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**Abstract** | This paper examines sentencing and treatment practices for juvenile sex offenders in Australia and the challenges of reconciling the imperatives of rehabilitation, accountability and community protection. It begins with an overview of juvenile offenders and the juvenile justice system, including the principles for sentencing young offenders. It then considers the complex lives and offending patterns of juvenile sex offenders, before providing examples of judicial reasoning in sentencing. It concludes by examining best practice in treatment for sexually abusive behaviours and innovative justice responses to juvenile sex offending, such as therapeutic treatment orders and restorative justice conferencing.

## Sentencing and treatment of juvenile sex offenders in Australia

Riddhi Blackley and Lorana Bartels

### Introduction

There are few crimes that shock and revolt the public as much as child sexual assault. In the face of well-publicised cases, a concerned and fearful populace often demands a tough judicial response and the imposition of harsh and unforgiving sentences (for discussion, see eg Parliament of New South Wales 2015; Tasmanian Sentencing Advisory Council 2015; Victorian Sentencing Advisory Council (VSAC) 2016). What to do, though, when the perpetrators of such abhorrent crimes are themselves children? It has only fairly recently been acknowledged that many incidents of child sexual assault are perpetrated by children and young people (Barbaree & Marshall 2006). Justice systems around Australia and the world are struggling to reconcile the youthfulness of juvenile sex offenders with the seriousness of their crimes and deliver an appropriate response.

This paper considers current sentencing and treatment practices for juvenile sex offenders in Australia and how the sometimes-competing imperatives of rehabilitation, accountability and community protection are met. It begins with an overview of juvenile offenders and the juvenile justice system and outlines the principles for sentencing young offenders. It then considers the complex lives and offending patterns of juvenile sex offenders, before providing examples of judicial reasoning in sentencing. It concludes with a brief examination of best practice in treatment for sexually abusive behaviours and innovative justice responses to juvenile sex offending, such as therapeutic treatment orders and restorative justice conferencing.

## Juvenile offenders and the juvenile justice system

A certain level of offending behaviour by young people is not unusual; in fact, 15 to 19 year olds are more likely than any other age group to be processed by police for criminal acts (Richards 2011). It is commonly accepted, however, that most young people will ‘grow out’ of offending as they mature, and offending rates decline significantly in early adulthood (Richards 2011; but see also Payne & Weatherburn 2015; Weatherburn, McGrath & Bartels 2012). Indeed, the so-called age–crime curve—which indicates that offending increases from late childhood, peaks around 15 to 19 and then declines in the early 20s (Farrington 1986)—is one of the most established tenets of developmental criminology.

Juvenile offenders are commonly charged with offences against property, such as graffiti, vandalism and petty theft, and very rarely for serious offences such as homicide and sexual assault (Richards 2011). For instance, in 2015–16, sexual assault and related offences accounted for just three percent of principal offences for which a young offender was proceeded against by police (Australian Bureau of Statistics 2017b).

Juvenile offenders are also different from adult offenders in their neurobiology. Rapid brain development in adolescence affects a youth’s emotional regulation and response inhibition, making them more prone to taking risks and particularly susceptible to the influence of peers (Siegel 2014). These factors limit an adolescent’s psychosocial maturity, a deficit that has been shown to contribute to their involvement in crime (Lardén et al. 2006). Steinberg and Scott (2003) have argued that psychosocial immaturity restricts a young person’s decision-making capabilities so much that it may also reduce their criminal culpability. In addition, young offenders have higher rates of intellectual disability, mental illness and victimisation than both the adult population under supervision of the criminal justice system and the population in general, which makes them a particularly vulnerable and high-needs group (Frize, Kenny & Lennings 2008).

The difference between juvenile offenders and adult offenders is recognised in international law (see Convention on the Rights of the Child 1990; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985), in Australia’s *Crimes Act 1914* (Cth) ss 4M, 4N and *Criminal Code Act 1995* (Cth) ss 7.1, 7.2, and in state and territory legal systems (see *Young Offenders Act 1997* (NSW); *Children (Community Service Orders) Act 1987* (NSW); *Children and Young Persons Act 1989* (Vic); *Children, Youth and Families Act 2005* (Vic); *Youth Justice Act 1992* (Qld); *Children’s Court Act 1992* (Qld); *Young Offenders Act 1994* (WA); *Children’s Court of Western Australia Act 1988* (WA); *Young Offenders Act 1993* (SA); *Youth Justice Act 1997* (Tas); *Children and Young People Act 2008* (ACT); *Crimes (Restorative Justice) Act 2004* (ACT); *Youth Justice Act 2005* (NT)).

Each Australian jurisdiction sets the minimum age of criminal responsibility at 10 years, with the presumption of *doli incapax* operating for children aged 10 to 14 years (see *Crimes Act 1914* (Cth) ss 4M, 4N; *Criminal Code Act 1995* (Cth) ss 7.1, 7.2; *Criminal Code 2002* (ACT) ss 25, 26; *Children (Criminal Proceedings) Act 1987* (NSW) s 5; *Criminal Code Act 1983* (NT) ss 38(1)–(2); *Criminal Code Act 1899* (Qld) ss 29(1)–(2); *Young Offenders Act 1993* (SA) s 5; *Criminal Code Act 1924* (Tas) ss 18(1)–(2); *Children, Youth and Families Act 2005* (Vic) s 344; *Criminal Code Act Compilation Act 1913* (WA) s 29). *Doli incapax* recognises that children mature at different times and allows for a rebuttable presumption that children in this age group are not legally responsible for their actions (Richards 2011). The age at which a person is to be treated as an adult for criminal responsibility is 18 years in all Australian jurisdictions, except for Queensland, where it is 17 years (*Children and Young People Act 2008* (ACT) ss 8, 69; *Children (Criminal Proceedings) Act 1987* (NSW) s 3; *Children, Youth and Families Act 2005* (Vic) sch 3; *Youth Justice Act 2005* (NT) s 6; *Youth Justice Act 1992* (Qld) sch 4; *Young Offenders Act 1993* (SA) s 4; *Youth Justice Act 1997* (Tas) s 3; *Young Offenders Act 1994* (WA) s 3). However, the Queensland Government recently passed legislation that will increase the age of responsibility to 18 (see *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld)).

These frameworks provide for a separate system of criminal justice that is responsive to both the developmental needs of young people and their potential for rehabilitation (Richards 2011). Australia's juvenile justice system places a special emphasis on diversion, restoration and rehabilitation in its dealings with young people (Weatherburn, McGrath & Bartels 2012). This emphasis is backed by several international instruments to which Australia is a signatory, which require the prioritisation of diversion and the best interests of the child and incarceration as an absolute last resort for the minimum time necessary (Convention on the Rights of the Child arts 37(b), 40(3)(b); Beijing Rules, rules 11, 17.1(b)–(c), 19.1). Under these instruments, criminal sanctions must serve some rehabilitative or restorative function (Beijing Rules, rule 17.1(b) commentary; see also O'Brien, cited in Mason-White & Pane 2015: 35). As a signatory to the Convention on the Rights of the Child, Australian executives must act in accordance with these provisions unless legislation specifies otherwise (*Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273).

## Principles for sentencing young offenders

There is debate in juvenile justice and corrective services between the merits of a welfare model of criminal justice that prioritises offender rehabilitation and a justice model that emphasises accountability and punishment (see for example Cunneen, White & Richards 2015). The respective emphases of welfare versus justice shift continuously, often in response to social and political pressures, and both elements are present in the juvenile justice system (Vignaendra & Hazlitt 2005). However, on the whole, juvenile justice in Australia is more welfare-orientated than the adult criminal justice system (Richards 2011). This is exemplified by the provisions in legislation such as the *Children, Youth and Families Act 2005* (Vic), s 362(1)(b)–(d) of which stipulates that courts must have regard to the desirability of reducing stigma and having the child live at home and maintain their education. In contrast, the *Sentencing Act 1991* (Vic) limits the purposes of adult sentencing to punishment, deterrence, rehabilitation, denunciation and community protection (*Sentencing Act 1991* (Vic) s (5)1). This distinction shows clearly the differential emphasis on needs in juvenile justice and deeds in the adult criminal justice system.

Like adults, most juveniles sentenced for a criminal offence receive non-custodial penalties such as fines, work orders and community supervision (87% and 91% respectively: Australian Bureau of Statistics 2017a). There are also a range of diversion options available for young offenders, including warnings, formal and informal cautions and youth justice conferences (see for example *Young Offenders Act 1997* (NSW); for discussion, see Weatherburn, McGrath & Bartels 2012). These measures seek to limit the stigmatisation of juveniles and their contact with more serious offenders, in order to assist them to grow out of crime (VSAC 2012; Vignaendra & Hazlitt 2005).

The prioritisation of rehabilitation for juvenile offenders is further cemented in common law. In the case of *Director of Public Prosecutions v TY* (No. 3) (2007) 18 VR 241, Justice Bell justified less punitive sanctions for young offenders on the basis that they 'lack the degree of insight, judgement and self-control that is possessed' by adult offenders (2007: 242). In *R v Wilcox* (Unreported, Supreme Court of NSW, 15 August 1979), Justice Yeldham stated during sentencing that, 'In the case of a youthful offender...considerations of punishment and of general deterrence of others may properly be largely discarded in favour of individualised treatment of the offender, directed to his rehabilitation.'

However, the primacy of rehabilitation becomes less certain in the case of serious and persistent offending. Chief Justice Martin has stated that 'there are times when the offending by a young person...is so serious that considerations of youth and rehabilitation must take second place to the elements of punishment, denunciation and general deterrence' (*The Queen v Holmes* [2009] NTCCA 16: [16]). In sentencing young offenders, judicial officers will often make a distinction between 'children's crime' and 'adult crime', the latter implying a level of maturity that supersedes the application of juvenile sentencing principles (see *The Queen v Bus and AS* (Unreported, NSW Court of Criminal Appeal, 3 November 1995); Yehia 2007). In the case of *R v WKR* (1993) 32 NSWLR 447, Justice Sully stated at 459 that the offence of sexual assault committed by a youth aged 16 years and nine months 'is a crime which is, in the nature and incidents, an adult crime rather than a crime which can be conceptualised sensibly as deriving from the offender's state of dependency and immaturity'. However, the violence of the offence does not of itself necessarily establish that the youth is acting as an adult (*MJ v The Queen* [2010] NSWCCA 52).

Zimring (1998) has argued against correlating the seriousness of offending with a youth's level of maturity. He suggested that serious and gross offending may actually indicate severe immaturity. This argument is particularly pertinent to juvenile sex offenders, who, despite the seriousness of their crimes, can blur the line between victim and offender and often have exceptionally complex needs.

## Understanding the needs and deeds of juvenile sex offenders

Young people with sexually abusive behaviours are likely to have experienced significant childhood trauma and have often been exposed to neglect, physical, sexual and/or emotional abuse, had early exposure to sex and pornography and have often experienced social isolation, as well as disengagement from school (O'Brien 2011; Seto & Lalumière 2010). This does not limit the gravity of their offences. As recognised in a recent report on inter-agency responses in England and Wales to young people who sexually offend, 'the impact of their behaviour can be extremely damaging, and often affects other children and young people' (Criminal Justice Joint Inspection 2013: 8).

A meta-analysis by Seto and Lalumière (2010) found higher rates of anxiety and low self-esteem among adolescent sex offenders than adolescent non-sexual offenders, though no difference was apparent in the prevalence of mood disorders. A study comparing sex-only adolescent offenders to adolescents who had offended in a variety of ways, including sexually, found that sex-only offenders had lower rates of antisocial personality, psychiatric issues and substance use disorder (Pullman et al. 2014). Furthermore, only a minority of juvenile sex offenders have deviant sexual arousal patterns (Ryan & Otonichar 2016). These findings suggest that psychopathology may play a more limited role in some adolescent sexual offending than in other antisocial behaviours.

Overall, young people are unlikely to commit sexual offences and only a very small proportion (1%) of juveniles brought before the courts are there for sexual offences (Richards 2011). However, juveniles account for a high proportion of sexual offences committed against children (Warner & Bartels 2015). In the Canadian context, it has been estimated that juvenile sex offenders account for 20 percent of all sexual assaults and 50 percent of all child sexual abuse (Barbaree & Marshall 2006).

The difficulties of prosecuting sexual assault cases are well known. The Centre for Innovative Justice (2014) in Victoria has suggested that, due to the high standards of evidence demanded by the criminal process and social attitudes about gender and sexual violence, the chance of successfully prosecuting an incident of sexual assault is as low as one percent. For sexual offences committed by children, the chances are likely even lower (Anderson, Richards & Willis 2013). The Victorian Law Reform Commission (2004) has highlighted several additional challenges in cases of juvenile sexual offending, including the youth of the victim(s) and a belief that sexual abuse by children and young people is less serious than abuse perpetrated by an adult. Barriers to reporting sexual offences are particularly strong in Indigenous communities, due in part to centuries of forced intervention from the state (Parliament of New South Wales 2010; see also Willis 2011).

Cossins (2006) elaborates on some of the difficulties involved in prosecuting sexual assault cases with young victims. These include a lack of corroborating and forensic evidence, delays in reporting the offence and a focus on the child's credibility during trial. Multiple jury warnings and directions given in such cases can confuse jurors and undermine evidence given by children.

Fortunately, there is no evidence to suggest that juvenile sex offenders will become adult sex offenders (NSW Commission for Children and Young People 2010; Warner & Bartels 2015). In fact, Smallbone (2006) believes it is important to recognise that sexual offences committed by young people are not necessarily manifestations of sexual deviance; rather, they are often part of an overall pattern of antisocial and offending behaviour. Daly et al. (2013) compared recidivism rates for juvenile sex offenders whose cases were finalised in court, by conference or with a formal caution. With follow-up times ranging from six to 84 months, they found that 54 percent of young people had been charged with a new non-sexual offence, but only nine percent had been charged with a new sexual offence. This matches national and international findings of generally low sexual recidivism rates among juvenile offenders (see Nisbet, Wilson & Smallbone 2004). Zimring, Piquero and Jennings (2007) found that only a 'quite small' fraction of juvenile sex offenders committed sex offences as adults, while the best predictor of such further offending was the frequency of juvenile offending generally, not whether there was sexual offending as a juvenile.

More recently, Lussier et al. (2012) examined the offending trajectories of a sample of 498 juvenile sex offenders in the Netherlands whom they followed up retrospectively and prospectively from late childhood into adulthood. They found seven distinct offending trajectories, of which only two related to sexual (re)offending. Lussier et al. accordingly concluded that desistance from sexual offending is the norm and ‘virtually all [juvenile sex offenders] will desist from sexual offending, but at a different rate’ (2012: 1,578). Cale et al. (2016) recently built on this research by examining longitudinal data for 217 adolescent sex offenders referred for treatment to a clinical service in Queensland between 2001 and 2009. Cale et al. identified four categories of offenders, which they termed ‘rare offenders’, ‘late-bloomers’, ‘low-rate chronics’ and ‘high-rate chronics’, with the first group around twice as likely as the others to have been referred to a service only for sex offences. The authors suggested that their analysis of different offending trajectories could shed light on different motivations for adolescent sex offending.

As noted above, Daly et al. (2013) found a high overall recidivism rate among juvenile offenders. These findings were recently confirmed by Payne and Weatherburn (2015) in their study of 8,797 juvenile offenders in New South Wales (NSW). They found that 58 percent of young people were reconvicted within 10 years, although this ranged from 53 percent for those who were cautioned to 68 percent for those whose matter was finalised in court. This suggests that, by the time a young person is formally cautioned or convicted, offending behaviour may be relatively entrenched. These findings point to an unmet need for targeted and well-resourced intervention programs that address underlying criminogenic factors early in a juvenile’s offending career (Weatherburn, McGrath & Bartels 2012). Early intervention programs that respond to general offending may also reduce the risk of sexual offences committed as an extension of antisocial and offending behaviour (Smallbone 2006).

## Sentencing juvenile sex offenders

Judge Robertson, former President of the Children’s Court of Queensland, has stated that ‘in the most difficult of all tasks facing a Judge, the sentencing of offenders, the sentencing of youthful offenders for serious sexual crimes and other crimes of violence stands out as one of the most challenging’ (quoted in Nisbet 2012: 3). Judicial officers appear to struggle to balance the youth of the offender with the gravity of their crime. As the following cases will show, judicial officers take into account a range of factors when determining an appropriate sentence, including the age and maturity of both offender and victim, the offender’s level of remorse and their potential for rehabilitation.

The case of *OH v Driessen* (No. 2) [2015] ACTSC 354 is a recent example of the court taking an individualised approach to justice in its determination that, despite the seriousness of the offence, the offender’s circumstances did not warrant a sentence of severity. OH was convicted of engaging in sexual intercourse with a person under the age of 10 years, a crime which carries a maximum penalty of 17 years’ imprisonment (*Crimes Act 1900* (ACT) s 55(1)). He was 13 years old at the time of the offence and the victim was aged seven. In sentencing OH to a 12-month good behaviour bond with community supervision and therapeutic treatment, Acting Chief Justice Refshauge noted the offender’s prospects for rehabilitation, his voluntary attendance at treatment, and his positive engagement with education and employment (2015: [22]–[33]).

Similarly, in *Western Australia v "A Child"* [2007] WASCA 115, the Western Australian Court of Appeal upheld an 18-month intensive youth supervision order for an offender who, when aged 14, was convicted of indecent dealing and sexual penetration of a child under 13 years of age in respect of a six-year-old victim. The court emphasised rehabilitation in its decision to grant a non-custodial sentence, citing the offender's 'adolescence, his significant cognitive limitations...lack of any prior sexual offending [and] the continuing support and influence of his mother' (2007: [21]).

Where offenders have a history of offending behaviour and appear to lack remorse, judges are more likely to impose custodial sentences. In *RP v The Queen* (2015) 90 NSWLR 234, the successful rebuttal of *doli incapax* was upheld against an offender who, aged 11 years at the time of the offence, committed aggravated sexual assault against his seven-year-old half-brother. The applicant, an adult at sentencing, was a repeat offender who had already been sentenced for three similar offences against other siblings. This, along with the offender's apparent lack of remorse, led Justice Hamill in the New South Wales Court of Criminal Appeal to concede that 'personal and general deterrence [were] important considerations despite the Applicant's young age' (2015: [106]). The overall sentence of two years and five months with a non-parole period of 11 months was upheld.

In *The Queen v KAL* [2013] QCA 317, a sentence of four years with an order to serve 70 percent of the detention period was modified so that the offender was required to serve a total of two years in detention. The offender was 14 years old when he committed a violent rape against a 16 year old. He was on probation at the time of the offence and had a long history of non-sexual offending. His background was described as 'shockingly dysfunctional' and involved extensive substance misuse, emotional and sexual abuse and neglect. The offender was judged to have limited empathy for the victim and a high risk of reoffending. In upholding the relatively lengthy sentence but modifying the detention period, the Queensland Court of Appeal sought to balance the competing principles of community protection and detention of young offenders for the shortest time possible.

The focus on rehabilitation, even in serious cases of sexual violence, appears as a common thread when sentencing juvenile sex offenders. Even when community protection is deemed an important consideration, such as in the case of KAL, the custodial sentence is typically framed as necessary for the offender to address the factors that underlie their offending behaviour. Sentencing almost always includes a condition that the offender undergo specialist treatment for sexually abusive behaviours (Bouhours & Daly 2007; Warner & Bartels 2015).

## Treatment for sexually abusive behaviours by young people

Given the centrality of treatment to sentencing, it is useful to know what treatment approaches are the most successful and what, if any, barriers young people and their families face in accessing treatment. It is to this issue that this paper now turns.

Overall a growing body of research has shown that programs specialising in the treatment of juvenile sex offenders result in lower recidivism rates (Worling & Langton 2012). While more research is needed to fully understand which treatment components work best with particular offender typologies, there is general acknowledgement that an ecological or multi-systemic approach to therapeutic treatment is most effective for reducing sexually abusive behaviours (O'Brien 2011; see also Borduin et al. 1990; Borduin, Schaeffer & Heiblum 2009; Henggeler et al. 1986; Henggeler et al. 2009; Letourneau et al. 2009).

Multi-systemic therapy (MST) is a leading example of an ecological approach. It is a comprehensive family- and community-based treatment that has been adapted for a number of clinical and family problems including problem sexual behaviours (Henggeler & Schaeffer 2016). MST engages highly qualified therapists to work intensively with young people and their families, designing strengths-based interventions that use pragmatic family therapies and cognitive behavioural therapy (Henggeler & Schaeffer 2016).

MST takes much from Bronfenbrenner's (1979) social ecological model by addressing the interplay between various aspects of the child's environment. Interventions seek to target risk factors both within and between domains, including family, peers, school and community, to maximise the likelihood of positive change (Henggeler & Schaeffer 2016; Worling & Langton 2012). Caregivers are central to achieving long-term goals and substantial effort is made to strengthen and mobilise carer skills and resources.

In MST, treatment is tailored to the child's and family's unique needs and strengths, and young people are treated with dignity throughout the process (Worling & Langton 2012). Common treatment goals include increasing accountability, post-traumatic stress recovery, developing offence-prevention strategies, enhancing awareness of victim impact, prosocial sexual attitudes and family relationships. The ultimate goal of MST, however, and the one most credited with its success, is creating a context that supports adaptive and prosocial youth and parent behaviour (Henggeler & Schaeffer 2016).

Pratt (2013) looked at the efficacy of community-based programs for adolescents who sexually harm and found that they can offer an effective low-cost alternative to residential treatment, while allowing the young person to continue to live in the community and their family home. Pratt examined the Sexually Abusive Treatment Services for young people up to the age of 18 years in Western Australia (see Anglicare WA 2015). The program has been shown to be effective with children and adolescents aged 10 to 14 years (Pratt 2013). It is unclear whether outcomes for 15 to 18 year olds have been properly evaluated. However, the program's success with younger offenders does suggest community-based treatment programs can safely keep young persons in the community and reduce recidivism rates.

The Male Adolescent Program for Positive Sexuality (MAPPS) is another community-based treatment program that has been operating in Victoria since 1993. It uses a developmentally-informed approach that considers the neurological and relational impacts of trauma and sub-optimal attachment relationships (Pratt 2014). Using a mix of group, individual and family therapy, the program seeks to build offender accountability and prosocial knowledge, skills and attitudes to manage life without offending (Victorian Department of Health 2016). Like MST, MAPPS considers the contextual framework of the child's lived experience as central to treatment, and includes intensive work with family and/or caregivers (Pratt 2014). New Street Adolescent Services in New South Wales and the Mary Street Adolescent Sexual Abuse Prevention Program in South Australia both use similar approaches (Flanagan 2003; KPMG 2014).

There are many benefits to providing treatment in the community rather than secure settings (Hunter et al. 2004). It allows for greater emphasis on an ecological model and increases the likelihood of familial involvement in treatment. There are also valid concerns regarding custodial placements for young people, due to their developmental vulnerabilities and potential for (re)traumatisation. Separation from society and family may further exacerbate attachment difficulties (Rich 2006), while generating a sense of rejection, negative self-image and antisocial attitudes (Holman & Ziedenberg 2013).

When a young person has offended against siblings, it will be important to consider whether they can stay at home. The abused child must receive support and counselling from a professional and be able to feel safe in their home. In assessing the risk of reoffending in the home, a number of factors will come into play, including parenting styles and skills, the home environment, family expectations and dynamics, and the duration and severity of abuse (Pratt 2013).

The Griffith Youth Forensic Service is one program that has had success in 'closing the gap' on sexual recidivism rates for Indigenous and non-Indigenous young people post-treatment. The program focuses on providing equal access to high-quality treatment services in remote areas; establishing collaborative partnerships between treatment providers, the client, their family and the community; and taking a multi-systemic assessment and treatment approach that targets individual, ecological and situational factors related to offending (Allard et al. 2016).

## Treatment barriers

For young people who have not come to the attention of the criminal justice system for sexual offences, there are specialised therapeutic services available in most metropolitan centres. However, these services are struggling to meet referral demands, and access for regionally- and remotely-located youth can be challenging or impossible (O'Brien 2011). According to O'Brien, this means that, in some remote areas, a young person may serve their entire community sentence without receiving any specialised treatment.

There are also concerns that eligibility for some therapeutic services is contingent on a conviction or a guilty plea (O'Brien 2011). As stated earlier, attrition rates are exceptionally high for incidences of adolescent sexual offending, meaning that young people with sexually abusive behaviours who have their charges reduced through plea negotiations or withdrawn for lack of evidence may not get the treatment they require.

There are specific issues in respect of Indigenous young people. A 2003 Western Australian study found that, post-treatment, Indigenous youth were three times more likely to reoffend sexually than non-Indigenous youth (Allan et al. 2003). Many Indigenous young people face a number of additional barriers to desistance from crime, including being more likely to live in rural and remote areas with backgrounds of sustained disadvantage and to experience more intensive police surveillance than non-Indigenous offenders (Cunneen, White & Richards 2015).

While the above factors can influence the efficacy of treatment, it is also likely that a failure to recognise the unique cultural, social and historical contexts of Indigenous lives has contributed to poor treatment outcomes. Accordingly, treatment should be culturally relevant to the young person in order to be effective (Allard et al. 2016). Smallbone (2009: 17) recommends that any sex offender treatment 'acknowledge the diversity among the various language and cultural groups, and...engage in meaningful and constructive ways not only with individual offenders but also with their families and local communities'. Allard et al. (2016) also noted the importance of treatment being field-based and involving the formation of local collaborative partnerships. More generally, programs are unlikely to be effective if they operate in isolation from, or fail to address the legacy of, trauma, racism and systemic issues such as poverty and homelessness (Australian Institute of Health and Welfare 2013).

## Treatment innovations

In 2005, Victorian legislators took steps to rectify treatment gaps by introducing therapeutic treatment orders that allow the family division of the Children's Court to direct a young person aged between 10 and 14 years who has demonstrated sexually abusive behaviours to take part in treatment without criminal justice intervention (see *Children, Youth and Families Act 2005* (Vic) part 5). Most young people and their families will enter therapeutic treatment voluntarily (Pratt, Miller & Boyd 2012); however, this approach can effectively mandate treatment without the need for a conviction (Pratt 2013). The introduction of therapeutic treatment orders is currently being considered in Tasmania (CEASE 2016).

Other innovative judicial responses to juvenile sex offenders include amendments made to the *Magistrates Court Act 1989* (Vic) s 4R to establish a Sexual Offences List. In 2009, the Criminal Division of the Melbourne Children's Court introduced a pilot specialist offences list for children and young people charged with sexual offences. Hearings for matters in the list are held in a separate courtroom to facilitate a more respectful and sensitive approach. More time is available for meaningful discussion to take place between the judge, prosecution, defence counsel and accused (Bowles 2013). The list has facilitated a diversionary approach where, in appropriate cases, the matter is referred to the Children's Court Clinic for assessment and/or counselling. The referral may be made on the understanding that, if the young person attends counselling and/or complies with treatment, the charges will be withdrawn. This facilitates access to treatment for young people who are unlikely to plead guilty or have the offence proven in court. The prosecution and victim's family must agree to such a course of action.

Restorative justice conferencing is another innovative approach that has been operating in South Australia for many years. Restorative justice conferencing operates as an alternative to court processing and brings all the parties relevant to an offence together, including the victim, offender and, where appropriate, their families and communities. It is a facilitated and structured process that provides a forum to discuss and resolve the impact of the offence. It requires willing and informed participation by both the victim and offender, and the offender must take responsibility for their behaviour (Daly 2006; for a recent discussion of restorative justice in the context of sexual offending, see Bolitho & Freeman 2016).

South Australia and New Zealand are the only jurisdictions in the world to currently offer restorative justice conferencing for juvenile sex offenders (O'Brien 2011), in part because sexual offences are typically seen as too sensitive and serious a crime to be resolved in this way (Centre for Innovative

Justice 2014). However, in light of poor conviction rates for sexual offences, there have been increasing calls for expanded use of restorative justice to improve the legal response for victims and offenders (Centre for Innovative Justice 2014; Daly 2008). It should be noted that the Australian Capital Territory (ACT) has committed to making restorative justice conferencing available for young and adult offenders accused and/or convicted of a sexual offence from 2018 (see *Crimes (Sentencing and Restorative Justice) Amendment Act 2016* (ACT) s 16; Legislative Assembly for the ACT 2016). The experience in the ACT will doubtless be instructive for other Australian jurisdictions which may also be considering restorative justice conferencing for sexual offences.

Daly et al.'s (2013) evaluation of juvenile sex offence cases found that those which proceeded through a conference were resolved more quickly, while matters that went to court often had the charges downgraded. Outcomes from conferences tended to focus on changing the offender's behaviour, with referral to specialist treatment a key feature (Daly 2010). Daly and Curtis-Fawley (2006: 237) concluded that, overall, 'conferencing has the potential to offer victims a greater degree of justice than conventional court processes'. One context in which this may be of particular significance is intra-familial offences where there is an ongoing relationship—for example, juvenile sex offending against siblings or cousins. On the other hand, Cossins has expressed concern that restorative justice conferencing in such circumstances 'will be unable to defuse the power relationship between victim and offender and will re-traumatize victims compared with recent criminal justice reforms that are designed to ensure that vulnerable victims do not have face-to-face contact with offenders' (2008: 372). The policies for the proposed ACT model are being designed in close consultation with victim representatives to ameliorate this concern.

## Conclusion

Juvenile sex offending is a serious and harmful behaviour that requires an immediate and careful response. It is clear that children and young people who sexually offend have different needs to adult sex offenders and this must be considered when they come before the courts. It is also clear that early intervention and appropriate treatment are vital if young people who have sexually offended are to lead healthy and respectful sexual lives. The challenge for judicial officers and justice officers, then, is to develop appropriate sentencing and treatment regimes that promote offender rehabilitation and accountability, while also providing justice and safety for victims and communities.

This paper has shown that Australian judicial officers are active in this pursuit and generally emphasise treatment in their sentencing, even when specific deterrence and community safety are prominent concerns. Multi-systemic and ecological approaches to treatment have shown promising results in reducing sexual recidivism. However, access to treatment can be inadequate in rural and remote areas and treatment will have limited efficacy if not culturally and individually tailored. There is also a great need to address the very high rates of case attrition for juvenile sex offences and to consider innovative judicial measures that better meet the needs of victims and offenders, such as restorative justice conferencing and therapeutic treatment orders. In particular, it must be remembered that although juvenile sex offenders may have committed serious offences, including against other children, they themselves are also vulnerable and responses therefore need to take this into account.

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**Riddhi Blackley is a recent graduate of the Bachelor of Social and Community Studies/Bachelor of Social Science in Justice Studies at the University of Canberra, and a Masters of Social Work student with the Australian Catholic University. She works as an Alcohol and Other Drugs Case Manager with CatholicCare Canberra Goulburn.**

**Lorana Bartels is Professor and Head of the School of Law and Justice at the University of Canberra and an Adjunct Professor at the University of Tasmania.**

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GPO Box 1936  
Canberra ACT 2601, Australia  
Tel: 02 6268 7166

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