



The trauma-informed approach of the NSW Youth Koori Court

Her Honour Magistrate Sue Duncombe

Children's Court of NSW

"It feels good. And like, since I've started with Koori Court I've just been less angry at the world. I actually feel happy coming to court, not leaving angry. So they pushed me into a good headframe and I started thinking twice before I do things." [Youth Koori Court participant]¹

Every day, in every court in NSW, consideration is given in sentencing to the need for specific and general deterrence.² There is a focus on the need to protect the community from offending by deterring a person who has committed an offence from doing so again (specific deterrence). There is also a focus on deterring others from offending by the imposition of a sentence which in itself is likely to deter future offending of that type (general deterrence).

In addition, the Children's Court of NSW has specific principles which it must consider in every function it undertakes. Those principles include a young person's right to be heard and participate in the proceedings, the fact that they may need guidance and assistance and that their rehabilitation should be promoted including by keeping them at home and/or in education or employment wherever possible. It is only subject to these principles that the court must then consider the effect of any crime on the victim.³

What if the court process itself could assist in achieving these goals and honouring these principles? The movement towards "therapeutic courts" and "problem solving courts" has in a large part been driven by these goals. There is a belief which has supported the growth of a movement⁴ that a different way of dealing in court with people who have admitted their crime or crimes could itself lead to less offending in the community and at the same time promote the rehabilitation of the offenders.

With these principles and beliefs in mind, the Youth Koori Court (YKC) has now been operating on a pilot basis since 6 February 2015. It began sittings at the Parramatta Children's Court and has been extended, as of 6 February 2019, to also operate at the Surry Hills Children's Court.

The experience to date has proven very challenging and very rewarding.

The YKC has made some critical modifications and additions to the way in which the court operates as follows.

Respect for culture

At the heart of the YKC is the acknowledgement and respect offered to the Aboriginal and Torres Strait Islander people of Australia. The goals of the YKC include a desire to "increase Aboriginal community, including Aboriginal young people's confidence, in the criminal justice system in NSW".⁵

The YKC aims to achieve this objective in a number of ways. Most importantly, the judicial officer is assisted in court by at least one community panel member who is a respected person in the community and who has been appointed by a rigorous selection process.⁶ Every court sitting, with every young person, begins with a welcome or acknowledgement of the country on which the court sits by both the community panel member and the judicial officer. The young person is introduced to everyone in the court room and is encouraged to introduce himself or herself by reference to culture as well as name.

All young people admitted to the YKC are involved in the preparation of an Action and Support Plan. An integral part of each plan includes an opportunity for expanded cultural connection, knowledge and/or participation in cultural activities. The YKC has been able to assist young people to attend cultural workshops, cultural camps, participate in cultural activities in NAIDOC Week and, at the invitation of some Elders, visit culturally important sites in NSW.

1 Extract from transcript of proceedings, Youth Koori Court (YKC), August 2019.

2 *Crimes (Sentencing Procedure) Act 1999*, s 3A.

3 *Children (Criminal Proceedings) Act 1987*, s 6.

4 International Society for Therapeutic Jurisprudence at www.intltj.com, accessed 30/3/2020.

5 YKC goals also include reducing the rate of non-appearances by young Aboriginal offenders in the court process in NSW; reducing the rate of breaches of bail by Aboriginal young people in NSW; and increasing compliance with court orders by Aboriginal young people in NSW: see S Duncombe, "NSW Youth Koori Court Pilot Program commences" (2015) 27 *JOB* 11.

6 Following funding from the NSW Government in 2018, the community panel members are now entitled to payment for their attendance at the court. From 2019 onwards it is usual to have two panel members sitting in the court.

Design of the court room and the court process

There is no special court yet designed for the YKC in NSW. The court convenes around the bar table in a normal court room. There are, however, hung on the walls of the courtroom the paintings of young Aboriginal people in juvenile detention on permanent loan to the YKC.

In general, the judicial officer is not robed during YKC proceedings with two exceptions. Whenever there is a sentence, the judicial officer will pronounce that sentence from the bench and is robed. Similarly, if there is a release application, the submissions from the prosecution and the defence will be heard by the presiding judicial officer who is robed and sitting on the bench.

All other parts of the YKC involve a less formal sitting around the bar table with the young person. The judicial officer sits with one or two community panel members who have been selected for that purpose. In addition, there are representatives from Youth Justice, the YKC case coordinator, the prosecution and the solicitor for the young person as well as her or his family or supports. A representative from the Department of Communities and Justice is often present (when the young person is in the care of the Minister). Representatives from agencies supporting the young person will also often attend with the young person.

The role of the YKC judicial officer

In addition to the roles normally performed by judicial officers in court, the YKC judicial officer must observe cultural protocols, facilitate conversations with all people present, allow time and space for a young person to speak for themselves (without forcing them to do so), respond to particular needs or concerns of young people, time manage to ensure there is sufficient time for each young person to be heard and, if necessary, manage any tensions or anxieties exhibited by the young person and/or his or her family.

In many cases, there are difficult conversations around the YKC table. It is for the judicial officer to manage those conversations and, if necessary, acknowledge and then re-direct the focus from alleged failures to future behaviours. The skills learned from the mediation profession have been utilised by the judicial officers on a regular basis. These skills include listening (including active listening), involving the creation of an environment where the young person can speak about their challenges and have those challenges recognised and acknowledged by the court. As a young

person is not directed to attend a particular program without their consent, it is often necessary to encourage option generation to address any particular area of concern and the intervention needed to address that concern.⁷

Mediators are encouraged to reframe negative conversations to allow an issue to be discussed and potentially resolved. This skill is often employed by the judicial officers, consciously or unconsciously, throughout the process. In a recent case the following exchange occurred:

Family member:

"He has always felt he wasn't as good as his brothers. He felt he had to prove himself and when he couldn't, he started acting out."

Judicial officer:

"One of the challenges for us is to help you find what is special about you and what your interests and talents are."

Conclusion

Since the court commenced operating, more than 180 young people have had the opportunity to benefit from the supports and encouragement offered by participating in the YKC. Not all young people are ready to accept those supports and make the changes necessary for them. Those who have made changes have benefited from the rewards including increased self-esteem, recognition from the community of their successes, ongoing support (during and after YKC) from family and/or agencies and individuals. The YKC will be evaluated again during 2020. In the meantime, we continue this important work in the knowledge that young people have opportunities to change and that the process itself contributes to the efforts they make.

"It's more supportive, heaps more. The support is more intense. You are talking to the judge. The judge knows what's going on, not just reading the papers about you."⁸

7 For example, in one case the judicial officer stated: "If you are not ready to do counselling, how can you address the issue of cannabis use? Any ideas from anyone around the table?"

8 Feedback from a young person, 2016.