

PRACTICE DIRECTION NO. 1 OF 2011

YOUTH DRUG AND ALCOHOL COURT PROGRAM

This Practice Direction takes effect from 1 September 2011.

1. Objective

The Youth Drug and Alcohol Court ('YDAC') is a program of the Childrens Court ('the Court') concerned with reducing drug and/ or alcohol related criminal activity by children and young people through judicial and therapeutic interventions that are designed to reduce or manage drug and/ or alcohol use. It provides a sentencing process that aims to divert young offenders from custody by addressing the issues related to drug and alcohol offending in a holistic way.

It is anticipated that the YDAC Program will proceed on a trial basis for a period of two years, and that an evaluation will be conducted to assess the effectiveness of the program.

2. Sittings

The YDAC will be conducted on Thursday mornings commencing at 10am, or at such other times as the Childrens Court Magistrate directs. The YDAC will be presided over by the Childrens Court Magistrate, or such other magistrate who has been assigned to act as Childrens Court Magistrate and who is sitting in the YDAC on any particular day.

3. Referral to the YDAC Program

A child or young person may be referred to the YDAC as follows:

- 3.1 The child or young person may make an application to the Court for the matters before the Court to be referred to the YDAC.

3.2 If the Childrens Court considers, of its own motion or after submissions by either the prosecution or the defence, that the child or young person is prima facie eligible or may be able to prove eligibility for participation in the YDAC program and should accordingly be assessed, the Court may refer the child or young person for assessment, in accordance with paragraph 5 below, as to their suitability for the YDAC program, with or without the consent of the young person.

4. Criteria

The following criteria apply to all referrals to the YDAC program:

- 4.1 The offence must be one in relation to which a term of imprisonment is a prescribed penalty and one that can be dealt with to finality in the Childrens Court (and consent to the jurisdiction of the Childrens Court has been given where appropriate);
- 4.2 The child or young person has a demonstrable drug and/ or alcohol problem;
- 4.3 The child or young person is resident in the ACT or is otherwise eligible to be supervised by ACT Community Youth Justice;
- 4.4 The child or young person has pleaded guilty to or admitted the offence, or the court exercises its discretion to refer and accept a child or young person who has pleaded 'not guilty' to some offence(s) (but guilty to the majority of matters) where the overall penalty will not alter significantly if the child is found guilty of those defended matters.

5. Referral procedure

- 5.1 At the time of referral for assessment for suitability for the YDAC program, the prosecution shall put, where relevant, before the Court:
 - An agreed statement of the facts in relation to the circumstances of the offence(s);
 - Any further relevant evidence that might ordinarily be provided to a court on sentencing;
 - The child or young person's antecedents.

- 5.2 On an application for referral to YDAC, the child or young person may give evidence and call witnesses or tender statements or other evidentiary material. The child or young person or their legal representative, and the prosecution, may make submissions in respect of the application for referral. The Court may determine the application immediately or adjourn the decision to another time.
- 5.3 The Court may either agree or decline to refer the child or young person to the YDAC. If the Court declines to make the referral, the magistrate shall endorse the bench sheet "YDAC declined" and proceed to deal with the matter as an ordinary sentence matter in the Childrens Court.
- 5.4 If the Court agrees to refer the child or young person for assessment for the YDAC program, an initial assessment by the Court Alcohol and Drug Assessment Service (CADAS) shall be requested by the Court. The matter shall then be adjourned into the YDAC on a Thursday in at least 2 weeks time.

6. First appearance at the YDAC

- 6.1 The purpose of the first appearance at the YDAC is to determine the child or young person's eligibility to participate in the program. At least the day before the first appearance before the YDAC, the Court, the prosecution and the child or young person's legal representative shall be provided with a written report of the initial assessment by CADAS.
- 6.2 After considering that report both the prosecution and the child or young person or their legal representative may make further submissions to the Court concerning the child or young person's eligibility. The Court will decide the child or young person's eligibility.
- 6.3 The YDAC may exercise a discretion to exclude a child or young person who is otherwise eligible, because:
- There is no current vacancy on the program;
 - There is no likelihood of a sentence of imprisonment being imposed;

or

- The child or young person's offence or offending history is so serious that despite satisfactory completion of the YDAC Program, the child or young person would still be likely to be sentenced to a period of imprisonment.

- 6.4 If the child or young person is found to be ineligible or is otherwise excluded from the program, the YDAC will note on the bench sheet "ineligible for YDAC" and note the reason(s). The YDAC shall then adjourn the matter to the Childrens Court for finalisation. If relevant, a Pre-Sentence report may be requested.
- 6.5 If the child or young person is found to be eligible and the YDAC does not exercise its discretion to exclude the child from the program, the bench sheet is to be endorsed "Eligible for YDAC". When a child or young person is found to be eligible the matter is to be adjourned for a period of at least four weeks for a Comprehensive Assessment by the Joint Assessment and Review Team (JART) and for the development of an appropriate Program Plan.
- 6.6 The Comprehensive Assessment may be conducted either in custody or in the community if the child or young person is on bail.

7. Joint Assessment and Review Team (JART)

- 7.1 JART is a body convened by the Director General under the *Children and Young People Act 2008* for the purpose of assisting the YDAC by:
- Performing assessments and conducting reviews of children and young people who are found to be eligible for the YDAC program;
 - Developing (and reviewing) a Program Plan for each child or young person admitted to the YDAC program;
 - Supervising the child or young person's progress on the YDAC program;
 - Providing reports to the YDAC at each Report Back Session or as requested by the YDAC.

7.2 JART will usually be constituted by a representative of Community Youth Justice, Care and Protection Services, Health (including both CADAS and Forensic Mental Health as appropriate) and Education. It is acknowledged that other organisations or areas of government may be involved with the child or young person from time to time as appropriate. Accordingly, the composition of JART may vary on a case by case basis at the discretion of the Director General, provided that a representative of Community Youth Justice shall always be the nominal convenor.

8. Appearance in the YDAC following Comprehensive Assessment

- 8.1 The purpose of the first such appearance in the YDAC is to determine whether a suitable Program Plan has been developed for the child or young person and, if appropriate, to formally accept the child or young person into the YDAC program.
- 8.2 At least two full days prior to such an appearance the Court, the prosecution and the defence shall be provided with a written report of the Comprehensive Assessment by JART.
- 8.3 If a Program Plan cannot be developed for the child or young person, or if the child or young person does not consent to being admitted to the YDAC program, or if the YDAC is of the view that the child or young person should otherwise not be accepted into the YDAC program, the YDAC shall adjourn the matter back to the Childrens Court for finalisation. A Pre-Sentence Report may be ordered at that time.
- 8.4 Where a suitable Program Plan has been developed and the child or young person consents to enter the program, the YDAC may, depending upon the circumstances of the case, accept the child or young person into the YDAC program, or stand the matter over for consideration and decision.
- 8.5 Upon acceptance into the YDAC program:
- The bench sheet will be endorsed by the court “Admitted to the YDAC Program”;
 - The matter shall be adjourned for sentence for a period of not less than six months;

- The child or young person may be initially remanded in custody, or placed on bail with conditions that facilitate participation in the Program Plan;
- If the child or young person is granted such bail, there shall be a condition on such bail that the child or young person shall attend all Report Back Sessions with the YDAC as directed.
- A date shall be fixed for the child or young person's first Report Back Session with the YDAC .

9. Report Back Sessions

- 9.1 The objective of the Report Back Sessions is to provide an intensive monitoring process and continuing supervision of the child or young person's progress and general compliance with the Program Plan by the YDAC.
- 9.2 Initially the child or young person will meet either weekly or fortnightly with the YDAC court team, together with other support persons including family members as may be asked to attend, to discuss the child or young person's progress and compliance with the Program Plan. The YDAC court team shall be constituted by the presiding YDAC magistrate, a YDAC prosecutor, the child or young person's YDAC legal representative (generally from the Legal Aid Office) and a representative of JART.
- 9.3 At the Report Back Session, the YDAC court team shall be provided with a report (either written or oral) from the representative of JART addressing the child or young person's progress and compliance with the Program Plan during the adjournment.
- 9.4 Section 72 of the *Court Procedures Act 2004* is applicable to Report Back Sessions. They are, however, not considered to be formal court proceedings and are to be conducted with as little formality as the circumstances of the case permit, to promote open and frank discussion. Transcripts or recordings of Report Back Sessions will not be available but it will, however, be common practice for notes to be made of discussion at the Report Back Session by the magistrate to maintain a record of compliance with the program plan and decisions made.

- 9.5 The frequency of Report Back Sessions may be varied as appropriate.
- 9.6 Any decisions made at Report Back Sessions shall be made by the YDAC magistrate with the assistance of recommendations from members of the YDAC court team.
- 9.7 Any formal application to the Court, any evidence taken in relation to such an application and any formal order of the Court shall not be heard or made in a Report Back Session. It is anticipated that if the need arises the Childrens Court Magistrate will, as soon as practicable, sit as the Childrens Court and deal with such matters.
- 9.8 A Program Plan will ordinarily be completed in six months but may be extended.

10. Compliance with the YDAC Program

When the Community Youth Justice supervising officer forms the view that the child or young person is in breach of their YDAC program obligations, the breach is to be assessed as either a serious breach or a minor breach.

11. Serious breaches of the YDAC program

- 11.1 If the breach is assessed as a serious breach, or if the child or young person is at risk of serious harm due to the Program Plan non-compliance, or the whereabouts of the child or young person is not known, the supervising officer shall advise the YDAC prosecutor, who may advise the AFP that the child or young person is in breach of their bail conditions and should be brought before the court.
- 11.2 Following the child or young person's arrest for such a breach, the child or young person shall be brought before the Children's Court at the first available opportunity. That Court shall determine the issue of whether bail should, at that time, be revoked or continued until the next sitting of the YDAC. In either case the child or young person's matter shall be listed at the next sitting of the YDAC.
- 11.3 At the next sitting of the YDAC, if the breach of the Program Plan is admitted, the YDAC shall consider if the breach is of such a nature that the child or

young person's continued participation in the program should be reviewed by JART and the YDAC. If the YDAC determines that the child or young person's participation should be reviewed, the matter shall be adjourned for 2 weeks. The YDAC may revisit the issue of bail if appropriate.

- 11.4 On the adjourned date JART shall provide the YDAC with a program review report and any recommendations thought appropriate by JART. The YDAC will hear any evidence and/ or submissions in relation to whether the child or young person should remain on the YDAC program, or on an adjusted or extended YDAC program.
- 11.5 If the YDAC determines that the child should be discharged from the YDAC Program, the matter shall be placed back before the Childrens Court. That court may then proceed to sentence the child or young person or adjourn the matter for a further period and request such reports as considered necessary to finalise the matter.
- 11.6 If a child or young person's whereabouts are unknown for a period of longer than two months, and the breach of bail has been notified to the AFP, the child or young person will be automatically discharged from the YDAC program and the bench sheet shall be endorsed accordingly.

12. Minor breaches of the YDAC Program

- 12.1 If a child or young person is not complying with their YDAC program, or is not complying with the directions of JART, and the breach is not considered a serious breach, the supervising officer will direct the child or young person to attend the next sitting of the YDAC.
- 12.2 If the child does not attend the YDAC as directed, the failure to appear will be treated as a serious breach and dealt with as such, unless there is a reasonable excuse for the child or young person not complying with the direction to appear at the YDAC.
- 12.3 If the child or young person does appear at YDAC when directed to do so, the child or young person will be asked if the breach is admitted or denied. If either admitted or proved, the YDAC will hear any evidence and/ or

submissions in relation to whether the child or young person should remain on the YDAC program, or on an adjusted or extended program.

- 12.4 If appropriate the YDAC may request that JART provide the YDAC with a program review report and recommendations for further consideration by YDAC in accordance with the procedure outlined in paragraph 11.3.
- 12.5 If the child or young person continues to fail to comply with his/ her Program Plan, a further breach may be regarded as a serious breach and dealt with as such.

13. Withdrawal of consent by the child or young person

If a child or young person informs the YDAC that they withdraw their consent to continue to participate in the YDAC program, the YDAC may:

- note on the bench sheet that consent has been withdrawn;
- adjourn all matters for finalisation before the Childrens Court;
- order a Pre-Sentence Report.

14. Sentencing

- 14.1 Although sentencing of the child or young person has been deferred for the purpose of participating in the YDAC program, such sentencing shall not, at that stage, be considered as part heard before any particular magistrate. The sentencing of that child or young person may be finalised at the appropriate time by the Childrens Court Magistrate or such other magistrate assigned to act as Childrens Court Magistrate.
- 14.2 Upon successful completion of the YDAC program, the child or young person shall appear before the Childrens Court as directed for finalisation of sentencing.
- 14.3 Whether a child or young person –
- (a) successfully completes the YDAC program;
 - (b) withdraws consent to continue to participate in the program; or
 - (c) is discharged from the program;
- the Childrens Court shall, when sentencing the child, take into account the child or young person's participation in and, where appropriate,

successful completion of the program in accordance with section 33 of the *Crimes (Sentencing) Act 2005*.

- 14.4 Any sentence imposed following completion of the program shall not be more punitive than that which may have been imposed had the child or young person not participated in the program. Such a sentence may require the child to participate in the after-care phase of his/ her Program Plan as a condition of a good behaviour order.

Dated: 21 July 2011

J D BURNS
Chief Magistrate

K M FRYAR
Childrens Court Magistrate