

Introduction: Attention Deficit Hyperactivity Disorder, Youth Justice and the Law

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The idea of producing a Special Issue about the impact that Attention Deficit Hyperactivity Disorder (ADHD) has had on youth justice and the legal system for the *Bond Law Review* emanated from a highly successful online conference held on the 28th of November 2020 by the ADHD Foundation [<https://adhd.foundation.org.au>] entitled “*ADHD, Youth Justice, and the Law: The Jury is No Longer Out*”. The Australian ADHD Foundation, under the leadership of Ms Joy Toll OAM and Ms Dympna Brbich, among others, sought to promote greater inter-disciplinary discourse concerning the manner and means by which youth who are labouring under ADHD are managed and processed in the youth justice system.

Bringing together expert practitioners from law, forensic psychiatry, psychology, paediatrics, police and criminology, the conference sought to achieve the following five main aims:

1. To inform and encourage factual awareness of ADHD and its related conditions.
2. To dispel misinformation and myths about ADHD.
3. To reveal current ADHD management practices within the youth justice system.
4. To disclose the reality and impact of these practices on young people and their families, as well as quantify personal and societal costs caused by ADHD; and

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5. To proffer potential solutions to the identified problems.

The holding of such an event was timely given how the under-recognition of ADHD and the myths surrounding the condition have led to significant numbers of youth with ADHD entering the Youth Justice System without their condition being diagnosed and/or adequately treated, thereby increasing the likelihood of future recidivism.

ADHD is a neurodevelopmental condition, where the brain develops differently to the average neurotypical brain.¹ Those with ADHD have excessive difficulties with impulsivity, hyperactivity, paying attention, and emotional regulation. Such behaviours are often misunderstood and not accepted; nor are they well managed by mainstream society, making life difficult for those with ADHD.² People with ADHD, especially the young, are therefore more vulnerable to substance abuse as they seek alternative coping mechanisms. Many also suffer from other psychiatric conditions, which may predispose some of them to involvement in the youth/criminal justice system.³ To put this into demographical context, ADHD generally presents itself in around 5% of children⁴ and 2.5% of adults⁵ within the community. However, studies conducted by Baggio et al⁶ and Young et al,⁷ point to the significant overrepresentation of those with ADHD among incarcerated youth and adult offender populations. Alarminglly, Young and colleagues found that:

Compared with published general population prevalence, there is a fivefold increase in prevalence of ADHD in youth prison populations (30.1%) and a 10-fold increase in adult prison populations (26.2%).⁸

Due to the seriousness and urgency of the situation, the Australian ADHD Foundation, a national 'for purpose' not-for-profit organisation, quickly convened a Youth Justice Committee and Taskforce to

¹ Stephen V Faraone et al, 'The World Federation of ADHD International Consensus Statement: 208 Evidence-Based Conclusions About the Disorder' (2021) 128 *Neuroscience & Biobehavioral Reviews* 789.

² Corey J Lane and Mark David Chong, 'A Hard Pill to Swallow: The Need to Identify and Treat ADHD to Reduce Sufferers' Potential Involvement in the Criminal Justice System' (2019) 25 *James Cook University Law Review* 119.

³ Guilherme V Polanczyk et al, 'ADHD Prevalence Estimates Across Three Decades: An Updated Systematic Review and Meta-Regression Analysis' (2014) 43(2) *International Journal of Epidemiology* 434.

⁴ Viktória Simon et al, 'Prevalence and Correlates of Adult Attention-Deficit Hyperactivity Disorder: Meta-Analysis' (2009) 194(3) *British Journal of Psychiatry* 204.

⁵ Stéphanie Baggio et al, 'Prevalence of Attention Deficit Hyperactivity Disorder in Detention Settings: A Systematic Review and Meta-Analysis' (2018) 9 *Frontiers in Psychiatry* 331. See also Harold et al (n 1).

⁶ Susan Young et al, 'A Meta-Analysis of the Prevalence of Attention Deficit Hyperactivity Disorder in Incarcerated Populations' (2015) 45(2) *Psychological Medicine* 247.

⁷ Ibid 247.

⁸ Australian ADHD Guideline Development Group, *Australian Evidence-Based Clinical Practice Guideline for Attention Deficit Hyperactivity Disorder* (Australian ADHD Professionals Association, 2022).

⁸ Ibid 151-155.

systematically and holistically address these problems through a range of initiatives that would:

- (i) help develop a greater understanding of ADHD among relevant practitioners;
- (ii) undertake cutting-edge youth justice research and program development, whether on its own or in collaboration with other relevant reputable organisations and acknowledged experts, with a view to redressing this overrepresentation;
- (iii) organise scholarly conferences and practitioner seminars to achieve wider audience education and appreciation of ADHD and its societal impacts;
- (iv) publish peer-reviewed work in reputable academic journals and publishing houses, thereby elevating the status of ADHD as a condition comparable to other more recognised/acknowledged disorders; and
- (v) develop and advocate pertinent policy recommendations and legislative reforms.

To that end, this current Special Issue is a distillation and refinement of many of those expert presentations made at the inaugural online conference.

The articles in this Special Issue are informed by the October 2022 publication of the *Australian Evidence-Based Clinical Guideline for Attention Deficit Hyperactivity Disorder* as well as the November 2023 Senate Inquiry and Recommendations Report into the *Assessment and Support Services for People with ADHD*, and where relevant the articles make specific reference to these new developments.⁹ It is important to emphasise here that the guidelines and Senate recommendations are now an essential resource for any clinician/practitioner who undertakes or intends to undertake ADHD assessment and/or treatment in any setting. In particular, Chapter 6.1 of the Guideline¹⁰ provides a brief outline of clinical gaps and recommendations for the assessment and treatment of ‘people in the correctional system’ who have ADHD. That said, this Special Issue provides substantial justification for the relevant positions and recommendations put forward in the Guideline. It also provides a plethora of important supplementary information, especially information which describes and explores the state of play with respect to Australian youth/criminal justice systems in particular.

⁹ Australian ADHD Guideline Development Group, *Australian Evidence-Based Clinical Practice Guideline for Attention Deficit Hyperactivity Disorder* (Australian ADHD Professionals Association, 2022) (*Australian ADHD*). Senate Community Affairs References Committee, *Assessment and Support Services for People with ADHD* (Parliament of Australia, 2023).

¹⁰ *Australian ADHD* (n 9) 151-155.

We hope that this Special Issue will, to some degree, address policymaker, stakeholder, practitioner, and clinician knowledge and acknowledgement gaps relating to the relationship between ADHD and youth/criminal justice. More specifically, it is our intention that this Special Issue will provide the discerning reader with:

- (i) an in-depth understanding of the biological/genetic nature of ADHD;
- (ii) its extent and prevalence;
- (iii) its influence over behaviour;
- (iv) how such behaviours are interpreted and addressed by practitioners;
- (v) its remedies, both pre-emptive and rehabilitative;
- (vi) relevant policy/statutory recommendations; and it will
- (vii) facilitate better informed dialogue leading to an increase in the condition's support base.

The first article provides an analytical overview of the relevant issues embedded within this discourse. Written by Dr Corey J Lane (a clinical psychologist and a former police youth justice and child protection police detective), Associate Professor Mark David Chong (a criminologist), and Dr Geoff Kewley (a paediatrician), the article entitled '*Often Fails to Give Close Attention to Detail*' – *ADHD in Criminal Justice Offender Populations*, addresses the criticism that 'ADHD is rarely given any serious consideration when it comes to youth and criminal justice policy development and review'.¹¹ This apparent oversight is explained, and through a process of demystification and clarification, the authors clearly set out the nature of ADHD as a neurodevelopmental condition; its treatment; the reasons for the over-representation of youth with ADHD in the criminal justice system; and its impact on the community. Finally, the article proffers pertinent policy recommendations that would ameliorate the present unsatisfactory situation.

The second paper entitled *Understanding the Nature of ADHD and the Vulnerability of Those with the Condition Who Fall Foul of the Criminal Justice System*, picks up on some of the key issues raised in the first article. Kewley, Lane and Chong provide a critical analysis in relation to the aetiology of ADHD and its links to pervasive low self-control. They explore why many crime prevention and/or ADHD symptom management strategies have proven to be less effective than anticipated. Finally, they recommend that relevant policy and practice should adopt a more self-control informed approach in its development and implementation.

¹¹ Corey J Lane, Mark David Chong and Geoff Kewley, 'Often Fails to Give Close Attention to Detail': Attention-Deficit Hyperactivity Disorder (ADHD) in Criminal Justice Offender Populations' (2024) 36(2) *Bond Law Review* 1, 1.

The third paper is pre-emptive in its focus. In *A Practitioner's Perspective Concerning the Links between ADHD and the Criminal Justice System*, Dr Phillip Anderton, the managing director of the United Kingdom's largest specialist ADHD clinic and a former senior police officer, provides an engaging narrative filled with examples of how and why the youth justice system is currently failing young people who are labouring under ADHD. Through the use of relevant studies, real-world evidence, and clinical experience, Dr Anderton strives to challenge his readers to 'rise up and break the systemic cycle of failure for people with ADHD' by keeping 'them in the health system rather than allowing them to fall into the criminal justice system'.¹²

The fourth paper, entitled *Attention Deficit Hyperactivity Disorder (ADHD): Forensic Issues*, authored by the eminent scholar and barrister, Professor Ian Freckelton AO KC, critically examines the challenges that the courts face when confronted with an accused or convicted person who is diagnosed with ADHD. Professor Freckelton analyses a range of 'decisions from Canada, Australia, New Zealand and the United Kingdom' so as to insightfully identify for readers the key 'principles on the basis of which courts can make nuanced decisions that are suitably informed by expert mental health evidence about the forensic ramifications of ADHD'.¹³

The final paper by UNSW Associate Professor John Kasinathan, a child and adolescent forensic psychiatrist, is entitled *Attention Deficit Hyperactivity Disorder (ADHD) and Young People in NSW Custody*. Associate Professor Kasinathan explores the highly vexing issue of psychiatric disorder comorbidity among incarcerated young people with ADHD and interrogates the data from the Young People in Custody Health Survey (YPiCHS) conducted in NSW in 2015. This paper will deepen readers' 'understanding of ADHD youth and comorbid psychiatric disorders' in the hope of informing 'prevention, intervention, policy and practice'.¹⁴

Needless to say, the production of this Special Issue has been an extremely rewarding experience and we are so indebted to the contributors of this endeavour for all the hard work and dedication that they exhibited throughout the process of producing the Special Issue. We are also most appreciative of our peer-reviewers (internal and external) who, despite their busy schedules, assessed the articles and expert commentaries and provided helpful feedback. The guidance provided to the contributors by the peer-reviewers has resulted in five

¹² Phillip Anderton, 'A Practitioner's Perspective Concerning the Links between ADHD and the Criminal Justice System' (2024) 36(2) *Bond Law Review* 75, 75.

¹³ Ian Freckelton, 'Attention Deficit Hyperactivity Disorder (ADHD): Forensic Issues' (2024) 36(2) *Bond Law Review* 91, 91.

¹⁴ John Kasinathan and Joey Le, 'Attention Deficit Hyperactivity Disorder (ADHD) and Young People in NSW Custody' (2024) 36(2) *Bond Law Review* 123, 123.

works of high quality and clarity. It is also appropriate at this juncture to acknowledge and thank the editors of the *Bond Law Review* - Professor Rachael Field and Dr Tory Baumfield, and former editor Professor Jonathan Crowe, as well as the journal managers, Ms Rochelle Vincent and Ms Johanna Tusa, for their support. We are likewise grateful to the ADHD Foundation for giving us this opportunity, through the conference, to share our ideas, insight and inspiration with others who are equally concerned about how the youth justice system treats our young people who have ADHD. We hope that through this Special Issue and other similar endeavours to come, the Foundation's Youth Justice Committee and Taskforce will continue to be a solutions-based entity that will support 'those committed to improving the system, [and] to develop mechanisms for change in each state and territory' in Australia thereby improving community outcomes.

For further details regarding the conference material, recordings, or involvement with the Youth Justice Taskforce, please email the Australian ADHD Youth Justice Team at office@adhd.foundation.org.au. More information regarding future events related to ADHD in Australia can be found at www.adhd.foundation.org.au or by contacting the ADHD Foundation Events Team at events@adhd.foundation.org.au. The ADHD Foundation is a volunteer-run not for profit charity registered with The Australian Charities and Not-For-Profit Commission (ACNC) within Australia. It is also an approved deductible gift recipient with the Australian Taxation Office (ATO).