, while DoE has been more attuned to welfare concerns. The Pilot has sought to foster collaborative approaches that bring in the strengths of both agencies.

**Save the Children** joined the Pilot in May 2011 and, along with the DoE HSLO, was authorised to access listings and attend closed court sessions in order to support case management of offenders, particularly at the bail or pre-sentence stages.

Save the Children has been an active partner in the Pilot, particularly through their Supporting Young People on Bail program, which helps young people to engage with appropriate educational, vocational, employment and recreational opportunities. The SYJC magistrate referred a number of eligible young people to that program under Special List bail conditions.7

**The Special List**

The Special List is a selective diversion program within the SYJC that focuses on young people at greater risk of custody or recidivism due to personal characteristics and/or circumstances, and/or the circumstances of their offending behaviour.

The Special List mechanism is consistent with achieving the objectives of the *Youth Justice Act 1997*, section 4. Its purpose is to address the behaviour underlying the criminal offences of young people.

The SYJC aims ‘to ensure that a youth who has committed an offence is given appropriate treatment, punishment and rehabilitation’ (s 4(e)) and to take into account ‘the youth’s social and family background and … the youth’s capacity to accept personal responsibility for his or her behaviour’ (s 4(h)).

The Special List uses provisions under the *Bail Act 1994* (Tas) to formulate and impose bail support plans on persons considered eligible. Using the *Bail Act*, the magistrate is able to arrange appropriate bail support for the young defendant that includes case management by relevant agencies under the supervision of the court. This practice is grounded partly on the legal principle known as the Griffiths-type remand, under which a court may adjourn sentencing proceedings for a period to allow a defendant to undertake rehabilitation.8

Generally, under the Pilot, a young person on the Special List is supported on bail for approximately three months.

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7 Save the Children (Tasmania) is part of Save the Children Australia, an independent emergency relief and development organisation for children, funded from donations. No government resources assisted their involvement in the Pilot. See Save the Children <http://www.savethechildren.org.au/>.

8 Griffiths [1977] 137 CLR 293; (1977) HCA 44.
The Special List initiative grew out of recognition that the persons and cases coming before contemporary youth justice courts are increasingly complex. Allan Borowski’s recent national study of children’s courts found that magistrates, lawyers, youth justice workers and police who work in youth justice are dealing with an increasingly complex population. His comments here on child protection equally pertain to youth justice:

Study participants across Australia reported that, relative to a decade ago, the court now served a much more challenging clientele. While the children, young people and families who appear in court remain highly socio-economically disadvantaged and marginalized, what is “new” is the complexity of their problems and needs. Alcohol and drug abuse, domestic violence, mental health problems and, indeed, prior involvement with the child protection system, are now common among the clientele of the child protection jurisdiction. Young offenders manifest similar problems and have increasingly engaged in serious (i.e. violent) criminal activity.9

The Special List in particular represents the intended ‘problem-solving’ capacity of the SYJC arrangements under the Pilot. The List is a juvenile justice intervention based on collaboration between the court, the police, lawyers, youth justice workers and community organisations with the potential to impact positively upon young defendants and help foster juveniles’ desistance from crime. The problems of substance abuse, mental illness and/or cognitive disability tend to cause greater problems among young people, who are more susceptible – physically, emotionally and socially – to them. A problem-solving and therapeutic approach means that defendants can have a more active role in the court. This can result in greater satisfaction for the defendant, both in terms of the process and the final outcome.

The Special List is open to young people who, charged with a criminal offence, satisfy eligibility criteria that relate to the seriousness of offence, the likelihood of custodial sentence, and their individual circumstances. A bail support plan for a young person in the Special List typically seeks to address the following issues, and may include others:

- The defendant’s engagement with treatment and case management
- The defendant’s compliance with and duration of any relevant court orders
- Area restrictions
- Non-association with certain individuals
- Accommodation needs
- Regularity of court review and supervision.

Special List participants are required to attend regular court hearings in order that the magistrate and other parties (such as YJS, their lawyer and prosecution) might review their progress on the bail

support plan and their compliance with bail conditions. Special List participants typically attended interim court reviews at least monthly.

The structure of the Special List and the requirement for regular reviews means that a successful referral to the List may increase, rather than lessen, the number of contacts a young person has with the court. By agreeing to participate in the List, young defendants have generally accepted a much higher level of involvement with the juvenile justice system. In some circumstances this will include greater intrusion into their personal lives than had their matters been dealt with in the general stream.

The Special List extends the Magistrates Court’s program of specialist problem-solving courts, following on from previous drug treatment and mental health court initiatives in Tasmania. These initiatives are characterised by judicial case monitoring, a less adversarial approach and close collaboration with statutory and non-government service providers.

Like magistrates, lawyers operating in a therapeutic jurisprudence context are required to see their client’s case in more than simply adversarial terms. Lawyers need to appreciate the potential therapeutic solutions to the client’s underlying problems. In therapeutic jurisprudence courts, all members of the court, including prosecution and defence, focus on an agreed plan or program, to achieve the best outcome for each participant.

In achieving this goal, it was at times necessary for the Legal Aid lawyer to work more closely than normal with YJS, Save the Children, or other professionals and to be aware of the wider options for support, care and treatment of the defendant.

A young defendant, or their guardian, is required to consent to participation in the Special List and the associated supported bail arrangements. Young people who feel they have been coerced into an intervention or treatment program may be less likely to want to resolve the issues, such as problems with education, health (including mental health), or substance abuse, that have contributed to their offending behaviour. Therapeutic jurisprudence emphasises the importance of self-determination in relation to addressing such problems. The principle of self-determination can be promoted within the curial context in several ways:

- Giving an offender the (genuine) option of participating in a diversion program
- Encouraging them to contribute to goal setting and treatment strategies
- Allowing them the opportunity of reporting on their own progress.

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14 King, above n 12, 131
Out of scope: changes to court layout

The national assessment of children’s courts found court facilities to be inadequate in all Australian jurisdictions:

All buildings were reported as failing to cater to children’s needs. They were described as overcrowded, tense, chaotic and often unsafe and without adequate security. They had either no or inadequate interview rooms for lawyers to meet clients. Many also had either no or inadequate audio-visual systems to permit parents unable to travel long distances to participate in proceedings. Further, holding facilities for remandees brought to court and those sentenced to detention were either inappropriate or inadequate; young people could spend lengthy periods in these facilities either awaiting their hearing or transport back to the remand or detention centre. But however poor the facilities in metropolitan locations, they were uniformly seen as much worse in regional and remote locations.15

While it might be impracticable for youth justice courts to operate in dedicated buildings in Tasmania,16 the above description is generally applicable to the Magistrates Court in Hobart.

While the Hobart Pilot did not seek to address matters of accommodation for the SYJC, it did operate with an implicit understanding that separation from adult courts is desirable. The physical layout and infrastructure of courtroom 9 frustrates the desired physical separation of juveniles from adult proceedings. There is little separation between courtroom 9 and the other courtrooms. Impressionable young defendants may be susceptible to the influence of adult offenders in such an environment.17

Courtroom 9 and the waiting area outside it have been designed and built like any other courtroom in the Hobart complex; there is nothing different about its physical layout or the amenity it offers. Separation from the other courts is only by virtue of its being at one end of the floor, such that the waiting area does not have any through-traffic from other courts.

One of the professional court-based staff critical of the courtroom layout saw opportunities in a changed environment:

Operationally there is a lot of ‘traffic’ for a closed court. The waiting room is appalling. You could change the feeling of the court and have a round table and community conferencing. But you need to balance the notion of the court and [the fact that] there are consequences for behaviour. By changing the spatial setup you are moving these agencies into a position [to] personalise the contribution.

Courtroom 9 is very busy on Tuesdays and Thursdays. The 19-seat waiting area is rarely sufficient to cater for defendants, their families and other support people. Defendants can sometimes wait a long

15  Borowski, above n 9, 19–20.

16  Travers et al above n 6, 15.

time, often in close proximity to individuals they would prefer to not associate with. Mothers required to be at court have no option of breastfeeding separately, and parents often find it difficult to care for young children when there is little space for them to move about.

Better design and layout of the courtroom and waiting area that focus on greater separation might have contributed to more gains under the Pilot. It is a recommendation of this evaluation that such improvements be considered.

**Governance and administration**

**Working Group**

During 2010 the Magistrates Court formed a project Working Group to determine the operational requirements of the Pilot and drive its establishment. The Working Group was chaired by DCM Daly while its administration rested with the Magistrates Court.

The aims of the group were to: inform and assist the transition to the Pilot; deal with any problems during the change-over and continuation of the Pilot, including practical issues around procedures and operation; and generate support and interest for the Pilot prior to its start-up.

The Working Group includes:

- Magistrates, including the Chief Magistrate
- Non-judicial court staff
- Representatives from key agencies:
  - Department of Police and Emergency Management: Early Intervention Unit, Southern Prosecution Services
  - Legal Aid Commission of Tasmania
  - Three independent lawyers
  - Department of Health and Human Services: Youth Justice, Child Protection, Child and Adolescent Mental Health, and Alcohol and Drug Services
  - Department of Education: Student Support
  - University of Tasmania: Faculty of Law
  - Community youth justice sector, principally Save the Children (from May 2011).

The initial meetings of the Working Group represented the inter-agency coordination and collaboration that would characterise the Pilot itself. The interdisciplinary input of the Working Group has been a key underpinning of the design and operation of the Pilot.

The team of legal, law enforcement, health and welfare, and correctional professionals has continued to work with the designated magistrate to monitor and revise all court and associated processes throughout the Pilot.

The Working Group has considered a wide range of matters, including:
• The designation of a specialist magistrate for youth justice matters
• Changes to the listing arrangements for youth justice matters
• Young people dually listed in the youth justice and child protection jurisdictions of the Court
• YJS staff availability for court appearances
• Dedicated prosecutor(s) for youth justice matters
• Dedicated defence lawyer(s) for youth justice matters
• Involvement of drug and alcohol, and mental health, services.

Meetings have also been held between DCM Daly and individual members of the Working Group as needed throughout the Pilot. Although there had been no agreed schedule of Working Group meetings, the infrequency of meetings did concern some representatives.

**Steering Committee**

In February 2011, the Court established a Steering Committee to oversee the Pilot. This committee consists of:

- Magistrates, including the Chief Magistrate
- Non-judicial court staff
- Management representatives of:
  - Department of Police and Emergency Management
  - Legal Aid Commission of Tasmania
  - Department of Health and Human Services
- Faculty of Law, University of Tasmania
- The Children’s Commissioner.

The terms of reference for the Steering Committee included:

1. Managing the ongoing development of the Pilot
2. Advancing the expressed goals of the Pilot
3. Considering mechanisms to enhance the collaboration of services brought to the court
4. Managing the evaluation of the Pilot, including making recommendations on data capture
5. Subject to evaluation findings, considering mechanisms for extending the model into other regions.
It was envisaged that the committee would meet quarterly to consider reports on the progress of the Pilot and provide broad-based, interdepartmental governance. In practice this was not possible and the Steering Committee only met twice.

Coordination

The lead agency for the establishment, implementation, non-judicial administration, and evaluation of the SYJC Pilot has been the Magistrates Court, through the coordinating role of the Deputy Administrator of Courts. The initiation of the Pilot has been primarily attributed to the Court, and its progress and performance identified, both within government and publicly, with the Court.

Other forums

A feature of the Pilot was a commitment to capturing feedback from courtroom workgroup members. DCM Daly and the Deputy Administrator of Courts spoke regularly with all participating agencies along with others that could potentially contribute to the Pilot.

Another mechanism for monitoring the Pilot was a schedule of meetings between DCM Daly, the Deputy Administrator of Courts, and the area manager of YJS (South). Approximately every six weeks from 14 October 2011 and throughout the Pilot’s consolidation in 2012, these meetings considered the performance of the SYJC and the factors contributing to its performance.

Considerations included, for example:

• Office accommodation and internet access for youth justice and child protection workers within the court building
• Supervision of probation and community service orders and the status of ‘non-active’ orders
• The involvement of CPS with the Pilot
• The nature and quality of supervision of young offenders in the community
• Legal representation of persons not represented at their first appearance
• The nature of the (YJS) CHART program
• The problems associated with alcohol and drug support for young persons on the Special List, including the potential greater involvement of Alcohol and Drug Services
• The problems associated with obtaining mental health support for young persons on the Special List

18 Youth Justice Services (South) consists operationally of three teams: Supervision team, Court team and Pre-sentence Report team. Youth Justice Services operates within the larger unit of Children and Youth Services in DHHS.

19 Changing Habits and Reaching Targets program, a cognitive-behavioural intervention predicated on criminological research on reducing the risk of reoffending among young people. CHART was developed in Victoria and targets medium to high risk offenders, aiming to reduce recidivism by assisting young people to change their thinking and decision-making processes. See Stewart et al (eds) below n 89, 143.
• Staff and resource shortages at YJS and the case load of youth justice workers
• The wording of bail orders and possible reporting options for the young person
• Validating contact details of young defendants
• The impact of youth justice resource shortages on a magistrate’s sentencing options
• Sentencing issues and practices in the SYJC
• The required content, quality and timing of YJS pre-sentence reports to the court, and resource implications
• Circumstances in which to use a short-form assessment instead of a full pre-sentence assessment report
• The nature and operation of the Special List, including the need for a procedural manual
• The exchange of offender information between YJS and (adult) Community Corrections
• The relationship between the SYJC and the after-hours youth justice court.

Considerable exploration and review throughout the Pilot of these and other project components resulted in adjustments to the operation of the Pilot and the services delivered to the court.

A key feature of the Pilot was the capacity of the court to respond to professional development needs within the courtroom workgroup. The Magistrates Court facilitated two workshops: one on sentencing young offenders, the other on the nexus between youth offending and alcohol and other drugs. The sentencing workshop provided the ‘non-legal sector’ workgroup members with insight into the legal issues magistrates consider when sentencing. The AOD workshop, attended by representatives of Alcohol and Drug Services, focused on care and recovery outcomes, and the need for specialised youth AOD services.

Project evaluation

Purpose and scope

The purpose of the project evaluation was to assess the performance of the Pilot against its objectives, to report on other findings, and to make recommendations about the continued operation of the SYJC in Hobart, and whether it should be adopted in the other registries of the Magistrates Court.

The evaluation uses various sources of quantitative and qualitative data that throw light onto all aspects of the Pilot – on the young people who came before the court, the operations of the court, and the various youth justice services to the court – and also encapsulates findings about the administration of youth justice more generally.

An Evaluation Reference Group considered a range of methods for appraising the performance of the Pilot. The choice of methods ultimately employed for the evaluation was based on the
accessibility of suitable data, both quantitative and qualitative, as well as the time and expertise available within the Court. As noted earlier, no separate budget was made available for this project, and the evaluation was conducted internally by the Magistrates Court.

In most circumstances, the optimum way of assessing the impact of an intervention program is to use a comparison group. Had the Pilot employed this method, defendants would have been randomly assigned to either the SYJC or to a control group in the Youth Justice Division operating under the pre-existing arrangements. There was no such control group of non-participating young defendants.

Another approach that was considered, but ultimately decided against, would have compared the Hobart Pilot defendant cohort to a similar population appearing in the conventional court system in Launceston, Devonport and Burnie. Data that compared Hobart with the other court registries was used to analyse certain system-wide indicators, such as youth justice lodgements, timeliness to finalisation of youth justice matters, admission to Ashley Youth Detention Centre and sentencing. These comparisons do not extend to a forensic study of the young defendants in question, such that there is no validation as to the similarities or differences between the cohorts in terms of demographic characteristics, or profiles of offending behaviour and history.

The more qualitative objectives of the Pilot – greater development and application of expertise, better coordination of youth justice services and increased collaborative approaches between agencies – did not lend themselves to comparative study. (The subjective assessments of the youth justice arrangements in place in Launceston, Burnie and Devonport could only have been garnered with extra project resources, and at no stage was such an option considered.)

There was no appropriate methodology to measure the Pilot’s impact on juvenile recidivism in the Hobart area. To have done so would have been conceptually as well as practically questionable. The Pilot did not specifically set about to achieve a reduction in juvenile crime in the short term. Rather it sought to improve youth justice arrangements within the context of the broader goals as provided by the Act. As there was no way to definitively prove a causal link between the Pilot, the Special List and any reduction in reoffending, this indicator of the success of the Pilot was not factored into the evaluation methodology.


21 Kelly Richards, Measuring juvenile recidivism in Australia (Technical and Background Paper 44), (Australian Institute of Criminology, 2011) ix. Richards has commented that using recidivism as a measure of the performance of the juvenile justice system can be problematic because measures of recidivism can be inaccurate or misleading, and rates of recidivism can be influenced by many factors and may not, therefore, accurately reflect the performance of a particular intervention. Richards presents a range of options for better conceptualising and measuring juvenile recidivism.
It was decided that the best methods to determine the success of the Pilot would be an analysis of available court data and the feedback of project and courtroom participants, supported by a review of current literature on the operation of Australian children’s courts. This range of data lent itself well to the questions being asked, particularly those concerning expertise, coordination and collaboration, and promised a richer and more detailed picture of the performance of the Pilot.

**Sources and methods**

The data sources are:

- documents produced in the course of the Pilot
- data available from agency sources relating to the Pilot period
- observation of Pilot processes by the evaluator
- interviews with some twenty key professional stakeholders in the Pilot
- case studies of seven finalised defendants who had participated in the Special List
- recent literature relating to youth justice courts.

**Project documentation**

Court documents and the records of scheduled meetings and the participant interviews and offender case studies have provided the documentation used this evaluation.

As mentioned, the Pilot lacked a formal project management framework; therefore these records do not specifically align with the Pilot objectives. (The lack of documentation concerning the performance measures of the Pilot has been something of a frustration to the evaluation.)

Moreover, given the multi-agency approach and the premium placed on collaboration, the lack of a central repository of information and system of documentation can be considered a procedural failing. The Pilot has relied on the working relationships between the participants, in particular the courtroom workgroup both inside and outside the courtroom; the leadership of the magistrates; and a strong sense of shared purpose. To enable the court to succeed in the Tasmanian juvenile justice system into the future, it will be necessary to mitigate the risks associated with such a reliance through effective strategic and operational planning.

Some of the specific requirements for better planning and documentation are contained in the details of the evaluation findings and recommendations.

While they do not provide the evaluation with a systematic or a comprehensive coverage of the Pilot’s implementation, progress and outcomes, the available records do provide a rich source of evidence of some of the Pilot’s achievements, and how future improvements could be made.
General notes on the data

The statistical data on court performance under the Pilot is sourced from court data generated by the Department of Justice, and data on young people engaged in the justice system provided by DHHS (Children and Youth Services) and the Department of Police and Emergency Management.

Each department has its own information priorities, methodologies and systems for the recording of data, and no special measures or alterations were put into place in any of those systems for the Pilot. The lack of a single data collection point has been an impediment to monitoring the progress and analysing the performance of the Pilot.

The information and statistical methodologies and collections in those databases are not particularly sympathetic to understanding the qualitative impacts of the Pilot, especially those intended by the Special List. For example there is no information system in place to measure the levels of collaboration between agencies, the coordinated management of offenders, recidivism outcomes, or health or education outcomes. This makes an objective evaluation of the Special List’s capacity to improve outcomes for young offenders difficult. The lack of information about each offender also means there is limited detail about the apportioning of costs at the individual, or case, level.

The time periods to which the quantitative data relates vary: some data covers a 12-month period and other data a 36-month period (taking in pre- and during-Pilot information). This was principally driven by the data available for any particular inquiry, the feasibility of retrieving the data in a timely manner, and the intent to bring in all the relevant data available.

Court data was principally used to interrogate the first and second objectives of the Pilot – improved timeliness to finalisation, and achieving greater consistency in court outcomes.

The qualitative analysis, involving interviews and observations, project documentation and the literature review reflected more on the operational aspects of the Pilot – both as stated in the objectives of bringing greater coordination and collaboration to the court, and in terms of the arrangements put in place to achieve them (process evaluation).

Court data

The court data used for the evaluation is sourced mainly from the 2011 calendar year, with 2012 data included where available. For some enquiries, twenty-one months of data (1 January 2011 to 30 September 2012) has been considered.

The following court records supplied by the Strategic Systems Branch within the Department of Justice, are examined in the evaluation.

• Lodgement data for Hobart and other youth justice courts during the Pilot evaluation period
• Data indicating timeliness to finalisation for all youth justice matters in Hobart and other youth justice courts during the Pilot evaluation period
• Pre- and during-Pilot sentencing data for Hobart youth justice offenders
• Sentencing data for all youth justice courts after January 2011, including number of appearances prior to sentence.

Most of the data provided for this evaluation was sourced from the Criminal Registry Information Management and Enquiry System (CRIMES), a database containing youth justice cases progressing through the court. With this data the Court is able to monitor case flow across the criminal and youth justice divisions of the Court.

The figures provided through CRIMES include total lodgements and finalisations, backlog indicators, and court attendance. CRIMES generates the statistics used in departmental reports and other publications including the Productivity Commission’s annual Report on Government Services.

The Tasmanian Auditor-General has noted that CRIMES, as it is currently used, generates insufficient information to fully and reliably gauge the success of Court trials, like the Hobart SYJC Pilot. Because resource constraints precluded the input of additional and more project-suitable raw data, the evaluation of the Pilot is based primarily on the information routinely generated by the CRIMES database.

The Pilot suffered from a lack of internal data reporting, particularly on the progress of timeliness to finalisation, which compromised the capacity of the Pilot to self-monitor and adjust. In the first six months of the Pilot a series of five reports were prepared by Strategic Systems to monitor the impact of the Pilot and provide the Court with information to assist in the management of the pending case load. From that point (June 2011), the Court did not seek those reports, reflecting the fact that participants were very much ‘caught up in the doing’, and there was not a project framework in place that would have prescribed a reporting schedule.

As such the court, court management and the Steering Committee could not readily assess how well the Pilot was performing in terms of timeliness to finalisation. It was not until data was provided for this evaluation that a clear picture of the timeliness of court processing under the Pilot started to emerge, but by then it was too late to institute solutions.

**Youth Justice and Child Protection data**

Children and Youth Services are seeking closer alignment between YJS and CPS in a range of areas and this is evident in the data management strategy now operating.

The figures provided by the Performance and Evaluation Unit of CYS are generated from the Youth Justice version of the Justice Offender Information System Tasmania (JOIST) and the Child Protection Information System (CPIS).

The figures provided by CYS include young offenders managed by or known to YJS, the number of young people under supervision in the community and held in custody, and the proportion of people in the Hobart Pilot who have at least been the subject of substantiation by CPS.

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**Stakeholder feedback**

Between October 2011 and January 2012, some twenty professionals who had worked in the SYJC under the Pilot provided their experiences and observations to the evaluation. They included all participants in the courtroom workgroup and the managers of various agency divisions.

Interviewees included:

- Three magistrates
- The court clerk who sits predominantly in the SYJC
- Managers and youth workers from YJS and CPS
- The allocated Legal Aid lawyer representing young defendants appearing before the court
- The dedicated Police Prosecutors appearing in the Court, and the head of the Southern Early Intervention Unit (Department of Police and Emergency Management)
- The Department of Education HSLO
- Save the Children’s manager and a youth worker who provided support under the Pilot.

A semi-structured questionnaire was used in each interview. The professional participants commented on the objectives of the Pilot and the organisational arrangements put in place to achieve them, including:

- How the Pilot affected the authority of the court
- The roles of the magistrate, prosecution and defence lawyer
- Legal representation of young offenders
- Collaboration between agencies directly and indirectly involved with the Pilot
- Deficiencie
  s in the youth justice system
- Sentencing
- The young offenders’ responses to the Special List
- Improvements that could be made to the SYJC.

The interviews ranged from 30 to 90 minutes. Interviews were recorded (except in one case, when notes were taken by hand) and later transcribed. The interviewees’ understandings, experiences and observations have provided a rich source of feedback on the Pilot and have significantly informed the findings and recommendations of this evaluation.\(^{23}\)

\(^{23}\) The comments quoted in this report are not attributed to particular professional roles because this would make the individuals potentially identifiable.
The content of those interviews is incorporated thematically into the findings of the evaluation and informs the recommendations.

**Case studies – young offenders on the Special List**

The evaluation presents case studies of seven ‘at-risk’ young people who were involved in the Special List component of the Pilot. Their matters were finalised between late 2011 and early 2012.

YJS approached individual young people they considered might be amenable to being interviewed, with the aim of representing a range of experiences in the youth justice system, and the Special List in particular. They did not seek a representative proportion of males and females. They advised the young people that participation was entirely voluntary. A number chose not to participate.

YJS facilitated the evaluator’s contact with those offenders, but had no involvement in the interviews.

Prior to each interview, the scope and purpose of the interview was explained to the participant and consent forms signed. All interviews were conducted face-to-face, digitally recorded and later transcribed. All transcriptions are held securely at the Court. Summaries of these interviews are provided at Appendix 1.

**Literature review**

Findings of recent research on Tasmania’s Youth Justice Division and Australia’s children’s courts are integrated into this report.

Fortuitously, a national assessment of children’s courts for the period 2009–11 was concluded in 2012 (during the Pilot), and the findings made available for this evaluation. Borowski’s study was the first of its type in Australia and had a broad scope. The study sought to examine the status, challenges and future directions for reform from the perspective of judicial officers and other stakeholders.

The study was unique in several respects. Firstly, there had previously been only a small number of empirical studies of Australia’s children’s courts. Thus, it represented an important addition to the small body of domestic research. Secondly, it sought the views of the courts’ judicial officers (and other stakeholders). No previous studies had focused on courtroom workgroup members across the range of issues explored in this study. And thirdly, the study was national in scope. The six states and two territories provided a natural social laboratory for comparing and contrasting a key institution of their youth justice and child protection systems.24

The national assessment took in individual and focus group interviews with judicial officers, court-based professionals and other stakeholders, such as lawyers, youth justice and child protection workers, prosecutors, clinical assessment specialists, advocacy organisations, policy stakeholders and academics. The issues canvassed included the courts’ purposes, current standing and effectiveness, major inputs, and directions for legislative and other reforms.

24 Borowski, above n 9, 3–6.
The Tasmanian component of the national study, conducted by Max Travers et al. was undertaken before the commencement of the Hobart Pilot. The report has, therefore, very usefully captured the environment in which the Pilot was established, including the views and concerns of court and youth justice professionals at the time, and informs both the conclusions and recommendations of the Pilot evaluation.25

## Part 2: Background to the project

### AN OVERVIEW OF JUVENILE JUSTICE IN AUSTRALIA
- Definition of juvenile
- Youth justice courts in Australia
- Characteristics of juvenile offending

### JUVENILE JUSTICE IN TASMANIA
- Some key background data
- Youth justice lodgements in Tasmania
- Juvenile justice prosecutions in Tasmania
- Young people held in custody
- Links to child protection

### TASMANIAN GOVERNMENT POLICY
- The Tasmanian Government agenda for children and young people
- Other government agency priorities for youth justice

### YOUNG PEOPLE, THERAPEUTIC JURISPRUDENCE AND PROBLEM-SOLVING JUSTICE
- Therapeutic jurisprudence
- Addressing criminogenic needs
- Diversion
- Characteristics of problem-solving courts

### PROCESSING YOUTH JUSTICE IN TASMANIA: THE PROBLEM OF TIMELINESS

### RESOURCING IN TASMANIA’S YOUTH JUSTICE SYSTEM
An overview of juvenile justice in Australia

Definition of juvenile

Until the mid-nineteenth century, there was no separate category of ‘juvenile offender’ in Western legal systems and children as young as six were incarcerated in Australian prisons. Today, it is internationally acknowledged that juveniles should be subject to a separate system of criminal justice, one that recognises their inexperience and immaturity. Consequently, juveniles are typically dealt with separately and are sentenced less harshly than adult offenders.

In every Australian jurisdiction except Queensland (where children from 17 are treated as adults in the courts), a juvenile is defined as a person aged 10–17 inclusive. The Commissioner for Children (Tasmania) summarises its scope:

Tasmania’s Youth Justice Act 1997… applies to young people aged between 10 or more years old but less than 18 years old at the time when the offence the person has committed, or is suspected of having committed, occurred. The object of the Act is not merely to punish young offenders but also to ensure they receive appropriate treatment and rehabilitation. Accordingly, the Act provides for a variety of diversionary processes including police cautioning and community conferencing as well as for a range of minimal intervention court orders such as community based supervision orders.

The Act also provides for the Youth Justice Division to hear and determine a wide range of crimes which, if committed by an adult would be triable only on indictment in the Supreme Court of Tasmania. Excluded from the Youth Justice Division’s jurisdiction are certain ‘prescribed offences’ such as aggravated sexual assault, rape, aggravated armed robbery and, for youths over 14, armed robbery. It provides that detention is considered a last resort for juveniles, thus reflecting the principles laid out in the United Nations (1989) Convention on the Rights of the Child.

Youth justice courts in Australia

The term children’s court is employed in the Australian Capital Territory, New South Wales, Queensland, Victoria, and Western Australia, while South Australia has a youth court – these terms describing the separate and specialist lower courts dealing summarily with both non-indictable

26 Richards, above n 17.

27 The Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’), United Nations (1985) stress the importance of nations establishing:

a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights.

28 Commissioner for Children (Tasmania), Ashley Youth Detention Centre – The Last Resort: Issues Paper No.2 (December 2011) 1.

29 Youth Justice Act 1997 (Tas) s 3.
offences committed by juveniles, and those juveniles subject to a child protection matter. In the Northern Territory the Youth Justice Court hears charges against young offenders.

Tasmania has no dedicated children’s court. Rather, juveniles are dealt with in two divisions of the Magistrates Court – the Youth Justice Division for summary criminal matters, and the Children’s Division for child protection matters.

In terms of its general objectives and operational procedures and practices, the Youth Justice Division of the Magistrates Court is not dramatically different and distinct from children’s courts in other Australian jurisdictions, albeit these courts are usually established under specific enabling legislation and usually run as independent courts under dedicated judicial officers.

As Borowski notes, children’s courts are ‘… embedded in youth justice and child welfare systems which have a strong bearing on their functioning’. The role of the court is necessarily part of a broader – and chronically under-resourced – youth justice system:

The youth justice systems’ other elements include the police, pre-court or pre-sentence diversionary programs, statutory youth justice agencies which supervise young people both in the community and in secure settings and non-government organisations (NGOs) which may provide services and programs for young people under supervision.

The effectiveness of the court is largely dependent on the broader youth justice system and the availability and delivery of services within that system. In this context, it is worth noting that the national study found there to be a shortage of youth justice workers in Tasmania. Under-resourcing in the youth justice system means that from time to time, some offenders on community-based orders who are classified as ‘low-risk’ are not supervised in accordance with the order. This is because there is a shortage of youth justice workers available to supervise them. That fact, combined with their low-risk assessment, has caused YJS to cease supervision or to conduct only minimal supervision.

The prevalence of ‘cross-over kids’, those who ‘drift’ from the child protection system into the youth justice system also means that statutory child protection agencies are required, on a fairly regular basis, to play significant roles in youth justice proceedings. The Youth Justice and Children’s Divisions of the Magistrates Court often concurrently but separately deal with criminal and child protection matters involving the same juvenile (dually-adjudicated youth).

Borowski’s national study suggests that there are about sixty specialist judicial officers in Australia who preside exclusively over children’s court matters (i.e. youth justice and child protection) and they are mostly located in the major cities. By comparison, there is a much larger number of

30 Borowski, above n 9, 8.
31 Ibid 15.
33 Borowski, above n 9, 12.
generalists (usually presiding over magistrates or local courts in regional and remote locations) who are empowered to convene children’s courts to deal with both youth justice and child protection matters. The mix of specialists and generalists was viewed as problematic in some other jurisdictions, but the lack of a specialist judicial officer in the Youth Justice Division was considered unproblematic for Tasmania’s magistracy. Nevertheless, the national study concluded that all judicial officers, particularly the generalists, were in need of professional development in juvenile justice and child protection.34

Further, the national study identified a need for ongoing professional development for all members of youth justice court workgroups. The training needs most commonly needed were in developmental psychology and childhood trauma, developmental criminology, mental health, intellectual disability (and associated communication skills), and cross-cultural professional practice.

At a national level Borowski recommends:

1. Additional court resources to cope with growing and increasingly complex workloads
2. A review in some states/territories of the structure of the courts, their interface with other courts that deal with children’s law, and their response to dually-adjudicated youth
3. Ongoing professional development for all members of courtroom workgroups
4. Greater clarity about the role of lawyers, and additional legal aid allocations to ensure equitable access to representation
5. A substantial investment in court facilities including holding facilities
6. Greater use of Indigenous children’s courts and sentencing circles
7. A substantial investment in bail support programs.35

The Hobart SYJC Pilot, incorporating the Special List, is not capable of addressing many of those concerns, but its implementation highlights its capacity against these recommendations and its potential to impact on the broader youth justice system.

**Characteristics of juvenile offending**

There is extensive research indicating that juvenile offending differs greatly from adult offending. Juveniles are also more likely than adults to come to the attention of police. They are typically less experienced at committing offences; and tend to commit offences in groups, in public areas (such as on public transport or in shopping centres), and close to where they live. They also tend to commit offences that are attention-seeking, public and gregarious; and episodic, unplanned and opportunistic.

Unsurprisingly, certain types of offences, such as graffiti, vandalism, shoplifting and fare evasion, are committed disproportionately by young people, while very serious offences such as homicide, white collar crimes and sexual offences are rarely perpetrated by juveniles. Generally, juveniles are more

34 Ibid 14.
frequently apprehended by police in relation to offences against property than offences against the person.36

Adolescence in itself generates risk:

It has been recognised that young people are more at risk of a range of problems conducive to offending—including mental health problems, alcohol and other drug use and peer pressure—than adults, due to their immaturity and heavy reliance on peer networks. Alcohol and drugs have also been found to act in a more potent way on juveniles than adults . . . and substance use is a strong predictor of recidivism . . . [Adolescence] is a time of complex physiological, psychological and social change. Progression through puberty has been shown to be associated with statistically significant changes in behaviour in both males and females and may be linked to an increase in aggression and delinquency.37

It is accepted by criminologists and justice practitioners that crimes are committed disproportionately by young people. Richards observes that the relationship between age and crime is ‘one of the most generally accepted tenets of criminology’.38

Data for 2010–11 indicates that in Australia offending peaks at age 18 among males, who at that age are legally considered adults in all Australian jurisdictions, and at 16 among females, such that females would typically come under juvenile justice regimes. There were 9925 offenders per 100,000 Australian males aged 18, compared with 3120 offenders per 100,000 Australian females aged 16.39

In Australia in 2010–11, young offenders aged 10–19 comprised over a quarter (28%) of the total offender population, almost twice that age group’s proportion in the entire population (15%). Similarly, persons aged 15–19, comprising 23% of all offenders, were more likely to be processed by police for the commission of a crime than were members of any other population group.40

Offender rates have been found to be consistently highest among persons aged 15–19 and lowest among those aged 25 years and over. As Richards states, ‘many juveniles who have contact with the criminal justice system are therefore not ‘lost causes’ who will continue offending over their lifetime’. Most people simply ‘grow out’ of offending.

Richards states that patterns of desistance differ between groups, but are not well understood:

36 Richards, above n 17, 3.
37 Ibid 4.
38 Ibid, citing Fagan and Western 2005, 2.
... while most juveniles grow out of crime, they do so at different rates. Some individuals are more likely to desist than others; this appears to vary by gender, for example... The processes motivating desistance have not been well explored and it appears that there may be multiple pathways in and out of crime...

Richards notes that a small proportion of juveniles continue offending well into adulthood. Criminological studies point to the fact this small core, usually from families with criminal lifestyles, continue to have repeated contact with the criminal justice system and are responsible for a disproportionate amount of crime.  

The characteristics, and the needs, of persistent juvenile offenders are described in a recent review of juvenile justice legislation in New South Wales:

It has long been known that a small proportion of all young offenders account for a disproportionate amount of crime... Whereas transient or adolescent-limited offenders tend to be creatures of opportunity, persistent offenders often have histories of neglect, low levels of educational attainment, histories of substance abuse and a tendency towards acts of physical aggression. Without intervention, treatment or support to address the underlying causes of their involvement in crime, many of these offenders continue offending well into adulthood.

The relationship between clinically significant oral language deficit and youth offending has been highlighted in recent research in Australia. Similarly, United Kingdom research highlights the special communication needs of young people in the youth justice system.

Young people are not only disproportionately the perpetrators of crime; they are also disproportionately the victims of crime. Young people aged 15–24 years in Australia are at a higher risk of assault than any other age group, and males aged 15–19 years are more than twice as likely to be victims of robbery than males aged 25 or older, or than all females. Additionally, juveniles are frequently the victims of offences committed by other juveniles. It is also widely acknowledged that victimisation is a pathway into offending behaviour for some young people.

The Youth Justice Division of the Magistrates Court has always been cognisant of the fact many young people who come into contact with the court will adopt law-abiding lifestyles from young adulthood. In this context the court generally adopts a minimal, people-processing approach, the

41 Richards, above n 17, 5.
43 Borowski, above n 9, 23, referring P Snow and M Powell.
45 Richards, above n 17, 4.
level of intervention by the court being proportionate to the offence, and the criminogenic needs and risks of the offender.

**Juvenile justice in Tasmania**

**Some key background data**

The following data provides a snapshot of juvenile offending in Tasmania immediately prior to and during the Pilot.46

- In 2010–11 and 2011–12, Tasmania recorded the highest youth offender rates per 100,000 persons aged 10–19 of any Australian state or territory.
- The Tasmanian youth offender rates have been consistently much higher than the national youth offender rates per 100,000 persons aged 10–19.
- Tasmania’s youth offender rate decreased slightly from 6022 in 2009–10 to 5557 offenders per 100,000 persons aged 10–19 in 2010–11.
- The predominant principal offence with which Tasmanian offenders aged 10–19 years were proceeded against in 2011–12 (as measured by the offender rates per 100,000 persons aged 10–19), related to public order (2076). The state or territory that had the second-highest rate of public order offences recorded, the Northern Territory, had less than half that number.
- In 2010–11, Tasmania ranked equal third of all states and territories in the proportion of defendants proven guilty receiving a custodial order (custody in a correctional facility or fully suspended sentence), with 14% of defendants proven guilty receiving a custodial order (the same as New South Wales), less than the Australian Capital Territory (23%) and the Northern Territory (21%).
- In 2010–11, Tasmania Police lodged 4037 juvenile files, consisting of 1630 juvenile prosecutions and 2407 juvenile conferences and cautions.47
- The total number of young people detained at the Ashley Youth Detention Centre in 2010–11 was 109, which represents a reduction of 25% from the 146 young people detained in 2009–10.
- In 2010–11 an average of 25 young people were detained at Ashley on any given day.
- In 2009–10, 66% of young people at Ashley were on remand and the average total unsentenced detention periods for young people were longer in Tasmania than in all other states surveyed.

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46 Data presented here on juvenile offending is sourced from the Australian Bureau of Statistics, above n 40, and data on juvenile detention from the Commissioner for Children, above n 28, 3. (Young people detained in custody have either been sentenced by a court to a period of detention or have been refused bail and have been detained on remand waiting for a court appearance or sentence.)

Although detention rates among young people in Tasmania have been declining in recent years, in 2009–10, young people in Tasmania aged 10–17, with a rate of detention of 0.5 per 1000, were, along with their counterparts in New South Wales, more likely on an average day to be detained in custody than other Australian young people aged 10–17.

In summary, young people in Tasmania were, at the beginning of the Pilot in January 2011, generally more likely than their counterparts in other Australian states and territories to be arrested and detained in custody. They were also disproportionately arrested for public order offences.

ABS figures indicate that, for the four years 2008–09 to 2011–12, Tasmania and the Northern Territory consistently had the highest youth offender rates in the country (Figure 3), and that the rate of public order offences in Tasmania exceeded that of all other state and territories (Figure 4).

Figure 3: Youth offender rate per 100,000 persons aged 10–19 years, by selected states and territories, 2008–09 to 2011–12 (ABS)

Australian Bureau of Statistics
© Commonwealth of Australia 2013.

The types of offences perpetrated by young people in Tasmania is somewhat mixed. In 2011–12 (consistent with the 2010–11 figures cited above) the principal offence most prevalent for youth offenders in Tasmania was public order offences (2076 offences per 100,000 people aged 10–19), followed by acts intended to cause injury (775 offences per 100,000 people aged 10–19), theft (772 offences per 100,000 people aged 10–19) and property damage (366 offences per 100,000 people aged 10–19). While public order offences are overwhelmingly the most common offences perpetrated in Tasmania, many do not proceed to court.

Offences for which juveniles were most frequently adjudicated by the Youth Justice Division of the Magistrates Court in Tasmania during 2010–11 were acts intended to cause injury (21%), theft (18%), road traffic offences (16%), unlawful entry with intent (11%), and public order offences (7%).

The Tasmanian data is generally consistent with the national data. Offences for which juveniles were most frequently adjudicated by children’s courts in Australia during 2010–11 were theft (21%), acts intended to cause injury (20%), unlawful entry with intent (13%), public order offences (9%), and road traffic offences (8%).

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49 Ibid.

50 Australian Bureau of Statistics, above n 2.

51 Ibid.
Youth justice lodgements in Tasmania

During 2011, the first full year of its operation, 1159 cases were lodged (initiated) in the Hobart SYJC. To show the trend within the evaluation period (ending September 2012): the first three quarters of 2011 saw 861 cases lodged, while in the same period in 2012 that number dropped to 687 (Figure 5).

In the 18 months prior to the Pilot and during 2011, Hobart youth justice lodgements almost always exceeded those in the combined other court districts (Launceston, Burnie and Devonport). In 2012, this trend reversed as the other district registries began recording more lodgements than Hobart. Youth justice lodgements fell state-wide during the Pilot period.52

![Graph showing youth justice lodgements in Hobart and other districts](image)

*Figure 5: Youth justice lodgements, 2011–12, Hobart and other districts*

Usually, more than one lodgement correlates to any youth justice defendant, as young defendants are generally charged with more than one offence per incident. Over the course of the Pilot the ratio of lodgements to persons has continued to hover around a factor of two (Figure 6).

Corresponding with the recent decline in the total number of juvenile justice lodgements state-wide, has been a decline in the total number of individuals appearing in Youth Justice Division of the Hobart Magistrates Court.

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52 The population of all young people aged 10–17 years is relatively similar in southern Tasmania (25,218, or 48% of all Tasmanians aged 10–17) and the combined northern and north-western regions (27,370, or 52%), such that valid comparisons can be made of the respective lodgement rates. Source: 2011 Census (by LGA) kindly supplied by Department of Health and Human Services, 21 August 2013.
Figure 6 below indicates, for example, that at 31 December 2010, immediately prior to the commencement of the Pilot, there were 210 individuals with matters active in the youth justice court; by 30 September 2012 (the end of the Pilot evaluation period), that number had reduced to 143. In the seven quarters prior to the Pilot the per-quarter average number of persons with matters active was 215; during the seven quarters of the Pilot, that average had reduced to 166.

![Graph showing pending lodgements vs. persons, Hobart, 30 June 2009 to 30 September 2012.](image)

**Figure 6: Pending lodgements vs. persons, Hobart, 30 June 2009 to 30 September 2012**

**Juvenile justice prosecutions in Tasmania**

As Figure 7 below shows, the state as a whole, and all police districts except the north recorded a reduction in the number of juvenile prosecutions between 2009–10 (prior to the Pilot) and 2011–12 (during the Pilot period). The relative proportion of prosecutions in the combined southern and eastern, and the combined northern and north-western districts was very steady throughout, with about 50% of all prosecutions originating in each combined region.53

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The juvenile arrests prosecuted under the Pilot would have originated in the southern and eastern police districts, roughly the catchment area of the Hobart registry.\(^{54}\)

In 2010–11, Tasmania Police initiated 4037 juvenile files, consisting of 1630 juvenile prosecutions and 2407 juvenile conferences and cautions. In 2011–12, Tasmania Police initiated 4205 juvenile files, consisting of 1645 juvenile prosecutions and 2560 juvenile conferences and cautions.

In Tasmania as a whole, pre-court juvenile diversions have remained fairly stable over recent years. Some 60\% of all juvenile offenders processed by Tasmania Police since 2008–09 have received some form of pre-court diversion instead of being formally prosecuted (Table 2). It is notable that this represents a decline from the higher proportion (approximately 70\%) recorded in the two years prior.\(^{55}\)

\(^{54}\) Prior to September 2012, Tasmania Police operated in four districts: Southern (Glenorchy, Hobart, Kingston divisions); Eastern (Bellerive, Bridgewater, Sorell); Northern (Deloraine, George Town, Launceston, St Helens); and Western (Burnie, Devonport, Queenstown). In September 2012 the Southern and Eastern Districts merged.


...juveniles who would otherwise be proceeded against (that is, taken to court) but who are diverted by police as a proportion of all juvenile offenders formally dealt with by police. The term ‘diverted’ includes diversions of offenders away from the courts by way of: community conference; diversionary conference; formal cautioning by police; family conferences; and other diversionary programs (for example, to drug assessment/treatment). Offenders who would not normally be sent to court for the offence detected and are treated by police in a less formal manner (for example, issued warnings or infringement notices) are excluded.
Table 2: Juvenile diversions as a proportion of juvenile offenders (Tasmania), 2006–07 to 2011–12

<table>
<thead>
<tr>
<th>Reporting year</th>
<th>Tasmania (%)</th>
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<tbody>
<tr>
<td>2006–07</td>
<td>71</td>
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<tr>
<td>2007–08</td>
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<td>2010–11</td>
<td>60</td>
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<tr>
<td>2011–12</td>
<td>61</td>
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</table>

Figure 8 below shows the number of pre-court juvenile diversions (consisting of informal cautions, formal cautions and community conferences) recorded under the Youth Justice Act 1997, Part 2, between 2009–10 and 2011–12.

During the year 2011–12 the proportion of informal cautions issued by Tasmania Police rose in the southern and northern police districts. The proportion of formal cautions reduced noticeably in the southern and eastern districts, whereas in the northern and north-western districts there was less change. The proportion of community conference referrals remained fairly stable in all police districts.

Figure 8: Cautions and community conferences, Tasmania Police districts, 2009–10 to 2011–12
Young people held in custody

The Youth Justice Act 1997, s 5(1)(g) provides that a young person should only be detained in custody for an offence as a last resort and for the shortest appropriate period of time.

Young people who are detained in custody in Tasmania have either been sentenced by a court to a period of detention or have been refused bail and have been detained on remand waiting for a court appearance or sentence (also known as pre-trial or unsentenced detention).\(^5^6\)

Traditionally, the Youth Justice Division of the Magistrates Court has overwhelmingly sentenced young offenders to non-custodial penalties, such as fines, probation orders and community service orders.\(^5^7\) The proportion of custodial orders has been decreasing: in 2007–08, 16% of cases adjudicated by the Youth Justice Division were finalised with a custodial order; by 2010–11, that figure had fallen to 14% (Figure 9).

\[\text{Figure 9: Sentence outcomes by custodial and non-custodial orders, Youth Justice Division, Tasmania, 2007–08 to 2010–11}\]

Note: Custodial orders includes custody in a correctional facility and a fully suspended sentence. Non-custodial orders includes community supervision, monetary orders and other non-custodial orders.

\(^5^6\) Commissioner for Children (Tasmania), above n 28, 2.

\(^5^7\) Australian Bureau of Statistics above n 2.
Ashley Youth Detention Centre is Tasmania’s primary facility for holding sentenced young offenders and young people on remand. Ashley accommodates young male and female offenders aged 10–18, and has a 51-bed capacity.

The national children’s court study concluded that Ashley occupies a necessary position in Tasmania’s juvenile justice system and that ‘there is a consensus among magistrates that detention is necessary as a last resort’.\(^{58}\) Travers quoted a magistrate as saying:

> It is last resort stuff sending a child into custody. It is a last resort to remand in custody. My feeling is that you do not send your dog to Ashley. But sometimes there is more to it than just how comfortable or positive it is going to be for the child. Something has to be done with a young offender on a rampage. I have to [take him] out of the community.
> (Magistrate 8)\(^{59}\)

While Ashley is the subject of ongoing debate, magistrates generally detain only young offenders who have committed serious offences involving violence, or those who have exhausted alternative sentencing options, sometimes due to their suffering from multiple and complex needs, such as alcohol and drug addictions, highly challenging behaviours and mental health problems. The Tasmanian study recounted the views of two magistrates, one (newly appointed) who had been surprised to discover no drug detoxification program in the detention centre, and the other who believed that, despite Ashley’s problems, offenders can benefit from time there:

> …Ashley has no facility for detoxification for drug addicted youths and whilst there was a psychologist, there was no program for alcohol and drug issues to be seriously addressed.
> (Magistrate 1)

> Often it is the case that the young person is doing really well at Ashley. He enjoys the structure of the day, enjoys the interaction and learning experience with teachers.
> (Magistrate 3)\(^{60}\)

The Commissioner for Children reported that in 2009–10, 66% of young people at Ashley were on remand and that the average unsentenced detention periods for young people were longer in Tasmania than in all other states.\(^{61}\)

The Tasmanian Government is aware of the economic and social costs of youth detention. On 19 July 2012, the Minister for Children charged the Commissioner for Children with providing a report addressing possible alternative solutions to Ashley. The Report, *Alternatives to Secure Youth Detention*

\(^{58}\) Travers et al, above n 6, 17.  
\(^{59}\) Ibid.  
\(^{60}\) Ibid,18–19.  

52  EVALUATION REPORT
in Tasmania was released in August 2013. Due to its timing, the report could not be considered for this evaluation.62

On average in 2010–11, there were 25 young people aged 10–17 in detention in Tasmania per day, half of whom were in unsentenced detention (remanded in custody). Over the course of that year, the average length of time young people were remanded in custody was 56 days.63

The proportion of young people remanded in custody has in fact hovered around 50% of all young persons in detention over the last four years. There was little difference in the proportion on remand at the beginning of 2008 and the end of 2011, the Pilot’s first year of operation (Figure 10).

Figure 10: Proportion of detainees on remand in Ashley, 2008–11

In 2010 and 2011, Ashley generally held as many young people under remand as under sentence. The introduction of the Pilot, at least in its first year of operation, appears to have had no notable effect on the numbers of persons on remand in Ashley (Figure 10).


High numbers of young detainees on remand is a concern to the Commissioner for Children, who considers that:

- The use of remand arguably contradicts the principle of detention as a last resort.
- Only a small proportion of remandees tend to be sentenced to a custodial order.
- Remand makes it difficult to put in place rehabilitative programs for young offenders because the length of the remand period is unknown and the ultimate outcome uncertain.
- Remand directs limited juvenile justice resources away from community supervision and diversion.

The lack of suitable accommodation for young offenders (who may have no safe home) and bail support programs to maintain young people in the community is also a national problem. Unnecessarily high remand rates and remands for extended periods are encountered by young people in all of Australia’s youth justice systems, despite the overwhelming majority of those remanded being unlikely to receive a custodial sentence and a small proportion being acquitted.

The preparedness of Tasmania’s youth justice courts to remand young people in custody is evident in the data at Figure 12. In the 18 months prior to the introduction of the Pilot, the Hobart youth

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65 Borowski, above n 9, 28.
justice court remanded an average of 8 (or 4.5%) finalised defendants in custody per quarter, and the combined other youth justice courts remanded an average of 5 (2.6%).

Notwithstanding the introduction of the Pilot, Hobart is now even more likely to remand young people in custody than are the combined other youth justice courts. In the eighteen months since the introduction of the Pilot, an average 5.4% of young people appearing before the Hobart SYJC have been remanded in custody per quarter, compared with fewer than 2% in other districts. The Pilot is not indicating any greater likelihood to bail young people to appear rather than remand them in custody. In fact under the Hobart Pilot a young person would appear to be almost three times more likely to be remanded in custody than in the other youth justice courts. That said, the actual numbers remain relatively small.

Figure 12: Finalised defendants’ remand status by court location (Hobart and other), 30 June 2009 to 30 September 2012

Note: ‘Other’ represents the Launceston, Devonport and Burnie youth justice courts.

Although the introduction of the Pilot has coincided with a decline in overall admissions to Ashley from the Hobart region and state-wide (Figure 13), the higher rate remanded in custody from Hobart relative to other districts, suggests that the decline may be accounted for by a reduction of offenders sentenced to detention.
The statistics on young people remanded in custody and granted bail by court location need to be treated with some caution. These statistics do not factor in the nature or seriousness of the offences, offender characteristics (such as age or criminal record), provision of legal representation, risk of the offender absconding, the residential status of the offender, or other factors that will influence a magistrate’s bail determinations. General or far-reaching conclusions, therefore, ought not be drawn from these statistics without recourse to the specific circumstances that drive each case and bail order.

![Figure 13: Admissions to Ashley by court registry, 2007–08 to 2011–12](image)

**Links to child protection**

In December 2011 the Tasmanian Commissioner for Children summarised the overlap between the juvenile justice system and child protection:

Research shows clear links between the experience of child abuse or neglect, homelessness and criminal activity for young people and a significant correlation between experiences of state care and involvement in crime.66

In March 2012, President of the Children’s Court of New South Wales, Judge Mark Marien SC stated that ‘children and young people who have been in care are grossly over-represented in the juvenile justice system’, and that these ‘cross-over kids’ who drift from the child protection system into the juvenile justice system present enormous challenges to children’s courts. He states that the ‘great divide’ between the two systems needs to be revisited because it ‘fails to recognise that with respect to many young offenders who come before the Children’s Court charged with a criminal

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66 Commissioner for Children (Tasmania), above n 28, 4.
offence, the clear underlying cause of their offending behaviour is essentially a welfare issue rather a criminogenic one’.  

Over the past 25 years there has been a widespread trend (particularly by government and government agencies) to view these two jurisdictions of Children’s Courts as quite separate and distinct. However, they are not separate and distinct. There is a considerable overlap between the two jurisdictions because many young offenders who come before the Children’s Court in its criminal jurisdiction have a history of being in care. We also see in our criminal jurisdiction young offenders who should have had interventions from the child protection agency but ‘have slipped through the cracks’ in the child protection system.

Marien recommends improved coordination and information sharing between agencies such as education, health, social welfare, juvenile justice, child protection, and police. Marien also insists that ‘child protection agencies must play a role in the juvenile justice system and not abandon young offenders with serious welfare concerns who have entered that system’. He advocates an evidence-based and ‘balanced approach’ to ‘avoid the criminalisation of young people where the real issue of concern is a welfare issue and not a criminogenic one.’

Tasmania has a significant, and growing, number of such ‘cross-over kids’. In southern Tasmania in 2011, of the 365 young people known to YJS – that is, subject to either a pre-sentence report or a court (sentencing) order:

- 136 (37%) had been the subject of a substantiation with CPS
- 50 (14%) were on a concurrent care and protection order with CPS
- 84 (23%) had been previously subject to a care and protection order with CPS
- 32 (9%) were in concurrent out-of-home care
- 77 (21%) had a history of out-of-home care.

As Figure 14 below shows, the number of young people known to YJS increased steadily over the period 2008–11. In 2011, 50 people were concurrently on a care and protection order and 32 were residing in out-of-home care while their youth justice proceedings were underway.

The number of young people known to YJS and engaged in child protection in southern Tasmania had increased steadily from 116 such cases in 2008. The relative proportions of each protection status remained noticeably constant over that period.
Unsurprisingly, a significant proportion of detainees at Ashley on either remand or detention orders also had a history of involvement with CPS. In 2011, of the 48 young people from the Hobart court region who were detained at Ashley:

- 25 (52%) had been the subject of a substantiation with CPS
- 17 (35%) were on a concurrent care and protection order with CPS
- 20 (41%) had been previously subject to a care and protection order with CPS
- 20 (41%) had a history of out-of-home care.

As Figure 15 indicates, while the number of young people from southern Tasmania in detention has reduced over the last four years (from 65 to 48), the overlap between custodial youth justice and child protection involvement remains.
The figures for southern Tasmania are not notably different from the whole-of-state custodial youth justice figures. The figures indicate that the links between juvenile justice and child protection are endemic, and that special strategies for these ‘cross-over kids’ are essential.

**Tasmanian government policy**

**The Tasmanian Government agenda for children and young people**

During its early development, the Hobart SYJC Pilot was incorporated into *Our Children Our Young People Our Future*, the Tasmanian Government’s agenda and ten year plan for children and young people, launched in July 2011. The agenda describes ‘the Tasmanian Government’s strategic direction for children and young people over the next 10 years right across a service system that included all its elements – health, wellbeing and education, as well as care and protection’. The Office for Children was established in the same year to coordinate its implementation. Whole-of-government
implementation plans have been produced by the Office of Children to facilitate the achievement of the agenda.\textsuperscript{71}

The Hobart SYJC falls within ‘Action area 9’ of the agenda, which is to: ‘Reduce youth offending by adopting problem solving approaches to youth justice’. A specific action under the agenda is the delivery of a ‘Hobart-based 12–24 month pilot of a Dedicated Youth Justice Magistrate’. This action relates to the broader service objective: ‘To support children, young people and their families through universal, targeted and specialist services that promote the wellbeing of all young Tasmanians’. The implementation framework for the government’s agenda has provided a structure against which the Pilot has been able to pursue its objectives and activities.

**Other government agency priorities for youth justice**

The Department of Justice and DHHS both recognise that there has been a tendency for their services to work in isolation when collaboration would improve outcomes for clients and the juvenile justice system. Recent documentation shows that these agencies cater for common client groups and accept that greater collaboration would lead to better interventions. The Department of Justice Corporate Plan 2010–2015 commits to increasing safety in the Tasmanian community by providing, for example:

- Programs aimed at addressing the causes of violent and other criminal behaviour
- Collaboration and coordinated responses with other government agencies (in particular the Departments of Health and Human Services, and Police and Emergency Management)
- The effective supervision of offenders in the community.\textsuperscript{72}

Furthermore, the (Department of Justice) Breaking the Cycle Strategic Plan, focusing on reducing re-offending and increasing community safety, aims to provide ‘more effective and accessible service delivery through better integration with service providers’. Accordingly, it promotes a strategy of increased ‘cooperation and collaboration between arms of corrective services, the broader justice system, and other relevant government departments and service providers’.\textsuperscript{73}

The DHHS Strategic Objectives 2009–2012 emphasise better collaboration and integration with the Department of Justice, one of the key strategic objectives being ‘creating collaborative partnerships to support the development of healthier communities’. DHHS aims to deliver ‘integrated, appropriate and accessible services – particularly to those who are most vulnerable and at most risk’.\textsuperscript{74}

Young people, therapeutic jurisprudence and problem-solving justice

Therapeutic jurisprudence

Youth justice or children’s courts have been challenged for being essentially ‘people-processing organisations’ when they should be ‘people-changing organisations’.75 People-processing organisations ‘shape a person’s life by controlling his access to a wide range of social settings through the public status they confer’.76 Courts, schools, hospitals, prisons, and human service agencies are typical examples of people-processing institutions. These organisations convert people into ‘cases’, ‘clients’, ‘patients’, ‘inmates’, and so forth. Once classified, the client is then treated ‘downstream’ according to a formalised set of rules and procedures.77 ‘People-changing’ institutions, by contrast, work to treat, reform or in some other way change the individual. As an institution, a children’s or youth justice court has elements of both a people-processing and people-changing organisation, with its ultimate goal being arguably people-changing. But without setting clear priorities and undertaking specific interventions, it can become little more than people-processing. The Hobart Pilot, especially through the Special List, has brought people-changing capacity to the youth justice court.

Therapeutic jurisprudence is ‘… the study of the law as a therapeutic agent’.78 It recognises that the way the law is implemented and operates can have a positive, negative or neutral effect on the wellbeing of participants. Therapeutic jurisprudence promotes the idea that by assisting offenders to address the behavioural or situational problems that underlie their offending behaviour, a more comprehensive resolution can be reached.79

The theory and practice of problem-solving courts is strongly related to therapeutic jurisprudence. Problem-solving courts are concerned with solving the problems that lead to a person’s appearance in court. Walsh provides a definition:

Problem-solving courts expand the role of the criminal court beyond the adjudication of guilt and sentencing to encompass a range of practices and techniques aimed at addressing the causes of defendants’ offending behaviour. Those within the court – the magistrate, defendant, prosecutor, defence lawyer and others – work together to bring about positive changes in defendants’ lives, to address any problems defendants might have and to improve their life chances. This benefits the defendant, but also the broader

75 Borowski, above n 9, 26.
77 Ibid.
79 King, above n 12, 130.
community as it is expected that a reduction in offending behaviour will occur, thereby promoting community safety.80

Hannam observes: ‘Many of the tools utilised in problem-solving courts are also consistent with promoting the wellbeing of the participants. In this way problem-solving courts can be seen as an excellent example of the application of therapeutic jurisprudence to the criminal justice system’.81

Importantly, problem-solving courts are different to specialist courts such as children’s courts:

‘Specialist’ courts deal with complex areas of law, while problem-solving courts are concerned with complex social problems that require a multidisciplinary approach. Problem-solving courts set themselves apart by employing an innovative approach to court proceedings, where the judicial officer leads a team of court players in finding solutions to defendants’ problems. In short, problem-solving courts may be described as ‘specialized courts that develop expertise with particular problems.’82

The Special List initiative is informed by the dual concepts of therapeutic jurisprudence and problem-solving courts. The therapeutic jurisprudence approach emphasised in the Special List involves quite different principles than those involved in conventional litigation. Among other things, it involves a collaborative, largely non-adversarial, approach. It aims to be forward-looking and is more concerned with participants’ needs.83

**Addressing criminogenic needs**

Australian juvenile justice systems aim to intervene to support juveniles to desist from crime. Richards suggests that assisting Tasmanian juveniles to grow out of crime – that is, to minimise recidivism and to help juveniles become ‘desisters’ – are key areas for continued development and for building safer communities.84

A key concern of juvenile justice is to address juveniles’ criminogenic needs – the dynamic factors that directly influence an offender’s criminal behaviour, values and attitude, and are considered to represent ‘needs’ in that young person’s life. These needs can be addressed through specific interventions that, if successful, reduce recidivism.

Criminogenic needs include:

- Anti-social personality

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80 Tamara Walsh, *A Special Court for Special Cases* (Australian Institute of Judicial Administration and the University of Queensland October 2011) 4.


82 Walsh, above n 80, citing MC Dorf and JA Fagan.

83 King, above 12 6, 134.

84 Richards, above n 17, 4.
PART 2: BACKGROUND TO THE PROJECT

- Anti-social attitudes and values
- Anti-social associates
- Family dysfunction
- Poor self-control, poor problem-solving skills
- Substance abuse
- Lack of employment/employment skills.\(^{85}\)

Richards reports that intellectual disabilities and mental illness are more common among juveniles under the supervision of the juvenile justice system than among adults under the supervision of the criminal justice system or among the general Australian population. A recent study of juveniles in detention in Australia found that 17\% had an IQ below 70.\(^{86}\) Juveniles with an intellectual disability are at a significantly higher risk of recidivism than other juveniles. Therefore, although juvenile crime is typically less serious and less costly in direct economic terms than adult offending, juvenile offenders often require more intensive and costly interventions.\(^{87}\)

Marien states that recognised risk factors for young people over the age of thirteen engaging in criminal justice include:

- A history of antisocial behaviour, conduct disorder during childhood (lying, stealing, bullying, non-compliance etc.) including contact with the law and arrest before age twelve
- A history of childhood abuse and/or neglect
- Disengagement from education
- Use of tobacco, alcohol and/or other drugs, either weekly or more frequently, before age twelve
- Male gender
- Low self-control, impulsiveness during childhood
- Hyperactivity, poor ability to pay attention during childhood
- Involvement in fighting, aggression, acts of violence before age twelve
- Low family income during childhood
- Neither parent had skilled work


\(^{86}\) Richards, above n 17, citing M Frize, D Kenny and C Lennings.

\(^{87}\) Ibid 5.
Neither parent left school with any qualifications

One or both parents has a history of antisocial criminal behaviour.

Protective factors are usually the inverse of the risk factors and may involve treatment of some types of behavioural disorders (drug use, mental health, etc.) but are essentially focused on establishing ‘community connectedness’ in the life of the young person.\(^88\)

Engaging a young person with education or employment or building family and community supports are all effective in reducing recidivism.\(^89\) Providing participants with employment and training, or treatment for drug and alcohol abuse, or assisting them to engage with social services supporting housing, disability or mental health are ways of targeting their dynamic criminogenic needs.

Some of these risk factors and resulting needs can be addressed through intervention programs, but others such as gender, criminal history or educational background of parents clearly cannot.

In a juvenile justice context, criminogenic needs can be addressed through court diversion programs and/or through rehabilitative or psychological treatment programs offered to offenders serving custodial or community-based sentences. Effective intervention needs to identify which criminogenic needs relate to a particular offender’s criminal behaviour and ensure that these are directly addressed. A program also needs to include strategies and activities that are personally meaningful to the offender.\(^90\) Including the offender in the formulation of their bail conditions is a component of achieving this.

**Diversion**

Diversion normally refers to programs or processes that divert young people away from the criminal justice system at the pre-apprehension stage. It aims to eliminate, not just minimise, contact with that system. In recent years, however, the term has expanded to refer to any alternative processing option at any stage of the criminal justice system, including court-based diversion.\(^91\)

The broader definition applies to the Special List, as an application for referral to the List can be made at any time prior to the finalisation of a matter. This sort of court-based diversion is in keeping with the graded system of diversion options for juveniles provided for under the *Youth Justice Act 1997*. Under the Act, young people are afforded the benefit of warnings, informal and formal police cautions, and youth justice conferences as strategies that divert them from the court system.
Within the court environment, the Special List continues to focus on diversion of young people from deeper involvement in the juvenile justice system. Diversion from intensive correction or custody is well-founded. It is widely recognised, for instance, that some juvenile justice responses to offending, such as detention, are criminogenic, that is, they foster further criminality. Detention, as Richards states, enables ‘offenders to learn more and better offending strategies and skills, and to create and maintain criminal networks. This may be particularly the case for juveniles, who, due to their immaturity, are especially susceptible to being influenced by their peers’.\(^{92}\)

**Characteristics of problem-solving courts**

Although a relatively recent development, problem-solving courts are becoming more common in Australia and internationally.\(^{93}\) Problem-solving courts are based on the concept of therapeutic jurisprudence in the delivery of justice. According to Freiberg, problem-solving (or problem-oriented) courts:

> ...represent a move away from a focus on individuals and their criminal conduct to offenders’ problems and their solutions. Their attempt to deal with the problems which may contribute to an offender’s criminal behaviour reflects a realisation by courts and legislators that social problems may require social, rather than legal, solutions.\(^{94}\)

The multidisciplinary team approach to understanding and addressing criminogenic behaviour, the application of ongoing judicial intervention and supervision, and adoption of therapeutic jurisprudence principles contribute to such problem-solving.\(^{95}\)

The literature on problem-solving courts has been an implicit influence on the Pilot. Some of the features of drug courts and mental health courts have clearly guided not just the development of the Special List but the broader Pilot itself.

The key components of such problem-solving courts can be summarised as:

1. Integration of treatment and welfare services with justice systems case processing

\(^{92}\) Richards above n 17, 6–7. Richards cites a Canadian finding that intervention by the juvenile justice system greatly increased the likelihood of adult criminality among a large cohort of boys who had attended kindergarten together. Contact with the juvenile justice system increased the odds of adult judicial intervention by a factor of seven. The more restrictive and intensive an intervention, the greater its negative impact, with juvenile detention being found to exert the strongest long-term criminogenic effect. The study recommended early prevention, the reduction of judicial stigma and limiting interventions that concentrated juvenile offenders together. See also U Gatti, R Tremblay and F Vitaro, ‘Latrogenic effect of juvenile justice’ (2009) 50 (8) Journal of Child Psychology and Psychiatry 991–998.

\(^{93}\) For a brief history of problem-solving courts see Walsh above n 80, 6–8.


2. A broad-based group of stakeholders (a court team) guide the planning and administration of the court

3. A non-adversarial, problem-solving approach

4. Eligibility criteria address public safety and consider a community’s treatment capacity

5. Timely participant identification and linkage to services

6. Terms of participation are clear and promote public safety; and the defendant’s engagement corresponds to the level of risk they present to the community

7. Ongoing judicial interaction with each court participant is essential

8. Continuing interdisciplinary education promotes effective court planning, implementation and operation

9. Forging partnerships among court officers, public agencies and community-based organisations generates local support and enhances program effectiveness

10. Data monitoring and evaluation are used to demonstrate the impact of the court, and its performance is assessed periodically (and procedures modified accordingly).

These components represent a well-accepted methodology in establishing new court arrangements, and guided the Pilot. The establishment process was driven through a regular dialogue with key statutory juvenile justice and criminal justice stakeholders. The court used both its perceived and actual authority to identify, discuss and clarify the roles of courtroom workgroup members, created forums outside the courtroom to communicate problems about and solutions to youth justice case processing, and signified an interest and intent to work on and continually improve the issues encountered by youth justice case processing.

While the establishment and implementation of the Pilot has obviously addressed some key components more than others, this process-driven approach to the Pilot provides implicit guidance on the key drivers to the Pilot and safeguards against any over-reliance on key individuals. While some elements of the Pilot have been characterised by a significant degree of single person-dependency, the principles, practices and operational procedures adopted by the Pilot are transferable to other court locations and other courtroom teams.

Processing youth justice in Tasmania: the problem of timeliness

The Tasmanian Auditor-General has observed that excessive court waiting times can have the following detrimental effects:

- Evidence can dissipate or deteriorate (e.g. witnesses may fail to appear or their memories may fade).
- Gaols may become overcrowded, with remandees held for lengthy periods.
- Victims of crime, the accused, and their respective families are subject to stress and anxiety.
- The deterrent effect of the criminal justice system may be undermined.
- Delay has a compounding effect.
- Court resources may be wasted.
- Other participants in the system may be inconvenienced.\(^\text{97}\)

Reducing the time before a young person appears in court is generally considered a favorable outcome for both the young person and the justice system. Timely processing after the commission of the offence provides greater accountability for the offences allegedly committed, potentially lessens the stress on the defendant, their family and any victims, and decreases the impact on a typically impressionable young person. The efficient clearance of matters saves time and money in an overburdened criminal justice system.

In June 2008 the Auditor-General conducted a performance audit of the Criminal and Youth Justice Divisions of the Magistrates Court, finding that case duration and clearance rates in the Youth Justice Division had deteriorated since 2003, concluding that:

> The increase in the active pending case load and durations of finalised cases are indicative of a deteriorating situation within Youth Justice. Factors contributing to this include higher recidivism amongst young offenders and the greater number of court-ordered reports required in Youth Justice.\(^\text{98}\)

The Auditor-General produced a number of recommendations designed to improve the overall timeliness of the Court’s Criminal and Youth Justice Divisions. In 2009 a statewide strategy was introduced seeking to consolidate all matters for young people appearing before the court. Court clerks, Police Prosecution Services and Legal Aid all assisted with the consolidation of matters for individual defendants in order to reduce the time to finalisation.

\(^{97}\) Auditor-General (Tasmania), above n 22.

\(^{98}\) Ibid.
Data for the period 2006–07 to 2009–10 indicate that the Court’s responses to the Auditor-General’s recommendations, including the improvements made to business practices, had not made a sustained impact on timeliness to finalisation.

While there has been a general and sustained increase in the number of youth justice cases before the Magistrates Court (from 2176 in 2006–07 to 3130 in 2009–10) and the number of cases finalised (from 1312 in 2006–07 to 2080 in 2009–10), with a corresponding increase in the number of attendances required at court, backlogs and delays in finalisation had remained fairly stable over time. As the table below indicates:

- The Court improved the proportion of cases finalised within 6 months in 2008–09.
- The Court improved the proportion of cases finalised between 6 and 12 months in 2008–09.
- A significant but fairly constant number of cases took over 12 months to finalise.

Table 3: Magistrates Court (Youth Justice Division) court activity data, 2006–07 to 2009–10

<table>
<thead>
<tr>
<th></th>
<th>2006-07</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal lodgements</td>
<td>2176</td>
<td>2561</td>
<td>2985</td>
<td>3130</td>
</tr>
<tr>
<td>Pending case load (no.)</td>
<td>834</td>
<td>940</td>
<td>848</td>
<td>847</td>
</tr>
<tr>
<td>Cases &lt; 6 months</td>
<td>591</td>
<td>671</td>
<td>619</td>
<td>611</td>
</tr>
<tr>
<td>Cases &gt; 6 months</td>
<td>133</td>
<td>183</td>
<td>136</td>
<td>144</td>
</tr>
<tr>
<td>Cases &gt; 12 months</td>
<td>110</td>
<td>86</td>
<td>93</td>
<td>92</td>
</tr>
<tr>
<td>Backlog % &lt; 6 months</td>
<td>59</td>
<td>62</td>
<td>73</td>
<td>72</td>
</tr>
<tr>
<td>Backlog % &gt; 6 months</td>
<td>31</td>
<td>29</td>
<td>16</td>
<td>17</td>
</tr>
<tr>
<td>Backlog % &gt; 12 months</td>
<td>10</td>
<td>9</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Number of attendances</td>
<td>6669</td>
<td>8204</td>
<td>9827</td>
<td>10 020</td>
</tr>
<tr>
<td>Attendance indicator rate (av listings per case)</td>
<td>5.1</td>
<td>5.1</td>
<td>4.9</td>
<td>4.8</td>
</tr>
<tr>
<td>All cases finalised</td>
<td>1312</td>
<td>1613</td>
<td>2012</td>
<td>2080</td>
</tr>
<tr>
<td>All cases finalised by trial</td>
<td>60</td>
<td>58</td>
<td>50</td>
<td>79</td>
</tr>
</tbody>
</table>

The Court’s concern with its performance in relation to both the timely disposition of cases and the number of attendances required in each case provides a background for the Court’s interest in a more specialised approach to youth justice.

After his appointment in August 2009, Chief Magistrate Michael Hill held discussions with government ministers and a number of youth justice professionals about the establishment of a specialist youth justice court. The Chief Magistrate made specific reference to a 2007 Legislative
Council Select Committee Report on youth justice and detention that had specifically recommended that ‘Magistrates with a special interest in youth justice be dedicated to the Youth Justice Court’.99

When the Tasmanian interviews for the national children’s court study were being conducted in late 2010, discussions were taking place in the Court about the desirability of a dedicated youth justice court. As the study points out, some magistrates favoured greater specialisation, while others did not:

We are jacks of all trades at the moment. In a small state like Tasmania I suppose we have to be. But I think the ideal would be to have a small specialised youth court that deals with all these matters by a dedicated one or a few magistrates. (Magistrate 4)

We need a dedicated children’s court, more conferencing supervised by a magistrate similar to our other diversion systems, more emphasis on parental involvement, and the parents must attend, sitting at the bar table. (Magistrate 9)

I’m generally not in favour of specialist magistrates in Tasmania because I do not think the market is big enough. If you have one magistrate dealing with all of the youth matters then there’s potential for a lack of cross-fertilisation of ideas. He becomes wrapped up in his own little youth justice world. That is my own view. In Victoria you have ten magistrates doing youth justice so that is a different thing. (Magistrate 10)

Even before the introduction of the Pilot, the Magistrates Court had been moving towards a more unified and child-centred approach to youth justice issues. Travers concluded that such reform was needed:

… the case of Tasmania illustrates that more could be done in reducing delays, and investing in more child protection and youth justice workers, refurbishing courtrooms and establishing bail hostels. The argument that no resources are available is not really compelling.101

**Resourcing in Tasmania’s youth justice system**

Travers observed resource shortages in the youth justice system in Tasmania:

Most of the difficulties in Tasmania’s (youth justice system) result from a lack of resources rather than because there are great ideological differences on how to proceed.102


100 Travers et al, above n 6, 27–28.

101 Ibid 32–33.

102 Ibid 7.
The lack of resources impacts directly on the time taken for cases to be finalised:

The good intentions behind the youth justice system are continually thwarted in this state through a shortage of resources. This is particularly evident in the way cases are adjourned, so that when the young person is eventually sentenced, the offence may have taken place weeks or months previously. This arises partly because young people are entitled to legal advice, but also because multiple offences overload the system:

One of the problems of dealing with kids is the delays in the system. You can get a child into court quickly after they’ve committed an offence … but it’s what happens then that’s the problem. If they get an adjournment then you put the matter off for three or four weeks for them to get some legal advice and a lot of them reoffend. So they come back next time with the lawyers and there is a new matter to address. The lawyer asks for it to be adjourned again. And it will happen and happen and happen … (Magistrate 1)

The Tasmanian study noted that lack of resources has adverse effects on the quality and number of rehabilitation and diversion programs available to young people:

Magistrates in Tasmania were also conscious that a lack of resources in agencies such as YJS affected the nature of programs offered to young people after sentencing. This was not a trivial problem but reduced the effectiveness of the system, as well as making magistrates look foolish when the orders they made could not be implemented:

Another bugbear for me is that we make orders and in 6–12 months’ time that person will come back. I will ask then the youth justice worker what happened under the orders I made. And I will hear nothing: “We were not resourced enough”. So essentially a penalty has been handed down but that is just words on a piece of paper … (Magistrate 3)

This magistrate wanted the courts to offer more effective welfare measures through sentencing.

The study also considered that the high numbers of young people on remand in Tasmania was principally due to a lack of resources:

The issue of remand is recognised as a problem among magistrates and the other agencies because in many cases offenders would not be sentenced to imprisonment for the substantive offence. The delays in this state arise from lack of resourcing within agencies. Allocation of a Youth Justice Officer, access to Legal Aid and compilation of bail or pre-sentencing reports all take time and are impacted by a lack of resources. Additionally a lack of resourcing within the police, whose funding has been reduced in attempts to address a budget deficit … may delay matters being processed by the court.

103 Ibid 11–12.
104 Ibid 14.
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Introduction and general comments

This evaluation examines the extent to which the Pilot has achieved its stated objectives of:

1. Improved timeliness to finalisation of youth justice matters
2. Encouragement of more consistency in the court’s decisions
3. Greater development and application of expertise in youth justice matters
4. Better coordination of youth justice support services to the court
5. Increased collaborative approaches between the agencies involved in youth justice.

The evaluation presents several additional findings – about youth justice under the Pilot, and more generally. A number of the recommendations in this report relate to these findings.

The SYJC Pilot achieved all but the first of its five formal objectives. However, its failure to achieve improvements in timely finalisation was the direct result of its having achieved the other four objectives. The Pilot introduced more consistent court decisions, brought more expertise to bear, and saw greater inter-agency coordination and collaboration, but these could not have been achieved without the allocation of more court and out-of-court time.

More coordination of youth justice services to the court and collaboration between agencies, the judicial supervision of defendants under supported bail programs, and the greater number of review appearances at court during that process, all contributed to an increase in the time taken to finalisation. Bringing together the range of parties interacting with the alleged offenders throughout the juvenile justice system in order to deliver better rehabilitative outcomes is known to be time-consuming.106

It is critical not to prioritise timeliness ahead of quality case management, including preparing the proper and relevant information for the court to make the best decisions about the people before it. Timeliness is only one indicator of effectiveness, and needs to be placed in the context of the substantial qualitative gains made under the Pilot.

Court data has informed the evaluation of timeliness (Objective 1) and sentencing orders (contained within Objective 2). The interviews with the various participants are also brought into the evaluation of Objective 1, and there is general discussion on various aspects of Objective 2 concerning consistency.

The evaluation of each of the remaining objectives (relating to expertise, coordination and collaboration, respectively) is based largely on the comments of all participants. As the participants frequently spoke about two or more of those objectives within the same statements, these are considered together and more generally.

106 Aigner, above n 4.
There were, of course, many outcomes of the Pilot. The final section of this report discusses the significant ‘other’ findings of the evaluation.

The central message delivered by the professionals interviewed was strong support of the SYJC. While each held their own views on the ways the court could be further improved, all praised the court and its aims, and were overwhelmingly in favour of its continuing.

The key strengths of the SYJC were identified as:

- The consistency of approach displayed by the court, facilitated in most part by the appointment of a designated magistrate
- The arrangements under the Special List
- The specialised attention provided to individual matters
- The collaborative engagement displayed by the court
- The sharper focus on the interests of the individual young people who came before the court.

There was general agreement that the Pilot had overwhelmingly achieved most of its objectives. Specific points made by the participants are captured in the following findings of the evaluation.

**Objective 1. Improved timeliness to finalisation of youth justice matters**

**Summary of findings**

Improved timeliness was a general objective of the Pilot. No particular targets were set. The evaluation has taken the normal understanding of the concept of timeliness and examines elapsed times, firstly, between the commission of the alleged offence(s) and the lodgement of the (paperwork of the) case in court, and secondly, between the commencement and conclusion of court proceedings.

Cases that moved perceptibly quickly through the court were commented upon by some of the professional participants:

> I think it works really well because … kids need to be sentenced quickly, otherwise they’ll forget what they’re there for. I think the case processing time has been greatly reduced.

> It has been the biggest improvement. I think there was a huge push from the police to have files in on time. The file might be on my desk on the Monday and be in court on the Tuesday. It gave them immediacy with what the penalty was in relation to the offending.

Despite the early signs of promise, there is no evidence that the SYJC improved any measure of timeliness to finalisation of youth justice matters. There may be a number of
reasons for this, some of them general in any youth justice court, and some specifically pertaining to the Pilot.

Time taken to process cases is not necessarily due to court delay. Some delays are caused by factors other than those related to the workload of the court. Timelines can be stretched when defendants fail to appear or fail to secure legal advice, a witness is unavailable, or when lawyers or YJS have insufficient time to prepare. A young defendant may deliberately cause delay. If a defendant pleads not guilty, the prosecution must complete its file, disclosure to the defence must be made and witnesses may be summoned. The lack of a legislated disclosure regimen also hampers the timely and proper sharing of charge information between prosecution authorities and defence lawyers.

Factors arising within the court that had an impact on the timeliness of case processing during the Pilot included:

• The impact of the general court workload on the specialised magistrates that presided over the SYJC
• The number of days per month set aside for the SYJC
• The availability of relevant data.

The designated magistrate’s general workload outside the SYJC has impacted on his specialist role in the Pilot, and vice versa. For example, during a period of absence by DCM Daly, the relief SYJC magistrate presided on three separate days and was required to familiarise herself with continuing cases as well as the specialised approach of DCM Daly and the courtroom workgroup under the Pilot. Obviously, any sudden and unplanned rearrangement of judicial and court resources impacted upon the rate at which cases (especially cases judicially supervised under the Special List) could be finalised.

Ten youth justice sessions per month were initially adequate despite periods of absence or leave on the part of the presiding magistrate. However, as the general court list and Special List components of the Pilot were consolidated, requiring more regular adjournments and court reviews, and the complexity and volume of the presiding magistrate’s overall court schedule increased, the time taken to finalise youth justice matters in the Pilot soon began reverting back to pre-Pilot levels. As a consequence of the magistrate’s involvement in multiple-day hearings in the Children’s Division, for example, 11½ youth justice rollover days were lost to the SYJC in 2012. Arrangements were put in place at the end of 2012 to minimise the number of rollover days lost to other non-youth justice court matters.

As has been mentioned elsewhere in this report, the lack of scheduled regular reporting to the court meant that the slowing of processing was not realised sufficiently early for adjustments to be considered. The Court was not aware of the timeliness impacts of, for example, the loss of court days, changes to court-based staffing, or resource limitations within YJS (as occurred during the second half of 2011). The Court was not in a position to

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107 Auditor-General (Tasmania), above n 22, 14.
protect the gains made in the first six months nor to redouble efforts in areas that might have caused performance to slow.

Had it received that information throughout the Pilot period, the Court might have called for additional days for youth justice hearings, or for an increase in the judicial resources (magistrates’ time) available.

This evaluation was not able to quantify the factors contributing to court delays but it would appear that, regardless of the efforts of the Court, improved timeliness is problematic and a function of many factors, some of which will continue to be outside the control of the Court.

**Finding 1. No sustained improvement in timeliness: offence to lodgement**

As some of the data outlined below indicates, there was a reduction during the first three months of the Pilot in the time between an alleged offence being committed and court proceedings commencing (with the lodgement of the paperwork), reflecting efforts by police to lodge more quickly.

The chart below (Figure 16) presents quarterly data on youth justice lodgements during 2011 and the first three quarters of 2012. It shows the number of cases commencing within four weeks and the number of cases commencing after four weeks. For example in the first quarter of 2011, 122 cases were initiated within four weeks of the offence and 149 cases were initiated at least four weeks after the offence.

Having initially recorded a slight increase in the proportion of cases commencing within four weeks of the offence(s), the Pilot saw that proportion decline overall. In the six quarters prior to the Pilot, an average of 40% of cases were commenced within four weeks of the offence(s); under the Pilot this fell to an average 37%.

![Figure 16: Lodgements within four weeks of offence (Hobart) by quarter September 2009 to September 2012](image-url)
These figures indicate that the Pilot has had no effect on reducing the time between the commission of the alleged offence(s) and the lodgement of the (paperwork of the) case in court. In approximately 60% of cases, it takes more than 4 weeks for the case to move from the police detection, investigation and preparation of files to the lodgement of the paperwork in Court. This aspect of timeliness is the responsibility of police.

Over the course of the Pilot, no additional resources were committed to improving the detection, investigation and, most significantly from a timeliness point of view, prosecution of offences committed by young people. In fact, Tasmania Police were required to respond to significant resource pressures as a result of reduced funding in 2011–12.

**Finding 2. No sustained improvement in timeliness: lodgement to first listing**

The lack of overall gains made by the Pilot in getting youth justice cases to the court more quickly is mirrored by the lack of improvement in moving such cases through the court. Apparent early gains were not sustained throughout the evaluation period.

In the first six months of the Pilot, the court witnessed a reduction in the time between lodgement and first listing in the youth justice court, suggesting that the new arrangements might have been reducing delays. For example, after three months of operation, 98% of cases had a first listing period of less than 5 weeks, compared to 68% in the month before the Pilot started (December 2010). At six months of operation (June 2011), 96% of cases still had a first listing period of less than five weeks (Figure 17).

![Figure 17: Lodgements by period to first listing (Hobart), December 2010 to June 2011](image)

Figure 18 (below) presents quarterly data on the period from lodgement to first listing in the six quarters prior to the Pilot and the seven quarters of the Pilot. In the period prior to the
Pilot an average of 61% of cases moved from lodgement to first hearing within four weeks. During the Pilot, this fell slightly to 56%.

![Graph showing lodgements by period to first listing by quarter (Hobart), September 2009 to September 2012]

Figure 18: Lodgements by period to first listing by quarter (Hobart), September 2009 to September 2012

The SYJC Pilot has had no sustained effect on reducing the time between the lodgement of the paperwork and the first listing (and generally hearing) of the case. In fact, there is a correlation between the establishment of the Pilot and a slight overall increase in that time period.

**Finding 3. No significant improvement in timeliness: first listing to finalisation (backlog indicator)**

A key measure of the effectiveness of the speed of a court is the ‘backlog indicator’:

… an indicator of governments’ achievement against the objective of processing matters in an expeditious and timely manner. The indicator recognises that case processing must take some time, that such time does not necessarily equal delay and that the time it takes to process a case can be affected by factors outside the direct control of court administration.108

The backlog indicator is a national standard for the age of a court’s pending case load. The following national standards have been set for youth justice courts:

- no more than 10% of lodgements pending completion are to be more than 6 months old

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• no lodgements pending completion are to be more than 12 months old.\textsuperscript{109}

Performance relative to these time standards indicates effective management of case loads and the accessibility of court services to the public. The backlog indicator highlights the numbers of long cases in the system.

Figure 19 below gives a base line of the backlog indicator of the Youth Justice Division case load as of 30 June 2010 (before the new arrangements were implemented). It compares Hobart with the other registries. Hobart was performing significantly better than other registries with only 6\% of lodgements being over 12 months old.

\begin{figure}
\centering
\includegraphics[width=0.7\textwidth]{backlog_indicator.png}
\caption{Figure 19: Pending case load by registry at 30 June 2010}
\end{figure}

Figure 20 below provides the same indicators at 30 June 2011, following the sixth full month of operation of the new Pilot arrangements.

\textsuperscript{109} Ibid.
The backlog indicators in Hobart did not change significantly, although Launceston and Hobart may be regarded as performing better than the north-western region. At 30 June 2010, 25% of Hobart lodgements were over six months old, and at 30 June 2011 that figure had increased to 28%. At 30 June 2010, 6% of Hobart lodgements were over 12 months old, and at 30 June 2011 that figure had increased to 10%.

For several years, the Youth Justice Division of the Magistrates Court has performed poorly in terms of backlog indicators. Tasmania has been unable to attain the national standards cited above. In the most recent ROGS data on backlog indicators in youth justice (2011–12), Tasmania again ranked behind all jurisdictions except Western Australia on the six month indicator. Seven per cent of Tasmania’s lodgements pending completion were more than 12 months old, again well outside the national standard.\(^\text{110}\)

Between 2006–07 and 2010–11, Tasmania had not been able to improve its backlog indicator for cases greater than six months. The introduction of the Pilot, however, correlates with a 3.3% decrease in the backlog indicator for cases greater than six months. Similarly, between 2006–07 and 2010–11, Tasmania had not been able to improve its backlog indicator for cases greater than 12 months, the indicator hovering around 10%. The backlog indicator for cases over 12 months, however, reduced by 4.7% from June 2011 to June 2012, again corresponding with the consolidation of the Pilot in Hobart.\(^\text{111}\)

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\(^{110}\) Ibid.

\(^{111}\) Ibid.
Table 4: Backlog indicator, cases greater than six months, at 30 June 2012, national

<table>
<thead>
<tr>
<th>Year</th>
<th>Units</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-12 (%)</td>
<td>15.6</td>
<td>15.4</td>
<td>23.3</td>
<td>28.8</td>
<td>20.0</td>
<td>25.9</td>
<td>23.2</td>
<td>20.8</td>
<td></td>
</tr>
<tr>
<td>2010-11 (%)</td>
<td>8.4</td>
<td>16.1</td>
<td>25.7</td>
<td>26.1</td>
<td>18.6</td>
<td>29.2</td>
<td>19.0</td>
<td>39.5</td>
<td></td>
</tr>
<tr>
<td>2009-10 (%)</td>
<td>8.4</td>
<td>16.5</td>
<td>24.6</td>
<td>23.9</td>
<td>18.8</td>
<td>27.9</td>
<td>16.1</td>
<td>29.1</td>
<td></td>
</tr>
<tr>
<td>2008-09 (%)</td>
<td>8.9</td>
<td>18.6</td>
<td>27.5</td>
<td>17.4</td>
<td>21.8</td>
<td>27.0</td>
<td>28.0</td>
<td>35.5</td>
<td></td>
</tr>
<tr>
<td>2007-08 (%)</td>
<td>11.7</td>
<td>13.8</td>
<td>30.0</td>
<td>21.0</td>
<td>21.6</td>
<td>28.6</td>
<td>13.4</td>
<td>18.9</td>
<td></td>
</tr>
<tr>
<td>2006-07 (%)</td>
<td>10.4</td>
<td>11.7</td>
<td>29.9</td>
<td>17.6</td>
<td>21.4</td>
<td>29.1</td>
<td>20.5</td>
<td>na</td>
<td></td>
</tr>
</tbody>
</table>

Table 5: Backlog indicator, cases greater than twelve months, at 30 June 2012, national

<table>
<thead>
<tr>
<th>Year</th>
<th>Units</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-12 (%)</td>
<td>2.4</td>
<td>3.7</td>
<td>9.1</td>
<td>11.5</td>
<td>4.8</td>
<td>7.0</td>
<td>8.6</td>
<td>6.5</td>
<td></td>
</tr>
<tr>
<td>2010-11 (%)</td>
<td>0.9</td>
<td>4.4</td>
<td>11.7</td>
<td>13.1</td>
<td>4.9</td>
<td>11.7</td>
<td>7.3</td>
<td>17.6</td>
<td></td>
</tr>
<tr>
<td>2009-10 (%)</td>
<td>0.9</td>
<td>3.5</td>
<td>9.9</td>
<td>7.8</td>
<td>5.2</td>
<td>10.9</td>
<td>8.1</td>
<td>17.4</td>
<td></td>
</tr>
<tr>
<td>2008-09 (%)</td>
<td>1.5</td>
<td>4.5</td>
<td>13.2</td>
<td>6.4</td>
<td>7.6</td>
<td>11.0</td>
<td>2.5</td>
<td>22.2</td>
<td></td>
</tr>
<tr>
<td>2007-08 (%)</td>
<td>1.4</td>
<td>2.9</td>
<td>14.6</td>
<td>7.3</td>
<td>7.5</td>
<td>9.1</td>
<td>2.6</td>
<td>16.5</td>
<td></td>
</tr>
<tr>
<td>2006-07 (%)</td>
<td>1.3</td>
<td>2.0</td>
<td>13.2</td>
<td>5.8</td>
<td>8.1</td>
<td>13.2</td>
<td>5.9</td>
<td>na</td>
<td></td>
</tr>
</tbody>
</table>

Figure 21 tracks the changes in the Hobart pending case load and backlog indicators from 30 June 2010 (prior to the implementation of the Pilot) to 30 September 2012 (after 21 months of operation).
Figure 21: Pending case load (Hobart), 30 June 2010 to 30 September 2012

While Hobart performs well in terms of backlog indicators when compared to other Tasmanian registries, it is still significantly outside the national benchmarks. In trend terms, the values of the Pilot period backlog indicators are very similar to the values of pre-Pilot backlog indicators although it is possible that they are trending downwards; after 21 months of operation 23% of Hobart lodgements were over six months old, and 6% of lodgements were over 12 months old.

As the above indicates, the backlog indicator was not demonstrating improvements in timeliness under the Pilot but instead demonstrated that this aspect of the SYJC may require further analysis and procedural adjustments.

**Objective 2: Encouragement of more consistency in the court’s decisions**

**Finding 4. Greater consistency achieved in a range of court processes**

Judicial officers play an important role in shaping a court’s environment. The designation of one magistrate to preside over youth justice matters has been a very important element in the successful operation of the Pilot, having brought greater specialisation and consistency of approach.

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112 Borowski above n 9, 8.
Without committing a judicial officer to preside exclusively over juvenile matters (youth justice and/or child protection), the Hobart Pilot represents a significant step on the part of the Magistrates Court to greater specialisation in youth justice matters.

The presence of the designated magistrate particularly contributed to the success of the Special List. The review component of the Special List is an important opportunity for the participant to demonstrate to the magistrate their commitment to and compliance with the bail support program, and in turn receive feedback and encouragement from the magistrate. As a courtroom workgroup member put it:

My involvement is with the children I case manage and their appearances in the court. For me, it’s positive because (the) magistrate … gets to know who they are and they don’t slip through the cracks. From my point of view and the kids’ as well, it’s that expectation and knowing who they’re going before.

Consistency was also found in the coordinated approach provided by the members of the courtroom workgroup. The consistency of approach provided, for example, by the dedicated child protection worker and HSLO is built around dealing principally with one magistrate on determined sitting days.

The benefits of certainty, consistency and familiarity that dedicated magistrates, lawyers, prosecutors, youth justice workers, child protection workers, education personnel and non-government youth workers bring to the court have been acknowledged by the professionals who work both inside and outside the court, and by defendants who have had their cases progress under the Pilot.

Finding 5. No change to sentencing patterns in the Hobart registry

The Pilot has not delivered significant changes to the rate of supervisory or custodial orders. Its approach to sentencing is very similar to other youth justice courts in Tasmania. The Pilot did not disrupt the conventional sentencing culture in Hobart, and so placed no unanticipated burdens on the authorities required to execute sentencing orders.

The sentencing statistics for Tasmania’s youth justice courts since the introduction of the Pilot indicate some interesting characteristics. Since the beginning of 2011, there has been predominantly one sentencing magistrate in Hobart, while youth justice courts in other locations have multiple sentencers. Figures 22 and 23 below compare sentencing statistics across a range of typical sentences imposed under the Youth Justice Act 1997. The Hobart SYJC is compared with all other youth justice courts over a 21 month period.

The sentencing statistics presented below need to be treated with a great deal of circumspection. The data is presented in simple, arithmetic averages that do not take into account the degree of variation in the lengths of sentences or the impact of global sentencing, nor do they compare cohorts known to be similar in characteristics such as age.
criminal history, the provision of legal representation, early guilty pleas, or other factors that will influence a final sentencing disposition. Consequently, broad-ranging and general conclusions ought not to be drawn from the statistics but instead they ought to be viewed as an aid to a general understanding of Tasmanian juvenile penology.

Some of the main observations from Figures 22 and 23 (below) are:

• The Hobart Pilot has sentenced a greater proportion of young people to detention, whether it be juvenile detention with a determined term, or juvenile detention with a partially or fully suspended term.

• Hobart imposed a greater proportion of fully suspended sentences on young people (10.5% compared to 4.2%).

• Hobart imposed a greater proportion of community service orders than the other courts (16.3% compared to 11.6%).

• Hobart imposed a greater proportion of probation orders than the other courts (8.3% compared to 5.8%).

• Hobart demonstrated a greater willingness to refer young people to court-ordered community conferences under section 37 of the Youth Justice Act 1997.

• Youth justice courts in other districts imposed a far greater proportion of fines than Hobart (23.1% compared to 13.2%) over the 21 months.

• Over the 21 month period, youth justice courts in other districts imposed a greater proportion of good behaviour bonds than Hobart (31.4% compared to 26.5%).

In summary, it may be said that generally the sentencing of young people across the state is fairly consistent, although Hobart, under the Pilot, may be more likely than other regions to sentence young people to terms of detention or to fully suspended sentences, community service orders, and probation orders and less likely to sentence them to good behaviour bonds or impose fines.
Figure 22: Finalised defendants by sentence type (Hobart), during Pilot, 2011–12

Figure 23: Finalised defendants by sentence type (Other areas), 2011–12
Before the introduction of the Pilot, eight Hobart-based magistrates presided over and sentenced young people in the Youth Justice Division. After the introduction of the Pilot, one magistrate predominantly did the sentencing. Figures 22 (above) and 24 (below) present a range of typical sentences for 18 month periods during and before the introduction of the Pilot.

Some of the main observations are:

- A greater proportion of young people were sentenced to juvenile detention with a determined term under the Pilot than 18 months before the Pilot (4% compared to 2.2%).
- An equal proportion of young people were sentenced to fully suspended sentences 18 months before the introduction of the Pilot and during the Pilot (10.5%).
- The figures relating to the imposition of community service orders before and after the introduction of the Pilot are very similar (16.3% compared to 13.4%).
- The proportion of probation orders under the Pilot and 18 months before the Pilot are roughly equivalent (8.3% compared to 9.6%).
- The number of young people referred to court-ordered community conferences under section 37 of the Youth Justice Act 1997 has remained fairly stable and the Pilot has not had a dramatic impact on the rate at which that order is imposed.
- A slightly reduced proportion of young people had fines imposed upon them under the Pilot than 18 months before the Pilot (13.2% compared to 15.1%).
- A slightly increased proportion of young people had good behaviour bonds imposed upon them under the Pilot than in the 18 months before the Pilot (26.5% compared to 25.3%).

As mentioned, drawing firm conclusions from these sentencing statistics is highly problematic, especially since lodgements in the court have been decreasing steadily, and the average number of actual sentenced persons decreased (from 215 per quarter to 156 per quarter) over that three-year period. In effect, fewer people have appeared and been sentenced under the SYJC Pilot than by the youth justice court that operated in Hobart in the 18 months before the Pilot.
Overall, the sentencing statistics when compared regionally and before and during the Pilot indicate that there is a high degree of internal consistency in the way that Tasmanian youth justice courts have been sentencing in recent times. In other words, the Pilot’s approach to sentencing has been consistent with other youth justice courts in Tasmania albeit its arrangements and practices are quite distinct.

As was shown earlier in this report, the SYJC has had no known effect on the patterns of remand orders originating in the youth justice court in southern Tasmania. The numbers of young people held in remand during the Pilot are insufficient for statistical analysis; the reasons for detaining an individual young person always pertain to their individual circumstances.

Objectives 3, 4 and 5: Greater expertise, coordination and collaboration

Finding 6. Considerable gains achieved under the Pilot

The Pilot has been a catalyst for change in the youth justice sector and one of the more important changes has been the efforts to increase collaborative approaches between agencies. One of the professional participants describes the environment before the Pilot:

I was shocked and appalled about the lack of collaboration between the key agencies working in young people’s lives, particularly Youth Justice, Child Protection and Education. They failed to work together. We are...
not providing that level of detail and responsibility for children’s lives, particularly with child protection. And we are not detailing our collaborative efforts. I think our program has highlighted the need for clearer communication and case coordination.

One of the strongest features of the Pilot has been the working relationships formed around the SYJC Working Group, which drove the establishment and implementation of the Pilot. The strong interdisciplinary and interagency synergy that has been developed in the context of the Pilot demonstrates that while the Court is undoubtedly the lead organisation developing and implementing the Pilot, its partners have also been instrumental in its creation and success. The positive roles played by prosecutors, defence lawyers, the magistrate’s clerk, and government and community youth justice workers in developing and supporting the Pilot have been enormously valuable. The Working Group members also generated considerable support and interest for the Pilot within their own organisations and within the broader youth justice sector. It is reasonable to conclude that the Pilot has fostered a positive view of the court within the southern Tasmanian youth justice sector.

The professional participants interviewed in the course of this evaluation made the following observations about the cooperative and collaborative nature of the Pilot:

There has been consistency having the same magistrate, the same lawyers and the same people there. It just makes things run a lot smoother.

Magistrates who preside over youth justice … consequently … have a better knowledge of the client group that’s going through, not only at the child protection case itself and the trauma and past issues, but also around criminal charges and why potentially some of the trauma could have led to the offending behaviour.

I am familiar and comfortable with the model and I think it works well. I believe it’s a good and supportive system. I appreciate that the magistrate has the opportunity to get to know the young people, providing continual and consistent flow.

It’s more collaborative and I think more efficient.

The court experience is different because it is a lot more engaging, you are more informed about what is going on with the different stakeholders, you talk to the youth directly and their lawyers. You’re gathering a lot more information and this provides a lot more options for the youth.

I think it’s a really good court and what I particularly like about it is that there is one dedicated magistrate and all of the support services. There is continuity and there’s consistency. There are also people within the court that can address issues outside the court. And it works quickly and that’s really important.
Perhaps the strongest indicator of increased cooperation and collaboration under the Pilot has been in relation to the Special List initiative. According to all the professional participants, YJS, CPS, DoE and Save the Children have been very cooperative and supportive of the Special List. This has assisted the magistrate in obtaining feedback on a defendant’s progress against a bail support plan, which in turn helps to ensure that the correct bail conditions are being modified and set. It also means that matters can be finalised when the defendant’s circumstances are sufficiently stable. While there is definitely a capacity to integrate the service providers more to achieve greater commonality of purpose and procedure (especially with respect to mental health and substance abuse matters), the achievements made by the Pilot in achieving collaborative approaches have been significant.

The court has received a high degree of cooperation from agencies providing services to it, particularly Tasmania Police, Legal Aid, and YJS. This has engendered some excellent relationships. All agencies accepted the requirement to collaborate more on cases both in the general and Special List. The increased collaboration has resulted in the provision of more detailed information about a case to the court, usually resulting in the formulation of clear goals to be achieved in the execution of the sentence. This has sometimes strained relationships but has, according to feedback from the participating agencies, generally worked well.

Formal Working Group meetings and ongoing dialogue between group members, including the specialist magistrate, has enabled regular cross-fertilisation of ideas and expertise. The designated magistrate has developed expertise through the professional development opportunities afforded by the Pilot. Similarly, expertise has been developed among other court staff, in particular the specialist magistrate’s clerk and the deputy administrator of Courts. It must be noted, however, that the concentration of youth justice matters among a smaller, more specialised group within the Court means that other Court officers had less than normal exposure to those matters and their skills and knowledge might have suffered accordingly.

Participants highlighted the aspects of the Pilot that they considered to have fostered the expertise, coordination and collaboration that was either not available under prior arrangements, or had not been brought to the court in such a focused and consolidated way:

- A dedicated magistrate and dedicated courtroom workgroup with key members always in attendance
- In-court presence of agencies is of great assistance to both the court and the defendant because of the additional resources available – for example in child protection situations, with the provision of ‘parental’ (or guardianship) support
- Matters always adjourned, and sentencing always conducted on a youth justice day
- Occasional priority for prosecution disclosure of charges and evidence where previously there was none
- Changed the way breaches to court orders are responded to (every breach case is now considered and, if appropriate, actioned)
• A dedicated team of defence lawyers with carriage of particular files, usually fully instructed to deal with the defendant’s matter

• A well-organised approach to the representation of youths in the Youth Justice Division, with Legal Aid responsive to the court’s listing arrangements

• Improved service delivery to young offenders presenting with multi-systemic problems

• Improved information-sharing between agencies with common clients

• Reduction in overlapping, duplicating or inconsistent reporting to the court

• Workgroup members have knowledge of the young offender’s case, and the youth justice worker in court has detailed knowledge of the young person being sentenced or information on their current orders and compliance with those orders

• Ability to provide regular, frequent feedback in relation to the young person (e.g. their engagement with education)

• Child protection workers are normally present in court with the child in care and are in a position to provide meaningful information to the court in relation to the child’s circumstances

• HSLO always present and able to provide immediate information about the young person’s education situation and other suitable opportunities, and facilitate arrangements and report to the court

• Inter-agency professional development in the area of juvenile justice, in particular sentencing and responses to problems of substance abuse.

Particular mention has been made in the evaluation of the role played by the DoE HSLO in youth justice proceedings (‘Education is a great liaison’), although it is also noted that the details of that role require further clarification.

During the establishment and consolidation of the Pilot, the HSLO position has been vital in supporting bailees to maintain contact with their schooling, involving defendants’ families, directly engaging young defendants with appropriate educational opportunities, and providing feedback to the court. The in-court presence has addressed a deficiency in education information that had previously prevailed within youth justice courts. The new Pilot arrangements assert that educational engagement is fundamental to reducing youth offending and reoffending. The Pilot, particularly through the Special List, has facilitated DoE working alongside YJS and CPS, and the HSLO has contributed positively to improved case coordination.

114 Stewart et al, above n 89, 33–34.
Leadership has been shown to be an important aspect of the coordination and collaboration achieved under the Pilot. The designated magistrate has provided the leadership that shaped the SYJC and his own capacity for collaboration has helped foster the same within the Court.

Early in the Pilot the magistrate frequently met with courtroom workgroup members to clarify roles and expectations, and share information about the responsibilities and work realities of each agency involved in the Pilot. For example, the roles of the dedicated Legal Aid lawyer and police prosecutor were negotiated and refined over the course of several months. The magistrate discussed with YJS, the demands and expectations that the Pilot would likely place on youth justice workers.

The leadership and management provided by the magistrate are reflected in the following statement from a workgroup participant:

I would rate the youth justice court, in terms of its impact in just one year, as a nine or ten. Change is just a gradual process … A different magistrate could completely change the hierarchical structure of the court. It’s the values, philosophies and personalities. It’s not working because of the Youth Court. It’s working because of the way it’s being managed.

Finding 7. Pilot had known resourcing impacts

The ‘problem-solving’ approach partly adopted under the Pilot had considerable resource impacts on the Magistrates Court.

The added workload of the principal designated magistrate has been observed by the courtroom workgroup and stakeholders of the Court. Additional time was dedicated to professional development, and scheduled meetings with the courtroom workgroup, the Pilot Working Group and Steering Committee, and other stakeholders.

The Court was the ‘hub’ for the Pilot’s implementation and administration, plus the professional development around the Pilot.

There were associated additional demands on the court clerk. The court clerk has played a vital role in linking the magistrate to the various courtroom stakeholders and the agencies with one another, both in and outside the court. The day-to-day information management, exchange and organisation role undertaken by the court clerk is very demanding (and distinct from the conventional role of a clerk) and the carrying out of that role was appreciated by all the professional participants.

The impact of the Pilot on the Court as a whole, and the sustainability of dedicating specialist magistrates has not been a specific focus of the evaluation, but must be considered for the future operation of the SYJC.

While the evaluation has not been able to quantify them, it is known that the Pilot has also had considerable resource impacts on Police Prosecution Services, YJS, CPS and other
services provided by DHHS, and DoE. While these agencies have an existing capacity and a
definite interest in supporting the Pilot, the ongoing success of the SYJC requires
consideration of the resources that will be needed.

Workgroup members echoed this view. One participant noted that the Pilot was a ‘great
start’ to increasing collaboration and integration between criminal justice and health
agencies, but there was a lot more that could be done. The lack of resources to actively
foster and detail collaborative efforts and broker and build partnerships was considered a
hindrance to the Pilot.

The workload for prosecutors and defence lawyers in the Pilot and the Special List came as
a surprise to the people in the roles:

I don’t think anyone anticipated the workload it would put on
prosecution.

Under the Special List, the roles of the prosecutor and the defence lawyer differ from those
in a regular youth justice court. The unfamiliarity can be confusing initially and court-based
professionals may tend to revert to less collaborative methods. The lack of resources for
the Pilot may go some way to explaining the occasional retreat to orthodox adversarialism
and legalism:

[We also] need more days in the court and more resources … There is
no government support … I think the prosecutor needs a lot more
integration. I don’t know whether a different configuration of the court
… You have all these people talking in a language the young people don’t
understand. At its heart, it’s still adversarial and legalistic.

There is a risk that the benefits can be lost under the heavy workload and strain put on the
individuals in the court-based team. As well as appearing in the Pilot, most of the dedicated
officers also have a usual general or additional case load. For example, the prosecutor and
defence lawyer provide representation to other courts, youth justice workers appearing in
the Pilot have assessments and supervisions to undertake in the community; and the HSLO
has other student case loads.

It is a demanding workload for all the professionals concerned and it can take its toll, as it
did when a small number of the courtroom workgroup took temporary leave of absence
from the court during the period of its consolidation. Therefore, while the highly
collaborative nature of the dedicated court-based team is clearly advantageous for all the
professional participants and young people involved, dependency on small numbers of people
is a risk that will need to be considered for long-term sustainability.

Perhaps inevitably, cooperation and collaboration were not wholly satisfactory, and
participants have suggested where improvements might be made. Critical comments
included that:

• There is too much emphasis on informal relationships between individuals.
• Collaboration between agencies is often person-dependent.

• There is a lack of integration between the views and approaches of YJS and CPS.

• There is scope for further enhancement of the collaborative relationships with Prosecution Services, such as increased time spent at collaborative meetings with other agencies.

• There should be more opportunities for consultation with the magistrate.

Some of these views are encapsulated in the selected quotations below:

There have been a number of occasions where Child Protection has one view and Youth Justice has another view, where they are part of the same system. They should’ve already spoken to each other. It is the unified view. It is all part of the same service delivery.

Prosecution and the Youth Justice department are more separate. I think the prosecutor needs a lot more integration.

I think we have a little way to go with our combination of Youth Justice and Child Protection.

We know it works … but without that integration it doesn’t work.

We could probably improve our communication with prosecution, perhaps by starting meetings. Just to streamline the breaching … I think we need better communication within Youth Justice itself.

One of the key tenets in this program is to develop strong partnerships. I’m into having collaborative partnerships and willing to allow the partnerships to shape the program.

I would like to have an avenue for consultation with the magistrate. I think there is, but we are not utilising it to our full potential.

The evaluation has suggested that the working relationship between YJS and Education appears to be quite variable, with some confusion about the exact scope of the HSLO role. Representatives from YJS suggested that the function of this position may clash with the statutory role of youth justice workers:

It is dependent on the schools and the personalities we are dealing with. We have re-engagement meetings with school officials. It depends if the schools come from a restorative base … Education do not have a person in the courtroom on a regular basis, apart from their home school liaison officer. Education needs to put one of their social workers in the court.
If the SYJC approach is adopted in other regions of Tasmania, a similar support role from DoE is highly recommended, and role clarification in relation to the work of YJS a priority.

Overall, the consensus amongst the professional participants is that the Pilot has increased the levels of collaboration between relevant agencies, and this from a fairly low base.

The Pilot has provided a framework for increased collaborative approaches between relevant agencies, and in this framework YJS and other agencies may need to be re-conceptualised as one part of a multi-agency (and multi-systemic) approach to youth justice. All agencies should be working to a common purpose and working actively together to provide better targeted and better coordinated community supervision options for young offenders in the community.

A consideration of the impacts on all participating agencies would be part of broad planning for the processes, impacts and quality framework for the continued SYJC in Hobart and in other regions.

**Other findings**

**Finding 8. Improved outcomes for young people under the Pilot**

The evaluation included interviews with seven young offenders determined to have been ‘at-risk’ and who participated in the Special List, with their matters finalised between late 2011 and early 2012. Notes on their offending behaviour, their engagement under the Pilot, and their own reflections are attached as Appendix 1.

For the young offenders the Special List had generally positive outcomes:

- Education and training programs resulted in a sense of achievement (Interviewee A), and undertaking or planning further study (Interviewees B, J, F, R and S).

- The social interactions provided under the supported bail plan were beneficial (Interviewee A).

- There was a sense that the magistrate was genuinely concerned about them (Interviewees A and F), had a good understanding of them as individuals (Interviewee B), and spoke directly to them (Interviewees A and F).

- The court language was easy to understand (Interviewees J, F and R).

- The case workers (e.g. Youth Justice, Save the Children) were supportive (Interviewees F, R and S).

- The experience of the Special List helped them ‘stay out of trouble’ (Interviewees F and R).

Interviewees reported the following difficulties with the court, including the Special List:
• Court language and/or processes were difficult to understand (Interviewees A and S).

• Some interviewees found the youth workers (Interviewees B and K), and lawyers (Interviewees F and S) not to be supportive.

• Court facilities could be more ‘accommodating’ (Interviewee F).

• Delays were frustrating (Interviewee S).

The collaboration between parties had beneficial outcomes for the young offenders. The meaningful working relationships developed between the dedicated prosecution and defence, youth workers and other workgroup members, allowed for matters to be dealt with in a more coordinated and consistent fashion, and often more quickly. As one professional participant put it ‘everyone has … the same mentality around these kids’.

Other comments from professional participants included:

… the attention you can give to the individual matter and the individual response you can craft to the individual problem.

Because of the degree of collaboration it has been generally positive. I suspect for the offender … it has got to be a much better experience and outcome.

How a magistrate behaves at a hearing can affect whether an offender complies with the particular order handed down. David Wexler argues that the level of language the magistrate uses and the amount of direct dialogue they choose to engage in with the offender can have a direct impact on the offender’s understanding of, and compliance with, any order made against them. Open and inclusive communication is one of the key principles in a problem solving court system. Speaking in simple terms, including the offender in discussions about their case and ensuring the comfort of all parties are some of the simple, yet essential, therapeutic jurisprudence approaches that have been adopted consistently under the Pilot.

In this context, the magistrate’s preparedness to be precise about the interventions imposed on offenders was notable in participant feedback:

I think the magistrate has encouraged our accountability in delivering orders. He will ask for updates and targeted plans, not just vague overarching orders. I think it’s been a lot more client-focused and client-centred … It’s more about what’s in their best interests. I would describe it as more youth-friendly. It’s more collaborative and I think more efficient.

Wexler, above n 77.
The court’s capacity to use its authority to encourage and bring about change in young defendants’ lives was acknowledged, but the professional participants suggested that this had as much to do with the way the court was managed, than any legislative authority or status of the court per se.

Regular and ongoing judicial supervision and encouragement is also important in the context of the Special List. Young people and stakeholders saw enormous value in the same dedicated magistrate supervising throughout the operation of the bail order, conducting the reviews and finalising the case:

The magistrate had a real interest in these kids … He wanted to see the children succeed.

Most of the professional participants agreed that the court was facilitating positive outcomes for young defendants in many cases and that, but for the authority of the court, many defendants would lack the motivation to change:

I think it is more effective. If you’re looking at the aim of rehabilitation, the services and bail review program are having that effect.

When asked whether the court was having a positive effect on the safety of individuals and public safety, one professional participant replied that ‘the short answer is yes’. He continued that the court:

… brings together those parties at the ‘pointy’ end of the offending behaviour. Not only does it grab those youth offending, but also (via the Special List) those where the offending behaviour is at such a scale over a long period of time.

Most of the professional participants interviewed agreed that the majority of vulnerable young offenders had been appropriately referred to the Special List:

The Special List is a good idea because it allows the magistrate to be up to date with what we’re actually doing. It gives the young offender a chance to prove that they can do what he asked to do.

The magistrate … can connect up the situation with that person.

For a problem-solving court to be successful, however, it is essential that each offender understand their role, and that of every other key player in the process. In a problem-solving court, as opposed to the general court, the offender often has an active, not passive, role and it is important they appreciate that how they behave while participating in the intervention program will have particular consequences.

A young person’s level of involvement in the proceedings of the Special List has generally been positive, but the often chaotic lifestyles of young people with complex needs will continue to present challenges.
Time constraints … youths are difficult to get to attend appointments. They are often reliant on their mum or dad for transport. None of my clients present early to court, inevitably clients will attend right on that time. With a lot of clients you need to take instructions at court.

The investment of the young people in the process and their commitment to the obligations imposed by the Special List, is reflected in the generally favourable comments of the professional participants:

It’s been really good how we’ve been dealing with youth and working with them around best outcomes.

We are seeing young people understanding the proceedings a lot more and therefore a better chance of their actions changing.

Professional participants agreed that the magistrates in the SYJC have made a conscious effort to speak directly to the young offenders, and to include them in discussions about their matters, especially about their progress on the Special List and the support they are receiving.

It is critical that every participant in the Special List is fully informed about the process and freely consents to take part. It was noted that more information could be provided to young people likely to be referred to the List.

Any information which allows us to explain the experience the young person will face alleviates their fear.

**Finding 9. Positive impact of the Pilot on agencies – improved services**

It is arguable that the Pilot has improved the effectiveness of Legal Aid, Southern Prosecution Services, YJS, CPS and DoE in terms of their services to young offenders. Better outcomes might be expected from the concentration of expertise among smaller numbers of agency staff who participated as courtroom workgroup members.

Greater efficiencies might also have been achieved by reducing the duplication of processes and services that inevitably occurs when each agency works alone. In an environment of limited public resources, having multiple case managers and practitioners from different agencies can lead to sub-optimal outcomes for the agencies and the clients. The Pilot has served to streamline and coordinate the number of practitioners from different agencies delivering justice services and interventions to young offenders.

An examination of service efficiency impacts is outside the scope of this evaluation. However the certainty provided by the scheduling arrangements was shown to have had a positive effect within the agencies.

Each agency consistently attended court on the designated days. Dedicated lawyers, prosecutors and youth workers were better able to attend court (as they were not split between different youth justice courts in Hobart). Similarly the Pilot introduced a clearer set
of expectations, particularly around reporting to the court. The certainty this provided allowed agencies and their workers to better manage their time.

The Pilot has led to a substantial reallocation of existing YJS resources to allow for a greater in-court presence. No longer are multiple youth justice workers caught between different magistrates on the same day, negotiating a large workload across several courts.

**Finding 10. Need for improved youth services to the court**

Echoing comments made by Travers in the Tasmanian component of Borowski’s national study of children’s courts,116 professional participants interviewed as part of the evaluation also commented overwhelmingly on the frustration caused by a lack of resources in the youth justice system. The lack of resources extends to the quality and diversity of rehabilitation and diversion programs and health and education services available to young people in Tasmania. The system fails to provide the court’s participating agencies with the support services they need for their clients.

Information availability was also a problem under the Pilot, with a sense of uncertainty among participants about the programs the young offenders had access to:

In terms of service gaps, I think the options post-bail and pre-bail … and alternatives to imprisonment and out-of-home care options are our major issues. Our child health service is very limited. Another gap is the independent living options for young people. Options to separate bad relationships is pretty limited.

Huge gaps – I think a lot of it is down to the lack of collaboration.

Appropriate drug, alcohol and residential services – because of the convention we can’t detain persons under the age of 18 [in residential detoxification]. There is a real legislative problem. There is no program for the court to directly refer to. There are also no mental health facilities … Another area of gaps is education. A lot of young people do not attend school. Schools are not able to meet their needs and manage their behaviour.

The existing programs offered to court participants, both in Hobart and elsewhere, are clearly insufficient. The Pilot would undoubtedly have been more effective if it had a broader spectrum of rehabilitation and diversion programs to which young people could have been referred.

Just sitting in court, it seems there is a lack of programs and services.

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116 Travers et al, above n 6.
I think there is probably an obvious lack of people on the ground. But I suspect the services are running their organisations on the smell of an oily rag.

Residential programs for youths where they get an opportunity to detox. Where their self-esteem is built up where they accomplish things and they see a life without offending and drugs.

Some of the professional participants believed that the court could have a greater diversionary role, specifically suggesting the establishment of a youth justice court liaison service ‘out in the waiting room as an adviser to youth’. The service would provide information and facilitate access to diversion and support services, supporting young people with the procedures and language of the Court, and informing them of their rights and entitlements.

The lack of a court liaison or coordination role was considered an impediment to the SYJC achieving broader, longer-term objectives in, for example: increased understanding of youth justice processes and available services; reduced offending and reoffending by young people; reduced numbers of young people held in detention; and increased safety for the Tasmanian community.

The types of functions that a court liaison service could provide include:

- Case management for young people who are subject to supervised bail orders
- Assessments of a young person’s suitability for diversion and support
- Advice to the court and lawyers about a young person under supervised bail or other intervention orders, and provision of progress reports on the programs undertaken
- Advice on available bail support services, including accommodation, treatments or interventions
- Liaison with magistrates, legal and court personnel, court support services and other key stakeholders
- Coordination of service responses concerning young people with multiple and/or complex needs
- Pre-sentence information and support for young offenders, their families and others
- Referral of a young person to relevant community services, and the provision of ongoing support.

Under the Pilot, both YJS and Save the Children operated ‘over and above’ normal capacity.

YJS’s role ordinarily takes effect once the sentence is about to be imposed (pre-sentence reports) or has been imposed (management of orders). Under the Pilot, YJS frequently engaged with young people at earlier stages of the proceedings, often advising the court and workgroup agencies prior to sentence about a young person known to them.
Save the Children, as a donor-funded organisation, is not in a strong position to make a long-term commitment.

Government-funded diversion and support services for young offenders operate in other jurisdictions. It was stated by a Pilot participant that such a service ‘would be a better use of court time and a better utilisation of resources’.

Despite Legal Aid providing a dedicated lawyer to the court under the Pilot, workgroup members were surprised at the number of young people appearing without representation. The major known reasons were that young offenders were often charged by summons; that they did not (or believed they did not) have time to contact Legal Aid; or the young person and/or their family considered representation to be unnecessary. This was of significant concern to the workgroup members, as they observed that young people and their families often struggled to understand the court language and processes, as well as the court’s decisions and their implications.

Even in circumstances where the presiding magistrate suggested that legal representation for the offender would have been advisable and that a lawyer was available (in fact, present in the back of the courtroom), young offenders often remained reluctant. It appeared as if the offender thought that engagement of a lawyer would prolong the proceedings that they ‘just wanted to finish’. Legal Aid does not actively promote its duty lawyer service to individuals at court. Nor is there any accessible information to indicate that a duty lawyer is available and that legal representation is recommended. It also appears that Legal Aid lawyers are ethically obliged to not ‘solicit for business’.

The characteristics of the young offenders who appear in the youth justice court suggests that legal representation should be fundamental to the operation of the SYJC. The cognitive disabilities, poor language proficiency, and poor education frequently seen among young people in the court could be partly ameliorated by suitably skilled lawyers explaining court processes to them.

While the Pilot has been widely commended by the professional participants interviewed, a number of the deficiencies of the wider youth justice system were brought starkly into light. The following are some of the suggestions about potential improvements to the SYJC and the youth services needed to better support the model:

• More scheduled youth justice days per month
• Greater opportunities for professional development for all involved with the court
• The provision of additional residential accommodation options for young people appearing before the court
• The simplification of court language

• More education-based strategies available for Special List interventions
• An enhanced courtroom role for the HSLO.

These suggestions for improvement are borne out by the following comments:

A youth justice court every day. Getting all departments on board – Youth Justice, Legal Aid, Save the Children working together to address the issues.

Time constrains – youths are difficult to get to attend appointments.

Different kinds of accommodation options – at the moment we’ve got therapeutic residential care, where only a special cohort of kids could and would go. There is nothing between that and Ashley and that and foster care.

We don’t have any supported accommodation … There needs to be more options for remandees, rather than detention. All the services need to be in place to reduce reoffending.

Another area of gaps is education. A lot of young people do not attend schools. Schools are not able to meet their needs and manage their behaviour.

It would be fantastic to have Education [at the bar table] so that they have a responsibility alongside Youth Justice and Child Protection to work together and provide input.

Many of the professional participants identified as urgent the need for enhanced drug and alcohol and mental health support for young offenders.

Definitely drug and alcohol and mental support – it could all be connected up to a list of kids.

There are no drug and alcohol placements for children under the age of 18. There is no actual accommodation where they can be treated as an in-patient.

I would like to see an alcohol and drugs services presence in the youth court.

There is a massive treatment gap with kids and drugs and alcohol. There is nothing for them until they are eighteen and it is just terrible.

More drug and alcohol services dedicated to youth and specialised mental health support.
Finding 11. Need for better sentencing and bail options

A limited range of sentences are provided for under the *Youth Justice Act 1997* and this poses problems for all Tasmanian magistrates who would wish to impose more rehabilitative or therapeutic sentences, or employ judicial case supervision over the course of the sentence. Similarly, the *Bail Act 1994* provides a limited scope for magistrates to divert young offenders into treatment and support programs. Currently, the only provision of the *Bail Act* supporting the diversion of young defendants is section 7(4). This section provides that:

An order for bail may be made subject to such other conditions as the judicial officer thinks fit in the interests of justice and any such other condition may be expressed to take effect either before or after the person admitted to bail is released from custody.

There was clear consensus among participants that existing sentencing alternatives and bail options were inadequate for the complex range of young defendants that the court deals with:

If we had more resources and sentencing options it would be better.

You can’t just ‘chuck them in Ashley’ and lock the door. You have to give them…light at the end of the tunnel.

Magistrates have from time to time invoked the legal principle set out in *Griffiths*, whereby a court may adjourn sentencing proceedings for a period to allow a defendant to undertake rehabilitation. By using the *Griffiths* remand, a court may develop or create bail diversion opportunities for young offenders where no formal bail support programs or frameworks are in place.\(^{118}\)

Partially in response to the limited available sentencing options, the Special List has broadly interpreted the *Bail Act* in the context of *Griffiths* to facilitate bail support plans. The magistrate may often pass sentence on certain charges and bail the individual on related or other charges to enable them to take advantage of the bail support plan. Despite the Special List being predicated on a therapeutic, bail-based approach, during the course of the Pilot there were no established, targeted bail programs or sentencing alternatives that the magistrates could draw upon to impose therapeutic-type dispositions in a way that enabled judicial supervision and regular court review.

There was a delay to the introduction of new deferred sentencing options under the *Youth Justice Act* during 2011. This impeded the court’s capacity to stimulate court diversions or

\(^{118}\) Griffiths, above n 8.
interventions during the Pilot. The new legislation will enable the court to mandate support and intervention programs and judicially supervise offenders before imposing a sentence.119

Finding 12. Need for ongoing professional development

As has been shown above, the Pilot has had a positive impact on developing and applying added expertise in youth justice matters, which points to the need for ongoing professional development for law enforcement, legal, health, education, welfare and correctional professionals. If the Court is to continue a SYJC, the service providers directly and indirectly involved will need ongoing professional development in therapeutic jurisprudence, criminogenic risk and protective factors, the aetiology of youth offending, and evidence-based policy and practice in youth justice, as well as specific training in the procedural and legal matters pertaining under the model.

No specific training was organised for police prosecutors or defence lawyers appearing in the Pilot. At the time the prosecutor and defence lawyer were co-opted into the Pilot, they already had considerable experience with youth justice matters, but they did not necessarily have significant exposure to child protection matters, nor to problem-solving courts or therapeutic jurisprudence. According to one stakeholder:

I think it’s really ‘on-the-spot’ training, explaining processes within the court’s system. But I think within this process, it’s easy to do that because less people are involved and the court sitting is less formal (so you can have discussions). Child Protection Services certainly hasn’t provided any informal training to solicitors or magistrates (or) prosecutors.

It was observed that procedural guidelines for both the general youth justice listings and the Special List would have enhanced professional performance and supported the development of the Pilot:

I am coming in with very inexperienced eyes. You would think there would be the capacity to have some kind of guidelines or practice guidelines with the operation of that court.

Finding 13. Need for documentation

As noted above, the absence of a set of documented procedures was a frustration to the Pilot’s professional participants. The roles and expectations of the magistrate, prosecution, lawyers, youth justice workers and other professionals are different for the Pilot and different for the Special List. Communication about the specific nature of the changed roles, expectations and procedures was generally conducted verbally. The court-based

119 The Youth Justice (Miscellaneous Amendments) Act 2013 was passed by Parliament in June 2013. The provisions of the Act, however, relating to deferral of sentencing have not yet commenced: they are due to commence on a day or days to be proclaimed (s 2). <http://www.thelaw.tas.gov.au>.
professionals working in the Pilot have done extremely well, but the sustainability of the SYJC will be compromised without adequate documentation.

The lack of documentation concerning the purpose, values, functions, procedures and performance measures of the Pilot has been a concern during the course of the evaluation.

With its relatively swift establishment, the Pilot certainly ‘got ahead of’ the production of any such information. The lack of funding for the new arrangements was also a factor.

Moreover, given the multi-agency approach and the premium placed on collaboration, the lack of a central repository of information about the Pilot appears to be a failing. While the agencies involved in the Pilot and their court-based staff have managed to implement and consolidate the Pilot without any formal guiding documentation, its absence is not a sustainable practice, particularly in the context of a juvenile justice and corrections environment where all stakeholders should understand the processes that affect them.

The Pilot has relied on effective project teams both inside and outside the courtroom, leadership from magistrates, and a shared purpose. To enable the Pilot to gain a stronger foothold in the Tasmanian juvenile justice system and to mitigate the risks associated with the loss of key individuals or the fracturing of key working relationships, formal and ongoing documentation about functions and operations, administration and management, education, training and monitoring are essential.

Documentation should include, for example:

- A program manual containing goals and targets (including targeted criminogenic factors), relevant legislation, the roles and requirements of key agencies; the rights and responsibilities of young offenders; Special List eligibility criteria; and all administrative processes
- An induction training manual
- Supplementary materials, such as fact sheets, forms, guides, referral kits, etc.

Documentation concerning the SYJC would also be useful for agencies that might be involved from time-to-time, such as NGOs providing targeted youth welfare services; and for young offenders and their support people.

Formal and explicit documentation would also serve to reduce the reliance on key individuals involved in the Pilot. As suggested in the ‘10 key components of problem-solving courts’ presented earlier, documented policy, program and performance standards would be continually updated to reflect best practice in programs that address offending behaviour, and to adjust to changes in local agency and community demands.

Several professional participants mentioned that the introduction of the Special List should have been better promoted to the general public.
Finding 14. Need for better data management and reporting

A fresh look at data collection will be necessary for the continuation of the SYJC, allowing the court to reliably track and measure performance. If the SYJC is adopted in other Tasmanian locations, it will be necessary to implement a more strategic and coordinated approach to data management. It should be a robust system capable of providing reliable information on the SYJC’s impacts and achievements over time.

Finding 15. Need for improved court layout

As noted in Part 1, the Pilot did not seek to analyse and report on the adequacy of courtroom 9 in the Hobart Magistrates Court. Rather, this evaluation simply observes that any youth justice or children’s court should be fit for purpose. A change to the design and layout of the courtroom and the waiting area, that focused on better separation and that was in keeping with the aims and nature of the Pilot, ought to be considered and would provide a significant strengthening to the performance of the SYJC.

Additional observations

1. Youth justice lodgements decreased during the Pilot

Over the Pilot period a solid downward trend emerged in the number of lodgements and individual young people appearing in the Hobart SYJC.

However it is very difficult to know whether the Pilot had a direct influence. The reduction would be a function of many factors, including personal factors such as family resilience, broad social factors such as education and employment opportunities, and organisational factors such as the charging or diversion decisions of police.

There ought to be no direct relationship between the number of lodgements and the Pilot, but the collaborative nature of the Pilot and the involvement of YJS and Tasmania Police, particularly the Southern Early Intervention Unit may have fostered different attitudes to the uptake of police diversionary procedures (Youth Justice Act 1997, Part 2).

It might appear that the SYJC is influencing reduced crime among young people in southern Tasmania, but the degree of influence relative to individual, social and other organisational factors would be difficult to ascertain.

2. Average court appearances increased during the Pilot

While the number of individuals appearing and lodgements filed fell during the Pilot period, the average number of appearances per person increased during the Pilot.

Figure 25 compares the average total appearances in the Hobart court under the Pilot with those in other regions. Finalised defendants in Hobart had only slightly more court appearances (average 4.6) than defendants in other districts where no therapeutic, bail-based court supervision was in place (average 4.4). In other words, the introduction of the Special
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List does not appear to be having a major deleterious impact on the relative efficiency of the Hobart court to finalise matters without too many adjournments.

Figure 25: Average number of appearances by court location, 30 June 2009 to 30 September 2012

The increased coordination and collaboration around each young offender, particularly under the Special List, the heightened accountability of the offender, and the application of greater judicial care and supervision, all contribute to the number of court appearances required of the offender.

The Pilot is generally working as efficiently as the youth justice courts in other regions. Given that Hobart facilitates a supported bail program that requires regular court supervision (and appearances) before a matter is finalised, this should be seen as a particularly encouraging outcome.

**Interpretation and reflections**

The Pilot has been building the functional synergies between the magistracy, Police Prosecution Services, Legal Aid, YJS, CPS, DoE and other services that can provide targeted and collaborative assistance to young offenders. The partnerships developed between the agencies and professionals involved in the Pilot, including services across government and non-government, are having positive effects on addressing the increasingly complex needs of young offenders appearing before the SYJC.
There is little doubt that the processes introduced by the Pilot have made those service agencies happier about the manner in which youth justice cases are now dealt with in Hobart. As a result of the Pilot, more care is being taken by each courtroom actor, including the specialist magistrate, on all youth justice cases, both those in the general list of the youth justice court and those in the Special List. More time is being spent on coordination and care is being taken to minimise the risk factors related to offending or antisocial behaviour and to maximise the protective factors that increase resilience against reoffending.

Juveniles are not fully developed—physically, emotionally and socially—nor are they entrenched in the criminal justice system. Consequently they provide hope to the professionals working with them; and the youth justice system emphasises early intervention, rehabilitation, community supervision, with detention as a last resort. Many of the professional participants interviewed for this evaluation indicated that the Tasmanian youth justice system offers hope to young offenders, often when the young offenders have very little else. As a caution too, as Richards notes, ‘the potential exists for a great deal of harm to be done to juveniles if ineffective or unsuitable interventions are applied by juvenile justice authorities’.  

As the case studies from the Special List illustrate, the offenders coming before contemporary youth justice courts have complex needs and the provision of better coordinated and integrated youth justice services is fundamental to achieving better outcomes for them.

The Pilot process was driven through a regular dialogue with key statutory juvenile justice and criminal justice stakeholders. The court used both its perceived and actual authority to clarify the roles of courtroom workgroup members, and to create forums outside the courtroom to find solutions to youth justice case processing.

While some elements of the Pilot have been characterised by a significant degree of single person-dependency, it is arguable that the customs and conventions, procedures and practices heralded by the Pilot are transferable to other court locations and other courtroom teams.

The Hobart SYJC is a place where social and criminal problems often intersect. The Court has demonstrated that it is uniquely positioned to convene stakeholders to address the issues that surface when young people with complex problems enter the juvenile justice system.

The evaluation has shown that in order for the SYJC to continue and to function well over time, participating agencies will need to commit not only to providing specialist staff to the courtroom workgroup, but will also need to more formally integrate the SYJC into their strategic and business planning, including budgeting. Agencies may be asked to maintain records in different, and possibly additional, ways to their normal practices so the Court has timely access to reliable information about its performance.

Whether separate from, aligned with, or integrated into existing arrangements, the SYJC will by necessity have resourcing implications for every agency. That said, it is also incumbent on each agency to examine how the arrangements under the Specialised Court might help them

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120 Richards, above n 17, 5.
achieve greater efficiencies, particularly over time. There is no assumption here that the arrangements under the SYJC will impose greater costs overall. If the Pilot, and its continuation as the SYJC, is found to have succeeded, then there will have been massive savings, both socially and economically.
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### B Cases

Griffiths [1977] 137 CLR 293 (1977) HCA 44

### C Legislation

Youth Justice Act 1997 (Tas)
Appendix 1: Case studies

A

A is a 15-year-old male. A appeared in the youth justice court both prior to and during the Pilot. Prior to the commencement of the Pilot, A had appeared multiple times before various magistrates in the youth justice court for several offences, including stealing, breach of bail and burglary.

A appeared in the Special List in relation to the offences of burglary, stealing, injuring property, destroying property, and attempted aggravated burglary. His matters were resolved after three appearances.

During his appearances in the Special List, A was represented by Legal Aid. A felt that having his mother in the court with him was a great support, especially as she had an opportunity to talk on his behalf. He felt that the magistrate spoke directly to him and was genuinely concerned with his situation. A also felt that his sentence of a good behaviour bond with no conviction was fair.

Based upon the magistrate’s suggestion, A participated in U-Turn, a program delivered by Mission Australia for offenders with a history of motor vehicle theft or at risk of becoming involved in motor vehicle theft. This program also enabled A to advance his literacy and numeracy skills. When he had completed the program, Whitelion (a community organisation) assisted A with finding a job. A said that this, along with the successful completion of U-Turn, was his biggest achievement since court. He also stated that he was given ample support by youth justice workers and enjoyed the ‘hands-on’ community work of painting and building with them. A also attended a church group and felt that interacting with other young people in that group was beneficial for him. A believed that YJS was more supportive than the magistrate or lawyers.

Since the completion of U-Turn and the resolution of his matters in the Special List, A has not reoffended. A found that facing and listening to the magistrate were the most stressful aspects of going to court. He often got confused. When asked what improvements could be made to the court, A responded that people talking more slowly and clearly would be beneficial.

B

B is a 19-year-old female. B appeared in the youth justice court both prior to and under the Pilot. During some three or four years prior, B had appeared before various magistrates for several offences. These offences included burglary, stealing, common assault, destroying and injuring property, trespass and breach of bail.
In 2011, B appeared in the Special List in relation to offences of breach of restraint order, common assault, stealing and aggravated burglary. B was sentenced to a community service order of 70 hours. She felt that this was a fair sentence. Four-and-a-half months after she had been sentenced, however, B had only completed one hour of her community service order. YJS confirmed that they were having trouble finding suitable programs for B.

While B had been involved with YJS for a long period of time, she was generally dissatisfied with youth justice workers and felt that they had been slow and ineffective in organising her community service work. She was unaware of the potential programs offered and she felt that she was not being encouraged by YJS.

B felt that she understood the court process and the language used in the court. She also believed that having one magistrate was effective as it allowed them to have a greater understanding of her issues. B believed that the Special List had helped her. While she had a good relationship with her lawyer, B felt that she had a problematic relationship with the prosecution and that they didn’t assist her with her matters.

Following her sentence, B completed school but at the time of her interview she had not found work.

Since her appearance in the Special List, B has been committed for trial (as an adult) on indictable offences. B remarked that as she is an adult YJS could no longer help her, although she has 69 hours of a community service order to complete.

J is a 16-year-old male. His matters were finalised under the Special List in late 2011. J had only three court appearances arising out of a single offence of wilfully obstructing a police officer.

J felt comfortable with the language of the court. He was represented by a Legal Aid lawyer.

J was sentenced to a 12-month good behaviour bond with a warning to not commit any further offences. When asked about the sentence he said it was fair. However, he commented that some of his friends had ‘got off easy’ in the past. As a result, J suggested that the court needed to impose harsher sentencing orders.

J’s lawyer referred him to contact Save the Children. Since being involved with that organisation, J has engaged in range of recreational and educational activities. He aspires to an apprenticeship at the completion of his Certificate II in Hospitality.

Since his appearance in the Special List, J has had no further involvement with youth justice and has not reoffended.
F is a 15-year-old male. His matters were finalised in the Special List in early 2012. F committed a number of offences in mid-2011. These included stealing, assault, trespass and possession of a deadly article. He appeared in the SYJC over a period of six months. F was sentenced to a 12-month probation order, nine-month suspended sentence order and a 30-hour community service order.

When F first appeared in the court he represented himself. It was three months into his proceedings before F was represented by a lawyer. F was generally disappointed by what he saw as his lawyer’s lack of commitment to him. He recalled several occasions when his lawyer failed to turn up to his hearings. F believed that this was one of the contributing factors for the lengthy court process.

F felt comfortable with the language of the court and thought his sentence was fair. He also felt comfortable because the magistrate spoke directly to him. F said that the magistrate ‘gave me a chance and spoke to me like an adult’.

F believed that both the magistrate and the DoE worker were genuinely concerned with his education. He felt that having the completion of his school work as part of his community service order was good motivation. At the time of his interview, F was completing his schooling part-time with the Tasmanian eSchool, hoping to go back to his original school soon.

YJS were involved with F from the commencement of his court proceedings. While F did not participate in any bail support programs or recreational programs, he was pleased with the relationship he developed with youth justice workers. In the interview, F particularly noted the continued contact he had with YJS and the encouragement they gave him.

When asked about the effectiveness of the court, F stated that it, along with his attitude, had played a significant role in stopping him from reoffending. F felt that the most stressful part of the court was waiting to be sentenced.

When asked if any improvements should be made to the Special List, F believed that it should be more organised and efficient. F said, however, that the length of time he spent under the Special List had been beneficial to him. F also felt that the general layout of the court and the waiting room should be more accommodating.

F felt that the most significant improvements to his life since going through the Special List was that he was now living with his grandparents. Since being sentenced F has been re-arrested. He felt frustrated with this because he believed he was blamed for an offence he did not commit. F found it particularly irritating that he became an immediate suspect because of his past record and the fact he was known to police.
R

R is a 17-year-old female. R appeared in the youth justice court both prior to and during the Pilot. Before the commencement of the Pilot, R had appeared before various magistrates in the youth justice court on a number of offences involving common assault.

In 2011, R appeared under the Special List in relation to offences of destroying property, abusing and assaulting police and recklessly discharging a missile. Her matters were finalised after four appearances and she was referred to a community conference under section 37 of the Youth Justice Act 1997.

During her time in the List, R worked with Save the Children. She did so because she had a desire to turn her life around and because she feared that she may be sentenced to a period of imprisonment.

When asked about her experiences in the Special List, R stated that she had a good grasp of what was being said after her first appearance. She was represented by Legal Aid. She also had the support of her mother, particularly with regard to transport. R felt comfortable with the use of a single magistrate and thought that it was ‘better than having a different one each time’. She felt her voice was heard through the process and she was pleased that youth workers from Save the Children were able to speak on her behalf.

Since the finalisation of her matters in the Special List, R has not reoffended. She believed that the experience of having to attend the SYJC has helped her stay away from trouble. She also stated that she ‘hated the waiting times and people’ and would like to avoid returning to the court. At the time of the interview R had remained in contact with Save the Children, had enrolled in a VET certificate in hairdressing, and attended college.

S

S is an 18-year-old female. Her matters were finalised under the Special List in mid-2011. Prior to commencement of the Special List, S had appeared before various magistrates. Her matters were then consolidated into the Special List and were resolved within approximately six months.

S was charged with a number of offences, committed in 2010 and 2011. These included motor vehicle stealing, selling/possessing and using controlled plants, unlawfully setting fire to property, resisting/assaulting and obstructing police. She had also been charged with multiple offences involving breaches of bail and failing to appear in court.

For S, the most frustrating part about participating in the Special List was the delay in having her matters finalised. In the interview, S particularly cited repeated adjournments. Due to this frustration, S would attempt to ‘make it worth it’ by committing further offences, believing that on the next occasion she might be sentenced and have a ‘clean slate’. The
delays in having her matters called on would also cause her to leave the court complex on occasion.

S commented that she did not really understand the court process. When asked about her representation in the Special List, she stated that the court did not allow her to speak when she was represented by a lawyer. She felt frustrated using a lawyer to communicate with the court as they would ‘not remember, or not get the full story across to the judge’. S believed that some of her comments were disregarded and not put in context. For this reason, she thought it was better to ‘have her say’ by telling the court that ‘she did not want her lawyer there.

When asked about her sentence, S said she believed she was likely to receive a custodial sentence as this had been indicated by the magistrate. However, as part of her involvement in the Special List, she was ordered to work with a member of Save the Children to address her offending behaviour and personal circumstances.

When asked about her involvement with Save the Children, S said, ‘the more time you spend with someone who works for you and the court, they begin to understand you. The type of person you are, your morals, some of the important things that a lawyer won’t tell the judge. If you have someone who has got to know you and has helped you they can tell the court what brings you down and whether you can improve’.

For S, one of the most stressful experiences about participating in the Special List was the residential bail conditions that were imposed. She felt that the court ‘punished’ her for not having somewhere to live.

At the conclusion of her time in the Special List, S received a non-custodial sentence. S has since completed a Responsible Service of Alcohol certificate and is attempting to address her housing and employment issues.

K

K is an 18-year-old female. Prior to the commencement of the Pilot, K was charged with a number of offences. These included unlawfully possessing a dangerous article, breach of bail, stealing, common assault and wilfully obstructing police. These offences resulted in various sentencing orders, including wholly and partially suspended detention orders. K has had multiple appearances before various magistrates in the youth justice court. K believed that there was significant inconsistency in appearing before a different magistrate at any given time. This particularly frustrated her.

K was detained in Ashley Youth Detention Centre for some months. She said, ‘when I first got out, it was almost easier to go back’.

K had her matters finalised in the Special List during 2011. These matters included stealing, breach of bail and disorderly conduct, which resulted in her being sentenced to a probation
order. K appeared on three occasions in regards to these matters. She felt that neither her representation nor her hearing was fair.

K felt that the youth justice workers were not genuinely concerned or willing to help her. She believed that if they had intervened productively in her past she would not have been placed in Ashley. K commented that she was particularly seeking support from the youth justice workers in finding permanent accommodation and employment. K said that following her sentence, she resumed education and found employment of her own accord. Following her sentence, K felt that all ties with YJS had ended.

When asked whether a bail support program would have helped her, she said that such a program, like the Save the Children program, would have been particularly beneficial as a source of support.

When asked what she thought was the worst thing about being in court, K said that it was ‘being put in a category with people I offended with, without being assessed as to whether I fit in that category [and] without having previous history looked into’.

K said the most significant improvements in her life were her job, home and family. When asked whether any improvements should be made to the Special List, K felt that YJS should not force people to participate in programs where they are likely to get involved with the same offenders that got them into trouble. She also felt that the fact that an offender seems to fit a certain program does not necessarily mean that they should be in it.

K said it was good to have every young offender appear before the one magistrate.