

Whither Australia's Children's Courts? Contemporary Challenges and Future Prospects - Workshop Report

On 17 and 18 February 2011, an Academy-supported workshop on the ARC-funded National Assessment of Australia's Children's Courts was held at the University of Melbourne. The workshop, 'Whither Australia's Children's Courts? Contemporary Challenges and Future Prospects,' was led by Professor Allan Borowski (School of Social Work and Social Policy, La Trobe University) and Associate Professor Rosemary Sheehan (Department of Social Work, Monash University). The ARC project is a collaborative one involving researchers from all States and Territories, with co-investigators based in the following universities: The University of Western Australia (WA); University of Adelaide (SA); Monash University (VIC); La Trobe University (VIC); Charles Darwin University (NT); Australian Catholic University (ACT); University of New South Wales (NSW); Griffith University (QLD); University of Tasmania (TAS) and Deakin University (VIC). The national team of researchers includes experts in juvenile justice and child protection drawn from such disciplines as sociology, law, criminology, psychology and social work. The project began in 2009 and will be completed in late 2010.

Children's Courts are responsible for important decisions regarding child welfare and juvenile justice, and are generally engaged with vulnerable children and families and marginalised delinquent youth. The purpose of the national study is to examine the current status of Australian Children's Courts, to identify the contemporary and future challenges they face from the perspective of judicial officers and other key stakeholders, to identify directions for reform and to assess the feasibility of the desired reforms. The research project developed through a collaborative process involving the identification and utilisation of common research questions, data collection instruments and data collection strategies.

The Academy workshop was held over two days to share the preliminary findings for each State and Territory's with the larger research group, summarise the findings and emerging issues and to locate them within international alternatives/developments. The workshop participants also discussed future publication and research directions.

Day 1

Each state/territory research team delivered a 45-minute presentation to the other researchers outlining the preliminary findings of their research. Semi-structured in-depth interviews had been conducted with judicial officers and other key stakeholders in the Children's Courts such as child protection workers, youth justice workers, legal representatives, court officers, and non-government workers with family and youth support roles. Each study analysed general issues within the courts, and specific issues relating to the dual role of the courts, namely, the child care and protection function and the youth justice function.

Researchers discussed various themes that emerged in the research. Thus, the preliminary findings pointed to the inadequacies in available infrastructure; equity issues regarding access to representation and adequate resources; significant Indigenous over-representation and adequacy of existing Indigenous-specific programs; concerns with the adversarial nature of the court; lack of evidence-based evaluations of diversionary programs, interagency collaboration and professional skills and inequities and social exclusion. Workshop participants

engaged in a rigorous discussion regarding the philosophical underpinnings of the Children's Courts system, including the goals and objectives of the courts and opportunities for lessening the adversarial nature of the court. Several ideological "binary tensions" within the courts were discussed including 'welfare versus punishment', 'needs or deeds', 'hands on or hands off', 'youth assistance or community protection', and 'child protection or family preservation'.

It was particularly evident that each jurisdiction has unique issues and needs, and factors such as geography, resources, political climate, demography, and culture are highly relevant in analysing the current state of Children's Courts and deciding options for reform. Clearly, a one-size-fits-all model cannot apply across all jurisdictions.

The first day concluded with a brief reflection on issues from two senior academics in the fields of child protection and juvenile justice, Professor Marie Connolly, Head, Department of Social Work, University of Melbourne and Associate Professor Judy Cashmore of Sydney University's Law School.

Day 2

The first half of the second day of the symposium was an open session involving the research team and select invited visitors, including Judge Paul Grant, President, Children's Court of Victoria, Ms Gill Callister, Secretary of the Victorian Department of Human Services, Magistrate David Fanning of the innovative Collingwood Neighbourhood Justice Centre, Associate Professor Helen Rhoades of Melbourne University's Law School and Dr. Darryl Higgins from the Australian Institute of Family Studies, and other relevant stakeholders from the child protection and juvenile justice sectors.

The second day began with a presentation of the summary of emerging findings from the workshop rapporteur, Naomi Godden. She outlined the key themes that emerged from the 8 presentations of the previous day. She reported on general observations including the philosophical debates that emerged in the comparative research studies (including the tensions arising from the care and crime components of the system), diverse perspectives regarding the legal model and framework, issues within the court system and processes, concerns regarding the socio-economic conditions of young people engaged with the courts, significant issues with Indigenous over-representation within the courts, equity issues in rural and remote areas, and issues regarding statistical collection and program evaluation of the Children's Courts process. She then summarised the previous day's deliberations on key strengths and challenges confronting the child care and protection, and juvenile justice "divisions" of the Children's Court. Key needs and possibilities for reform were also discussed along with national directions for the next decade.

The workshop then further considered options for reform with presentations focusing on international responses to juvenile crime and child abuse and neglect. Professor Connolly provided an international perspective of children's courts vis-a-vis their child protection function. She briefly discussed various overseas models including the United Kingdom pre-court focus with case conferencing and interagency consultation and the lay tribunals of Scotland. She then provided a detailed description of the New Zealand system, one which is strongly focused on supporting families to find solutions to child welfare concerns without finding blame. It is less adversarial, strongly child-focused and family responsive, and takes a collaborative problem-solving approach. A specific strength of the New Zealand system is Family Group Conferencing which has

been found to be highly effective in supporting families, particularly Maori families, to make collaborative decisions regarding their children. Some practice tensions within the New Zealand system include the difficulties in developing effective family safety plans, responding to complex needs and achieving the departmental goal of a 'home for life' for children. Connolly stressed that, although difficult, cross-institutional collaboration is vital to good process and effective outcomes. She also discussed the complexities of adopting programs from other countries or jurisdictions and the challenge of achieving a 'cultural fit' for introduced ideas in a different society.

The symposium continued with a presentation by Associate Professor Cashmore, who provided an international analysis of children's courts focussing on the juvenile justice function. Various alternative international models include the United States collaborative model and the Scottish and Swedish models where children under the age of 16 are not dealt with as criminals but rather children with welfare needs. Additionally, she discussed therapeutic models such as the Koori Court, Circle Sentencing, and Youth Drug Courts. Some challenges to sentencing in youth justice include ensuring rehabilitation, reintegration in the community, and individual deterrence, along with general principles of proportionality (ensuring adequate punishment to fit the crime), consistency and equity, and specificity regarding the precise nature of the crime. Cashmore pointed to the limited available research regarding children's experiences of the court, with some evidence suggesting that children are concerned about recognition and respect, and 'being listened to'. Finally, Cashmore discussed the United Nations benchmarks in youth justice, such as advocating a minimum age of criminal responsibility of 12 years, the primary objective of promoting the "best interests of the child" and rehabilitation, encouraging non-discriminatory practices and enabling reintegration, utilising judicial proceedings and detention as a final resort, and ensuring the child's right to be heard.

The public session closed at midday. The second day concluded with an afternoon meeting of the research team to discuss opportunities for the publication and dissemination of findings, advocacy for policy reform, and potential future research in this field.

The study on which the workshop was based is an excellent exemplar of a multi-institutional, multi-jurisdictional social research project whose findings have great scope for informing social policy reform. The final report of the project will be available in late 2011.

Allan Borowski and Rosemary Sheehan