

THE NEW SOUTH WALES YOUTH DRUG & ALCOHOL COURT PROGRAM: A DECADE OF DEVELOPMENT

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I INTRODUCTION

In 2010, the NSW Youth Drug and Alcohol Court ('YDAC') Program celebrated its 10th year of continual operation, but despite a promising early evaluation of the Program,¹ it remains an indefinite pilot. In 2000, the year the YDAC program commenced as a pilot, Freiberg remarked that, '[o]n balance, Australia is right in experimenting with drug courts, providing that they are rigorously and carefully evaluated and carefully targeted at those who are most likely to benefit.'² Notably, the 'NSW Drug Summit 1999 — Government Plan of Action', declared that '[a]s with the adult Drug Court program, the Youth Drug Court will be carefully evaluated.'³ However, to date there is only one published evaluation of the YDAC Program⁴ and very limited available information that describes or analyses its development and current structure and characteristics. This paper attempts to redress this gap in the literature somewhat, by providing a descriptive overview of the YDAC Program based on publicly available information about the program and the author's own experiences as the former manager of this program. This is then critically compared to research evidence about criminal justice programs and services that work to reduce young offenders' rates of recidivism and harmful substance misuse.

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1 Tony Eardley et al, 'Evaluation of the New South Wales Youth Drug Court Pilot Program — Final Report — Report Prepared for the New South Wales Attorney General's Department' (Report, The University of New South Wales, Social Policy Research Centre, March 2004).

2 Arie Freiberg, 'Australian Drug Courts' (2000) 24 *Criminal Law Journal* 213, 235.

3 New South Wales Government, 'NSW Drug Summit 1999 — Government Plan of Action' (Plan of Action, NSW Government, July 1999) 15.

4 A review of the services component of the YDAC Program was conducted in 2008 — see Hilary Hannam, 'The New South Wales Youth Drug and Alcohol Court' (Paper presented at the Non-Adversarial Justice: Implications for the Legal System and Society Conference, Melbourne, 4–7 May 2010).

II WHAT IS THE YDAC PROGRAM?

A Emergence of the YDAC Program

In May 1999, the NSW Government held a Drug Summit, which emphasised the need for a holistic approach to issues surrounding young people, drug use and the crime cycle, as well as the creation of specific diversionary options for young offenders with substantial drug problems to access treatment services. The result was changes to the *Young Offenders Act 1997* (NSW) (effective April 2000) and an inter-agency working group that established the Youth Drug Court ('YDC') pilot program in July 2000.⁵ The YDC trial was announced in the 'NSW Drug Summit 1999 — Government Plan of Action', as follows:

The Government proposes that the model for the Youth Drug Court will combine intensive judicial supervision and case management of young offenders who are charged with criminal offences that result from drug misuse. These young people will be referred into programs aimed at eliminating or reducing their drug misuse and related criminal behaviour and increasing their ability to function as law abiding members of the community.⁶

Funding for the trial was and continues to be provided by the NSW State Government Drugs Program and the Federal Government's Illicit Drug Diversion Initiative.⁷ To accommodate the operation of the YDC Program, some amendments were initially added to the *Children's (Criminal Proceedings) Act 1987* (NSW),⁸ which continues to provide the YDC's legislative framework, complemented by two Children's Court Practice Directions (Nos 18 and 19 — now superseded by Note No 1) that outline general Program procedures. In 2003, following the NSW Alcohol Summit,⁹ the YDC changed its name to the Youth Drug and Alcohol Court program, to emphasise alcohol as a problematic drug for young people, and expanded its catchment area from western and south-western Sydney to encompass the inner city and suburbs to the east and north of Sydney.

B YDAC Court Team and Joint Assessment and Review Team ('JART')

The YDAC Program involves partnerships between multiple government agencies and contracted non-government service providers, with the NSW

5 Eardley et al, above n 1.

6 New South Wales Government, above n 3.

7 Roger Dive et al, 'NSW Youth Drug Court Trial' (Paper presented at the Juvenile Justice: From Lessons of the Past to a Road Map for the Future Conference, Sydney, 1–2 December 2003).

8 Ibid.

9 See New South Wales Government, 'Outcomes of the NSW Summit on Alcohol Abuse 2003: Changing the Culture of Alcohol Use in New South Wales' (Report, NSW Government, May 2004); New South Wales Department of Juvenile Justice, 'Annual Report 2007–2008' (Report, NSW Government, 2008) <<http://www.djj.nsw.gov.au/publications.htm>>.

Attorney-General's Department as lead agency. According to an early YDC Program conference paper:

the YDC Program relies on the strategic establishment of two interdependent and overarching teams: the judicially driven Youth Drug Court Team and the intervention oriented Joint Assessment and Review Team (JART).¹⁰

The Court Team is comprised of a designated YDAC magistrate, registrar, police prosecutor, children's solicitor and a treatment services representative from the JART. JART is comprised of representatives from four government agencies: Juvenile Justice and Community Services (Department of Human Services), Justice Health (Department of Health) and the Department of Education and Training. According to the founding YDAC magistrate and colleagues, '[w]hilst the primary focus of the Court Team is the processing of justice matters, the participation of JART in this process provides the opportunity to contribute a therapeutic perspective to the legal proceedings.'¹¹

C YDAC Referral, Eligibility and Initial Screening

Currently, the YDAC sits three times per week, rotating between and operating at three different local Sydney Children's Courts. Children are referred to the YDAC program by the magistrate of the NSW Children's Court in which the child appears, generally alongside a recommendation from their legal representative or Juvenile Justice. Girls, Aboriginal children and children on remand in custody are considered 'priority' referrals.¹² As prescribed in the YDAC Practice Directions,¹³ program eligibility is limited to children who:

- are ineligible for a caution or Youth Justice Conference as per the *Young Offenders Act 1997* (NSW);
- are charged with an offence (that is not a sex offence) that can be dealt with to finality in the Children's Court;
- have a demonstrable alcohol or other drug problem;
- are aged 14–18 years at the time of carrying out the offence;
- reside and/or have committed an offence within the current YDAC catchment boundaries or can otherwise demonstrate identification with the area within these boundaries;
- plead guilty to or admit to the offence(s), or where 'the referring court and the YDAC exercise their discretion to refer and accept a child who has

¹⁰ Dive et al, above n 7, 5.

¹¹ Ibid.

¹² Ibid.

¹³ The Children's Court of New South Wales, *Practice Note No 1 — Practice Note for the Youth Drug and Alcohol Court*, 28 August 2009, s 5 ('*Practice Note for the Youth Drug and Alcohol Court*').

pleaded ‘not guilty’ to some offence(s), where the overall penalty will not alter significantly if the child is found guilty of those defended matters’;¹⁴

- have been found guilty of the offence(s) but the Court considers a referral to YDAC to be appropriate regardless of this.

Pending each child’s first appearance at the YDAC, Juvenile Justice conducts an Initial Screen to confirm a demonstrable substance use problem and to assess the young person’s immediate needs for a possible bail hearing and development of a potential program plan.¹⁵ This information is reported to the Court at the child’s first appearance to assist in determining eligibility¹⁶ and the potential benefits of proceeding with further assessment. Importantly, there are two additional provisions in the Practice Directions allowing the YDAC magistrate to exercise discretion to exclude an eligible child, on the grounds that:

- (1) It is not probable that a control (custodial) order will be imposed; or
- (2) Their criminal history is so serious that even if the child completed the YDAC program satisfactorily, a control order would still be imposed.¹⁷

Thus, a child who is deemed ineligible will have their matters returned to the Children’s Court for sentencing. A child who is deemed eligible will have their matters adjourned for 14 days (if remanded in custody) or 21 days (if on bail in the community) to allow for the completion of a Comprehensive Assessment report.

D Comprehensive Assessment

The Comprehensive Assessment expands on the Initial Screen and is conducted independently by representatives from each of the four JART agencies. The assessment is intended to be holistic, covering a broad range of issues, pertinent to each JART agency’s specialist area (for example, health, child protection, education and criminal history), and to also determine the young person’s clinical suitability for participation in the YDAC Program.¹⁸ JART members and relevant staff collectively develop a proposed program plan or, if one cannot be developed, determine if further assessment (for example, psychiatric) is required. The proposals and assessment information are collated by Juvenile Justice into a single Comprehensive Assessment report for the Court. A child whose proposed program plan is found unsuitable by the magistrate, or for whom no program plan can be developed, shall have their matters returned to the Children’s Court for sentencing.¹⁹ A child whose proposed program plan is found suitable for the YDAC program will have their matters adjourned for six months and will be placed on a Griffith Remand under s 33(1)(c2) of the *Children (Criminal Proceedings) Act*

14 Ibid s 5(f).

15 Dive et al, above n 7, 6.

16 Ibid.

17 *Practice Note for the Youth Drug and Alcohol Court*, above n 13, s 7.4.

18 Dive et al, above n 7, 6.

19 *Practice Note for the Youth Drug and Alcohol Court*, above n 13.

1987 (NSW).²⁰ This requires a young person to: ‘Comply with the conditions contained in his or her program plan, and with other related requirements; and... [a]llow deferral of final sentencing in the matter for a minimum of six months.’²¹

The young person then signs an undertaking to consent to abide by the YDAC requirements, particularly those outlined in the program plan, which is intended to be flexible and constantly reviewed to accommodate the young person’s ongoing needs and progress.²² A YDAC program plan typically requires a young person to:

- reside as directed by Juvenile Justice or JART (either at an accommodation or residential rehabilitation service);
- accept supervision by Juvenile Justice and case work support from a YDAC Support Worker;
- participate in counselling, educational or vocational assessments and programs, health-related assessments or intervention and recreational/leisure programs;
- submit to random urinalysis;
- attend the YDAC for Report Back sessions as directed by the Court or JART.

In general, JART guides clinical interventions, including the need for urinalysis, rather than the Court.²³ While all YDAC participants can be subject to random urinalysis, generally six times in six months for each participant,²⁴ it is not conducted as regularly as in the NSW (adult) Drug Court where participants are tested two to three times per week.²⁵

E Inter-Agency Service Provision

1 Juvenile Justice

Juvenile Justice provides an operational and administrative base at an office in south-western Sydney for all JART members and its own staff team, including administrative support.²⁶ Juvenile Justice employs the JART Manager and an Assistant Manager, who coordinate the JART team and activities and provide after-hours, on-call service to assist in dealing with client breaches of the YDAC

²⁰ Dive et al, above n 7, 8.

²¹ Ibid.

²² Ibid 7–8.

²³ Ibid 8.

²⁴ Hilary Hannam and Sarah Crellin, ‘The Youth Drug and Alcohol Court — Get with the Program!’ (2010) 7 *Children’s Legal Service Bulletin* 1 <<http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=638>>.

²⁵ Lawlink Attorney-General and Justice, Drug Court of New South Wales, *Policy 9: Drug and Alcohol Use by Participants* (December 2007) <http://www.lawlink.nsw.gov.au/lawlink/drug_court/ll_drugcourt.nsf/pages/adrgcrt_drguse_participant>.

²⁶ New South Wales Department of Juvenile Justice, ‘Annual Report 2001–2002’ (Report, NSW Government, 2002) <<http://www.djj.nsw.gov.au/publications.htm>>.

program or other client crisis situations outside of regular business hours. In instances involving serious breach of the YDAC program, for example, if a young person's whereabouts are unknown, the JART Manager will consult with the on-call YDAC Police Prosecutor to determine an outcome.²⁷ In the case of a minor breach, the JART Manager will determine an immediate appropriate response to a crisis situation and direct the young person to attend the next sitting of the YDAC.²⁸ Juvenile Justice also employs seven direct service staff who are responsible for: client case management, monitoring compliance with legal mandates, the provision of court reports and delivery of individual counselling and group-work that target the underlying triggers to offending behaviour and substance misuse.

2 Community Services and Intensive Case Support Work

The Community Services JART member is responsible for family and child protection assessments and managing the funding and service agreement for a non-government organisation ('NGO') to provide Intensive Case Support Work ('ICSW'). The ICSW agency provides an important link for young offenders to community based support services, in order to encourage integration, and works in close partnership with the Juvenile Justice case managers to help each young person meet their case plan goals. The agency is also responsible for administering client brokerage funds for day-to-day living necessities and any additional required services for YDAC participants.

3 Justice Health and the Residential Induction Unit

The JART member for Justice Health supervises two Registered Nurses and is responsible for ensuring the provision of appropriate health care to YDAC participants and health reports to the Court. Justice Health funds services for YDAC participants that include regular psychiatric consultations, dental treatment, health education, optometry and General Practitioner check-ups. Justice Health also funds the Residential Induction Unit ('RIU'), a six-bed residential unit that operates to induct and stabilise YDAC participants. The RIU is managed by a contracted NGO. Most young people reside at the RIU for a period of time when they commence the YDAC program as a way to maximise opportunities for their engagement with YDAC staff and processes and to stabilise their lifestyle. Where vacancies permit, young people can also re-enter the RIU during periods of crisis, when respite is required, when their program plan is being reviewed and supervised or when supported accommodation is required.

27 *Practice Note for the Youth Drug and Alcohol Court*, above n 13.

28 *Ibid.*

4 Department of Education and Training and TAFE

The JART member for the Department of Education and Training ('DET') is responsible for providing assessments of a young person's education and vocation history, literacy and numeracy skills, and for identifying any possible intellectual or learning disabilities. In addition, the JART member consults and develops professional links with schools, TAFE institutions and vocationally-based services and programs, in order to enable responsive program planning.²⁹ DET also fund an accredited education program exclusively for YDAC participants, which aims to help students with literacy and numeracy problems to develop the required social skills for coping with learning environments and to facilitate progression to other education, training and employment options. This program is deliberately flexible, with multiple entry and exit points to accommodate young people entering, departing from and re-entering the program as their personal circumstances change.³⁰

5 Inter-Agency Case Management and Supervision

From the date a young person is admitted into the YDAC program, they are formally under the supervision of a YDAC Juvenile Justice case manager, with support from an allocated NGO Support Worker and Justice Health Registered Nurse. The nature of this supervision is intensive and frequent, regularly involving daily contact with the young person, their family members or other significant stakeholders.³¹ In addition to the overarching program plan, each participant has a detailed, individualised case plan that sets out the expectations and goals of both the program and the young person. The case plan and progress towards meeting the goals are reviewed fortnightly in meetings between the young person and their Juvenile Justice case manager, NGO Support Worker and Justice Health Registered Nurse. Other key stakeholders, who have a significant relationship with the young person, may also be invited to participate in these review meetings, such as parents or legal guardians (including child protection workers), partners or spouses, children, or workers from YDAC or other agencies (for example, youth, refuge or employment workers). As diversion from custody is a key aim of the YDAC program, the involvement of community-based and mainstream services is important to encouraging client–community integration. Where a young person's needs cannot be met through YDAC agencies, referrals are placed, in consultation with young people, to external service providers, such as residential AOD rehabilitation, supported accommodation, sexual or other assault counselling, parenting classes, dental treatment, optical care, or neuro-psychological testing. Where possible and available, services are chosen according to their responsiveness to a young person's assessed needs, including services that are specific to culture, gender and age.

²⁹ Dive et al, above n 7.

³⁰ Ibid.

³¹ Ibid.

6 Report Backs and Judicial Supervision

All YDAC participants regularly return to Court throughout their program to meet with the YDAC magistrate and the Court Team. These meetings, referred to as Report Backs, are generally conducted in a court room, but are not formal court sittings. YDAC staff, relevant key workers and significant others may also attend a young person's Report Back, as required. The frequency of a young person's Report Backs is directed by the YDAC magistrate. They usually take place weekly or fortnightly and occasionally monthly, depending on the young person's progress and recommendations made in the program plan.³² Issues related to compliance can be dealt with by the YDAC magistrate and the Court Team in a number of ways:

- (1) Through a JART Treatment Review to adjust the program plan to better meet the young person's needs.
- (2) By extending the sentence deferral date and requirement for continued program participation from the initial date for anywhere up to an additional six months.
- (3) Ongoing or serious breaches of the program plan and related requirements could result in a young person being discharged from the program.

Besides these three actions, no judicial sanctions should be incurred by a young person for program breaches.³³

7 Sentencing and Aftercare

A young person can opt to 'self-discharge' from the YDAC program at any time by making this request at a Court sitting. A child can also be discharged from the program by the Court, due to continuous or serious breaches of their bail, such as ongoing offending or behaviour that results in no program plan being available to the young person. Generally, at the time that a child opts to self-discharge or is discharged from the YDAC program, the YDAC magistrate will order a Juvenile Justice Background Report for sentencing 14 days from the date of discharge. Conversely, the YDAC will 'graduate' a young person who has successfully completed all aspects of their program plan to a high or satisfactory standard. It is expected that children who have 'graduated' will avoid a control order and a conviction (where applicable) and instead be sentenced to a community-based order. In all cases, a child's participation in the YDAC program is to be taken into account during sentencing and the final sentence must not be more punitive than what may have been imposed if the young person had not participated in the YDAC program.³⁴ As a general rule, children are given a suspended sentence or other orders that require supervision from Juvenile Justice or NSW (adult) Corrective Services, Probation and Parole Services, depending on the young

32 Ibid.

33 *Practice Note for the Youth Drug and Alcohol Court*, above n 13.; Dive et al, above n 7.

34 *Practice Note for the Youth Drug and Alcohol Court*, above n 13.

person's age and level of maturity, as assessed by the YDAC magistrate.³⁵ The YDAC Juvenile Justice case manager will continue to supervise and support the young person until a hand-over meeting and transfer of supervision has taken place with the receiving Juvenile Justice or Corrections office. During this time, after-care is also available to the young person through their YDAC Support Worker for a minimum of six months.

III DOES THE YDAC PROGRAM WORK?

A Drug Court Evaluation Issues

The effectiveness of drug courts in general is disputed in relation to two areas: (1) the methodological soundness of evaluation studies and (2) the quality of treatment that is provided.³⁶ A recent review of 96 studies of adult and youth drug court programs in the USA, Canada and Australia, found that 'the drug treatment court literature is littered with methodological problems ...'³⁷ Notably, the authors of the review concluded that:

- Given the limited number of methodologically sound studies, it is difficult to draw conclusions about the efficacy of drug courts in general, but '[t]he least biased estimate of overall reductions in recidivism was approximately 8%'³⁸
- The effectiveness of treatment is determined by adherence to the principles of risk, need and responsivity ('RNR'), but no programs reviewed adhered to all three principles and only very few adhered to even one.³⁹
- More robust, quality research is required to estimate drug court program efficacy.⁴⁰

In addition, specifically related to *youth* drug courts, neither general treatment research nor drug court evaluations have produced definitive information on children and adolescents.⁴¹ While there is some evidence to support alcohol and other drug abstinence and treatment programs as a way to reduce recidivism, this evidence appears very weak, with the effects being only slightly positive and

³⁵ Dive et al, above n 7.

³⁶ Leticia Gutierrez and Guy Bourgon, 'Drug Treatment Courts: A Quantitative Review of Study and Treatment Quality 2009–04' (Report, Public Safety Canada, December 2009).

³⁷ Ibid 12.

³⁸ Ibid 13.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Joy Wundersitz, 'Criminal Justice Responses to Drug and Drug-Related Offending: Are They Working?' (Technical and Background Paper No 25, Australian Institute of Criminology, 2007); National Drug Court Institute and National Council of Juvenile and Family Court Judges, 'Juvenile Drug Courts: Strategies in Practice' (Report, Office of Justice Programs, US Department of Justice, March 2003); National Institute of Justice, 'Drug Courts: The Second Decade' (Special Report, Office of Justice Programs, US Department of Justice, June 2006).

not significantly different from zero.⁴² Not only are there relatively few studies on adolescent substance misuse treatment, those that do exist are inclined to be methodologically poor.⁴³ Considering only methodologically sound studies, there is evidence that treatment is better than no treatment, but not enough evidence to compare and determine the effectiveness of different types of treatment.⁴⁴ The sole exception to this is outpatient family therapy, which appears more effective than other forms of outpatient treatment⁴⁵ and supports other research findings that suggest effective interventions with children and adolescents must also target the family.⁴⁶

B YDAC Evaluation, Methods and Issues

In 2004, commissioned by the NSW Attorney-General's Department, the University of New South Wales ('UNSW') Social Policy Research Centre, published a review of the YDAC pilot program, examining the two years ending July 2002.⁴⁷ During this time, the YDAC received 164 referrals, of which 75 (46 per cent) were deemed eligible and suitable to participate and of these, 29 (39 per cent) graduated from the Program.⁴⁸ The UNSW review was unable to employ the optimal, quasi or experimental research designs to its evaluation of the YDAC pilot, due to the small number of eligible referrals to the program and opposition from the Court to random selection.⁴⁹ The review therefore relied on a combination of methods, including: (1) a comparison between YDAC participants and young people referred to the program as *prima facie* eligible, but who chose not to participate; (2) in-program and post-program offending data for both sample groups; (3) a series of in-program and post-program interviews with program participants that incorporated some standardised instruments; and (4) data from participant files used to create a series of individual participant case studies.⁵⁰

42 James McGuire, Peter Kinderman and Carol Hughes, 'Effective Practice in Offending Behaviour Programs: Literature Review' (Report, Youth Justice Board for England and Wales, 2002).

43 Robert J Williams and Samuel Y Chang, 'A Comprehensive and Comparative Review of Adolescent Substance Abuse Treatment Outcome' (2000) 7(2) *Clinical Psychology: Science and Practice* 138.

44 Ibid.

45 Ibid.

46 Ken Buttrum, 'Juvenile Justice: What Works and What Doesn't!' (Paper presented at the Australian Institute of Criminology Conference — Juvenile Crime and Juvenile Justice: Toward 2000 and beyond, Australian Mineral Foundation, Adelaide, 26–27 June 1997) 63–8; Chris Trotter, *Working with Involuntary Clients: A Guide to Practice* (Allen & Unwin, 2nd ed, 2006).

47 Eardley et al, above n 1.

48 Ibid.

49 Ibid.

50 Ibid.

The available statistics on YDAC Program participation rates suggest an average of around 65 participants each year⁵¹ and according to the NSW Community Services 2007/08 Annual Report, '[n]early 700 young offenders have participated in the [YDAC] program since it started in 2000.'⁵² In 2009, the incumbent YDAC Magistrate reported that more than 130 young people had successfully 'graduated' from the YDAC Program since its commencement.⁵³ Nevertheless, data regarding YDAC participation and graduation rates appear sporadic and inconsistent, with no apparent available statistics about participant self-discharge rates. Moreover, there is an absence of data concerning the rate and nature of YDAC participant recidivism and substance misuse. The most definitive information comes from the preliminary findings of the UNSW review, despite the researchers incurring data problems that created difficulties in accurately determining levels of offending by participants.⁵⁴ The UNSW review found that in the first two years of the YDAC pilot:

- An estimated 60 per cent of participants appeared in court on new charges while on the program.⁵⁵
- Approximately 35 per cent of participants had no record of offending after they departed or completed the program, but the post-program offending data was incomplete and available for only a brief time after the conclusion of the pilot.⁵⁶
- Graduates of the program demonstrated lower re-offending rates, increased motivation to reduce drug use and longer-term improvements in mental health (particularly for young women), compared to those who did not complete the program.⁵⁷
- Most participants interviewed reported a decrease in their drug use compared to three months prior to program entry.⁵⁸

The UNSW review concluded that while within the limitations of the research framework it was not possible to definitely assert that the YDAC program achieved superior outcomes to other types of intervention, it was clear that the program achieved a positive, significant impact on the lives of numerous participants who

51 Figures estimated from the compilation of reported annual YDAC participant numbers published by: NSW Department of Juvenile Justice, in their Annual Reports for 2001/02, 2002/03 and 2004/05 <<http://www.djj.nsw.gov.au/publications.htm>>; NSW Department of Community Services, in their Annual Reports for 2005/06 and 2006/07 <http://www.community.nsw.gov.au/about_us/news_and_publications/reports.html>; Department of Human Services, in their Annual Report for 2009/10 <<http://www.humanservices.nsw.gov.au/publications>>.

52 New South Wales Department of Community Services, 'Annual Report 2007/08' (Report, NSW Government, 2008) 22 <http://www.community.nsw.gov.au/docswr/_assets/main/documents/annual_report07_08.pdf>.

53 Hilary Hannam, 'The Youth Drug and Alcohol Court: An Alternative to Custody' (2009) 7(13) *Indigenous Law Bulletin* 12, 12.

54 Eardley et al, above n 1.

55 Ibid 122.

56 Ibid iii.

57 Ibid iv.

58 Ibid.

came from backgrounds of entrenched drug use and offending behaviour.⁵⁹ The review also estimated the per capita program costs to be between \$359 and \$452 per day and considered that overall, the program was more cost-effective than keeping the group in custody.⁶⁰ The evaluation recommended the continuation and possible strategic expansion of the YDAC Program to other geographical areas, subject to a number of caveats that included improved data on offending that comes to police or court attention, in order to accurately determine the offending rates of both program participants and referrals.⁶¹ However, according to a comprehensive review of the NSW Juvenile Justice system, conducted in the same year as the YDAC tenth anniversary, '[n]o data of this nature has been collected and no further evaluation [of the YDAC Program] conducted.'⁶²

C YDAC Treatment Efficacy

A full and in-depth analysis of the treatment efficacy of the YDAC Program is not within the scope of this paper, but a number of key program features can be examined as they relate to evidence about effective, rehabilitative treatment in the juvenile criminal justice system. As noted, the effectiveness of drug court treatment has been found to correlate with program adherence to the following principles of risk, need and responsivity ('RNR'):

- *Risk principle* — offenders should be provided with supervision and treatment levels that are commensurate with their assessed risk of recidivism, based on information about participants' criminal history and other important variables. Therefore, intensive and more frequent doses of supervision and intervention should be directed at higher-risk offenders, while services should be minimised for lower-risk offenders.
- *Needs principle* — programs and treatment must adequately target areas of criminogenic need (as identified in formal assessment) in order to yield reductions in recidivism. Criminogenic needs are dynamic or changeable factors in an offender's life that are known to be linked to offending behaviour and are relevant to predicting risk of recidivism, such as anti-social attitudes and beliefs, self-control issues, negative peer relationships, skills deficits and alcohol and other drug misuse.
- *Responsivity principle* — programs and treatment must be provided in a style and form that suits the general and specific learning styles, motivations and aptitudes of offenders as a cohort and as individuals, in order to accommodate for difference and diversity (eg age, intellectual functioning,

59 Ibid.

60 Ibid .

61 Ibid.

62 Peter Murphy et al, 'A Strategic Review of the New South Wales Juvenile Justice System' (Review Report, Noetic Solutions Pty Ltd, 13 April 2010) 111 <http://www.djj.nsw.gov.au/pdf_html/publications/general/Juvenile%20Justice%20Review%20Report%20FINAL.pdf>.

developmental stage, gender, culture) among individuals and to allow for personal strengths.

Consistent with the risk principle, given their intensive and interventionist nature, adult and youth drug court programs are widely considered to be best targeted at chronic, recidivist offenders, who present the greatest risk of re-offending and who have the highest levels of criminogenic need.⁶³ Findings from a meta-analysis that reviewed the effectiveness of drug courts internationally, established that drug courts that targeted higher-risk offenders were twice as effective in reducing recidivism rates as those that targeted lower-risk offenders.⁶⁴ Thus, given the frequency and intensive nature of judicial supervision and monitoring of YDAC participants, coupled with similarly intensive supervision, monitoring and case management from the YDAC treatment agencies, it is clear that the YDAC Program is also best suited to higher-risk young offenders. Moreover, involving lower-risk offenders in the YDAC Program could have unintended consequences that result from exposing such a cohort to potentially higher-risk, more sophisticated and predatory offenders.⁶⁵ In addition, as lower-risk offenders are by definition quite pro-social, involving them in a highly structured, restrictive criminal justice program may actually disrupt the very elements that make them low-risk, such as stable accommodation, positive peer or family relationships or employment.⁶⁶ The stringent and longer term bail conditions, such as those of the YDAC Program and other drug courts, may also increase the potential for net-widening, due to increased breach rates that could result in more young people being placed on remand.⁶⁷

D Evidence-Based Suitability Criteria

It is clear therefore, that in addition to its legal eligibility criteria, the YDAC Program requires a clearly articulated suitability criteria to ensure that only higher-risk offenders are included in the program. Although the Comprehensive Assessment process appears to cover many of the domains necessary for an assessment of RNR factors (such as family dynamics, peer associations and offending history),⁶⁸ there appears to be no clear statement in the literature about what constitutes 'clinical' suitability for the Program. Therefore, to align itself more strongly with RNR principles, suitability assessment for the YDAC Program should overtly include:

63 DA Andrews and James Bonta, *The Psychology of Criminal Conduct* (Anderson Publishing, 3rd ed, 2003); Christopher T Lowenkamp and Edward J Latessa, 'Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders' [2004] *Topics in Community Corrections* 3; Caroline S Cooper, 'Juvenile Drug Court Programs' [2001] (May) *Juvenile Accountability Incentive Block Grants Bulletin* 1.

64 Lowenkamp and Latessa, above n 63.

65 See, eg, *ibid*; Andrews and Bonta, above n 63; Wing Hong Chui, 'What Works in Reducing Reoffending: Principles and Programmes' in Wing Hong Chui and Mike Nellis (eds), *Moving Probation Forward: Evidence, Arguments and Practice* (Pearson Education, 2003) 56.

66 Lowenkamp and Latessa, above n 63.

67 Wundersitz, above n 41.

68 Dive et al, above n 7.

- The young person's assessed level of risk of re-offending, with priority given to medium-high and high-risk offenders, in line with the risk principle.
- Responsivity issues that can seriously, negatively impede a young person's capacity to participate in and benefit from the YDAC Program (eg significant mental health issues or intellectual disability) and may require referral to other specialist programs.
- The young person's criminogenic needs and how these can be addressed through participation in the YDAC Program, including details about existing strengths and protective factors (and how these can be exploited to assist a young person).

Consideration should also be given to the need for greater diversionary options from custody and specialist intervention in some populations (such as Aboriginal young people, girls and young women) but not to the exclusion of the RNR principles. Notably, a recent report from the National Indigenous Drug and Alcohol Committee, recommended that to be responsive to the needs of Aboriginal offenders, current juvenile and adult diversionary programs should amend their eligibility criteria to include people with 'a prior conviction that is alcohol or drug related...[and]...a violent alcohol or drug related offence conviction'.⁶⁹ It is evident that the YDAC Program is one of the only drug courts in Australia and overseas that does not exclude young people who have committed violent offences or who have alcohol problems.⁷⁰

E Inter-Agency case management

There is evidence to support the efficacy of the team approach taken to case management in the YDAC Program, as this can ensure a sense of overall continuity for participants and combat some of the disruptive impacts of staff turnover or leave.⁷¹ However, case management approaches involving large numbers of people have been widely criticised for creating difficulties in case planning, decision-making and the consistent application of the principles of effective practice.⁷² In examining the structures of the YDAC Program, it is clear that the case management approach not only involves a considerable number of stakeholders, but also a number of key drivers, including the Juvenile Justice case manager, the JART, the YDAC magistrate and other YDAC agencies and staff. A key challenge, therefore, is to ensure there is a clear and consistent approach with clients across the program, which is especially important when working with statutory clients (who may have limited intrinsic motivation)⁷³ and children

69 National Indigenous Drug and Alcohol Committee, Australian National Council on Drugs, *Bridges and Barriers: Addressing Indigenous Incarceration and Health* (2009) 11.

70 Michael King et al, *Non-Adversarial Justice* (Federation Press, 2009); Hannam, above n 53.

71 Sarah Partridge, 'Examining Case Management Models for Community Sentences' (Home Office Online Report 17/04, UK Home Office, 2004) <<http://rds.homeoffice.gov.uk/rds/pdfs04/rdsolr1704.pdf>>.

72 Trotter, above n 46.

73 Ibid.

or adolescents (who are still developing emotional, social and cognitive skills).⁷⁴ A special report by the US National Institute of Justice found that:

The magnitude of a [drug] court's impact may depend upon how consistently court resources match the needs of the offenders in the drug court program. ... Proper assessment and treatment of offenders is primarily the responsibility of service providers, but all drug court team members should be concerned with the integrity of treatment planning, service delivery, and performance reporting ...⁷⁵

This requires cooperation and clear communication between YDAC agencies and staff at all levels of the program, to align differing philosophical perspectives and expectations before delivering program interventions.⁷⁶ However, there is substantial evidence to suggest that expectations of case management in general are not clearly defined, particularly in more complex arrangements such as inter-agency case management approaches.⁷⁷ Notably, the UNSW review of the YDAC Program found a need for clarification of staff and agency roles, responsibilities and approaches, to ensure that young people comply with their legal conditions, including their case plan.⁷⁸ Although the review added that formal procedures were to be put in place to address these issues, as there has been no further published evaluation of the YDAC Program, the efficacy of these measures, as well as that of the inter-agency case management approach overall, cannot be established.

F Court, Legislation and YDAC Practice Directions

In addition to examining the treatment services of the YDAC Program, it is also important that attention be given to the legislative framework and operation of the Court itself, as there is a reciprocal relationship between these components. The YDAC Program appears responsive to the issues of lapses and relapse as part of the substance use rehabilitation process,⁷⁹ through the overtly therapeutic orientation of the court and the use of a Griffith Remand. Through the lens of therapeutic jurisprudence, the YDAC not only applies the rules of law and legal procedure, but also considers the wellbeing and social needs of the young person in terms of rehabilitation, which also takes into account the long-term safety of the wider community. The Griffith Remand, in being a form of bail, rather than a formal

74 National Drug Court Institute and National Council of Juvenile and Family Court Judges, above n 41.

75 National Institute of Justice, above n 41, iii.

76 Kerry Murphy Healey, 'Case Management in the Criminal Justice System' (National Institute of Justice: Research in Action, US Department of Justice, February 1999) <<http://www.ncjrs.gov/pdffiles1/173409.pdf>>.

77 Shelley Turner, 'Case Management in Corrections: Evidence, Issues and Challenges' in Fergus McNeill, Peter Raynor and Chris Trotter (eds), *Offender Supervision: New Directions in Theory, Research and Practice* (Willan Publishing, 2010) 344.

78 Eardley et al, above n 1.

79 Freiberg, above n 2; Michael S King, 'Challenges Facing Australian Court Drug Diversion Initiatives' (Paper presented at the Court Drug Diversion Initiatives Conference, Carlton Crest Hotel, Brisbane, Queensland, 25–26 May 2006) <<http://www.aic.gov.au/events/aic%20upcoming%20events/2006/-/media/conferences/2006-drugdiversion/keynoteking.ashx>>.

order, allows young offenders an opportunity to undertake treatment to address their substance misuse and offending behaviour with greater flexibility in relation to breach action. However, as noted, concerns have been raised about unintended net-widening through stringent bail conditions and also about the capacity of young people to comprehend their bail conditions.⁸⁰ Nonetheless, a legally flexible and therapeutic approach is important in promoting rehabilitation, as this allows young people supervised opportunities to practice and consolidate new skills in a community-based environment⁸¹ and to learn from mistakes without seemingly irreversible and detrimental consequences, such as a custodial sentence.

In 2010, the NSW Law Society's Juvenile Justice Committee observed that, compared to the YDAC Program, the NSW (adult) Drug Court provides its participants with substantially more certainty about what the program entails and potential outcomes.⁸² While acknowledging that the (adult) Drug Court is administered by the *Drug Court Act 1998* (NSW) and that a Practice Note lacks the power of legislation, the Committee recommended a number of strategic amendments to the current YDAC Practice Directions to increase protections for children and to align them with those that exist for adults in the NSW (adult) Drug Court.⁸³ Three key relevant recommendations are as follows:

- (1) *Providing a pre-program sentence indication:* Currently, unlike adults in the post-sentence Drug Court, prospective YDAC participants must decide whether to participate in the Program, without knowing exactly what sentencing outcomes they would face if they chose not to participate. Notably, the NSW Law Society asserts that:

It is a common complaint of young people that they have been prejudiced against on a personal basis upon sentence to the point where they feel disadvantaged for having participated [in] the [YDAC] program. Many young people have expressed the view that they have received an additional punishment for their failure on the program, and that their final sentence was greater than what they would have received if they had just been sentenced in the Children's Court instead of being referred to YDAC.⁸⁴

This is clearly a significant issue and detrimental to the integrity of the YDAC Program. Thus, including a requirement in the Practice Directions that magistrates provide a sentence indication to prospective YDAC participants, would increase the transparency of the penalty process, allow young people to make an informed choice about their participation and

80 See, eg, Katrina Wong, Brenda Bailey and Dianna T Kenny, 'Bail Me Out: NSW Young People and Bail' (Report, Youth Justice Coalition, February 2010) <<http://www.yjconline.net/BailMeOut.pdf>>.

81 Paul Holt, *Case Management: Context for Supervision — A Review of Research on Models of Case Management: Design Implications for Effective Practice* (De Montfort University, 2000).

82 Letter from Mary Macken, President of the Law Society of New South Wales, to His Honour Judge Marien SC, President of the NSW Children's Court, 6 April 2010, 2 <www.lawsociety.com.au/idc/groups/public/documents/internetpolicy submissions/066565.pdf>.

83 Ibid.

84 Ibid 2.

remove any perceived bias in sentencing. This is because it is likely that young people would be better able to comprehend and appreciate the final sentence, as they could see where a reduction in sentencing has been made that correlates to their participation level, including in cases where the program was not completed.

- (2) *Immunity from prosecution for certain offences:* YDAC participants are expected to be honest about illicit substance use and therefore require assurance that such admissions will never be used as grounds to charge them. This could be achieved by amending the Practice Directions to make it clear that young people are protected from prosecution.
- (3) *Transparent policies and procedures:* The policies of the NSW (adult) Drug Court are publicly available and explain the day-to-day operational procedures of the court. The YDAC Program could mimic this process and possibly use the Practice Directions as a basis and vehicle for formalising policies and procedures. For example, it would be both useful and proper to have a clear policy concerning the ‘substantial compliance’ of a young person with the conditions of the YDAC Program, but with insufficient levels of compliance or achievement to ‘graduate’. In addition, the priority target group for the YDAC Program could be clearly stipulated, including higher-risk offenders, girls and young women and Aboriginal and Torres Strait Islanders.

IV CONCLUSION

A *The Need for Further Research*

According to Gutierrez and Bourgon, ‘[a]ccurately translating what takes place behind the closed doors of drug treatment courts depends on good quality evaluations.’⁸⁵ Despite the NSW Government’s commitment at the commencement of the YDAC pilot to providing a ‘full evaluation’ of the program, since the UNSW review of the first two years of the YDAC Program, there has been no further evaluation. Although some anecdotal evidence exists concerning the positive client and other outcomes of the YDAC Program,⁸⁶ in the absence of empirical evidence, no final conclusions can be drawn about the success or otherwise of the Program.⁸⁷ Thus, it is strongly evident that further, long-term and ongoing evaluation of the YDAC Program is required to determine its efficacy.⁸⁸ In doing so, the methodology of the evaluation must address:

⁸⁵ Gutierrez and Bourgon, above n 36, 13.

⁸⁶ See, eg, Hannam, above n 53; Hannam and Crellin, above n 24; Hannam, above n 4; Australian Broadcasting Corporation, ‘Kids Doing Time’, *Four Corners*, 24 August 2009 (Matthew Carney).

⁸⁷ Murphy et al, above n 62.

⁸⁸ Eardley et al, above n 1; Wundersitz, above n 41; Jason Payne, ‘Specialty Courts: Current Issues and Future Prospects’ (2006) 317 *Trends and Issues in Crime and Criminal Justice* 1, 1.

- (1) The uniqueness of the YDAC Program, which creates difficulties in conducting comparative evaluations against other drug court programs.
- (2) The ethical and other dilemmas associated with randomised experimental design and the relatively small number of YDAC participants (the sample size would not be large enough to be representative or to generalise findings),⁸⁹ in order to develop a robust methodology.
- (3) The ability of the YDAC Program to reduce offending and drug use as per the program aims.

Thus, in the absence of definitive research outcomes about ‘what works’ in youth drug courts to reduce recidivism and support other positive client outcomes, the importance of learning and drawing from research developments and outcomes in other related areas becomes highly apparent. In a similar vein, therapeutic jurisprudence is also a dynamic, ongoing research effort. As David Wexler observes:

One of the things therapeutic jurisprudence tries to do is to look carefully at promising literature from psychology, psychiatry, clinical behavioural sciences, criminology and social work to see whether those insights can be incorporated or brought into the legal system.⁹⁰

In this regard, this paper has provided a brief overview of contemporary international and Australian research that identifies evidence-based principles relevant to drug courts, young offenders and reducing recidivism, which can be incorporated into the YDAC Program to ensure a further decade of development.

⁸⁹ Wundersitz, above n 41.

⁹⁰ David B Wexler, ‘Therapeutic Jurisprudence: An Overview’ (2000) 17(1) *Thomas M Cooley Law Review* 125, 129.