

## Foreword

Although the Children's Court stands at the very foot of the hierarchy of criminal courts, its contribution to the administration of justice in New South Wales is of vital significance. Now, with a 100 years of history and experience behind it, the Children's Court—a specialist court—provides formal recognition that, in the main, young offenders (children who commit offences when they are aged from 10 to under 18 years) should not be treated in the same way as their adult counterparts. Generally, they should be helped rather than punished, rehabilitated rather than deterred.

The need for such a court grew out of late nineteenth century thinking that, having regard to the age (immaturity) and often poor health and socio-economic status of young offenders, care and protection, rehabilitation and reform, rather than the application of deterrent and retributive sanctions, provided the best prospects of saving young offenders from a life of crime.

Under the sentencing powers of the Children's Court, magistrates can either impose a sanction that facilitates the young person's rehabilitation, or pursue a more punitive course. The challenge for the magistrate is to treat young people who have committed offences in a way that is both humane and in their best interests, while paying due regard to the rule of law, the principles of natural justice and the need to protect the community from crime. More so than for adults, the emphasis or focus in sentencing the young is on the individual offender rather than the individual offence, on the offender's needs rather than on his or her deeds. Yet this emphasis is not always appropriate, and the opposing purposes of punishment that inform sentencing decisions in this and other courts continue to jostle one another for paramountcy.

A century of experience has taught us that there is no easy answer to the juvenile crime problem and that excessive interventions into the lives of the young can often be counter-productive. In 1994, the NSW Bureau of Crime Statistics and Research published a study showing what others had found previously; namely, that the majority of offenders who appear before the Children's Court for the first time do

not re-offend.<sup>1</sup> Two years later, a large recidivism study by the Department of Juvenile Justice also showed that seven out of every ten juvenile offenders did not reappear before the Court on a second proven offence.<sup>2</sup> An even more recent Queensland study tracked, over a seven-year period, a cohort of 1500 young offenders who had received supervised orders and found that the vast majority of these people progressed to the adult criminal justice system.<sup>3</sup> It further found that half of them had been sentenced subsequently to at least one term of imprisonment.

With such outcomes, it is little wonder that in recent years there has been increased emphasis on the principles of restorative justice and on alternative or diversionary options for handling young offenders, such as the use of warnings, cautions, youth justice conferences and the introduction of the Youth Drug Court. At the same time we have experienced a steady decline in the use of juvenile detention, the numbers decreasing from 370 on 30 June 1994 to 222 on June 2003.<sup>4</sup> Improvements in understanding risk factors, and what works and what does not work, are contributing to new initiatives in the administration of Juvenile Justice.

Ivan Potas

*Director, Research and Sentencing*  
*May 2005*

- 
1. Coumarelos, C, *Juvenile Offending: Predicting Persistence and Determining the Cost-Effectiveness of interventions*, New South Wales Bureau of Crime Statistics and Research, Sydney, 1994.
  2. Cain, M, *Recidivism of Juvenile Offenders in New South Wales*, Department of Juvenile Justice Sydney, 1996.
  3. Lynch, Buckman and Krenske, "Youth Justice: Criminal Trajectories" in *Trends and Issues*, No 265 Australian Institute of Criminology, Canberra, September, 2003. A further study, tracking some 5500 young offenders over a period of eight years after contact with the criminal justice system, is soon to be published by the NSW Bureau of Crime Statistics and Research. This study is likely to provide insights into how young offenders are faring under recent reforms in the criminal justice system.
  4. Source: Australian Institute of Criminology, *Technical and Background Paper 10, Statistics on juvenile detention in Australia: 1981-2003* at Table 5(e).