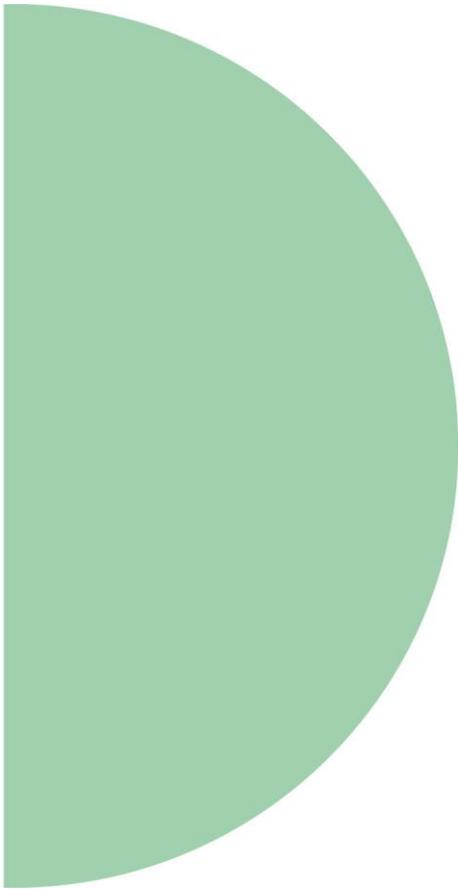


Specialist Children's Court Approaches

September 2020



Summary

The Children's Court of Victoria requested that the Service Reform Project team undertake a review of comparative jurisdictions and provide a summary of principles underlying specialist children's courts. The review also aimed to provide an overview of available economic analysis that supports the implementation of practices in line with being a specialist court.

The review identifies several high-level principles which should guide specialist children's court jurisdictions. The principles are primarily informed by the rights established in the United Nations Convention on the Rights of the Child (CRC), along with the guidance set out in several General Comments from the United Nations Committee on the Rights of the Child on how to interpret and apply the CRC. The principles are also informed by the small, but growing, body of research with young people and families about their experiences with children's courts, as well as the positive practices and initiatives identified from our review of children's court jurisdictions in New Zealand, the United States, Canada, Scotland and England and Wales, as well as Australian courts.

The principles are further supported and complemented by many of the insights and findings from the human-centred research undertaken by the Service Reform Project team, which are outlined in its final report.

We note that the availability of economic analysis in respect of specialist court processes is limited but has been included where possible.

Principles of specialist children's courts

The court is child focused

International human rights principles emphasise that children differ from adults in their physical, social and psychological development. This necessitates their entitlement to special care and assistance, including in the way they are treated in court processes. Guidance from the Committee on the Rights of the Child and the findings from our comparative review identified that children's courts can ensure they are child focused by implementing several measures.

These include (though are not limited to):

- Modifying the court environment to be less formal and intimidating so that children feel more comfortable about attending court and are able to participate meaningfully. For example, some courts adopt U-shaped seating arrangements to allow the young person to see the other people in the room who are discussing their case. Judicial officers can also be physically located at the same level and in closer proximity to the young person, which has been found to make the young person more relaxed and engaged in the court process.
- Ensuring that the best interests of the child, a guiding principle of the CRC, are appropriately considered in the court process and informed by the views of the child; the advice of qualified professionals; and with the involvement of legal and other representatives for the child. For example, a number of courts, including in Victoria, New South Wales and Ontario, Canada, are supported by specialist clinics which provide expert assessments to inform best interests assessments.

- Adopting rehabilitative and reintegrative approaches to support and encourage young people's successful reintegration into society, such as restorative justice approaches, post-sentence judicial monitoring and education programs. In line with the CRC's focus on supporting the holistic development of children, these approaches have been found to achieve improved outcomes for young people, including reduced recidivism and re-engagement with education.
- Considering the trauma history of children and young people at court and providing appropriate responses to them and their families. For example, by training judicial officers and staff about trauma and its impacts, implementing trauma screening and ensuring that the needs of young people who are appearing in both child protection and criminal proceedings are adequately considered.

The court promotes the participation of children and families in the court process

A guiding principle of the CRC is that courts ensure that children are facilitated and supported to participate in the court process in all matters affecting them, with due regard to their age and maturity. Importantly, we also know from research considering young people's experiences in child protection and youth justice proceedings that young people want to be informed and involved in the court process, and that this can be done without causing high distress to them.

Implementing accessible and appropriate court proceedings for children and young people is important to facilitating their participation. This can be achieved by creating processes which involve more direct engagement with the young person, such as the Rangatahi Court model in New Zealand or Teen Court model in the United States, or by enabling young people to meet with judicial officers outside the courtroom to communicate their views about a matter, as occurs in Canada in some child protection proceedings. Research with young people has also identified that courts and judicial officers adopting relatively simple and appropriate engagement practices - such as sensitively questioning a young person about their views and using developmentally appropriate language - can also have a positive impact on ensuring that their right to be heard is met.

Further, some young people with communication difficulties will benefit from the support of specialist communication assistants, often known as intermediaries, who are appointed by the court and who assist the young person to understand the court process and the questions being asked of them in giving evidence. This expertise has the added benefit of bringing valuable new knowledge to the justice system which is not commonly held by other professionals.

Families must also be supported to participate in proceedings regarding their children and young people. This is a requirement of the CRC in respect of child protection matters and strongly recommended by the Committee on the Rights of the Child in youth justice matters due to the positive benefits associated for the young person, including increased emotional support and maximising compliance with court orders. Families are encouraged and supported to engage in their children's matters through family conferencing approaches, a central aspect of the New Zealand child protection and youth justice systems. Families are also placed at the centre of judicial processes in the unified family court, or 'one judge-one family', models operating in the United States.

The court incorporates problem solving, collaborative and multidisciplinary practices

In the jurisdictions considered in this comparative review, problem solving, collaborative and multidisciplinary practices have proven to be an effective way to deal with youth justice and child protection matters by children's courts. These approaches are implemented in speciality problem solving courts affiliated with children's courts, such as youth mental health courts or family drug treatment courts, but can also be incorporated into mainstream court processes, as occurs with the family group conferencing process in New Zealand. A key feature of the approach is the involvement of multidisciplinary teams which collaborate to support and address the holistic needs of children and their families.

In respect of youth justice matters, these approaches are recognised by the Committee on the Rights of the Child to be particularly useful in supporting the best interests, development and rehabilitation of young people in the criminal justice system. Promising results from youth drug and youth mental health courts in the United States and Canada suggest that the approach can help to address young people's substance abuse or mental health needs and also reduce reoffending, by linking young people with appropriate treatment and support.

Similarly, in child protection proceedings, infant courts and family drug treatment courts are seeing positive results for children and families, including a reduction in further neglect or abuse, with encouraging evidence that family drug treatment courts can lead to cost savings for the state. The unified family court model is also achieving positive change by working with a range of court-supplied or court-connected social services to meet court users' non-legal needs which may be contributing to the exacerbation of challenges in the family.

The court is supported by a specialised and trained workforce

Due to the unique developmental needs of children, there is increasing recognition in justice systems of the need for its professionals to be continuously trained in key subject areas and practices relevant to children. This applies to all professionals working in the system, including judicial officers, court staff, lawyers, youth justice and child protection professionals, as well as support service professionals. Specialised training for professionals is recommended at an international level by the Committee on the Rights of the Child through its General Comments, including training about:

- the social and psychological development of children (including current neuroscientific findings);
- new technologies and innovations to assist children's participation in justice systems;
- special needs of marginalised or minority groups;
- social and other causes of crime; and
- the concept of best interests and its application in practice.

The review was not able to identify the broad level and quality of training for professionals working in children's courts. However, several positive initiatives were identified, such as:

- Professional organisations for lawyers in the United States facilitate core competency training for new child protection lawyers covering a range of topics, including legal skills and advocacy, child protection law and legal processes, child development and understanding trauma, communicating with children and effective interventions for children and families.
- The London Family Court Clinic based in Ontario, Canada provides comprehensive training to professionals about working with children in youth justice and child protection systems. A range of training topics are covered, including forensic interviewing of children, developmental trauma, and assessment and intervention services available for young people in youth justice matters.
- The Children's Court of Victoria, in collaboration with the Judicial College of Victoria, facilitates multidisciplinary training workshops which bring together a range of professionals involved in the youth justice system to explore ways of working better together for the benefit of young people and the community.

The court provides culturally responsive approaches

There is a strong focus in the CRC on preventing discrimination and respecting the rights of young people from ethnic, religious and linguistic backgrounds and those from Indigenous communities. The Committee on the Rights of the Child recommends that opportunities for young people and families from these backgrounds to participate in court processes should be inclusive and culturally sensitive.

This is especially important in countries such as Australia and Canada where young people from Indigenous backgrounds are over-represented in the criminal justice and child protection systems. Several children's courts here and abroad have taken positive steps to respond to these issues and uphold the rights of the CRC by adapting their processes to respond in a more culturally responsive way. Practices and initiatives identified in the review include:

- Youth justice courts for Aboriginal and Torres Strait Islander young people in Australia, such as the Youth Koori Court in New South Wales, Children's Koori Court in Victoria and Youth Murri Court in Queensland.
- The Koori Family Hearing Day, Marram-Ngala Ganbu, in Victoria for child protection proceedings.
- First Nations courts in Canada, such as the Aboriginal Youth Court in Toronto for young people involved in the criminal justice system.
- New Zealand's family group conferencing approach to youth justice and child protection systems, which is strongly informed and inspired by Maori culture.

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- The Rangatahi Courts and Pasifika Courts operating in New Zealand for young people from Maori and Pasifika backgrounds involved in the criminal justice system, as well as the involvement of lay advocates. Lay advocates are appointed by the court and tasked with ensuring the court is made aware of cultural matters that are relevant to the proceedings and to represent the interests of the young person's family and cultural group/tribe.

Informed by the international human rights framework and the positive practices and processes from jurisdictions around the world, the review identifies several overarching principles which should guide specialist children's courts. The review shows that the ways in which courts can and do give meaning to these principles differs between jurisdictions.

However, the principles should serve as an important guide when courts are considering the need for, and the appropriateness of, new initiatives for children's matters. Recognising that the needs of children and young people differ significantly from adults lies at the heart of each principle. Courts must therefore ensure that they remain aware of the latest research regarding children's development and its impacts on children and young people's participation in the justice system.

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1 Introduction

The Children's Court of Victoria requested that the Service Reform Project team undertake a review of comparative jurisdictions and to provide a summary of principles underlying specialist children's courts. This review was also to provide a snapshot of any available economic analysis that supports the implementation of practices in line with being a specialist court.

The review identifies several high-level principles which should guide specialist children's court jurisdictions. The principles are primarily informed by the rights established in the United Nations Convention on the Rights of the Child (CRC), along with the guidance set out in several General Comments from the United Nations Committee on the Rights of the Child on how to interpret and apply the CRC. The principles are also informed by the small, but growing, body of research with young people and families about their experiences with children's courts, as well as the positive practices and initiatives identified from our review of children's court jurisdictions around the world. These jurisdictions include New Zealand, the United States, Canada, England/Wales and Scotland, as well as Australian courts.

The principles are further supported and complemented by many of the insights and findings from the human-centred research undertaken by the Service Reform Project team, which are outlined in its final report.

The availability of economic analysis in respect of specialist court processes is limited, but a snapshot of what is currently available has been included.

The high-level principles underlying specialist children's courts identified from our review include:

1. The court is child focused
2. The court promotes the participation of children and families in the court process
3. The court incorporates problem solving, collaborative and multidisciplinary practices
4. The court is supported by a specialised and trained workforce
5. The court provides culturally responsive approaches.

The focus of this review is primarily narrowed to the processes and practices of courts dealing with children's matters. Although it can be difficult to separate court systems from the wider youth justice or child protection systems, time and resource constraints prevented this paper from detailed consideration of the policy and legislative systems underpinning these systems.

There are, of course, variations and differences in the youth justice and child protection systems around the world, including the role and processes of courts in those systems. Many of these differences are apparent in the comparative analysis set out below. We recognise that some of the practices identified in our research would not necessarily be easily or appropriately transferable to the Victorian jurisdiction. Nevertheless, we are of the view that valuable lessons can be learnt from understanding the principles underpinning these initiatives.

The Children's Court of Victoria is already a leader in implementing innovative approaches and has a range of future initiatives in train to expand its specialist capabilities. This research paper aims to provide a strong evidentiary basis as to why specialist initiatives are necessary for children's matters and an insight into the court processes of other jurisdictions.

2 Children's courts past and present

Specialist children's courts have existed for over 150 years, with the establishment of the first dedicated court for children in 1869 in Massachusetts in the United States. Prior to that time, children's matters were dealt with in adult courts. During the period that followed, and in line with 'child-saving' philosophies, recognition started to grow that children were in need of special treatment in judicial and welfare systems.¹ The criminal behaviour of children was attributed to poverty, destitution, abandonment by parents and incompetent parenting - and courts aimed for improved care, rather than imprisonment, as a result.² Children's courts and children's jurisdictions therefore began to be established around the world, including in Australia with the first children's court established in South Australia in 1895.

As noted above, approaches to children's matters and the role of courts around the world have evolved and developed in different ways. In Australia, children's courts are now responsible for dealing with both youth justice and child protection matters. In other jurisdictions, youth justice and child protection matters are heard in different courts. Child protection matters are often heard in family courts alongside other family matters, such as separation and divorce and estates matters. In many jurisdictions, a tension has prevailed in the youth justice system between pursuing welfare and pursuing justice-based approaches to offending, or a combination of both. In simple terms, the welfare approach recognises the young person as a child in need of support to address the drivers of their offending. The justice approach focuses on holding the young person accountable for their criminal actions.³

2.1 Overview of comparative jurisdictions

Below is a brief overview of the jurisdictions considered in this review:

- New Zealand – Youth Courts are a specialist division of the District Court and deal with youth justice matters for young people aged 10 to 17 years. Child protection matters are heard in the Family Court, another specialist division of the District Court, alongside private family disputes. However, a key aspect of the New Zealand system is the more informal family group conferencing process which occurs in both youth justice and child protection cases at a preliminary stage.

¹ Daniel King, Andrew Day and Paul Delfabbro, 'The Emergence and Development of Specialist Courts: Lessons for Juvenile Justice from the History of the Children's Court in South Australia' (2011) 4 *The Open Criminology Journal* 2011, 40, 40.

² Rosemary Sheehan, 'Introduction: Australia's Children's Courts – The Study and Its Context', 2; in Rosemary Sheehan and Allan Borowski, *Australia's Children's Courts Today and Tomorrow* (Springer, 2013).

³ Australian Law Reform Commission, *Seen and Heard: Priority for children in the legal process* (Australian Law Reform Commission Report 84, 1997), [18.33].

- United States – Court systems differ between states. In many states, juvenile courts deal with youth justice cases (often termed juvenile delinquency), while child protection issues are heard in family courts. Unified, or 'one judge-one family', courts also operate in some states. These handle a range of jurisdictions relevant to family life, including youth justice, child protection and other private family law matters such as divorce, estates and guardianship (though the particular combination may vary).
- Canada – Youth Courts are a division of the Provincial Court and deal with youth justice matters for young people aged 12 to 17 years. Child protection matters are heard in the Family Court, alongside other private family matters.
- England and Wales – Youth justice matters for young people aged 10 to 17 years are heard in Youth Courts which are specialist magistrates' courts, before three Magistrates or a District Court judge. Child protection proceedings are heard in Family Proceedings Courts (also specialist magistrates courts) but may be transferred to County Courts due to the complexity of the case or to consolidate with other family matters.
- Scotland – A significantly different approach to youth justice and child protection matters has operated in Scotland since the 1970s. The system centres around Children's Hearings which are quasi-judicial tribunals comprising three trained, volunteer panel members. Children's Hearings are held about children and young people (generally up to the age of 16 years) who are alleged to have committed an offence or who are the subject of abuse and neglect concerns.

The hearing process is more informal than court processes and is attended by the child, family and other support persons. Children aged 16 and 17 years who are alleged to have committed offences, and in other instances where it is deemed necessary, have their matters heard in the adult court jurisdiction. While not a court, it is worthwhile considering aspects of the Children's Hearings approach, given the similarity in the types of matters addressed.

We note that there has been recent consideration in Australia by the Council of Attorneys-General about raising the minimum age of criminal responsibility, though any decision has currently been deferred. Of the above jurisdictions, Canada, Scotland and some states in the United States have set the minimum age at 12 years. In most Australian states, New Zealand and England and Wales, the age of criminal responsibility remains at 10 years. Encouragingly, the Australian Capital Territory's Legislative Assembly recently voted to raise the minimum age to 14 years, which is in line with the United Nations' recommendation that the minimum age be at least 14 years.

Reasons for raising the age to at least 14 years include (among several) that children have not developed the requisite level of maturity by 14 years and that the majority of children who offend come from disadvantaged backgrounds and have multiple and complex needs which would be better addressed outside the criminal justice system. In Australia, Aboriginal and Torres Strait Islander young people are disproportionately affected under the current law.⁴

⁴ Centre for Innovative Justice, 'Review of the age of criminal responsibility: Submission to the Council of Attorneys-Generals' (RMIT University, 2020); Australian Human Rights Commission, 'Submission to the Council of Attorneys-General Age of Criminal Responsibility Working Group' (AHRC, 2020).

By comparison, the criminal age of responsibility in countries such as Norway and Sweden is 15 years and a largely welfare-based approach to youth justice matters has been adopted. Young people under the age of 15 years are not charged with criminal offences but, rather, are managed by social service authorities, which also handle child protection matters. Young people aged over 15 years are tried in adult courts, though different sentencing options apply to them and separate detention facilities exist.⁵ Norway and Sweden have exceptionally low detention rates, compared to Australia. As these countries have not established specialist children's courts, they have not been considered as part of this review. However, we suggest that the organisation of youth justice systems in these countries, including the minimum age of criminal responsibility, is worth further consideration by law makers.

Due to emerging evidence about young people's ongoing maturation and development into young adulthood, some jurisdictions have also recognised that specialised treatment is needed for young people beyond the age of 18 years when they commonly enter the adult jurisdiction. Young adult courts for young people aged 16 to 25 years have been operating in the United States for a number of years and a trial is planned in 2020 in the New Zealand District Court for a Young Adult List for young people aged 18-25 years.⁶

2.2 Challenges faced by children's court jurisdictions

It became clear when undertaking this review that, despite differences in the organisation of courts dealing with youth justice and care proceedings around the world, similar challenges are being encountered. These include:

- challenges in facilitating the understanding and meaningful participation of children and families in court processes;
- the complexity of the issues being experienced by young people and families appearing in court, including in relation to intergenerational disadvantage, disability, mental health, substance abuse and family violence;
- the high proportion of young people appearing in both youth justice and child protection proceedings;
- the large volume of cases to be heard, especially in child protection jurisdictions;
- the over-representation of young people from Indigenous, as well as Culturally and Linguistically Diverse (CALD) backgrounds;
- challenges in expanding specialist court approaches, especially to rural and regional locations.

⁵ Anna Hollander and Michael Tärnfalk, 'Juvenile Crime and the Justice System in Sweden', 92; in Malcolm Hill et al. *Youth Justice and Child Protection* (Jessica Kingsley Publishers, 2006); Tapio Lappi-Seppälä, 'Youth justice and youth sanctions in four Nordic states: Denmark, Finland Norway and Sweden'; in Barry Goldson, *Juvenile Justice in Europe: Past, Present and Future* (Taylor and Francis Group, 2018).

⁶ Elise White and Kim Dalve, 'Changing the Frame: Practitioner Knowledge, Perceptions, and Practice in New York City's Young Adult Courts' (Centre for Court Innovation, 2017); Judge Jan-Marie Doogue and Judge John Walker, 'Proposal for a trial of Young Adult List in Porirua District Court'; available at <https://www.districtcourts.govt.nz/assets/Uploads/Proposal-for-a-trial-of-Young-Adult-List-in-Porirua-District-Court-pdf.pdf>.

Given these similarities, there is value in considering how other jurisdictions have sought to address the challenges.

3 Overview of relevant international principles in relation to children's court processes

The United Nations Convention on the Rights of the Child establishes the rights of children at an international level. In addition to the human rights set out in other conventions, the CRC establishes that children and young people are entitled to further rights which recognise their special needs required to help them survive and develop to their full potential. The CRC recognises every person under the age of 18 years as a child. Australia ratified the CRC in 1990. As will be highlighted throughout this paper, the rights set out in the CRC and the associated guidance from the United Nations Committee on the Rights of the Child, outlined below, should inform the principles underlying children's courts and the ways in which these courts operate.

3.1 UN Convention on the Rights of the Child

The guiding principles of the CRC are non-discrimination (Article 2); best interests of the child (Article 3); right to life, survival and development (Article 6); and respect for the views of the child (Article 12). These Articles specify as follows:

- Article 2 states that all children are entitled to the rights set out in the CRC, and that individual children and young people should not be discriminated against on any basis, directly or indirectly, when these rights are realised.
- Article 3 requires that, in all actions concerning children undertaken by bodies, including courts of law, the best interests of the child must be a primary consideration. States must ensure that a child receives the protection and care that is necessary for their wellbeing, taking into account the rights and duties of their parents and carers.
- Article 6 requires states to recognise that every child has the inherent right to life, and that states must ensure, to the maximum extent possible, the survival and development of the child.
- Article 12 establishes that children have the right to express their views freely and have their views taken into account in any judicial or administrative proceedings affecting them, with due regard to their age and maturity.

While these four articles establish important rights in themselves, as guiding principles they must be considered in the interpretation and implementation of all other rights set out in the CRC.

Article 40 of the CRC is also particularly relevant to the operation of children's courts, as it relates specifically to young people accused of criminal offending. It sets out due process standards and establishes the requirement to adapt trial processes to the needs and rights of children. Article 40 recommends that children be treated in a manner which takes account of their age and promotes their dignity and worth, and which promotes their reintegration into, and capacity to assume a constructive role in, society.

In particular, it recommends that a wide range of measures be considered for young people accused of criminal offending which are appropriate to the child's well-being and are proportionate to their circumstances and the offence. For example, it suggests counselling, probation, care, guidance and supervision orders, education and vocational training programmes and other alternatives to institutional care. Article 40 also establishes that a child's privacy should be protected throughout proceedings.

Article 9 establishes that a child should not be separated from their parents except when it is determined that it is in their best interests to do so. In any such determination, all interested parties, including children and families, shall be given the opportunity to participate in the proceedings and to make their views known.

Article 30 recognises that young people from minority communities, such as CALD or Indigenous communities, have the right to practice and to learn about their own culture, language and religion. This is highly relevant to the analysis in this paper, due to the overrepresentation of young people from Indigenous and CALD backgrounds in children's jurisdictions and the necessity for courts to provide culturally responsive approaches to these young people and their families.

3.2 Guidance from the UN Committee on the Rights of the Child

The United Nations Committee on the Rights of the Child provides guidance on how to interpret and apply the substantive provisions of the CRC through several General Comments, including General Comment 12 on the right of the child to be heard (2009); General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration (2013); and General Comment 24 on children's rights in the child justice system (2019).

3.2.1 General Comment 12 on the right of the child to be heard (2009)

General Comment 12 provides the following guidance in respect of a child's right to be heard in judicial proceedings:

A child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. Proceedings must be both accessible and child-appropriate. Particular attention needs to be paid to the provision and delivery of child-friendly information, adequate support for self-advocacy, appropriately trained staff, design of courtrooms, clothing of judges and lawyers, sight screens, and separate waiting rooms.⁷

General Comment 12 states that adequate time and resources should be made available to ensure that children are adequately prepared and have the confidence and opportunity to contribute their views in judicial proceedings. Consideration should be given to the fact that children will need differing levels of support and modes of involvement according to their age and evolving capacities. It states that opportunities to participate in court processes should be inclusive, without discrimination and culturally sensitive to children from all communities. Consideration should also be given to minimising any risk to children from participating in court processes.

⁷ UN Committee on the Rights of the Child, *General comment No. 12 (2009): The right of the child to be heard*, 20 July 2009, CRC/C/GC/12.

3.2.2 General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration (2013)

The concept of best interests is described in General Comment 14 as being aimed at ensuring a child's full and effective enjoyment of all of the rights recognised in the CRC, as well as their holistic development. Courts are obliged to ensure that a child's best interests are appropriately integrated and consistently applied in judicial proceedings and that all judicial decisions concerning children demonstrate that the child's best interests have been a primary consideration. This can be evidenced by describing in the decision how the best interests have been examined and assessed, and what weight has been given to them. The Committee underlined that a child's best interests is a threefold concept, encompassing a substantive right; a fundamental interpretative principle; and a rule of procedure.⁸

General Comment 14 recognises that the concept of best interests is complex, and that it must be determined on a flexible, individual basis for each child. Elements which should generally be considered and weighed when assessing and determining the child's best interests include:

- the child's views;
- the child's identity, including characteristics such as sex, sexual orientation, religion and beliefs, cultural identity, personality;
- preservation of the family environment and maintenance of relationships;
- care, protection and safety of the child to ensure their wellbeing and development;
- any situation of vulnerability, such as disability or belonging to a minority group;
- the child's right to health and to access quality education.

General Comment 14 recommends that procedural safeguards be built into legal systems to guarantee the appropriate consideration of best interests, such as ensuring:

- the right of the child to express their views;
- the participation of a multidisciplinary team of qualified professionals, including experts in child development, to inform assessments of a child's best interests in a friendly and safe atmosphere;

⁸ The Committee defines the three-fold concept of best interests as follows:

- A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child.
- A fundamental, interpretive principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen.
- A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. The justification of a decision must show that the right has been explicitly taken into account and respected. For example, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

- that children have appropriate legal and other representation when their best interests are to be formally assessed and determined by courts or equivalent bodies;
- that decisions are effectively explained and justified to demonstrate the best interests of the child have been a primary consideration;
- the timely completion of best interests assessment to avoid adverse effects on a child's development which may arise from delayed or prolonged decision making.

In criminal matters, the Committee underlines that protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives.⁹

3.2.3 General Comment 24 on children's rights in the child justice system (2019)

General Comment 24 provides guidance on how the articles and principles of the CRC should be interpreted by states in the implementation of criminal justice systems when interacting with children to ensure the promotion and protection of children's rights.¹⁰ In line with increasing knowledge about childhood development, it highlights the importance of prevention and early intervention and promotes strategies for reducing the especially harmful effects of contact with criminal justice systems. For example, it recommends setting the minimum age of criminal responsibility to at least 14 years, scaling up the diversion of children away from formal justice processes to effective programs and expanding the use of non-custodial measures to ensure that the detention of children is only used as a measure of last resort.

The following commentary from General Comment 24 focusing on specialist court processes for children is of particular relevance to this analysis.

The Committee recommends the establishment of specialised courts to deal with youth justice matters, as well as specialised units within the police force and organisations which provide legal representation to young people. Professionals working in child justice systems should receive appropriate multidisciplinary training on the content and meaning of the CRC. The training should focus on established or emerging information about, for example, the social and other causes of crime, social and psychological development of children and special needs of marginalised and minority groups.

General Comment 24 echoes the guidance set out in General Comment 12 about facilitating the meaningful participation of young people in court processes, such as by adapting proceedings; using child-friendly language; and arranging child-friendly layouts of court spaces. It notes that children in criminal justice proceedings have the right to be heard directly, not only through their legal representative. It also specifies that states should respect the rule that hearings be conducted in private, with only limited exceptions which must be clearly articulated in the law.

⁹ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14.

¹⁰ UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, 18 September 2019, CRC/C/GC/24. General Comment 24 replaces General Comment 10 on children's rights in juvenile justice (2007), reflecting international developments and new knowledge about child development and evidence of effective practices.

The Committee also noted that safeguards against discrimination are needed in child justice systems, including for children with a disability who may need assistance with physical access to court buildings or with communication, such as reading documents or giving evidence. It strongly recommends that parents and carers be present throughout proceedings (where appropriate and in the child's best interests) because they can provide emotional support to the child and contribute to effective outcomes.

The Committee recommends that any measures taken by courts in relation to offending should be proportionate to the circumstances and gravity of the offence and the child's personal circumstances, including their age and any other needs (such as disability or mental health needs). Weight should be given to the child's best interests as a primary consideration - as well as the need to promote the child's reintegration to society. The Committee recommends that individual assessments of children and a multidisciplinary approach be adopted for this purpose. Courts should have a range of non-custodial measures available to ensure that deprivation of liberty is only used as a measure of last resort. The Committee encourages states to expand its use of established practices, such as restorative justice approaches, including where this involves incorporating Indigenous or customary approaches relevant in the particular jurisdiction.

3.3 Relevance to Australia and Victoria

The CRC and the associated guidance do not constitute law in Australia.¹¹ As a signatory to the CRC, however, Australia is obligated to give effect to its provisions. In Australia, the method of implementation is through the adoption of appropriate legislation by Australian federal, state and territory parliaments. The CRC and its associated guidance should be considered by bodies responsible for upholding these rights, including by courts, to ensure their full and proper implementation.

We also note that the *Charter of Human Rights and Responsibilities Act 2006* (Vic) enshrines into Victorian law a number of human rights established at an international level, including several rights specific to children. For example, section 25(3) requires that children charged with a criminal offence have the right to a procedure that takes account of their age and desirability to promote the child's rehabilitation. Courts must, as far as possible, interpret all Victorian laws in a way that upholds the human rights in the Charter.

3.4 Other guidance

In addition to the guidance provided by the Committee on the Rights of the Child, other international and regional bodies have developed guidelines which promote child friendly justice and access to justice.

The Council of Europe released the *Guidelines on child friendly justice* in 2010 for all European nations. The guidelines define 'child-friendly justice' as justice that is:

- accessible;
- age appropriate;

¹¹ We note that countries such as Norway, Sweden, Finland, Belgium and Spain have incorporated the CRC into their domestic law, and that Scotland has recently committed to doing so.

- speedy;
- diligent;
- adapted to and focused on the needs and rights of the child;
- respecting the rights to due process;
- respecting the right to participate in and to understand the proceedings;
- respecting the right to private and family life;
- respecting the right to integrity and dignity.

The guidelines, for example, recommend that, as far as possible, specialist courts, procedures and institutions should be established for children in conflict with the law. Further, to facilitate the participation of children in court proceedings, it is recommended that court sessions should be adapted to the child's pace and attention span. Regular breaks should be planned, and the hearing should not last too long.¹²

In the United States, the National Council of Juvenile and Family Court Judges (NCJFCJ), a leader in the development and implementation of policy and practice in juvenile and family courts, has published comprehensive resource guidelines on child abuse and neglect, as well as juvenile justice, which aim to improve court practice in both areas.¹³ The guidelines are designed for judicial officers and other professionals working in these jurisdictions.

Both resource guidelines provide direction on procedural issues, as well as a range of general issues. For example, the *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* sets out a recommended approach on general issues which includes the judge's role in proceedings; engaging families and children; child well-being and trauma; problem solving approaches to abuse and neglect cases; and court facilities.¹⁴ As an example, the guidelines recommend that all judicial officers in child abuse and neglect cases can and should use problem solving strategies to make their courts and their decisions more relevant, collaborative and effective.

4 Principles of specialist children's courts

Guided by the human rights framework outlined above, and supported by the findings of our comparative review, we have identified the following principles as being key to the operation of specialist children's courts which deal with youth justice and child protection matters.

¹² Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Council of Europe Publishing, 2011).

¹³ National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (NCJFCJ, 2016); National Council of Juvenile and Family Court Judges, *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases* (NCJFCJ, 2018).

¹⁴ NCJFCJ, *Enhanced Resource Guidelines*, 24.

1. The court is child focused
2. The court promotes the participation of children and families in the court process
3. The court incorporates problem solving, collaborative and multidisciplinary practices
4. The court is supported by a specialised and trained workforce
5. The court provides culturally responsive approaches

How courts implement, or seek to implement, these principles varies between jurisdictions and incorporates different processes and initiatives, as detailed below.

1. The court is child focused

International human rights principles emphasise that children differ from adults in their physical, social and psychological development, which in turn necessitates their entitlement to special care and assistance. This special care and assistance must of course extend to their treatment in court processes.

A child focused court recognises that children and young people are different from adults and need to be treated accordingly, such as by modifying the court process and environment to be less formal and intimidating and more private; using easy to understand language; and, for young people in youth justice matters, opting for rehabilitative approaches over punitive measures. Policies and practices should reflect an understanding of the differences between children and adults that exist across age, gender and culture.

As outlined below, we have identified from our research a number of ways in which children's courts promote a child focused approach, including by:

- creating a child-friendly environment which enables children to engage in the court process;
- appropriately considering the best interests of the child, informed by the views of the child and the advice of qualified professionals;
- adopting rehabilitative and reintegrative approaches to support and encourage young people's successful reintegration to society;
- considering the trauma history of court-involved young people, and providing appropriate responses to them and their families.

We note, of course, that this is not an exhaustive list of all child focused court practices in these jurisdictions. A further illustration, for example, is courts ensuring that proceedings are conducted in private so that no identifying details about a young person are made public, in line with Article 40 of the CRC and General Comment 24.

Child-friendly environment

The physical environment of children's courts should demonstrate a sensitivity to the needs of children and the adults accompanying them. Otherwise, it may add to the distress of the court experience. General Comment 24 on child friendly justice recommends that child-friendly layouts of interviewing and court spaces take account of the age of participants in youth justice matters and promote their participation.¹⁵ As described below, child-friendly layouts include, for example, more informal and intimate court room arrangements. Ensuring the separation of children's proceedings from adult proceedings is a key concern for courts but continues to be a challenge, especially in rural areas.

In the United States, the Edmund D. Edelman Children's Court in Los Angeles was the first purpose-built children's court for child protection matters. The design of the court was informed by the views of children, parents, court staff, lawyers, judges and child advocates, as well as by field observations. Spaces and elements were introduced which were distinctly for children, evidenced by a creative use of light, colour, form, textures and activity areas which protect, nurture and stimulate.¹⁶ Child and family-friendly elements of the court design included:

- specially designed family visiting areas for children removed from their homes set up as small, intimate living rooms with couches, chairs, art, non-institutional lighting and plants;
- scaled down entrances to court rooms that appear home-like, as well as architectural details that make the entry familiar;
- waiting areas in front of each court room with a variety of loose seating and small tables at which children could read or colour, as well as video monitors showing programs designed to inform viewers about the court process, teach parenting skills and educate or entertain children;
- lowered judicial bench and simpler seating arrangement in the court room;
- large interior and outdoor play spaces for children in protective custody, with designated areas for younger and older children.¹⁷

These design features are important because they create a more informal, comfortable and familiar environment for children and families attending court, with the intention of lowering the anxiety they may be feeling about the day, and of keeping children entertained during waiting periods. The design also takes account of the fact that children and young people require age-appropriate activities and entertainment.

Other courts in the United States have also adopted child-friendly elements including:

- specialised children's waiting rooms equipped with art supplies, televisions and comfortable furniture to keep children attending court occupied while they wait;

¹⁵ UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, 9.

¹⁶ Susan Goltsman, 'Recognising Children and Families in the Design of a Children's Court' (1992) 9(1) *Children's Environments* 72.

¹⁷ *Ibid.*

- scaling down the size of court rooms to make the environment more intimate and less intimidating;
- child-appropriate furniture in court rooms and waiting areas to provide a more comfortable environment.¹⁸

In New Zealand's Youth Courts, a U-shaped seating arrangement is used, rather than the traditional courtroom arrangement. Professionals working in the jurisdiction believe that this is a better arrangement than the typical court layout, because it is more informal and enables the young person to see other people in the room.¹⁹

The arrangement of the Rangatahi Courts in New Zealand (discussed further below) are similar to the Youth Courts, except for a few notable differences, including that the judge is located physically at the same level and in much closer proximity to other participants. Young people who participated in an evaluation of the Rangatahi Courts spoke positively about the judge and other professionals being 'on the same level'. This made them feel more relaxed about the process and able to engage, a key reason informing General Comment 24's recommendation in relation to child-friendly layouts.²⁰

In England, the Magistrates Association's youth protocol sets out a desirable set of standards for the Youth Court environment, including young people being kept separate from adults attending court (separate entrances and waiting areas), as well as a less formal arrangement in the court room. Some, though not all, Youth Courts have implemented these measures, including adapting courtrooms for young people with seating arranged on the same level and/or in a conference style room without a dock.²¹

This creates a more informal environment for young people to participate in proceedings and allows them to sit closer to their families and other support persons. By contrast, comments from young people with experience sitting in the dock suggest that they experience a sense of detachment from the hearing process when located there.²²

In Scotland, Children's Hearings have generally been held in government offices around traditional conference tables. However, a more child-friendly room was piloted in Glasgow in 2015. Features of the room include comfortable seating, more colour, toys and no 'big table' separating the panel members from the children and families. An evaluation of the pilot found that the overwhelming majority of young people, parents and carers indicated that the new look room made them feel more relaxed and able to participate and was preferred to the standard rooms in operation elsewhere in Scotland.²³ Several more child-friendly rooms for Children's Hearings are now in operation across Scotland.

¹⁸ Manka Ngwa-Suh, 'Facility facelifts: How courthouses are accommodating children and youth' (2006) 15(1) *Children's Voice* 29; Jill Duerr Berrick, Marit Skivenes, Jonathan Dickens and Tarja Pösö, 'International perspectives on child-responsive courts' (2018) 26(2) *International Journal of Children's Rights* 251, 256-257.

¹⁹ New Zealand Ministry of Justice, *Youth Court Research: Experiences and views of young people, their families and professionals* (Ministry of Justice, Wellington, 2011), 38.

²⁰ Lisa Davies and John Whaanga, *Evaluation of the early outcomes of Nga Kooti Rangatahi: Final Report – Submitted to the Ministry of Justice* (Kaipuke Consultants, 2012), 69.

²¹ Gillian Hunter, Claire Ely, Carmen Robin-D'Cruz and Stephen Whitehead, 'Time to get it right: Enhancing problem-solving practice in the Youth Court' (Centre for Justice Innovation and Institute for Crime and Justice Policy Research, London, 2020), 15.

²² *Ibid*, 16.

²³ Scottish Children's Reporter Administration, *A pilot hearing room in Glasgow: Trialling a room designed by, and for, children and young people with experience of the Children's Hearings System* (SCRA, Stirling, 2016).

A number of Australian jurisdictions have purpose-built children's courts in certain locations, such as Melbourne CBD and Parramatta. A review of the Parramatta court noted that, while there were some good elements of the design - such as televisions providing education about court procedure and large waiting areas with adequate seating - further consideration should be given to the impact of design on facilitating the meaningful participation of children in court processes. Reviewers considered the lack of intimacy in the court room size and the reliance on the dock to be key factors which prevented children from being involved in the proceedings.²⁴

Best interests of the child

As outlined above, the CRC establishes that, in all actions concerning children undertaken by state bodies, including courts of law, the best interests of the child must be a primary consideration. General Comment 14 establishes that the concept of the child's best interests is aimed at ensuring the child's full and effective enjoyment of all the rights in the CRC, as well as their holistic development, and that a range of elements should be considered when assessing best interests (e.g. the child's views, their identity, preservation of the family etc).²⁵

For courts, the procedural safeguards set out in General Comment 14 are particularly important, such as facilitating the right of the child to express their views freely in order to inform the best interests assessment; qualified professionals informing best interests assessments; and young people having the benefit of legal and other representation.

It is common practice in children's court jurisdictions that qualified professionals are requested to contribute expert reports to best interests assessments. A number of courts, including in Victoria, New South Wales and Ontario, Canada, are supported by specialist clinics to provide this service. The clinics assist the court's best interests assessments by providing independent expert clinical assessments of children and young persons, as well as their families. The request for an assessment is usually made by a judicial officer and, in most instances, the report will be released to other parties in the proceedings. Other professionals may also be called upon to provide information to inform best interests assessments, such as education professionals or social workers.

In the jurisdictions reviewed in the research, young people are generally required by the legislative framework to be represented by lawyers and, in some instances, non-lawyer representatives in child protection proceedings. Legal representatives operating on a direct representation, or 'instructions', basis are responsible for instructing the court as to the child's wishes in order to inform the court's best interests assessment. Ideally, children will also have the opportunity to participate directly in the proceedings (if they desire), so that their views can be directly heard by the judicial officer.²⁶

²⁴ Penny Crofts, Subhaja Amarasekara, Phillip Briffa, Rebecca Makari and Meryl Remedios, 'Design and Children's Courts' (2008) 33(4) *Alternative Law Journal* 229, 234.

²⁵ We note of course that in Victoria, section 10 of the *Children, Youth and Families Act 2005* (Vic) sets out the elements which need to be considered in deciding what is in a child's best interests in Victorian proceedings.

²⁶ The NCJFCJ's *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* recommends that where a *guardian ad litem* has been appointed, judges should make an extra effort to determine what the child's wishes are as they may differ from what others argue are in the child's best interests: NCJFCJ, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, 43.

In England and Wales, where a child has been taken into care, the family court appoints a non-lawyer representative, known as a guardian, to represent the child's best interests. The guardian is an independent social worker and independently advises the court about what is safe for the child and what is in their best interests. The guardian is responsible for instructing a solicitor for the child. A study involving judicial officers found that they hold positive views of the guardian's role in safeguarding the best interests of children in care proceedings (though the particular reasons as to why were not outlined in this study).²⁷

In the United States, a *guardian ad litem* must be appointed in child protection proceedings to represent the child. The role can be performed by a legal representative or a trained community volunteer through the Court Appointed Special Advocate (CASA) system.²⁸ Studies have identified a number of unique benefits to the CASA system, including:

- the stability of representation for the child, given that it is widely acknowledged in the United States (as it is in Australia) that children in the child protection system experience frequent turnover in the professionals with whom they interact;
- the independence of the volunteers who provide recommendations independent of judges, lawyers, social workers or family members involved in the proceedings;
- the CASA's ability to spend time with the child and bring a breadth and depth of information to the court. This is in contrast to lawyers and child protection professionals who often have large caseloads.²⁹

Like the children's guardian role in England and Wales, the CASA system is held in high regard by the judiciary and also by other child protection professionals.³⁰

This noted, further research, including with children and young people, is required to ensure that children and young people are satisfied with the way in which their interests are represented by advocates and guardians. It is possible that children may have a different view to what has been advocated on their behalf, hence why hearing directly from the child is highlighted by General Comment 14 as an important safeguard. Further research is also required to determine whether the involvement of advocates and guardians leads to more positive outcomes overall for children and young people, such as safe and timely permanency decisions.

²⁷ Jill Berrick, Jonathan Dickens, Tarja Pösö and Marit Skivenes, 'Children's and parents' involvement in care order proceedings: a cross-national comparison of judicial decision-makers' views and experiences' (2019) 41(2) *Journal of Social Welfare and Family Law* 188, 199-200.

²⁸ Note that a number of guardian ad litem models are in operation today. For example, the judge may appoint a volunteer to serve as guardian ad litem who is afforded party status; the judge appoints the volunteer to act as a 'friend of the court' rather than a party to the case or the attorney guardian ad litem and the volunteer function as a team, sharing information and planning strategy together: NCJFCJ, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, 47.

²⁹ Jennifer Lawson and Jill Duerr Berrick, 'Establishing CASA as an Evidence-Based Practice' (2013) 10(4) *Journal of Evidence-Based Social Work* 321, 321-322. This article outlines research to date in respect of the CASA system.

³⁰ *Ibid*, 330.

Rehabilitative and reintegrative focus

The CRC requires state parties to recognise that every child has the right to life, survival and development. 'Development' in this context should be interpreted as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development. The Committee on the Rights of the Child recommends that implementation measures should aim to achieve 'optimal development' for all children.³¹ For young people involved in criminal proceedings, the CRC also requires that they be treated in the justice system in a way that promotes their sense of dignity and worth and reintegration into society.

Children's courts, supported by appropriate legislative arrangements, should therefore ensure that their processes and outcomes aim to reintegrate the child or young person so that they may take part constructively in society. This is also part of ensuring that a child's best interests are upheld, in line with General Comment 14 and 24's recommendation that the traditional objectives of criminal justice must give way to rehabilitation and restorative justice objectives for youth offenders. Thus, courts must avoid imposing punitive or stigmatising processes or sanctions and instead seek rehabilitative approaches for young people. In many jurisdictions, more informal and less-adversarial approaches have proven to be effective in meeting these objectives.

Restorative approaches

Restorative justice approaches have proven to be a successful way to rehabilitate and reintegrate young people involved in offending and, as noted above, it is a recommendation from General Comments 14 and 24 that states consider incorporating restorative approaches into their processes. Restorative approaches are widely used in a number of jurisdictions internationally and in Australia, though particular approaches differ between jurisdictions.

In New Zealand, a restorative justice approach is embodied in the family group conferencing processes which have been an important feature of the youth justice system since 1989. Family group conferences (FGC) in New Zealand provide young people who have committed offences with the opportunity to meet with their family members, members of their community, victims, police and other professionals to talk about the impact of the crime; what contributed to it; and what an appropriate response to it might be.

The group aims to find practical ways for the young person to put things right and to help them find ways to change their behaviours and foster their ongoing development, such as through employment, education or other activities, rather than criminal sanctions. An FGC plan is made and a person, usually a family member, chosen to support the young person with the plan. The FGC process was prompted and inspired by aspects of the Maori method of dispute resolution and aimed to improve the experiences of Maori families involved in youth justice.³² The Youth Court must refer all cases to an FGC and judges must take into account the recommendations from the conference in any sentencing decisions. Studies of the youth justice FGC process have been positive overall, particularly in relation to support provided for the young person in the process to avoid further justice system involvement; the young person's ability to understand the process; and the meaningful participation of the young person, families and victims.³³

³¹ UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, 4.

³² Judge Andrew Becroft, 'Family Group Conferences: Still New Zealand's gift to the world' (Office of the Children's Commissioner, Wellington, 2017).

³³ Gabrielle Maxwell, Venezia Kingi, Jeremy Robertson, Allison Morris and Chris Cunningham, *Achieving effective outcomes in youth justice: Final report to the Ministry of Social Development* (Ministry of Social Development, Wellington, 2004).

Australian jurisdictions also use restorative justice conferencing in youth justice matters. South Australia's family conferencing system was developed in line with the New Zealand model. Although no formal evaluation was identified in our research, professionals working in the South Australian jurisdiction view the conferencing system as one of the best features of its youth justice system and an important way to divert young people away from the justice system.³⁴

The Victorian Youth Justice Group Conferencing program has been operating for several years. A 2010 evaluation identified that the majority of young people who participated in a group conference received non-supervisory orders and were diverted from further progression in to the youth justice system. Participants were also found to be less likely to reoffend than young people who received sentences through the mainstream court process without referral to a group conference.

The success of the program was strongly linked to the highly skilled and competent convenors implementing the restorative conferencing model. Feedback from young people who had participated in a group conference indicated that the process had enabled them to understand the effect of their offending on the victim, their family and friends. They also felt supported in the process by the convenor and their family and able to participate in the more informal group conference process.³⁵

Judicial monitoring

A further rehabilitative court initiative identified in this review was a form of judicial monitoring in England and Wales. The government's Youth Offender Service (YOS) has been trialling post-sentence judicial monitoring with Youth Court judges through informal review hearings in order to provide ongoing support to young people on community-based rehabilitation orders. The monitoring is not a formal function of the court or the judicial officer's role, nor is it compulsory for the young person to attend.

The informal review hearings take place outside the court setting, usually at YOS offices, with the review panel comprising judicial officers; a manager from the YOS; and the supervising YOS worker. The young person is invited to attend and may bring a support person, such as a parent or social worker.

The review includes an assessment of how well the young person is engaging with the requirements of their order, including highlighting their progress, achievements and where further support may be needed to improve progress. The review panel process has not been comprehensively evaluated as yet, but appears to be a promising innovation based on research undertaken by Centre for Justice Innovation (CJI) based in the United Kingdom.

Professionals involved in the review hearings process consider it a helpful way to encourage and support a young person's motivation and positive engagement in their rehabilitation. The young person is able to see the judicial officer and other professionals taking a real interest in their development beyond the formal court process. Similarly, the young person is able to discuss their challenges and achievements in an informal, relaxed environment.³⁶

³⁴ Daniel King, Andrew Day and Paul Delfabbro, 'The Children's Court of South Australia', 96; in Sheehan and Borowski, *Australia's Children's Courts Today and Tomorrow* (Springer, 2013).

³⁵ KPMG, *Review of the youth justice group conferencing program: Final report* (Melbourne, 2010).

³⁶ Hunter et al, 'Time to get it right: Enhancing problem-solving practice in the Youth Court', 28-30.

Education programs

Education programs at court are also an important way in which young people can be supported in their rehabilitation and ongoing holistic development. In Victoria, the Education Justice Initiative (EJI) was introduced to address educational disadvantage among young people involved in the youth justice system. The EJI staff work closely with young people, including those on remand, to support their re-engagement in education.

An early evaluation of the program reported positive results, primarily that young people have been enabled to access appropriate education options for their individual needs, despite previous efforts failing. The evaluation also found that the EJI had raised the reputation of education within the Court.

A Magistrate who participated in the evaluation noted that the EJI establishing an educational opportunity for a young person in the community would be an influential factor in their considerations as to whether to release the young person or to detain them.³⁷ Education support can therefore be an important tool for the court in supporting young people to reintegrate into society, as is required by the CRC. Other Australian states have also implemented equivalent programs into their children's courts.

A similar education service to the EJI operates in New Zealand. The New Zealand Ministry of Education, however, also provides school education reports for young people appearing in the court. These assist judicial officers further in addressing young people's educational needs. Information relating to enrolment status and schooling history, specialist education services and achievement data helps judicial officers to decisions such as whether a young person should be transitioned back into mainstream education or into a meaningful alternative option.³⁸ In other jurisdictions, education services are also provided for children involved in care and protection cases through the court system.³⁹

Other examples of rehabilitative and reintegrative court approaches include youth mental health courts and youth drug courts (discussed in further detail below) which operate in several jurisdictions abroad. Both of these court programs take a holistic and rehabilitative approach to a young person's offending, in line with human rights principles, by seeking to address the factors driving the criminal behaviour.

³⁷ Katarina te Riele and Karen Rosauer, *Education at the Heart of the Children's Court. Evaluation of the Education Justice Initiative - Final Report* (Victoria Institute for Education, Diversity and Lifelong Learning, Victoria University, Melbourne, 2015).

³⁸ Judge Andrew Becroft, 'The Youth Courts of New Zealand in Ten Years' Time' (Paper delivered at the National Youth Advocates/Lay Advocates Conference Auckland, Aotearoa New Zealand: 13-14 July 2015).

³⁹ For example, the Westchester Court Education Initiative staff in New York State involves education advisors located on site at the Westchester Family Court to consult with family court judges regarding the education status of court-involved children and work collaboratively with parents and carers to assist children with their education needs. Education advisors submit reports to court for each family they work with: see Center for Court Innovation, Westchester Court Education Initiative, available at <https://www.courtinnovation.org/programs/westchester-court-education-initiative/more-info>.

Adoption of trauma informed approach

There is a growing recognition within the court system of the importance of adopting a trauma informed approach when dealing with children in the court system. Research indicates that the majority of court-involved children have experienced some form of trauma or associated adverse experiences in their lives, such as physical, sexual or emotional abuse or exposure to family violence.

These experiences often impact on the child's development (including their language, neurological and behavioural development) and their likelihood of coming into contact with the justice system on a repeated basis.⁴⁰ The long-term human, social and economic costs associated with trauma and adverse experiences are substantial and demonstrate the need for trauma informed prevention and intervention. Contact with a children's court can therefore present an opportune time to address a child or young person's trauma experiences. Several jurisdictions have implemented processes to identify and support children who may have experienced trauma.

In the United States, the NCJFCJ is working collaboratively with juvenile and family courts to improve courts' responses to trauma. The NCJFCJ's work recognises the inextricable link between trauma and child development, as described above.⁴¹ Following a consultation process with courts in several states, the NCJFCJ identified a number ways in which courts can become more trauma-informed, such as:

- creating a shared definition of trauma among court staff and stakeholders;
- implementing trauma screening into current practice;
- matching court and court-ordered services to the unique needs of young people and families;
- creating an environment at court conducive to limiting arousal among those who have experienced trauma;
- promoting a healing environment through positive interactions in the court; and
- prioritising secondary traumatic stress in court staff.⁴²

Following the NCJFCJ consultation process, the Stark County Family Court in Ohio sought to increase its trauma awareness by undertaking training, implementing standardised trauma screening and building community capacity to provide trauma specific treatment for children, young people and families entering the family court system.

⁴⁰ See, for example, Eamon J. McCrory et al., 'Annual Research Review: Childhood Maltreatment, Latent Vulnerability and the Shift to Preventative Psychiatry – the Contribution of Functional Brain Imaging' (2017) 58(4) *Journal of Child Psychology and Psychiatry* 338, 339–340; Jonathan D. Schaefer et al., 'Adolescent Victimization and Early-Adult Psychopathology: Approaching Causal Inference Using a Longitudinal Twin Study to Rule Out Noncausal Explanations' (2018) 6(3) *Clinical Psychological Science* 352, 352–354; B. van der Kolk et al., (2009) *Proposal to include a developmental trauma disorder diagnosis for children and adolescents in DSM-V* (Official submission from the National Child Traumatic Stress Network Developmental Trauma Disorder Taskforce to the American Psychiatric Association).

⁴¹ Shawn Marsh, Alicia Summers, Alicia De Vault and J. Guillermo Villalobos, 'Lessons Learned from Developing a Trauma Consultation Protocol for Juvenile and Family Courts' (2016) 67(3) *Juvenile and Family Court Journal* 5.

⁴² *Ibid.*

A judicial officer working in the court considers that judicial officers are now better placed to identify young people and families who may have experienced trauma, by using appropriate questioning to elicit information, and to direct an appropriate response.⁴³

Specialist court clinics, discussed above, have also been identified as key resources assisting judicial officers' responses and decision making in respect of children who have experienced trauma. The court can request that the expert clinicians conduct independent psychological and psychiatric assessments of children and families and provide the reports to the court to inform decision-making in youth justice and child protection cases.⁴⁴

In New Zealand, the FGC system has been recognised as incorporating a trauma informed approach to offending by children and young people. The legislative framework requires that a child's care and protection matters must also be considered and incorporated into any plans made in the FGC, and the Youth Court must have regard to these plans.⁴⁵

New Zealand has also introduced a cross-over list in the Youth Court which identifies young people with involvement in both youth justice and child protection proceedings. The list enables young people with complex needs to be identified and ensures that the court has important information for consideration in the criminal process, such as information about the child's trauma experiences and its impact on their behaviour. This helps the Youth Court to identify possible causes of offending and to facilitate the coordination of effective outcomes, such as dismissing the charges; addressing placement issues; and providing further support to the young person (such as for mental health or substance abuse).⁴⁶

A more simple, trauma focused innovation has been the introduction of support or therapy dogs to the court environment. Court support dogs have been introduced in a number of jurisdictions and proven to be an effective way to comfort child witnesses in criminal trials who may have experienced trauma.⁴⁷ There is also encouraging evidence about the use of therapy dogs in waiting areas to calm court users prior to court events, though not in the context of children's courts as yet.⁴⁸

⁴³ Judge Michael J. Howard and Robin R. Tener, 'Children Who Have Been Traumatized: One Court's Response' (2008) 59(4) *Juvenile and Family Court Journal* 21.

⁴⁴ Sentencing Advisory Council, *Crossover kids: Vulnerable children in the youth justice system. Report 3: Sentencing children who have experienced trauma* (Sentencing Advisory Council, Victoria, 2020), 45; Susan Baidawi and Rosemary Sheehan, *Cross-Over Kids: Effective Responses to Children and Young People in the Youth Justice and Statutory Child Protection Systems: Report to the Criminology Research Advisory Council* (Australian Institute of Criminology, 2019), 186; Elizabeth Fernandez, Jane Bolitho, Patricia Hansen and Myvanwy, 'The Children's Court in New South Wales', 38-40; in Sheehan and Borowski, *Australia's Children's Courts Today and Tomorrow*.

⁴⁵ *Oranga Tamariki Act 1989* (NZ) s 261.

⁴⁶ Tony Fitzgerald, 'Children in Both Youth and Family Courts: New Zealand' (2018) 1 *International Association of Youth and Family Judges and Magistrates English Chronicle* 15.

⁴⁷ Casey Holder, 'All Dogs Go to Court: The Impact of Court Facility Dogs as Comfort for Child Witnesses on a Defendants Right to a Fair Trial' (2013) 50(4) *Houston Law Review* 1155; Ellen Wood and Paul Harpur, 'Teaching an old dog new tricks: Using courthouse facility dogs in Australia' (2018) 43(2) *Alternative Law Journal* 89.

⁴⁸ Elizabeth Spruin, Katarina Mozova, Anke Franz et al, 'The Use of Therapy Dogs to Support Court Users in the Waiting Room' (2019) 29(3) *International Criminal Justice Review* 284.

1. Summary

International human rights principles emphasise that children differ from adults in their physical, social and psychological development. This necessitates their entitlement to special care and assistance, including in the way they are treated in court processes. Guidance from the Committee on the Rights of the Child and the findings from our comparative review identified that children's courts can ensure that they are child focused by implementing measures, including:

- modifying the court environment to be less formal and intimidating so that children feel more comfortable about attending court and are able to participate meaningfully;
- ensuring that the best interests of the child, a guiding principle of the CRC, are appropriately considered in the court process and informed by the views of the child; the advice of qualified professionals; and with the involvement of legal and other representatives for the child;
- adopting rehabilitative and reintegrative approaches to support and encourage young people's successful reintegration to society, such as restorative justice approaches, post-sentence judicial monitoring and education programs; and
- considering the trauma history of court-involved young people, and providing appropriate responses to them and their families.

2. The court promotes the participation of children and families in the court process

As required by Article 12 of the CRC, children's courts must ensure that children are facilitated and supported to participate in the court process in all matters affecting them, with due regard to their age and maturity. Importantly, we also know from research looking at young people's experiences of court processes in child protection and youth justice matters that young people want to be informed and involved in the court process.⁴⁹

For example, in respect of child protection matters, research has found that children want to have a voice in decisions and that they feel disappointed when their views are not listened to. Researchers have found no evidence of high distress associated with a child's participation in the court process, and indeed consider that it likely leads to more benefit than harm.⁵⁰ Similarly, researchers have also found that most young people in criminal proceedings want to have the opportunity to participate; to have a voice; and to tell their version of events directly to the judge. If not given this opportunity, young people are more likely to become frustrated and detached from the process taking place.⁵¹

⁴⁹ See Stephanie Block, Howard Oran, Diane Oran, Nikki Baumrind and Gail S. Goodman, 'Abused and neglected children in court: Knowledge and attitudes' (2010) 34(9) *Child Abuse & Neglect* 659; Judy Cashmore, 'Promoting the participation of children and young people in care' (2002) 26 *Child Abuse & Neglect* 837; and Monica Miller and Brian Bornstein *Stress, Trauma and Wellbeing in the Legal System* (Oxford University Press, 2013).

⁵⁰ Cashmore, 'Promoting the participation of children and young people in care', 845.

⁵¹ Robin-D'Cruz, 'Young people's voices on youth court'; New Zealand Ministry of Justice, *Youth Court Research: Experiences and views of young people, their families and professionals*.

Despite the fundamental importance of children having the right to be heard, the Committee on the Rights of the Child has noted that, in most societies around the world, implementation of the child's right to express their views on issues that affect them, and to have those views duly taken into account, continues to be impeded by long-standing practices, attitudes and barriers.⁵² For example, the formality of the court process may deter young people from participating; judicial officers in adversarial systems may prefer to hear the young person's views through their legal representative; and, in high volume courts, participation by children may be discouraged or limited due to the additional time required for it to be facilitated in a meaningful way.

In respect of family participation, Article 9 of the CRC establishes that all interested parties to child protection proceedings must be given the opportunity to participate in the proceedings and make their views known. The engagement of families in youth justice processes is recommended by General Comment 24 and is increasingly being recognised as crucial to achieving positive outcomes for the young person. Families and other support persons can have valuable information about the young person which the court should hear, and their support is also important in assisting young people to comply with orders and rehabilitation goals.⁵³

General Comments 12 and 24 identify that a range of factors will impact the ability of a young person to participate in court processes, including whether the court process has been appropriately adapted; uses child-friendly language; and provides assistance for young people with communication difficulties. Our review identified a number of positive practices in children's courts outlined below which support and promote a child's right to participate in court processes, in line with this guidance.

Accessible and appropriate proceedings for children and young people

Family group conferencing and Rangatahi Courts

New Zealand's FGC process, discussed in detail above, is a good example of a process which has been designed to facilitate greater participation by young people in decision making around their offending and future plans. The Rangatahi Courts in New Zealand are a similarly encouraging example. The Rangatahi Court is unique because it adapts a conventional part of the Youth Court process – the monitoring of a young person's FGC plan – to incorporate Maori cultural traditions.⁵⁴ The court process is not held in a courtroom but on a marae, a cultural gathering place for Maori people. The Court aims to reconnect young offenders with their culture, improve their compliance with FGC plans and reduce the risk of reoffending.⁵⁵

An evaluation of the New Zealand Rangatahi Courts found that the active role expected to be taken by the young person in the process, as well as the strong engagement by the judge and Maori Elders with the young person, helped the young person to meaningfully engage and participate. Young people are encouraged to take an active role in the following ways:

⁵² UN Committee on the Rights of the Child, *General comment No. 12 (2009): The right of the child to be heard*, 6.

⁵³ New Zealand Ministry of Justice, *Youth Court Research: Experiences and views of young people, their families and professionals*; Wendy Luckenbill, 'Innovation Brief: Strengthening the role of families in juvenile justice' (Models for Change: Innovation Brief, 2012); Ryan Shanahan and Margaret diZerega, 'Identifying, Engaging, and Empowering Families: A Charge for Juvenile Justice Agencies' (Vera Institute of Justice, New York, 2016).

⁵⁴ Although Rangatahi courts were designed to support Maori youth, they are available to any young person.

⁵⁵ The Rangatahi courts were inspired by the Koori Courts introduced in Victoria in 2002: Davies and Whaanga, *Evaluation of the early outcomes of Nga Kooti Rangatahi*, 78.

- preparing and delivering a *pepeha in te reo* (a Maori practice for introducing yourself) to inform the judge and Elders who they are and where they come from;
- introducing, by name and role, who is present at the hearing to support them; and
- engaging directly with the judge about their circumstances and progress since last appearance as well as next steps and what is required of them.⁵⁶

The evaluation found that the young people and their families held overwhelmingly positive perceptions of their experience with the Rangatahi Court. Young people reported that they had understood the court process and what was required of them and felt included and actively engaged in the court process. It was also observed that young people became more active the further they progressed through the monitoring process.⁵⁷

Judicial interviews and meetings

In some jurisdictions, there are opportunities for children to meet with judges outside the courtroom, often in chambers, to communicate their views about a matter. This occurs in some Canadian provinces in respect of family law matters, including child protection. Studies have shown, however, that it is not commonplace for judicial interviews to take place, and the likelihood of a child participating in a judicial interview may be influenced by the views of their lawyer.⁵⁸ Research with children and young people who had participated in judicial interviews in parental custody disputes (not child protection) found that the children or young people were often anxious prior to the interview, but reported that the judge had made them feel comfortable and less anxious.

It was also found that the children and young people appreciated having had an opportunity to be heard by the judge, even those who did not ultimately achieve the outcome for which they had hoped in the court process.⁵⁹ This finding is supported by the wider body of literature regarding procedural justice which indicates that, when individuals feel fairly treated in the legal system, it increases their belief in the legitimacy of the system and makes them more likely to comply with decisions made.⁶⁰

Although a different context, through the Child Witness Service (CWS) in Victoria, some judges meet with child witnesses to serious offences at the CWS premises prior to the court hearing. Judges do so dressed in their civilian clothes. This gives the child an opportunity to meet and become familiar with the judge outside the formal court process. Other special measures are adopted for child witnesses through the CWS. For example, the CWS hosts remote witness facilities in a child-friendly environment and provides a safe, comfortable space where children, young people and their families can engage with their legal team.

⁵⁶ Davies and Whaanga, *Evaluation of the early outcomes of Nga Kooti Rangatahi*, 36-37.

⁵⁷ Ibid.

⁵⁸ Rachel Birnbaum, 'Judicial Interviews with Children: Attitudes and Practices of Children's Lawyers in Canada (2013) *New Zealand Law Review* 465.

⁵⁹ Nicholas Bala, Rachel Birnbaum and Francine Cyr, 'Judicial Interviews of Children in Canada's Family Courts: Growing Acceptance but Still Controversial, 149; in Tali Gal and Benedetta Duramy, *International Perspectives and Empirical Findings on Child Participation: From Social Exclusion to Child-Inclusive Policies* (Oxford Scholarship, 2016).

⁶⁰ For example, see Tom Tyler, 'Procedural Justice and the Courts' (2007) 44 *Court Review* 26.

Teen Courts

A further relevant innovation from the United States are Teen or Peer Courts which operate to divert young people with low-level offences from the juvenile justice system. The common feature of these courts is that other young people hear the case and determine the outcome for the young person involved, such as participating in community service. The model is based on restorative justice principles, as well as social learning and social control theories. That is, youth behaviour is believed to depend in part on peer role models and their degree of engagement in the broader community, which are both promoted in teen court programs.⁶¹

Studies have found lower recidivism levels among teen court participants, with young people reporting that their positive interactions with the peers hearing the case was key to the positive experience, as well as the opportunity for community involvement. Young people also appreciated the opportunity for a 'second chance' and to avoid receiving a criminal record that was provided by teen court.⁶² Like other court innovations, such as youth drug or mental health courts, we note that there has been some inconsistencies in research findings related to teen courts. This is likely reflective of differences in how teen courts operate in different locations.⁶³

Child focused engagement strategies

Research by the CJI in England and Wales with young people who have experienced the Youth Court has also highlighted how courts and judicial officers adopting relatively simple and appropriate engagement practices with children can have a meaningful impact on enabling the child's right to be heard. Simple engagement strategies can improve a young person's experience of procedural justice and their feelings of being understood, having a voice, being respected and trusting in the process. The study identified that:

*Enhancing engagement need not be complicated. Simply speaking to young people directly, asking their side of the story and actively listening to them can go a long way to improving young people's experiences and perceptions of the court process.*⁶⁴

Examples of this approach highlighted in the research included:

- efforts by judicial officers to engage directly with the young person about their views - this may require sensitive probing or enabling different ways for the young person to present their view (i.e. providing the young person with an opportunity to write a letter to the judicial officer);
- providing information to young people using appropriate language for their age and developmental level and avoiding technical language (such as 'adjournment', 'remand', 'detention');
- ensuring that interpreters are available;

⁶¹ Charlotte Lyn Bright, Douglas W. Young, Melissa L. Bessaha and Benjamin J. Falls, 'Perceptions and Outcomes following Teen Court Involvement' (2015) 39(3) *Social Work Research* 135, 135.

⁶² Ibid, 136.

⁶³ Ibid.

⁶⁴ Robin-D'Cruz, 'Young people's voices on youth court', 4.

- professionals explaining the court process beforehand and showing the young person around the court.⁶⁵

Communication assistance

Several jurisdictions, including England and Wales and New Zealand, have introduced communication assistance roles into their youth justice systems. These communication specialists, also known as intermediaries, provide expert support to witnesses and defendants in justice settings who have been identified as having communication difficulties.

While both models support young people to give evidence in proceedings, the operation of the New Zealand model is wider than the English model. In New Zealand, communication assistance is about facilitating broader understanding and participation in justice processes both inside and outside the courtroom, including in meetings with lawyers and for young people in FGCs. In England, the assistance is usually limited to trials and police interviews.

Professionals working in these justice systems have been overwhelmingly in support of the role. In England and Wales, studies have found that the role has been a 'very valuable tool' that helped to obtain better quality evidence and increased vulnerable people's access to justice.⁶⁶ In New Zealand, professionals believed that young people understood more as a result of the communication assistant's support, evidenced by increased engagement; ability to repeat key pieces of information; as well as comments to this effect made by the young person and family members.

Professionals also identified that the innovation brings valuable new knowledge to the system not held by other professionals and helps the youth justice system to function as it ideally should, by facilitating the meaningful participation of young people.⁶⁷ While facilitating a child's right to be heard, the role is also a good example of a safeguard to prevent discrimination as required by the CRC and General Comment 24, in this case for young people with a disability or communication difficulties.

Similar schemes have been implemented in Australia in a number of states, including New South Wales, Victoria and the Australian Capital Territory. An evaluation of the New South Wales' pilot intermediaries scheme found widespread support for the intermediaries role, though we note that the pilot only provided communication support for child complainants and witnesses in child sexual offence cases. Professionals, parents and child participants reported that the intermediary helped to reduce the child's stress at court and to improve their confidence in answering questions and provide better evidence.⁶⁸ We note that the Victorian intermediaries scheme has been evaluated but the evaluation report has not been made publicly available.

⁶⁵ Ibid.

⁶⁶ Emily Henderson, "A very valuable tool": Judges, advocates and intermediaries discuss the intermediary system in England and Wales' (2015) 19(3) *The International Journal of Evidence & Proof* 154.

⁶⁷ Kelly Howard, Clare McCann and Margaret Dudley, "It's really good...why hasn't it happened earlier?" Professionals' perspectives on the benefits of communication assistance in the New Zealand youth justice system' 53(2) *Australian and New Zealand Journal of Criminology* 1, 7-8.

⁶⁸ Judy Cashmore and Rita Shackel, *Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report* (UNSW, 2018).

Provision of child-friendly information

While there is generally recognition of the importance of child-friendly justice processes to facilitate participation, there has been only minimal attention given to the availability, quality and accessibility of information provided to children and young people involved in court processes. As researchers have highlighted, most attempts to engage critically with child justice processes have focused on environmental and procedural factors.⁶⁹ However, the provision of child-friendly information is an essential starting point for stimulating meaningful participation by children and young people.

This was a key point identified in the research undertaken by the CJI in England with young people who had been through the Youth Court process. In addition to the direct feedback from young people, researchers observed that young people noticeably disengaged when, for example, formal terminology was used or staff did not introduce themselves. The CJI concluded that the benefits of improving the information and understanding far outweigh the implementation effort required, as young people are much more likely to engage in the court process and may be more able and motivated to comply with any orders made by the court.⁷⁰

In England and Wales, a collaborative project is currently underway involving Her Majesty's Courts & Tribunals Service (HMCTS) and Youth Advisory Network Ambassadors, a group of children and young people with experience of the youth justice system, to consider how communication and information provision could be improved in the Youth Court. Based on feedback from Ambassadors, the HMCTS is designing a guide that addresses typical concerns and worries (i.e. what to wear) and a 'who's who' poster for use online and in court buildings. HMCTS is also reviewing the language used in its guidance to ensure that it is easy to understand and plans to review the hearing notices used in Youth Court to make them easier to understand.⁷¹

In the United States, the multi-state Models for Change initiative established in 2004 has been working towards making juvenile justice systems more fair, effective and developmentally appropriate. A focus of the initiative has been on improving young people's understanding of the court process. In Washington state, a project incorporated judges using a proforma script to explain the orders or conditions set during a hearing that was drafted with developmentally appropriate language. It was found that the use of these proforma scripts improved young people's comprehension of the conditions commonly ordered in youth justice proceedings and improved compliance with the orders. The project was also found to increase the awareness of the court and stakeholders of the need for more developmentally appropriate language in juvenile courts.⁷²

Family participation

Initiatives from jurisdictions such as New Zealand, the United States and Scotland demonstrate different ways in which families are supported to participate meaningfully in proceedings respecting children and young people, as is required by the CRC in respect of child protection matters and strongly recommended for youth justice matters.

⁶⁹ Helen Stalford, Liam Cairns and Jeremy Marshall, 'Achieving Child Friendly Justice through Child Friendly Methods: Let's Start with the Right to Information' (2017) 5(3) *Social Inclusion* 207, 210.

⁷⁰ Robin-D'Cruz, 'Young people's voices on youth court', 2-3.

⁷¹ Rachael Collins, 'Inside HMCTS: A fresh, young perspective on court information' (HM Courts and Tribunals Service, 2020). Available at: <https://insidehmcts.blog.gov.uk/2020/02/28/a-fresh-young-perspective-on-court-information/>

⁷² Rosa Peralta and George Yeannakis, *Judicial Colloquies: Communicating with kids in court* (Team Child, 2013).

The Scottish Children's Hearing system recognises the family as being a critical part of any decision making processes about children's offending or care and protection needs. Families are included in children's hearing processes for youth justice matters, as well as care and protection matters, and are encouraged to participate and contribute to the plans made.⁷³

Similarly, the New Zealand youth justice and child protection systems also place a strong emphasis on the participation of families through the FGC model which operates at an early stage both in child protection and in youth justice matters. The model differs from court processes in jurisdictions like Victoria, as it involves the partial transfer of decision making power from the court to the community. In child protection FGCs, family members and, where appropriate, children come together with relevant government staff to discuss their strengths as a family and to develop a plan for keeping the children safe. Families are provided with the opportunity to discuss the plan in private before bringing it back to the group to agree on the plan.⁷⁴

In the United States, the 'one judge-one family', or unified, family court model (discussed in further detail below) places the family at the centre of judicial processes concerning child and family related legal matters. In these contexts, a single court handles all matters relevant to families, regardless of jurisdiction, including youth justice, child protection matters and other private family law matters such as divorce, estates and guardianship. Ideally, families appear before one specially trained judge who addresses the legal and accompanying emotional and social issues challenging each family across their various legal issues.⁷⁵

The consistent involvement of one judge can help families shift from feeling that strangers who do not know them are making decisions about their lives. In this way, it can help to build trust and a desire to engage in the process and meet the expectations set by the judge.⁷⁶

Addressing lengthy wait times

Recognising the negative effects of lengthy wait times and crowded waiting rooms both on children and on families, some family and juvenile courts in the United States have incorporated appointment times into their listing processes. A study at the Travis County Model Court for Children and Families, which has adopted appointment times for several years, has highlighted the benefits of this approach.

The study results indicated that there were positive correlations between participants who reported satisfaction with their wait time and their satisfaction with the judge's decision, their lawyer, feeling respected by the judge, and overall satisfaction with the court experience.⁷⁷ Although not clearly articulated in the study, it is reasonable to assume that the positive correlation is due to participants having more certainty about the time they will spend at court, thereby reducing anxiety and frustration and enabling them to focus on the court process.

⁷³ Kathleen Marshall, 'Human Rights and Children's Rights in the Scottish Children's Hearings System'; in Malcolm Hill, Andrew Lockyer and Fred Stone, *Youth Justice and Child Protection* (Jessica Kingsley, 2006).

⁷⁴ Judge Andrew Becroft, 'Family Group Conferences: Still New Zealand's gift to the world' (Office of the Children's Commissioner, Wellington, 2017).

⁷⁵ Barbara Babb and Judith Moran, *Caring for families in court: An essential approach to family justice* (Taylor and Francis, 2018), 17.

⁷⁶ NCJFCJ, *Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases*, 35.

⁷⁷ Carlene Gonzalez, Theresa Bohannon and Alicia Summers, 'Assessing Time-Certain Calendaring Dockets', (NCJFCJ, 2015), 2.

In New Zealand, the Youth Court has also implemented an appointment system for youth justice matters. Professionals have acknowledged the improvement this has made to the time spent waiting by young people at court.⁷⁸

2. Summary

The above discussion has highlighted a number of ways that children and young people can be supported to participate in court processes meaningfully with due regard to their age and maturity, as is required by the CRC. Implementing accessible and appropriate court proceedings for children and young people is an important way to facilitate participation. This can be achieved by creating processes which involve more direct engagement with the young person, such as the Rangatahi Court model in New Zealand or Teen Court model in the United States; or by enabling young people to meet with judicial officers outside the courtroom to communicate their views about a matter, as occurs in Canada in some child protection proceedings.

Research with young people has identified that courts and judicial officers adopting relatively simple and appropriate engagement practices - such as sensitively questioning a young person about their views and using developmentally appropriate language - can also have a positive impact on ensuring that their right to be heard is met. Young people with communication difficulties will also be better supported to participate in court processes with the assistance of specialist communication assistants.

It is important that families are likewise supported to participate in proceedings regarding their children, as occurs in the family group conferencing model in place in New Zealand and the unified family court model operating in the United States. In youth justice matters, families can provide important emotional support to young people and assist in maximising compliance with court orders.

3. The court incorporates problem solving, collaborative and multidisciplinary practices

The CRC and its associated guidance recognise that, to promote a young person's best interests and holistic development, the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitative and reintegrative principles. General Comment 24 encourages courts to adopt multidisciplinary approaches to achieve this, with collaboration between relevant bodies and services to assist the young person.

This aligns with the problem solving, or problem-oriented, justice approaches which have increased in prevalence in many jurisdictions over recent decades. Problem solving approaches aim to connect individuals with the necessary social supports which they need to rehabilitate, such as alcohol or drug treatment, mental health support or family violence agencies, through a holistic and integrated approach.⁷⁹ These approaches have also proven to be successful in assisting children and families involved in child protection proceedings.

⁷⁸ New Zealand Ministry of Justice, *Youth Court Research: Experiences and views of young people, their families and professionals*, 34-35.

⁷⁹ Lorana Bartels, 'Mainstreaming Problem-Oriented Justice: Issues and Challenges', 31-40; in Marie Segrave, *Australia and New Zealand Critical Criminology Conference 2009 Conference Proceedings* (Monash University, 2009).

Specialty problem solving courts, such as drug courts or mental health courts, adopt these principles, but courts can incorporate problem solving approaches into their mainstream processes. Described below are several examples of speciality courts or court processes adopting problem solving, collaborative and multidisciplinary approaches.

Youth drug and mental health courts

Youth drug courts and youth mental health courts are examples of court processes incorporating collaborative, problem solving approaches for young people who offend with complex problems. Youth drug courts have been operating in the United States since the 1990s and have the aim of reducing the cycle of crime and drug use among young people who offend. The courts operate with multidisciplinary teams, including a judicial officer, district attorneys, public defenders, juvenile probation officers and drug treatment providers, who collaborate to address the unique needs of each participant, guided by therapeutic jurisprudence principles.⁸⁰ Teams may also include representatives from school, child welfare or social services where appropriate.

Research examining the effectiveness of youth drug courts in the United States have produced mixed results at times, with some evaluations criticised as using poor methodology and no control groups. However, several rigorous studies have shown that youth drug courts can reduce recidivism and the substance use or abuse by participants and be more cost effective than standard court processes for this cohort.⁸¹ Key success factors identified in the research include:

- well-trained multidisciplinary teams who attend all relevant court events and meetings and are able to build rapport and trust with participants, encouraging their participation in the program and treatment;
- use of evidence-based treatment practices targeted to the identified needs of participants in their rehabilitation;
- the active participation of parents and carers to support the young person's ongoing engagement in the court program and with their treatment.⁸²

In New South Wales, a drug and alcohol court for youth operated between 2000 and 2012. The program was not comprehensively evaluated but a review of the two year pilot program evidenced several promising outcomes. The overall view of the evaluators was that the program was having an important, positive impact on the lives of those participating, including diversion from custody.⁸³ The program was discontinued in 2012, with the NSW Government citing funding issues.⁸⁴

Similar to drug courts, youth mental health courts are designed to divert young people experiencing mental health issues who offend into community treatment programs. Like drug courts, these courts are guided by problem solving and therapeutic jurisprudence principles and adopt non-adversarial, treatment-oriented approaches, supported by multidisciplinary teams. As

⁸⁰ David M. Ledgerwood, 'Juvenile Drug Treatment Court (2019) 66(6) *Paediatric Clinics* (2019) 1193.

⁸¹ Jacqueline van Wormer and Faith Lutze, 'Exploring the evidence: The value of juvenile drug courts' (2011) *Juvenile and Family Justice Today*; Dave Crumpton et al, *Maryland drug treatment courts: Interim report of the effectiveness of juvenile drug courts* (NPC Research, 2006).

⁸² Van Wormer and Lutze, 'Exploring the evidence: The value of juvenile drug courts'.

⁸³ Tony Eardley, Justin McNab, Karen Fisher and Simon Kozlina, with Jude Eccles and Mardi Flick, *Evaluation of the New South Wales Youth Drug Court Pilot Program — Final Report* (University of New South Wales, Social Policy Research Centre, March 2004).

⁸⁴ 'Quiet death of the youth drug court'. *The Age*, 9 July 2012.

these courts are a relatively new development, studies about their effectiveness are limited. However, a small number of studies are showing positive results.

A study of a youth mental health court in Toronto, Canada, found that young people and parents who had participated in the court identified the effective collaboration between team members as being key to creating a supportive environment which facilitated their meaningful engagement in the process. A good example of the multidisciplinary approach recommended by General Comment 24, young people in this study reported that being linked by their support team with appropriate treatment services was important for their rehabilitation and another strength of the program.⁸⁵

A study of a youth mental health court in Colorado, United States, found that young people who had participated in the court had lower recidivism rates than young people assigned to other forms of diversion and probation, though the particular factors contributing to the lower recidivism rates were not identified in the study.⁸⁶

Family Group Conferencing and Rangatahi Courts

The FGC process in New Zealand operates in this problem solving and multidisciplinary way both for youth justice and child protection matters by bringing together relevant participants and professionals to discuss how to deal with the issues affecting the child and family. The FGC process is recognised as a positive example of a problem solving and multidisciplinary approach being applied in mainstream processes, though there continue to be areas for improvement in practice, such as in relation to preparation by professionals ahead of the conference.⁸⁷

Rangatahi Courts in New Zealand also operate with a strong collaborative and multidisciplinary approach, with teams comprising judicial officers, court staff, police prosecutors, youth justice professionals, lay advocates, social workers and government representatives. Evaluators observed personnel from the various agencies to be working closely together to achieve common goals for the young participants and this was considered to impact the sense of support felt by families in the process.⁸⁸

Youth Offender Service and Youth Court

Recent research has identified the Youth Court and YOS in England and Wales to be providing collaborative interventions and supervision for participating young people. Examples of these collaborative approaches include:

- pre-court meetings between legal advisors and YOS, and at times judicial officers, to highlight and discuss issues relevant to a young person appearing in court – these meetings were considered vital to the effective running of the court;

⁸⁵ Krista M.Davis, Michele Peterson-Badali and Tracey A.Skilling, 'A theoretical evaluation of a youth mental health court program model' (2016) 45 *International Journal of Law and Psychiatry* 17-24.

⁸⁶ Donna Heretick and Joseph Russell, 'The Impact of Juvenile Mental Health Court on Recidivism Among Youth' (2013) 3(1) *Journal of Juvenile Justice* 1.

⁸⁷ Office of the Children's Commissioner, *Fulfilling the Vision: Improving Family Group Conference preparation and participation* (Office of the Children's Commissioner, State of Care Series, 2017).

⁸⁸ Davies and Whaanga, *Evaluation of the early outcomes of Nga Kooti Rangatahi*, 73.

- YOS alerting the court to potential difficulties which a young person may have in understanding or participating in court processes;
- specialist staff, such as mental health professionals and speech and language therapists, informing assessment and pre-sentence reports to court.⁸⁹

This research also unfortunately highlighted that a lack of resources limited the breadth and depth of support available to help young people, as well as issues in respect of collaboration between YOS and children's services which supports young people in care.⁹⁰

Unified family courts

Unified family courts in the United States place a strong emphasis on collaborative practices. A key component of unified family courts includes the court working with a range of court-supplied or court-connected social services to meet individuals' non-legal needs that contribute to the exacerbation of problems in the family.⁹¹ Proponents of the unified court model suggest that the provision of these services to families through the court process provides minimum guarantees of fairness and accountability that do not exist in the same way when these services are provided in the community or private settings.⁹²

Studies which have evaluated the operations of unified family courts are positive about the outcomes, though we note that the availability of empirical research is somewhat limited. A key strength of the unified family court model is that judges are able to make better informed decisions about the family because they are coordinating all of the families' cases and have the benefit of input from a range of professionals working with the family.⁹³

Through informed decision making, conflicting orders are less likely to be made and families are more likely to be linked to the services they need to address the combination of issues leading to their court appearance, in turn leading to more compliance with court-ordered services. With the efficient handling of cases by the judicial officer and professionals, unified court models are seeing a reduction in the length of time that children are being placed in out of home care, in comparison with non-unified court models.⁹⁴ This is important because, as identified by General Comment 14, the timely resolution of cases about a child's care and protection and best interests will avoid adverse effects on a child's development which may arise from delayed or prolonged decision making and, in relevant cases, prolonged separation from their families.

⁸⁹ Hunter et al, 'Time to get it right: Enhancing problem-solving practice in the Youth Court', 24-25.

⁹⁰ Ibid, 25-26.

⁹¹ Babb and Moran, *Caring for families in court: An essential approach to family justice*, 20.

⁹² Ibid, 28.

⁹³ American Institutes for Research, *Unified Family Court Evaluation Literature Review* (American Institutes for Research, 2002), 12-13.

⁹⁴ AIR, *Unified Family Court Evaluation Literature Review*, 13; Corey Shdaimah and Alicia Summers, 'One Family, One Judge Practice Effects on Children: Permanency Outcomes on Case Closure and Beyond' (2013) 2(2) *Journal of Juvenile Justice* 37.

Infant courts

In the United States, a specialist court approach has been developed for families with infants aged 0 to 3 years who are involved in child protection proceedings. The Safe Babies Court Team (SBCT) model was developed to address the high rate of protection concerns reported among this age group. It seeks to prevent or address developmental issues which, as noted above, can arise as a result of trauma experienced at this age and lead to ongoing issues into adolescence and adulthood.⁹⁵ It is a further example of court processes adopting trauma-informed approaches, in addition to the other initiatives identified above. The SBCT program focuses on strengthening families to support their children and, where children have been removed, promoting reunification when it is safe to do so.

The SBCT model operates at more than 60 sites across the United States and focuses on supporting the health, mental health and developmental needs of court-involved infants and expediting safe, nurturing permanency outcomes.⁹⁶ The court adopts a problem solving model and operates in a highly collaborative way, with regular review hearings before a judicial officer and monthly Family Team meetings held to address new and current needs. The coordinator plays a key role in facilitating interdisciplinary referrals, information sharing and problem solving.⁹⁷

A recent evaluation of sites across multiple states identified several positive practices and outcomes resulting from the implementation of SBCT. These included:

- early referral of families to key services, including evidence based practices such as Child-Parent Psychotherapy;⁹⁸
- increased support for parents during hearings to allow them time and space to voice their needs;
- frequent court hearings (often every 1-2 months) to maintain the parent's engagement, with a strong focus in hearings on quality of placements, parent-child relationship, services and use of evidence based programs;
- establishment of strength-based family team meetings model which include parents in the discussions;
- frequent and high-quality parent-child contact where safe to do so to maintain and strengthen the parent-child relationship (i.e. daily or three to five times per week); and
- positive safety outcomes for children as a result of the parent's participation in SBCT, including a reduction in further neglect within a 12 month period.⁹⁹

⁹⁵ Cecilia Casanueva, Sarah Harris, Christine Carr, Chelsea Burnfeind and Keith Smith, 'Evaluation in Multiple Sites of the Safe Babies Court Team Approach' (2019) 97(1) *Child Welfare* 85, 86.

⁹⁶ *Ibid*, 86-87.

⁹⁷ Zero to Three, 'The Safe Babies Court Team Approach: Core Components and Key Activities' (2020). Available at: <https://www.zerotothree.org/resources/1655-the-core-components-of-the-safe-babies-court-team-approach#downloads>.

⁹⁸ Child-Parent Psychotherapy aims to strengthen the parent-child relationship. It assists parents in understanding how best to help their young children feel safe and secure. It helps parents to learn that 'behaviour has meaning' and, with that understanding, to help their children to name and cope with strong feelings: Casanueva, 'Evaluation in Multiple Sites of the Safe Babies Court Team Approach', 96.

⁹⁹ Casanueva, 'Evaluation in Multiple Sites of the Safe Babies Court Team Approach'.

Family drug treatment courts

Family drug treatment courts operate in several international jurisdictions, including the United States, Australia and United Kingdom. The courts involve collaboration between the court, specialised judges, government agencies, social workers and other professionals to provide a range of supports and treatment to parents. This is in order to give parents the opportunity overcome their substance abuse issues and show that they are capable of safely caring for their children.

Studies have shown that family drug treatment courts have an overall positive effect on family reunification.¹⁰⁰ There is positive evidence from the United Kingdom that parents are more likely to cease their drug use and that children are less likely to experience further neglect or abuse where families have participated in these processes.¹⁰¹ There is also evidence that these courts are cost effective. An evaluation of the London Family Drug and Alcohol Court determined that, across the 2014/15 caseload, the court cost £560,000 (in respect of specialist staff salaries, office costs etc) and generated estimated gross savings of £1.29M to public sector bodies over five years.

The savings were attributed to positive outcomes as follows: fewer children permanently removed from their families; fewer families returning to court; and less substance misuse.¹⁰² There is similar evidence of costs saving from family drug treatment courts in the United States as well.¹⁰³ The Family Drug Treatment Court in Victoria has also achieved strong outcomes for families and children in respect of reunification and the length of time taken to deal with the case, again in line with General Comment 14's recommendation about the timely resolution of care and protection proceedings.¹⁰⁴

¹⁰⁰ Saijun Zhang et al, 'The impacts of family drug treatment court on child welfare outcomes: A meta-analysis' (2019) 88 *Child Abuse and Neglect* 1.

¹⁰¹ Judith Harwin, *The Family Drug & Alcohol Court – Evaluation Project: Final Report* (Centre for Child and Youth Research, Brunel University, 2011); Judith Harwin, *After FDAC: outcomes 5 years later – Final Report* (Lancaster University, 2016).

¹⁰² Neil Reeder and Stephen Whitehead, *Better Courts: the financial impact of the London Family Drug and Alcohol* (Centre for Justice Innovation, 2016).

¹⁰³ Douglas B. Marlowe and Shannon M. Carey, *Research Update on Family Drug Courts* (National Association of Drug Court Professionals, 2012), 3-5.

¹⁰⁴ Lillian De Bortoli, Stefan Luebbers, Maddison Riacchi and Bianca Mastromanno, 'The Family Drug Treatment Court: An Evaluation Report' (Centre for Forensic Behavioural Science, Swinburne University of Technology, 2018).

3. Summary

Problem solving, collaborative and multidisciplinary practices have proven to be an effective way to deal with youth justice and child protection matters by children's courts. A key feature of the examples discussed above is the involvement of multidisciplinary teams which collaborate to support and address the holistic needs of children and their families. In youth justice matters, promising results from youth drug and youth mental health courts in the United States and Canada suggest that the approach can help to address young people's substance abuse or mental health needs and also reduce reoffending, by linking young people with appropriate treatment and support.

Similarly, in child protection proceedings, infant courts and family drug treatment courts are seeing positive results for children and families, including a reduction in further neglect or abuse, with encouraging evidence that family drug treatment courts can lead to cost savings for the state. The unified family court model is also achieving positive change by working with a range of court-supplied or court-connected social services to meet court users' non-legal needs which may be contributing to the exacerbation of challenges in the family.

4. The court is supported by a specialised and trained workforce

Due to the unique developmental needs of children, there is increasing recognition in justice systems of the need for professionals working in the system to be continuously trained in key subject areas and practices relevant to children. This applies to all professionals in the system including judges, court staff, lawyers, youth justice and child protection professionals and support service professionals.

Specialised training for professionals is recommended at an international level by the Committee on the Rights of the Child through its General Comments. For example, General Comment 24 recommends that professionals in youth justice systems receive appropriate multidisciplinary training on the content and meaning of the CRC, with a focus on established or emerging information about, for example:

- social and other causes of crime;
- social and psychological development of children, including current neuroscience findings;
- special needs of marginalised or minority groups, such as Indigenous communities;
- culture and trends in the world of young people;
- available diversion and non-custodial measures;
- new technologies or innovations to assist children's participation in child justice systems.

The Council of Europe guidelines on child friendly justice recognise the specialised training of professionals as a key element of all child justice systems. In particular, the guidelines recommend that all professionals working with children receive interdisciplinary training on the rights and needs of children of different age groups and in relation to proceedings adapted for children and young people.

It also recommends that those working directly with children be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.¹⁰⁵ We note that the guidelines do not refer to training about trauma and court-involved children. As the guidelines were published in 2010, the omission may be due to a lack of understanding about trauma and its impact at that time.

Despite the expectation at an international level, it was difficult for this review to identify the level and quality of training for professionals working in children's courts. It appears that there is an opportunity for a more systematic approach to training to be adopted across jurisdictions to ensure that all professionals are trained in key areas and in line with emerging research. The following is a brief overview of some specific initiatives identified.

Professional organisations in the United States and Canada provide extensive continuing professional development training and courses for lawyers working in child protection, such as the Colorado Office of the Child's Representative (COCR).¹⁰⁶ The COCR runs a Core Competencies training program for new lawyers working in the jurisdiction. The training covers a wide range of topics, including:

- legal skills and advocacy;
- child protection law and legal processes;
- child development and understanding trauma;
- communicating with children; and
- effective interventions for children and families.¹⁰⁷

A number of professional organisations also offer specialist accreditation training schemes in child protection law, which involves multi-day training courses and supervision by a mentor.¹⁰⁸ Law societies in Australia and England and Wales have also established accreditation schemes for lawyers working in children's law.

The London Family Court Clinic (LFCC) based in Ontario, Canada, provides a range of independent services for children and families involved in youth justice and child protection court processes, such as specialised assessments, interventions and child witness services. The LFCC also provides comprehensive training to professionals about working with children in youth justice and child protection systems. A range of training topics are covered, including forensic interviewing of children, developmental trauma, and assessment and intervention services available for young people in youth justice matters.

¹⁰⁵ Council of Europe, *Guidelines on Child Friendly Justice*, 23.

¹⁰⁶ For further information about the professional development training run by other professional organisations, such as the National Association for Counsel for Children, Law Society of Ontario and the Public Defender Agency of Massachusetts, see Nigel A Miller, 'To instigate the establishment of a child protection law specialist accreditation program in Queensland - UK, Switzerland, USA, Canada' (Churchill Fellowship report, 2014), 53-57.

¹⁰⁷ Colorado Office of the Child's Representative, 'Core Competencies I: New Attorney Orientation'. Available at <https://coloradochildrep.org/core-competencies-i-new-attorney-orientation/> [accessed 10 September 2020].

¹⁰⁸ Miller, 'To instigate the establishment of a child protection law specialist accreditation program in Queensland - UK, Switzerland, USA, Canada', 63.

The Louisiana Models for Change court program in the United States developed a training initiative for judges, prosecutors and defenders on children's development, key issues in juvenile justice and how to work and engage with children. It was recognised that these legally trained professionals rarely had deep knowledge about adolescent development or about the best practices for addressing young people's issues and needs through effective community-based resources.

A positive outcome from the training initiative was the increased knowledge among judges, prosecutors and defence attorneys about the risks and needs of young people, meaning that they will be better informed when proposing or making decisions about effective interventions. Young people will therefore be more likely to receive the support which they need to rehabilitate through the court process.

The professionals also became better informed about the need for juvenile justice reform to take account of the developmental differences between adults and young people; the need for alternatives to formal court processes; and the importance of community-based services for young people. Opportunities for wider system reform were therefore strengthened.¹⁰⁹

The Children's Court of Victoria, with the Judicial College of Victoria, has in recent years been running multidisciplinary training workshops - bringing together a range of professionals involved in the youth justice system, including Magistrates, Legal Aid, Youth Justice, Department of Health and Human Services, Victoria Police and other community organisations. Bringing these professionals together for the workshop allowed them to explore ways of working together more effectively for the benefit of young people and the community.¹¹⁰

4. Summary

Due to the unique developmental needs of children, there is increasing recognition in justice systems of the need for its professionals to be trained continuously in key subject areas and practices relevant to children. This applies to all professionals working in the system, including judicial officers, court staff, lawyers, youth justice and child protection professionals, as well as support service professionals.

Specialised training for professionals is recommended at an international level by the Committee on the Rights of the Child through its General Comments. This review was not able to identify the broad level and quality of training for professionals working in children's courts. However, several positive training initiatives were identified focusing on a range of essential topics relevant to children in the justice system, such as:

- child development and understanding trauma;
- communicating and engaging with children; and
- effective interventions for children and families.

¹⁰⁹ Barry Mahoney and Stephen Phillipi, *Professional Development for Key Decision Makers in Juvenile Court: Strengthening the Juvenile-Specific Knowledge and Capabilities of Prosecutors, Defenders, and Judges* (Institute for Public Health and Justice, 2013).

¹¹⁰ Judicial College of Victoria, 'It Takes a Village – Geelong Children's Court Multidisciplinary Training', 12 February 2020, available at <https://www.judicialcollege.vic.edu.au/news/it-takes-village-geelong-childrens-court-multidisciplinary-training> [accessed 10 September 2020].

5. The court provides culturally responsive approaches

Tragically, young people from Indigenous and CALD backgrounds are over-represented in criminal justice and child protection systems around the world. The causes of this are, of course, complex. In countries such as Australia and Canada, the over-representation of Indigenous young people in these jurisdictions is linked to the impacts of dispossession and intergenerational trauma; its socio-economic and health impacts on Indigenous families and communities; and, many argue, ongoing institutional racism.¹¹¹

There is a strong focus in the CRC on preventing discrimination and respecting the rights of young people from ethnic, religious and linguistic backgrounds and those from Indigenous communities. General Comment 12 recommends that opportunities for young people from diverse backgrounds to participate in court proceedings should be inclusive and culturally sensitive. Several children's courts here and abroad have taken positive steps to respond to these issues and uphold the rights of the CRC by adapting their processes to respond in a more culturally appropriate way.

Dedicated courts for Aboriginal and Torres Strait Islander young people in youth justice cases operate across Australia, including the Youth Koori Court in New South Wales, Youth Murri Court in Queensland and the Children's Koori Court in Victoria. These courts, which include participation by Elders or Respected Persons in the hearing process, have been found to achieve improved outcomes for participants.¹¹²

For example, an evaluation of the New South Wales Youth Koori Court found that participants made considerable progress in meeting the plans which they set for themselves at the beginning of the process in areas such as cultural connection, education and employment, accommodation and substance abuse. The evaluation also found evidence that participation in the process reduced re-offending. The positive outcomes were linked to the young people being given the opportunity to participate actively in the court process, by speaking freely in the hearings and defining their own preferred career options. There was also an important role played by Elders, court workers, lawyers and service agencies in supporting the young people to achieve the objectives of their plans and avoid future involvement in the criminal justice system.¹¹³

Victoria's Children's Court has also implemented a Koori Family Hearing Day, Marram-Ngala Ganbu, for child protection proceedings. An evaluation of the program found that the Koori Family Hearing Day provides a more effective, culturally appropriate and just response for Koori families in Victoria than the mainstream process. This is through a more culturally appropriate court process which promotes greater family participation and culturally-informed decision making with the involvement of Elders.¹¹⁴

¹¹¹ Carla Cesaroni, Chris Grol and Kaitlin Fredericks, 'Overrepresentation of Indigenous youth in Canada's Criminal Justice System: Perspectives of Indigenous young people' (2018) 52(1) *Australian and New Zealand Journal of Criminology* 111, 112; Sentencing Advisory Council, *Crossover kids: Vulnerable children in the youth justice system*, 40.

¹¹² Melissa Williams, David Tait, Louise Crabtree and Mythily Meher, *Youth Koori Court: Review of Parramatta Pilot Project* (Western Sydney University, 2018); Allan Borowski, 'In Courtroom 7 – The Children's Koori Court at Work: Findings from an Evaluation' (2011) 55(7) *International Journal of Offender Therapy and Comparative Criminology* 1110.

¹¹³ Williams et al, *Youth Koori Court: Review of Parramatta Pilot Project*.

¹¹⁴ K Arabena, W Bunston, D Campbell, K Eccles, D Hume and S King, *Evaluation of Marram-Ngala Ganbu: A Koori Family Hearing Day at the Children's Court of Victoria in Broadmeadows* (November 2019).

Encouraging outcomes from the initiative include Koori families being more likely to follow court orders, in part due to the encouragement from the judicial officer and the support of other professionals working in the program, and young people feeling more connected to family, culture and community. There are also early indicators that more Koori children are being placed in Aboriginal kinship care and that families are more likely to stay together.¹¹⁵

There are several First Nations courts operating across Canada. The way each court operates is unique and reflects the culture of the local Aboriginal people where the court is located. A number of these courts hear youth justice and child protection cases, as well as other adult crime or traffic court matters.¹¹⁶

The Aboriginal Youth Court in Toronto is a dedicated court for young Aboriginal people involved in youth justice matters. The court aims to encourage alternatives to custody through an informal, culturally and individually appropriate process, which involves the young person and Aboriginal community agencies engaging in the rehabilitation journey together.¹¹⁷ Young people may be diverted from the court to the related Community Council, a restorative circle of Aboriginal volunteers, including Elders, who talk with the young person about why the offence occurred (not the offence itself). A rehabilitative plan is designed with the young person, which includes referral to culturally appropriate services.

Encouragingly, an evaluation of the program found that youth who participated in the Aboriginal Youth Court-Community Council process were less likely to re-offend than young people in other jurisdictions.¹¹⁸ Young people reported that having input into their individual plan with support from the judge, Elders and other support agencies was important to their progress, as was the informality and cultural aspects of the court process.¹¹⁹

As discussed above, the Rangatahi Court in New Zealand has adapted the traditional court process to be more inclusive of Maori culture and hearings are held on a marae. The evaluation of the Rangatahi Court found that the positive perceptions held by young people and their families about the experience were often associated with the cultural aspects of the marae, including the marae facilities, cultural processes, as well as the involvement of the marae community and cultural Elders.¹²⁰ Culturally responsive processes are also adopted in the Pasifika youth courts in New Zealand for young people from Pasifika backgrounds, though the hearings are usually held in churches or community centres.

In general, New Zealand's youth justice and child protection systems are strongly informed and inspired by Maori culture, notably through the family group conferencing process (discussed in detail above). The FGC model, as intended by the governing legislation, involves families and cultural communities being given greater responsibility and power to make decisions about their young people, informed by professional advice.

The role of lay advocates in New Zealand, established in legislation, also supports these principles. Lay advocates are community members appointed by the court and tasked with ensuring that the court is made aware of cultural matters that are relevant to the proceedings and representing the interests of the young person's family and cultural group/tribe (if not otherwise represented).

¹¹⁵ Ibid.

¹¹⁶ Shelly Johnson, 'Developing First Nations Courts in Canada: Elders and Foundational to Indigenous Therapeutic Jurisprudence +' (2014) 3(2) *Journal of Indigenous Social Development* 1, 2-5.

¹¹⁷ Scott Clark, *Evaluation of the Aboriginal Youth Court, Toronto* (2016, Ryerson University), 34.

¹¹⁸ Ibid, 41.

¹¹⁹ Ibid, 34.

¹²⁰ Davies and Whaanga, *Evaluation of the early outcomes of Nga Kooti Rangatahi*, 60.

Lay advocates were identified as critical within the Rangatahi Court process. Judges and professionals reported that lay advocates were able to establish a relationship of mutual respect and trust with families, and better able to gain insights into the family's needs than other state agencies. Judges reported that they received more comprehensive information in relation to the young person and their family circumstances with the involvement of lay advocates.¹²¹

While the above examples are encouraging, the continued overrepresentation of Indigenous and CALD young people in justice systems requires courts to continue to improve, expand and innovate in this area.

5. Summary

The CRC contains a strong focus on preventing discrimination and respecting the rights of young people from ethnic, religious and linguistic backgrounds and those from Indigenous communities. The Committee on the Rights of the Child recommends that opportunities for young people and families from these backgrounds to participate in court processes should be inclusive and culturally sensitive. This is especially important in countries such as Australia and Canada, where young people from Indigenous backgrounds are over-represented in the criminal justice and child protection systems.

As set out above, several children's courts here and abroad have taken positive steps to respond to these issues and uphold the rights of the CRC by adapting their processes to respond in a more culturally responsive way, such as:

- establishing specialised youth justice and child protection courts for young people from Indigenous and diverse backgrounds which incorporate cultural practices and the involvement of cultural Elders; and
- facilitating the involvement of advocates who ensure that the court is made aware of cultural matters that are relevant to the proceedings and who represent the interests of the young person's family and cultural group, as occurs in New Zealand.

¹²¹ Ibid, 72.

5 Conclusion

Informed by the international human rights framework and the positive practices and processes identified from jurisdictions around the world, this paper has outlined several overarching principles which should guide children's courts dealing with youth justice and child protection matters, including:

1. The court is child focused
2. The court promotes the participation of children and families in the court process
3. The court incorporates problem solving, collaborative and multidisciplinary practices
4. The court is supported by a specialised and trained workforce
5. The court provides culturally responsive approaches

The review has shown that the ways in which courts can and do give meaning to these principles differs between jurisdictions. However, the principles should serve as an important guide when courts are considering the need for, and the appropriateness of, new initiatives for children's matters.

Recognising that the needs of children and young people differ significantly from adults lies at the heart of each principle. Courts must therefore ensure that they remain aware of the latest research regarding children's development and its impacts on children and young people's participation in the justice system.

As noted above, the Children's Court of Victoria is already a leader in implementing child focused initiatives. This review provides the Court with a strong evidentiary basis as to why it should continue to expand its specialist initiatives, as well as build the capacity of its judicial officers and staff to give meaning to the principles which can maximise support for some of the most vulnerable children and young people in Victoria.