Untangling the strands of the youth justice policy process
Insights from 30 years of youth justice research and policy advocacy in NSW

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The development of youth justice policy and the role of youth research need to be understood in the context of a complex and dynamic policy landscape. Drawing on the author’s years of experience in the non-government sector, research with policy stakeholders and insights from the policy literature, this article examines the ‘real world’ tangle of the policy process where, it is argued, research evidence is only one factor among many influencing youth justice policy decisions. The article provides a critical examination of the dynamics of the policy process and the day-to-day challenges where strands of competing discourses are shaped by structure and agency, order and serendipity, the rational and the emotional. The discussion is illustrated with examples from the work of the Youth Justice Coalition, an advocacy network based in New South Wales.

Key words: youth justice, policy development, research, media influence

This year, 2018, marks the 30th anniversary of the formation of the NSW Youth Justice Coalition (YJC, see http://www.yjc.org.au), an inter-agency advocacy group based in New South Wales. Since 1988 the aim of the group has been to advocate for systemic reform in the areas of youth justice law, policy and practice, based on the principles of human rights and social justice. This advocacy is informed by the needs and experiences of young people and children as service users, coupled with the insights and expertise of practitioners in the YJC policy network.¹ Over the years, the YJC has developed extensive policy, advocacy and research skills and for most of that time has been

¹ The author has been a member of the YJC since 1988.
acknowledged as a strategic player in the NSW policy process. However, YJC’s capacity to impact on the policy process has waxed and waned depending on, first, the readiness of the government of the day to engage in deliberative decision-making consultation and to receive advocacy input and, second, the resources available to the YJC to engage in advocacy and research.

The following discussion incorporates reflections on the policy advocacy strategies and initiatives undertaken by the YJC over the years in the context of changing patterns of policy governance and the shifting political and legislative landscape. Coalitions like the YJC have had to adapt their range of policy and research strategies in order to respond effectively to change. The YJC has enhanced its policy analytical capacity by: conducting research informed by practice; engaging in vertical and horizontal coordination and networking between organisations; and by its ability to communicate policy-related changes to interested parties and stakeholders (see Howlett 2009, cited in Goodwin & Phillips 2015b, p.249). However, this article also points out that research and evidence knowledge is itself contested and subject to both political and bureaucratic influence. Consequently, what is seen to be valued as legitimate research is context-specific. Analytical capacity requires the ability to adapt to these changing research requirements (Ransley 2011). Ultimately, the article argues that no matter how persuasive and conclusive youth justice research and evidence might be, they very rarely provide a stand-alone, direct causal impetus for policy change. This is due to the fact that the policy process is complex, and multi-layered research and evidence play a small part among many other factors shaping policy outcomes (Cairney 2018; Fishwick 2016, 2017; Kingdon 2003). In order to increase the likelihood of research and evidence having an impact on policy development, researchers need to develop a solid understanding of the policy process and hone their advocacy skills.

The article begins by providing a brief overview of policy and the complexity of the policy process. It then examines the shifting policy, advocacy and research landscape in Australia over the past 30 years before moving on to a reflection on the work of the YJC during that time. The article draws on policy literature and a major empirical study of youth justice policy decision-making in NSW (Fishwick 2016) to provide insights into the complex world of policy advocacy.

1. Understanding policy

Decisions made in the public sector are the result of efforts to balance competing societal interests, resolve power conflicts, and appease groups with widely divergent values, not the end-point of a linear, rational, instrumental exercise. Research
evidence is just one influence on a complicated decision-making process, and not necessarily the most important one, either (Newman 2017).

As stated earlier, in order for researchers to optimise the possibility of having an impact on the policy decision-making process, researchers need to become more familiar with the complexity of the policy process. An initial step is to understand how policy itself is a nebulous concept. The term is used to cover a range of practices, processes and outcomes (see Colebatch 2002; Hill 2013; Kingdon 2003). Policy can include reforms to laws, policies and practices; change in the portfolios of ministers; the allocation and withdrawal of staffing and funding resources; doing nothing in response to an issue (maintaining the status quo); deciding who are the priority clients by conducting a needs assessment or the hours of opening of a service. There are also situations where policy statements by politicians or powerful stakeholders, like the police, may symbolise a standpoint, establishing or testing out policy positions or reinforcing political capital and moral authority; these statements may not be backed by any intention to act (Newburn & Sparks 2004). Bacchi (2009) argues, too, that policy discourse is also constitutive of the problem it seeks to address. In Analysing policy: What’s the problem represented to be? Bacchi argues that dominant discourses in policy fields frame how problems are seen and dealt with, making it difficult for alternative policy views and options to gain purchase. In other words, dominant discourses marginalise or exclude other explanations and knowledges. For example, in youth justice and criminal justice there have been changes to the ways that knowledge and practices relating to the problematisation of crime and “crime solutions” are articulated. Such changes result in a drift from the dominant discourses of welfare and children’s rights to those of punitive sentencing or individual criminogenic risk assessment and management (Muncie 2009). It becomes difficult to talk of rehabilitation and social welfare programs as the basis for the delivery of youth justice services in a criminogenic “risk” policy environment.

Using insights from the work of John Kingdon (2003), we can also see how the dynamic multi-faceted nature of the policy decision-making process adds complexity to any advocacy project. Kingdon (2003) identifies how there are many shifting policy elements and streams, where setting policy agendas, the development of policy options and decision-making are uncoupled. They flow alongside each other and only occasionally intersect. In this understanding of policy, different policy players are responsible for each of these spheres. For example, politicians are generally responsible for policy agenda setting and public servants for the development of policy options (Kingdon 2003). Other policy literature also reveals that decision-making is not necessarily a linear or
vertical process where those in authority, such as ministers, decide on issues, which are then implemented by public servants and practitioners. Policy decisions also occur horizontally across departments, agencies and interest groups (Colebatch 2002; Kingdon 2003). Policy ideas can also flow upwards (Colebatch 2002; Lipsky 1980) by providing feedback up the policy chain.

Incremental policy work takes place away from the public gaze in the day-to-day operations of government, the public service and other related policy organisations. This involves the discussion and finalising of policy options, allocating finances and resources and the routine administration of programs and procedures. Participants in this kind of policy work are operating within what is termed by Cairney (2018) as the “bounded rationality” of that particular agency or policy community. Here there are “rules” of the policy game that are understood by organisational players and which set the parameters of how policy issues are framed and discussed. These rules evolve from institutional histories and are reinforced through organisational cultures, day-to-day practices, established policy and procedures and management structures of an organisation. So, for example, the ways the police problematise youth crime and discuss and develop policy and practice options, and use research and evidence within their organisation will be distinct from those of a youth work agency. There are also other set institutional routines, deadlines, protocols and policy events that shape the policy process within and between organisations (Considine 2005). Planned policy events include elections, legislative reviews, discussion of delegated legislation, audits, budget procedures, cabinet meetings and more. Community-based advocates and researchers need to be familiar with the overall discursive approaches of organisations, their rules and routines, as well as key policy events. This familiarity will assist them to maximise their opportunities to influence the policy process and optimise the impact of the research and evidence by targeting the information appropriately (Duffy 2003).

There are one-off and serendipitous events, however, that can disrupt or punctuate the policy equilibrium and lead to rapid or unanticipated change. For example, the 9/11 attack on the Twin Towers in New York (Lynch, McGarrity & Williams 2010), the Redfern and Cronulla riots and one-punch attacks in Kings Cross, NSW, have shifted the youth justice policy landscape. Sections of the media can be noisy policy players on these occasions and play a key role in escalating moral panics about crime, leading to demands for specific policy responses by governments (Cohen 2002; Jennings et al. 2017). If there is a key policy event like an election approaching, both government and opposition members will tap into newsworthy and often sensational media stories about crime and
young people to make short-term political gains (Hogg & Brown 1998; Muncie 2009). However, it can be easy to overstate the influence of the media in the setting of long-term policy agendas (Kingdon 2003). The media are only as influential as governments allow them to be (Fishwick 2016). From its early days, the YJC realised the potential of the media as a conduit for influencing policy development, and, along with other community organisations, the YJC has developed effective media strategies to communicate the findings of research reports and to establish itself as an authoritative source on key policy issues.

There are also smaller serendipitous influences on the policy decision-making process – like a word in the ear to a minister at a party – that can have both short- and long-term ripple effects on policy development (Fishwick 2016). Kingdon (2003) uses the analogy of a policy window opening unexpectedly to explain how policy advocates have to be ready with sets of policy options in order to seize the opportunities that these kinds of events present. He argues that advocates need to be part of the push to open the policy window as well as being ready to climb through the policy window once it is open.

In this brief overview of the dynamics of policy and the policy process it can be seen how the range of policy players, the layers of decision-making, create a complex environment for policy players. They need to be familiar with the dynamics of the policy process and the organisations involved in their policy field.

2. Changes in the policy and advocacy landscape

The capacity of community organisations to have an input into the policy process is also shaped by broader patterns of policy governance, administration and funding (Goodwin & Phillips 2015b). This section provides a very brief overview of the trends in public administration that have altered the advocacy landscape over the past 30 years.

In the 1970s and 1980s, emerging rights and issues-based social, environmental and community movements began to call for a greater say in government decision-making; in effect, they demanded “the democratisation” of state institutions (Goodwin & Phillips 2015a, p.100). Governments introduced policy mechanisms that opened up public administration to input from the community sector, including “a raft of new government advisory bodies, commissions of inquiry and consultative committees in a range of areas of social need” (Goodwin 2006, cited in Goodwin & Phillips 2015b, p.247). From the 1980s onwards, the NSW government, like those around Australia, engaged in a period of deliberative, consultative decision-making in many aspects of the policy process, including youth justice (Fishwick 2016, 2017; see also Goodwin 2006). Community
organisations and advocacy networks like the YJC began to develop their policy capacity and take advantage of these policy opportunities for their advocacy work. The success of the YJC’s *Kids In Justice Report* during this time is evidence of this willingness to engage with public and community input (Fishwick 2016).

Since the 1970s and 1980s, however, there has been a shift away from democratic, deliberative decision-making procedures towards a more technocratic, removed process where there are fewer opportunities for civil society to be included in decision-making and an increasing reluctance by governments to engage in deliberative decision-making processes (Goodwin & Phillips 2015a, 2015b).

These changes are partly due to the adoption of new public managerialism, economic rationalism, marketisation and public choice theory as the rationales for the delivery of public services (Goodwin & Phillips 2015a). Government-provided and government-funded services were put out to competitive tender, and, for the not-for-profit sector, this has led to a movement “from grants and project funding to output-based funding” where “new financing models involved new data collection requirements, new standards of professionalisation and new organisational structures” (Goodwin & Phillips 2015, p.10). The kinds of principles and objectives that underpinned many not-for-profit organisations (including their research and advocacy work), such as community and client empowerment, democratisation, justice, self-determination and strengthening rights, were hard to measure in output terms and were not valued by funders (Goodwin & Phillips 2015a). According to Goodwin and Phillips, as a result of this shift to efficiency, effectiveness and output funding, the community sector began to lose some of its legitimacy (2015a). Governments, especially conservative governments, began to criticise small community-based services and environmental organisations for representing and promoting special interest groups, and for being too “political”; consequently, many of them faced significant funding cuts as governments looked to larger charitable organisations who offered more generalist services and economies of scale (Goodwin & Phillips 2015a, 2015b). Not only has the capacity of community organisations to engage in particular kinds of policy work altered, but the kinds of research, evidence and information that used to be seen as persuasive in policy development has shifted.

As governments began to contract out services they also began to close their in-house policy and research sections, limiting their own capacity for evidence-informed policy and evaluation. Independent think tanks gained more purchase as lobbyists and larger charitable organisations and not-for-profits developed their own research and policy units to provide the evidence base for output measurement in their funding agreements; these
units also helped them gain professional reputational advantage in the field (Goodwin & Phillips 2015a, p.107). In addition, the growth in private companies with research and evaluation consultancy arms has made it more difficult for smaller community organisations, who may be offering a more critical voice, to influence the policy process.

New public managerialism and economic rationalism have also changed key aspects of government administration. Productivity measurement and performance auditing began to regulate the operation of public service departments, and heads of public service departments were appointed who were not necessarily experts or professionals in their subject field but capable technocratic managers (Fishwick 2016). This has had implications for their understanding and knowledge of the research, evidence and issues relevant to their particular department and their readiness to advocate within government for programs and policy options that may conflict with performance and budgetary targets.

The research and advocacy work of government-funded organisations and charities has also been subject to increasing legislative, regulatory and funding restrictions. Generally, advocacy is seen to be a key indicator of a healthy democracy and a well functioning civil society (Philanthropy Australia 2018b). It provides an avenue for governments to receive feedback on the efficacy or otherwise of policy and for policy development to be informed by the evidence of policy in practice. Advocacy also provides an avenue for governments to be held accountable by civil society and for those marginalised from the political process to have access to decision-making both directly and indirectly. However, since the years of the Howard government, with a slight reprieve during the Rudd/Gillard years, the policy advocacy work of government-funded and independent community services and charities has been subject to attack from both Federal and State governments. Although there is not enough room here to discuss this in detail, it has been noted by the UN Special Rapporteur on Human Rights Defenders and others that the increasing constraints placed on their advocacy activities in Australia have had a negative impact on democracy (see Forst 2018; HRLC 2017a; Maddison & Carson 2017; Star 2016).

Government actions include the introduction of “gag clauses” into service sector funding agreements that limit comment on government policy and remove law reform and legal policy activities from core services (Forst 2018; Maddison & Carson 2017; Sercombe 2014). Additional government actions include: funding cuts to community legal services, Aboriginal Legal Services and Environmental Defenders’ Offices that restrict their capacity to engage in research and advocacy; challenges to the Deductible Gift Recipient
status of charities that are deemed to engage in political activity or receive funding from international sources; and the criminalising of protest (see Community Law Australia 2016; HRLC 2017b; Philanthropy Australia 2018a). In many cases these actions have led organisations to “self-silence”; that is, they are not prepared to comment on government policy and practices for fear of losing funding (Goodwin & Phillips 2015a; Maddison & Carson 2017; Seccombe 2014). In this climate of constraint, the research and advocacy activities of academics and youth justice policy networks gain even more importance in relation to commentary on government policy.

3. The role of research and evidence

In light of the reality of the policy processes outlined above, it is clear that the capacity of research and evidence to directly impact on policy decision-making is contextual and that policy advocates need to understand the nuances of the policy process in a changing policy and political landscape. Policy and political commentators also argue that what constitutes research and evidence is also contestable and politically slippery (Ransley 2011; Sanderson 2003). As discussed above, in more deliberative, consultative government phases, a range of research data, including individual case histories and professional testimony, are acknowledged as legitimate sources for informing policy development; whereas in a more technocratic performance-based environment this may not be the case and other forms of research and evidence are prioritised. Since the 1990s there have been calls by governments and policy stakeholders for policy to be based on scientific, objective, empirical research. Quantitative statistically complex analyses (known variously as evidence-led, evidence-based or evidence and research-based policy, randomised control trials and meta-studies of what works) are valued above qualitative and client-informed testimony, or professional experience (Ransley 2011; Sanderson 2003). In Australia, a statement by Labor Prime Minister Kevin Rudd that policy needed to be based on “facts not fads” encapsulates this approach (Rudd 2008, cited Allard & Manning 2011, p.188). Underpinning this is the belief that scientifically rigorous research automatically leads to good policy outcomes in human services; such an approach envisions a linear, cause and effect relationship between research, evaluation and policy.

However, critics of evidence-based policy argue that is too often a political rhetorical device used to dismiss critical commentary on policy choices; that it includes cherry picking details that suit the ideological outlook of the government, with a retrospective appeal to evidence; and that it is cynically used to support decisions that have already been made – referred to as termed policy-led evidence. Cairney (2018) notes this is a key feature of government approaches to research in general, highlighting that, by necessity,
governments have a very pragmatic approach to the use of research evidence and policy to support strategic decision making. “The dynamics of political systems encourage politicians to make choices based on limited evidence, address problems that cannot be resolved by ‘the evidence’, and adjudicate between competing ideas about what constitutes ‘good’ evidence” (Cairney 2018, p.2). Policymakers usually have only a finite set of resources for making decisions and will look to in-house advice or readily available trusted sources of information to make their tasks easier. These are what Cairney and Kwiatkowski (2017) call cognitive “shortcuts” where simple solutions are easier and more convenient to process in comparison to complicated research and evidence from external sources. Policy research also shows that the presentation of research and evidence needs to be simple, easy to comprehend, PowerPoint friendly with memorable charts or phrases for it be organisationally persuasive and effective (Stevens 2010).

It is in these situations that policy advocates need to position themselves as experts in their respective fields, with readily developed options available to government policymakers. This increases the advocates’ chances of competing with influential, well-resourced lobbyists and research bodies like think tanks, consultancy firms, police and other professional associations, and private industry groups.

4. Maximising policy capacity and influencing decision-making

In order to maintain their influence as policy players, policy networks like the YJC have had to adapt and build their policy capacity and hone their advocacy and research skills in response to the changing policy landscape. The work of the YJC provides a case example of how advocates can optimise their influence on the policy process.

In the 1970s and 1980s a constellation of factors enabled the YJC to have a significant input into policy agenda setting and decision-making. There was a growing interest internationally and domestically in children’s rights and the legal process, and in implementing the principle of “best interests of the child”. At an international level, the UN Declaration of the Rights of the Child was formally being adopted as the Convention on the Rights of the Child (UNCRC), with Australian government representatives playing a large part in its development (Mezmur 2018). The Australian government signed the UNCRC in 1989, and it was ratified in 1990. In NSW, the juvenile justice section of the Department of Youth and Community Services (YACS) led by their director, were keen to develop and implement policies based on the research and evidence of international scholars specialising in diversionary juvenile justice schemes and rehabilitation, as well as in restorative justice and conferencing (see Bargen, Clancey & Chan 2005;
Fishwick 2016). The *Kids In Justice Report* 1990 captured this zeitgeist and set in motion a policy reform process that eventually culminated in the *Young Offenders Act 1997* (*YOA*, implemented in 1998). The report itself was based on an extensive research exercise involving a review of international and Australian comparative policy materials, extensive consultation with public servants, youth workers, police, solicitors, judges and other key players in children and youth services. Another component was action research with young people who were, or had been clients of juvenile justice and/or care and protection services.

It was not, however, simply the quality of the research project that drove the changes that led to the eventual implementation of the *Young Offender’s Act 1997* but sustained and skilled advocacy activities from YJC members. During the research and development of the *Kids In Justice* campaign, the YJC recognised that they needed to convince key policy players of the value of the project and the proposed reforms. The research team worked hard to include politicians, public servants and senior police in the development of the project and the reform agenda, establishing sector-wide support from the policy community for the aims and objectives of the research-informed report. Influential politicians like successive attorneys-general from both major political parties and senior public servants developed an emotional and political investment in the policy agenda and policy options; although it took seven years, they continued throughout that time to push for their implementation. During this period representatives of the YJC became members of key parliamentary committees and inter-departmental consultation groups, providing a consistent message about the reform proposals. Members built solid professional relationships (and friendships) across key agencies and at different levels of seniority within organisations (see Fishwick 2016). These personal and emotional attachments to the policy agenda were invaluable to the eventual success of the reform process.

By the mid 2000s, the kinds of deliberative and consultative policy mechanisms that had enabled the YJC and other community organisations to have a place at the policy table began to disappear and a different political and policy culture emerged. This was partly a result of the shifts in policy governance towards new public managerialism and marketisation outlined above, but was also due to the fact that many of the individuals involved in implementing the *Young Offenders Act*, including politicians, YJC members, public servants and senior police officers, had by then moved on from the sector, and their understanding and skills in youth justice policy went with them. Some of the long-established personal and professional networks were broken. In addition, the dominant discourse and associated practices underpinning youth justice policy had shifted towards
risk management and individualised treatment (Muncie 2009) and away from children’s rights, diversion and rehabilitation. In this context, it became more difficult to have input into decision-making as the kinds of research evidence that offered alternative, critical or contradictory perspectives were to some extent marginalised.

Nevertheless, the YJC alongside other community-based networks continue to engage in research and practice-informed advocacy, representing the interests of young people in contact with the youth justice system. By re-establishing professional links with key policy players, maintaining familiarity with policy processes and key events and sustaining communication and information across the network, the YJC has maintained a significant policy presence. For example, the YJC is currently engaged in a research-informed campaign to raise awareness about the impact of the New South Wales Police Force Suspect Targeting Management Plan (STMP). The STMP is a police intelligence tool targeting individuals deemed to be “at risk” of offending due to their past record or because of their association with people with a criminal record (Sentas & Pandolfini 2017). In order to raise awareness about the STMP the YJC held a well-publicised launch, inviting key policy players to attend, and this event coupled with a social media campaign led to media interest in the story. In response, the NSW Police Commissioner released a statement about the STMP and the newly established NSW Law Enforcement Conduct Commission has expressed an interest in some of the issues raised in the report.

**Conclusions**

This article has argued that the capacity of youth justice research to influence policy decision-making has to be understood in the context of a complex policy environment. By outlining the dynamics of the policy process and the changing policy landscape, the article has highlighted the importance of developing policy skills and advocacy strategies as a means of enhancing the potential of research to influence decision-making.

The role of research and evidence in informing advocacy activities and holding governments to account is vitally important, especially when the input of civil society into democratic processes is becoming increasingly circumscribed. With the de facto silencing of many government not-for-profits and the recent attack on charities, it is incumbent on academics and independent organisations like the YJC to continue to advocate for social and legal justice, especially by working alongside and on behalf of the children and young people who are marginalised from both policy and political processes.
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