STRENGTHENING COMMUNITY SAFETY BILL 2023

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QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
Protecting Queenslanders' individual rights and liberties since 1967

To
The Secretary
Economics and Governance Committee
Queensland Parliament

egc@parliament.qld.gov.au

Dear Madam

Thank you for the opportunity of making a submission in relation to the Strengthening Community Safety Bill.

We have previously prepared submissions for you and the Queensland government in relation to various proposals put forward over the years in relation to the vexed question of youth crime and youth justice.

Our Council has been involved in making many proposals and recommendations for consideration of government. Given the short period of time that you have allowed for a submission in relation to this bill, we have gone back over our records and have attached to our submission our previous submissions, which of course are quite apposite.

The difficult public policy questions related to youth crime and youth justice do not really change, and government seems to be in a steady state for a period of time leading to a period of concern requiring law reform. With respect, in our opinion, the current Youth Justice Act is appropriate for the circumstances and Queensland's current environment. Knee-jerk responses to bad publicity should never be used as the basis for law reform.

We are happy to provide evidence and further verbal submissions at any public hearing that your committee may have before recommending changes to the Bill.

We trust this is of assistance to you in your deliberations.

Yours Faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
24 February 2023

[1] T M Scanlon *"Freedom of Expression and Categories of Expression"* in Scanlon *The Difficulty of Tolerance- Essays in Political Philosophy* Cambridge University Press 2003 Pages 90-92

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QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

Protecting Queenslanders' individual rights and liberties since 1967

Watching Them While They're Watching You

Committee Secretary
Legal Affairs and Community Safety Committee
Email: LACSC@parliament.qld.gov.au

Dear Madam

Youth Justice and Other Legislation Amendment Bill 2021

Please accept this submission on behalf of the Qccl in relation to the above bill.

We start off by expressing our dismay at the government's policy reversal since the position that it took when in opposition in 2014 in opposing legislation introduced by the Newman government which followed similar erroneous principles.

1. Basic Principle

Since the end of the 1800's there has been a shift from the punishment of children to the treatment of children and a clear acknowledgement that their age should be considered. This is because children are morally different from adults as a result of the fact that they do not have the same judgment skills, self-control and ability to know right from wrong. Children take more risks, pay less attention to negative consequences, are impulsive and look at short term outcomes and not a long-term perspective. They also suffer more from peer pressure.

Because children are impulsive and do not plan for the future, the concept of deterrence has a particularly limited application to them.

These views of the differences between adults and children have recently been profoundly reinforced by modern neuro-scientific research.

2. A Crime Wave?

Underlying this Bill is the proposition that there is some sort of youth crime wave affecting the community. The Australian Bureau of Statistics Paper 45190DO03 – Recorded Crime – Offenders 2008-09 - 2018-19 released 6 February 2020 shows a consistent decline in young offending in this state during that period.

Long-standing research shows that some 70% of juvenile offenders appear in Court only once with another 14.9% appearing in Court only twice.

These reforms appear to be directed at dealing with specific problems in a specific region. It might be suggested, that the appropriate response to that situation is to focus on how to deploy the police and other resources in that area to deal with that specific problem, rather than making changes to the law that applies generally.

3. Submissions

There are three aspects of the Bill upon which we wish to comment:

(a) Suspicion less searches

(b) Bail - show causeBail - electronic monitoring

4. Suspicion less searches

Under these provisions a senior police officer may authorise police officers to search members of the public in certain prescribed areas of the Gold Coast with a handheld metal detector, for the purpose of ascertaining whether the person has a knife. There will be no need for a police officer to suspect the person of having committed an offence or of carrying a knife. The officer may then require a person to produce anything that is detected by the metal detector.

These provisions expire, under the current legislation, after two years.

This legislation authorises mass, suspicion less, warrantless magnetometer searches.

We oppose this proposal.

The traditional requirement that before a search can proceed there must be a reasonable suspicion that a crime has been committed or a weapon found is a bulwark protection of our liberty. Such a requirement is essential to being able to prevent arbitrary searches or searches based on bias. The granting of such powers will inevitably result in unwarranted invasions of privacy.

The fact that the search takes place in public does not make it any less an invasion of privacy.

Even a once over with a metal detector in the context of a night out with friends or family has the capacity to cause an individual a deal of embarrassment. Further, given that most people carry metal objects a high proportion of people are likely to be subjected to further more invasive searches.

It is quite possible that we would be safer if police were permitted to stop and search anyone they wanted, at any time, for no reason at all. Insisting on a requirement that there be a reasonable suspicion before a search can occur will hopefully prevent us from gradually trading ever-increasing amounts of freedom and privacy for extra security.

There is no analogy with walking through a metal detector in an airport. At the airport everyone must walk through a metal detector and there is no reason for a person to wonder why they have been asked to do so[1].

Finally, there is no evidence these types of powers will reduce knife crime.

In 2012, the Victorian Office of Police Integrity produced a report on Victorian "stop and search" powers which were also introduced to reduced knife crime. That report entitled "Review of Victoria Police use of "stop and search" powers" reviewed research from the United Kingdom in relation to the effectiveness of such powers. At page 40 of the report, the Office stated that the research "found the relationship between incidence of knife crime and the rates of "stop and search" is at best unclear." Whilst some research indicated that stopping members of the public, with or without searching, deterred crime, there was "no significant and consistent correlation between searches and crime levels a month later". The report said, "a review of the "stop and search" reporting data over six months compared to crime statistics for the same period showed no relationship between increased searches and a decrease in knife crime."

5. Bail - show cause

We note that 80% of children in youth detention in Queensland are on remand. We also know that only about 16% of those people go on to receive a custodial sentence. Therefore, the vast majority of them are spending

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[1] In this regard, we note that the American Supreme Court has accepted that in certain very narrow circumstances a suspicion less search may not violate the fourth amendment to the American Constitution. However, none of those exceptions would apply in the circumstances being considered under this Bill *Vernonia Sch. Dist. 47J v. Acton*, 115 S Ct 2386 at 2391. See also *Bourgeois v. Peters*, 387 F. 3d 1303 for a law similar to this, which was struck down

an unnecessary amount of time in detention. This law will result in more people on remand in what are universally acknowledged to be universities of crime, which have long term adverse impacts on children detained in them.

Under the proposed law a juvenile charged with committing one of the following offences, whilst on bail, will be required to show cause as to why they should not be detained in custody:

(a) Offences which would render an adult liable to imprisonment for 14 or more years, other than certain drug offences,

(b) Choking, suffocation of strangulation in a domestic setting,

(c) wounding,

(d) female genital mutilation,

(e) assault occasioning bodily harm

(f) unlawful use of a motor vehicle where the child was actually in charge of the vehicle

(g) attempted robbery.

(h) offences which would render an adult liable to life imprisonment.

These provisions bear some resemblance to those in the *Bail Act* which apply to adults, which place an accused person in a show cause position in the following situations:

- The accused committed an offence while on bail (not including simple offences).
- The accused committed an offence against the *Bail Act* 1980
- The accused committed an offence while armed with a weapon (including a firearm or explosive).
- The accused committed certain offences relating to organised crime.
- The accused committed an offence punishable by mandatory life imprisonment.

In our society every person has a right to liberty. Additionally, every person is presumed innocent. We would also argue that a proper principle in a society committed to liberty, is that everyone ought to be presumed to be harmless.

The presumption of innocence dictates that the State has no higher duty to protect its citizens from the risk a person charged might commit an offence than it must protect them from the risk other people walking the street might commit one.

None of the statistics indicate that if bail is allowed further offending is more probable than not, even where the person has previous convictions[2].

A British study found that about 75 per cent of people granted bail against police objections completed their remand period without a new offence being recorded.

The research on the rate at which those who are on bail commit offences has been summarised as follows:

> there is a recurring finding that the rate of offending increases as the age of the offender decreases, with the highest offending occurring in the younger age cohorts. Morgan and Henderson found that 29 per cent of defendants under the age of 18 committed offences whilst on bail compared to 13 per cent of those aged over 21 (Morgan & Henderson (1998) cited in Hucklesby & Marshall 2000:154). Similar results were found by Lash in the study of offending on bail in New Zealand in 1994. She found the age cohorts with the highest rate of offending on bail were the 17 to 19-year-olds, of whom over 27 per cent offended whilst on bail. By comparison

[2] Ashworth and Zedner *Preventive Justice* Oxford University Press, 2014 page 69

approximately 16 per cent of offenders aged between 30 and 34 offended whilst on bail (Lash 1998: Table 4.2). [3]

These statistics combined with serious considerations of principle[4] call into serious question the decision to refuse bail to a person on the basis that they might commit further offences.

The situation might be different if the person has previously committed offences whilst on bail. It might also be different where the person is charged with a serious offence and has a previous conviction for a similar serious offence. However, we do not see those situations as justifying the reversal of the onus of proof. The same comments apply in relation to the provisions the subject of this Bill, which of course fall short of establishing those circumstances as a predicate for refusing bail.

In short, we oppose the reversal of the presumption in favour of bail.

6. Bail - Tracking devices

Finally, we turn to the provisions allowing for the tracking of young persons on bail.

Under the proposed law the court may require a young person, as a condition of bail, to wear an electronic monitoring device, if certain conditions are fulfilled:

(a) The child must be over 16 years old.

(b) The offence must be a prescribed offence, being those listed in relation to where a child is required to show cause as listed above.

(c) The Child has previously committed one indictable offence and

(d) The child and the Court must be in a geographical area to be prescribed.

Factors to be taken into account in deciding to make the order include whether the child can understand the conditions and whether a parent of a child or other adult is willing to support the child, and notify authorities of any change of circumstances or of a breach of a bail condition.

The provision clearly contemplates the person has established they are entitled to bail. Whilst of course, a tracking device is preferable to being detained, the fact remains that the person is presumed to be innocent.

In a context where the person is presumed innocent the police are to be entitled to know every movement of that person, which constitutes on any view a substantial violation of the right to privacy of an innocent person

There are serious questions about the effectiveness of electronic monitoring of young people as measured by not being re-arrested. Questions remain about the treatment benefits of electronic monitoring of young people. The assumption is that electronic monitoring will only apply to those who would ordinarily have been detained. However, the opposite might be the case.

The technology in fact allows for the possibility of increased monitoring of an increased number of people. In the United States, young people who would ordinarily not be detained are regularly placed on Electronic monitoring.[5]

The problems of the underdeveloped adolescent brain also have implications for the use of electronic monitoring. Children remain less likely to be deterred by the potential adverse consequences of the electronic monitoring come in the same way as their behaviour in all other circumstances. Lacking impulse control, in moments of excitement or stress a child is still likely to try to disconnect the monitor or to ignore it. These

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[3] S King, D Bamford and R Sarre, *The Remand Strategy; Assessing Outcomes'*, (2008) 19(3) Current Issues in Criminal Justice 327 at 339

[4] Ashworth and Zedner opcit pages 64-72 c.f the Irish Supreme Court *People v Callaghan* 1966 IR 501 and *Ryan v DPP* 1989 IR 399

[5] *Monitoring youth* 101 Iowa L. Rev. 297 page 324

problems will be exacerbated in the case of young offenders with mental health or intellectual disabilities. A significant percentage of juvenile offenders have such disabilities or illnesses[6]

No doubt it will be said that wearing a device is better than being incarcerated, given the well-established adverse impact of detention on young people. However, wearing the device will no doubt result in stigmatization and social ostracization, particularly considering that the wearing of such devices is associated in our community with serious sex offenders.

Whilst acknowledging the attractiveness of an alternative to detention with its incumbent adverse consequences and risk of harm, we cannot support this measure having regard to the following factors:

(a) It involves a substantial violation of the person's privacy

(b) There is no evidence that it is effective in preventing rearrests and hence preventing reoffending

(c) it is not clear how the risk that monitoring will be applied to people who would not ordinarily be detained or would be detained on far less intrusive conditions is to be addressed

(d) the substantial stigmatisation which is likely to accompany the wearing of the device

7. Summary

It is fair enough to say that the changes proposed by this Bill do not go as far as one expected from the commentary in the media.

The show cause provisions in relation to bail are in our opinion objectionable as a matter of principle.

Whilst the proposed electronic tracking arrangements seem at first blush to be an advance, on closer examination that proposition has not been justified.

We strongly oppose the provisions for suspicion less searches. The requirement for the search only to be carried out when there is a reasonable suspicion is a fundamental protection of basic liberties. Any departure from that principle in our view will lead to further erosion of that principle.

We trust this is of assistance to you in your deliberations.

Yours faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
12 March 2021

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[6] ibid

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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Watching Them While They're Watching You

Committee Secretary
Legal Affairs and Community Safety Committee

By Email - Lacsc@parliament.qld.gov.au

Youth Justice and Other Legislation Amendment Bill 2019

Please accept this short submission on this important and long overdue bill

The necessity for the reform of the law of bail contained in this Bill is made clear by the statistics that 80% of children in detention are on remand and only 16 percent of young people on remand go on to receive a custodial sentence and therefore the vast majority of them are spending unnecessary time in detention.

We would say the law should go further.

In our society every person has a right to liberty. Additionally, every person is presumed innocent. We would also argue that a proper principle in a society committed to liberty, is that everyone ought to be presumed to be harmless.

In our submission, bail serves two legitimate purposes. Firstly, to secure the attendance of the accused person before the court at trial. The second is to prevent any interference with the course of justice particularly, interference with witnesses. The case for these can be made on the purely pragmatic basis that these things are necessary for the functioning of the judicial system. These decisions are usually made by reference to the past conduct of the individual in either failing to appear or making threats.

By way of contrast, the decision to refuse bail for a person on the basis that they might commit further offences has no foundation what so ever. None of the statistics indicate that if bail is allowed further offending is more probable than not, even where the person has previous convictions[1].

The research on the rate at which those who are on bail commit offences has been summarised as follows:

> there is a recurring finding that the rate of offending increases as the age of the offender decreases, with the highest offending occurring in the younger age cohorts. Morgan and Henderson found that 29 per cent of defendants under the age of 18 committed offences whilst on bail compared to 13 per cent of those aged over 21 (Morgan & Henderson (1998)

[1] Ashworth and Zedner *Preventive Justice* Oxford University Press, 2014 page 69

> cited in Hucklesby & Marshall 2000:154). Similar results were found by Lash in the study of offending on bail in New Zealand in 1994. She found the age cohorts with the highest rate of offending on bail were the 17 to 19-year-olds, of whom over 27 per cent offended whilst on bail. By comparison approximately 16 per cent of offenders aged between 30 and 34 offended whilst on bail (Lash 1998: Table 4.2). [2]

The presumption of innocence dictates that the State has no higher duty to protect its citizens from the risk a person charged might commit an offence than it must protect them from the risk other people walking the street might commit one.

The QCCL's position in that regard reflects that of the Irish Supreme Court[3]. Though that position has been modified by a referendum in 1996, the law in Ireland remains that bail will only be refused on the production of sufficient evidence to enable the Court to conclude on the balance of probability that the objection to bail has been made out[4]

In addition, it is our submission that the government should assume a *legislative* responsibility for placing young people in suitable accommodation, when they are required to do so by bail conditions as recommended by the New South Wales Strategic Review of Juvenile Justice (2010). Money should be diverted from building more detention centres, the High Schools of crime, to providing children on bail with suitable accommodation.

We also express our concern about body cameras. We have accepted that body cameras should be used by police on the basis that they are an accountability measure. However, we also argued that strict controls need to be imposed on their use to respect privacy. No doubt a similar argument can be made in this situation.

But the privacy concerns remain. Whilst those in prisons give up some right to privacy, they do not surrender it entirely. What rules are to be imposed to respect the rights of prisoners? What rules are to be imposed in relation to the destruction of the product of these cameras? Has or will the Privacy Commissioner be consulted?

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[2] S King, D Bamford and R Sarre, *The Remand Strategy; Assessing Outcomes'*, (2008) 19(3) Current Issues in Criminal Justice 327 at 339

[3] *People v Callaghan* 1966 IR 501 and *Ryan v DPP* 1989 IR 399

[4] *Director of Public Prosecutions -v- Mulvey* [2014] IESC 18

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We trust this of assistance to you in your deliberations

Yours faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties

The Secretary
Legal Affairs and Community Safety Committee

By Email: lascs@parliament.qld.gov.au

Dear Sir

Youth Justice and Other Legislation Amendment Bill 2014

Thank you for the opportunity to make a submission in relation to this Bill.

A Crime Wave?

Underlying this Bill is the proposition that there is some sort of youth crime wave affecting the community. The Australian Bureau of Statistics Paper 4519.0 – Recorded Crime – Offenders – 2010 -2011 shows that youth offender rates in Queensland decreased in 2010-2011 compared with 2009-2010.

The Children's' Court of Queensland Annual Report 2011-2012 showed that:

> "Again there was an overall decrease in the number of juveniles whose cases were disposed of in all Queensland Courts in 2011-2012. The decrease was 6.9% following a decrease of 8.6% in 2010-2011."

That report did show that there are a small number of persistent offenders who were charged with multiple offences, resulting in an increase in the number of offences alleged.

This is in fact consistent with long-standing research which shows that some 70% of juvenile offenders appear in Court only once with another 14.9% appearing in Court only twice.[1]

Basic Principle

Since the end of the 1800's there has been a shift from the punishment of children to the treatment of children and a clear acknowledgement that their age should be taken into account. This is because children are morally different from adults as a result of the fact that they do not have the same judgment skills, self-control and ability to know right from wrong. Children take more risks, pay less attention to negative consequences, are impulsive and look at short term outcomes and not a long term perspective. They also suffer more from peer pressure.

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[1] Weatherburn *Law and Order in Australia*, The Federation Press 2004, page 58

Because children are impulsive and do not plan for the future, the concept of deterrence has a particularly limited application to them.

These views of the differences between adults and children have recently been profoundly reinforced by modern neuro-scientific[2] research.

International Obligations

These principles are very strongly reflected in international obligations to which Australia is a party. Article 37(b) of the Convention of the Rights of the Child provides that imprisonment is to be a measure of last resort for a child and only for the shortest appropriate period of time.

The United Nations Standard Minimum Rules for the Administration of Criminal Justice, commonly referred to as the Beijing Rules, provides that, "In principle no information that may lead to the identification of a juvenile offender shall be published." Whilst not binding these rules were developed on the basis of leading criminological research and represent a highly persuasive body of opinion.

Proposals

We turn now to consider the changes proposed in the Bill.

Naming of Children

First of all we note that Queensland Judges already have a discretion to name children charged with offences that involve violence against a person that is particularly heinous. This is contained in section 34 of the *Youth Justice Act* 1992.

The QCCL opposes the changes to the current law.

A similar proposal was rejected by the New South Wales Legislative Council Standing Committee on Law and Justice in 2008 which accepted that the stigmatisation coming from being named may lead to an increase in recidivism.

That committee of New South Wales Legislative Council was in fact of the view that, "Naming juvenile offenders would stigmatise them and have a negative impact on their rehabilitation, potentially leading to increased recidivism by strengthening a juveniles bonds with criminal subcultures and their self identity as a criminal or deviant and undermining attempts to address the underlying causes of offending."[3]

The New South Wales Parliamentary Committee could find no evidence of any research supporting the proposition that naming children would reduce recidivism rates.

The Committee went on to acknowledge that it is important for juvenile offenders to recognise their actions have caused harm and it is right that they should experience shame. However, the Committee Said, "The shame should be constructive, promoting rehabilitation and assisting the child to make a positive contribution to society over the rest of their lives."[4] Reintegrative shaming, as utilised in youth justice conferences is an example of the constructive use of shame. However, the QCCL notes with

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[2] See *Age of Criminal Responsibility is too low, say brain scientists* – The Guardian, 13 December 2011

[3] The Prohibition on the Publication of names of Children involved in Criminal Proceedings Legislative Council Standing Committee on Law and Justice April 2008 page XI

4 Ibid para 3. 1113

disappointment that this government has abolished youth justice conferencing in complete disregard of the evidence of its benefits.

Kelly Richards in a paper for the Australian Institute of Criminology entitled *What makes juvenile offenders different from adult offenders*[5] makes the following statement at page 6:

> "Labelling and stigmatisation are widely considered to play a role in the formation of young peoples' offending trajectories – whether young people persist with or desist from crime. Avoiding labelling and stigmatisation is therefore a key principle of juvenile justice intervention in Australia."

Rather than rehabilitating young offenders it is the QCCL's view that naming them would in fact serve to destroy their prospects of rehabilitation. This is particularly so when you consider the statistics quoted previously which demonstrate the vast majority of juvenile offenders only appear before the Courts once. That small group of repeat offenders who appear to be the focus of the government's concern are not going to be deterred by the prospect of being named. In fact, as the New South Wales Committee found the likelihood is that they will be reinforced in their behaviour. Being named would become a badge of honour rather than a deterrent. The Committee went on at paragraph 3.117 of its report to say that it did not, "believe naming juvenile offenders will act as a significant deterrent to either the offender or other would be offenders."

Furthermore, this policy has already been attempted in the Northern Territory where the research clearly indicates that the naming of children is detrimental to them as it results in harassment and the disruption of their educational and other prospects.

Removing the principle that detention should be the last resort

In Ms Richards' paper[6] it is noted that prisons are the universities of crime which enable offenders to learn more and better offending strategies and skills. The author cites a Canadian study which found that, "Contact with the juvenile justice system increased the cohort's odds of judicial intervention by a factor of 7. ...The more restrictive and intensive an intervention the greater is its negative impact, with juvenile detention being found to exert the strongest criminogenic effect."

These types of policies involving applying greater detention to children have been implemented for the last twenty odd years in the United States. It is surprising to see this government seeking to follow those policies when they have been demonstrated to be complete failures (see Justice Policy Institute – Common Ground: Lessons Learned from Five States that reduced juvenile confinement by more than half – February 2013).

In a paper entitled "No Place for Kids – The Case for Reducing Juvenile Incarceration"[7] it was said that:

> Programs employing therapeutic counselling, skill building, and case management approaches all produced an average improvement in recidivism results of at least 12%. By contrast, programs oriented towards surveillance, deterrence, or discipline all yielded weak, null, or negative results... A recent

[5] Trends and Issues Paper No. 409 February 2011
[6] Ibid pages 6 to 7
[7] The Annie E Casey Foundation 2011 at page 16 http://www.aecf.org/KnowledgeCenter/Publications

review found that cognitive behavioural training programs are associated with a 26% reduction in recidivism, the most of any treatment modality.

That document goes on to point out that the cost of incarceration is far more than alternative programs. We would consider this to be a particularly telling point for the current government. We find no reason for believing that the situation would be any different in Queensland than the United States.

Reference to Criminal Histories as an Adult

This proposal to allow childhood criminal histories to follow a person into adulthood is entirely inconsistent with the basic premise of youth justice that people should not be tagged with their juvenile indiscretions into adulthood. This is essential to their being rehabilitated into society.

In the QCCL's view the current law is appropriate for dealing with the issue of the admissibility of childhood criminal histories. The current law provides that only evidence of a "recorded conviction" of a previous childhood offence is admissible against any person during a proceeding for an adult offence. This gives the Court the power in appropriate cases to record convictions against child offenders that will be admissible against the child as an adult.

The current proposal will inevitably result in an increased Queensland prison population with associated increased operational costs and long term cost to the community.

Offence of Breach of Bail

The primary purpose of bail is to ensure that a person does not avoid their trial. It should not be used for punitive reasons.

In its submission to the *Blue Print for the Future of Youth Justice* the Legal Aid office of Queensland at page 4 made the following telling points:

1. Even in cases where a child is unlikely to serve a term of imprisonment for the original offence bail is unlikely to be granted if the child has reoffended while on bail.
2. Historically bail is more onerous for children than for adults. It is rare for a child to be released without any bail conditions such as a curfew or residential condition. The absence of an offence for breach of bail has allowed the courts to adopt innovative conditions to address a child's reoffending.

This provision appears to be based on the notion that a Judge or Magistrate should be aware of any breach of bail when sentencing. This object can be achieved without creating an offence by providing that proof of breach of bail is noted on a criminal history which can be disclosed to the Court.

Automatic Transfer of 17 year olds to Adult Prison

It is said that the object of this provision is to reduce overcrowding in youth detention centres.

The Council notes from the consultation paper at page 10 that on average 70% of young people in detention are on remand. This is extraordinary. In the QCCL's view the Queensland government would better focus its efforts on reducing the very high

number of people in detention on remand than transferring children into adult prisons to improve their education in the world of crime.

The Council records its objection to proposed Section 276E removing the decisions from review pursuant to the *Judicial Review Act*.

Retroactive Provisions

Clauses 359 and following clearly give this legislation retrospective operation. Inevitably clauses 359, 360 and 361 will result in an increased penalty for a person sentenced after the commencing of the legislation from what would have been imposed under the former law. Similarly Section 363 will result in increased punishment from what a person would have been subject to had the current law remained in place. We refer in that regard to *Bakker v Stewart* [1980] VR 17.

We trust this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
1 March 2023

Youth Justice Reform-Discussion Paper
By Email: Yjconsultation@justice.qld.gov.au

Dear Madam/Sir

Youth Justice Reform

Thank you for the opportunity to make a contribution to this discussion.

The QCCL agrees with the fundamental objectives described in the summary of the paper which are:

1 to divert children and young people from further involvement when they first come into contact with the youth justice system

2 rehabilitate children and young people during their involvement in the youth justice system

3 to support successful transition from the youth justice system into a crime free life in the community.

In our submission to the Youth Justice Consultation we supported the mandatory diversion of young people from the Criminal Justice system to restorative justice processes.

We fully support a focus on the rehabilitation of young people.

In a speech delivered on 27 March 2003 entitled "Turning Boys into Fine Men: The role of economic and social policy". the well-known criminologist Don Weatherburn made the following comment, "even the most optimistic research to date suggests that incapacitation is a not very cost-effective way of reducing juvenile crime. The money we spend incarcerating juvenile offenders would, in many instances, be better spent treating or trying to rehabilitate them. There is good evidence that treatment of drug dependence is an effective way of reducing reoffending. There is also good evidence, despite earlier suggestion to the contrary, that it is possible to rehabilitate offenders using methods such as conferencing, cognitive behavioural therapy or training in basic life skills.".

However, as Dr Weatherburn went on to point out a far better approach would be to "reduce the rate at which young people become persistent offenders, rather than increase the rate at which we catch them, put them behind bars or put them in treatment. Early intervention programs offer one avenue for achieving this."

In this regard focus needs to be put on assisting parents to be better parents.

In other work Dr Weatherburn has referred approvingly to the Queensland Triple P Parenting Program.

Economic research indicates that early intervention is a more cost effective way of dealing with crime than conventional sanctions such as imprisonment. The research referred to by Dr Weatherburn in 2003 has been reinforced by later research for example Greenwood *Prevention and Intervention Programs for Juvenile Offenders* Juvenile Justice Volume 18 Number 2 Fall 2008 at page 188 where a number of programs are discussed.

As Dr Weatherburn noted in his speech there are other ways of reducing juvenile crime including: reducing long-term unemployment, encouraging more flexible working arrangements for parents and ensuring that poor families have direct access to quality child care or adequate income support if they elect to stay home during the first year of a child's life. We also need to slow down the spatial concentration of poverty and revitalise neighbourhoods where disadvantage and crime have become deeply entrenched.

We accept that a lot of those issues are not within the capacity of a State Government. However, the type of programs discussed by Weatherburn and Greenwood are within the capacity of a State Government. Given the evidence that early intervention will save the government money we would respectfully submit that this is an area on which the government should focus by identifying effective programs and funding them.

Yours faithfully

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
1 March 2023

The Assistance Director General, Youth Justice
Department of Justice and Attorney General

By Email: youthjusticeblueprint@justice.qld.gov.au

Dear Madam/Sir

Safer Streets Crime Action Plan – Youth Justice

Thank you for the opportunity to make a submission in relation to this important topic.

No Evidence

A review of the discussion document indicates that the only research that has been undertaken to prepare it is into opinion polls. It is a document designed to pander to some of the worst prejudices in the community.[1]

A Crime Wave?

Underlying the paper is the proposition that there is some sort of youth crime wave affecting the community. The Australian Bureau of Statistics Paper 4519.0 – Recorded Crime – Offenders – 2010 -2011 shows that youth offender rates in Queensland decreased in 2010-2011 compared with 2009-2010.

The Children's' Court of Queensland Annual Report 2011-2012 showed that:

> "Again there was an overall decrease in the number of juveniles whose cases were disposed of in all Queensland Courts in 2011-2012. The decrease was 6.9% following a decrease of 8.6% in 2010-2011."

That report did show that there are a small number of persistent offenders who were charged with multiple offences, resulting in an increase in the number of offences alleged.

This is in fact consistent with long-standing research which shows that some 70% of juvenile offenders appear in Court only once with another 14.9% appearing in Court only twice.[2]

Basic Principle

Since the end of the 1800's there has been a shift from the punishment of children to the treatment of children and a clear acknowledgement that their age should be taken into account. This is because children are morally different from adults as a result of the fact that they do not have the same judgment skills, self-control and ability to know

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[1] In fact, when members of the public are fully acquainted with the facts of the matter, most consider the sentences imposed by Judges are appropriate and that Judges are in touch with public opinion – *Warner et al: Public Judgment on Sentencing: Final Results from the Tasmanian Jury Sentencing Study,* Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, Paper No 407 February 2011.
[2] Weatherburn *Law and Order in Australia*, The Federation Press 2004, page 58

right from wrong. Children take more risks, pay less attention to negative consequences, are impulsive and look at short term outcomes and not a long term perspective. They also suffer more from peer pressure.

Because children are impulsive and do not plan for the future, the concept of the deterrence has a particularly limited application to them.

These views of the differences between adults and children have recently been profoundly reinforced by modern neuro-scientific[3] research.

International Obligations

These principles are very strongly reflected in international obligations to which Australia is a party. Article 37(b) of the Convention of the Rights of the Child provides that imprisonment is to be a measure of last resort for a child and only for the shortest appropriate period of time.

The United Nations Standard Minimum Rules for the Administration of Criminal Justice, commonly referred to as the Beijing Rules, provides that, "In principle no information that may lead to the identification of a juvenile offender shall be published." Whilst not binding these rules were developed on the basis of leading criminological research and represent a highly persuasive body of opinion.

Proposals

We turn now to consider a number of the specific proposals contained in the discussion paper.

Naming and Shaming of Children

First of all we note that Queensland Judges already have a discretion to name children charged with offences that involve violence against a person that is particularly heinous. This is contained in section 34 of the *Youth Justice Act* 1992.

It is not clear from the discussion paper how far this power is to be extended or whether the prohibition is to be removed completely.

The QCCL would oppose any changes to the current law.

A similar proposal was rejected by the New South Wales Legislative Council Standing Committee on Law and Justice in 2008 which accepted that the stigmatisation coming from being named may lead to an increase in recidivism.

That committee of New South Wales Legislative Council was in fact of the view that, "Naming juvenile offenders would stigmatise them and have a negative impact on their rehabilitation, potentially leading to increased recidivism by strengthening a juveniles bonds with criminal subcultures and their self identity as a criminal or deviant and undermining attempts to address the underlying causes of offending."[4]

The discussion paper implicitly assumes that the naming of children will reduce the number of people committing offences. This was also a proposition specifically rejected by the New South Wales Parliamentary Committee. It could find no evidence of any research supporting the proposition that naming children would reduce recidivism rates.

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[3] See *Age of Criminal Responsibility is too low, say brain scientists* – The Guardian, 13 December 2011

[4] The Prohibition on the Publication of names of Children involved in Criminal Proceedings Legislative Council Standing Committee on Law and Justice April 2008 page XI

The Committee went on to acknowledge that it is important for juvenile offenders to recognise their actions have caused harm and it is right that they should experience shame. However, the Committee Said, "The shame should be constructive, promoting rehabilitation and assisting the child to make a positive contribution to society over the rest of their lives."[5] Reintegrative shaming, as utilised in youth justice conferences is an example of the constructive use of shame. However, the QCCL notes with disappointment that this government has abolished youth justice conferencing in complete disregard of the evidence of its benefits.

Rather than rehabilitating young offenders it is the QCCL's view that naming them would in fact serve to destroy their prospects of rehabilitation. This is particularly so when you consider the statistics quoted previously which demonstrate the vast majority of juvenile offenders only appear before the Courts once. That small group of repeat offenders who appear to be the focus of the government's concern are not going to be deterred by the prospect of being named. In fact, as the New South Wales Committee found the likelihood is that they will be reinforced in their behaviour. Being named would become a badge of honour rather than a deterrent. The Committee went on at paragraph 3.117 of its report to say that it did not, "believe naming juvenile offenders will act as a significant deterrent to either the offender or other would be offenders."

Furthermore, this policy has already been attempted in the Northern Territory where the research clearly indicates that the naming of children is detrimental to them as it results in harassment and the disruption of their educational and other prospects.

Removing the principle that detention should be the last resort
The clear evidence is that rather than reducing crime, incarcerating young people in juvenile facilities increases the likelihood of further crime, particularly those with less serious offending histories.[6]

These types of policies involving applying greater detention to children have been implemented for the last twenty odd years in the United States. It is surprising to see this government seeking to follow those policies when they have been demonstrated to be complete failures (see Justice Policy Institute – Common Ground: Lessons Learned from Five States that reduced juvenile confinement by more than half – February 2013).

In a paper entitled "No Place for Kids – The Case for Reducing Juvenile Incarceration"[7] it was said that:

> Programs employing therapeutic counselling, skill building, and case management approaches all produced an average improvement in recidivism results of at least 12%. By contrast, programs oriented towards surveillance, deterrence, or discipline all yielded weak, null, or negative results... A recent review found that cognitive behavioural training programs are associated with a 26% reduction in recidivism, the most of any treatment modality.

That document goes on to point out that the cost of incarceration is far more than alternative programs. We would consider this to be a particularly telling point for the current government. We find no reason for believing that the situation would be any different in Queensland than the United States.

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5 Ibid para 3. 1113
6 *Juvenile Justice Reform in Connecticut*, page 19 – The Justice Policy Institute http://www.justicepolicy.org/research/4950
7 The Annie E Casey Foundation 2011 at page 16 http://www.aecf.org/KnowledgeCenter/Publications

Boot Camps
Once again this seems to be a populist measure having no basis in any scientific evidence. This is the view taken by the highly regarded Dr Weatherburn.[8] Once again these are programs which have been tried and failed in the United States where they have been proven to not only be ineffective, but harmful, and as a result have begun to wane in recent years.[9]

Reference to Criminal Histories as an Adult
The discussion paper in many places makes reference to rehabilitation. However, the actual proposals suggest that it is just doing lip service to that concept.

This proposal to allow childhood criminal histories to follow a person into adulthood is entirely inconsistent with the basic premise of youth justice that people should not be tagged with their juvenile indiscretions into adulthood. This is essential to their being rehabilitated into society. It is another misguided proposal.

What should be done?
On 27 March 2003 Dr Weatherburn gave a speech entitled, "Turning boys into fine men: The role of economic and social policy"[10] It is a document worth quoting at some length:

> "A lot of crime committed by boys is transient and opportunistic. They arrive in adolescence drowning in testosterone, desperate for excitement and lacking the self-restraint that would later come with adulthood. Being caught by their parents, or the school or the police is usually enough to stop the vast majority of them from further offending...Most young boys who find themselves in trouble with the law then are only transiently involved in crime. They commit a few offences; usually of a non-violent kind, and then stop offending by the time they are in their late teens or early twenties.
>
> Sadly for a small but influential majority of boys this isn't true...they get into trouble at a rate that sometimes beggars comprehension. Almost half of all juvenile court appearances come from the 15% of boys who have more than two court appearances.
>
> Most persistent offenders acquire a criminal record, so one option is to increase the rate at which we imprison recidivist juvenile offenders. Even the most optimistic research to date suggests that incapacitation is not a very cost effective way of reducing juvenile crime. The money we spend incarcerating juvenile offenders would, in many circumstances, be better spent treating or trying to rehabilitate them. There is good evidence that treatment for drug dependence is an effective way of reducing re-offending. There is also good evidence, despite earlier suggestions to the contrary, that it is possible to rehabilitate re-offenders using methods such as conferencing, cognitive behavioural therapy or training in basic life skills.
>
> These options though have their limitations...it would clearly be better if we could reduce the rate at which young people become persistent offenders, rather than increase the rate at which we catch them, put them behind bars or put them in treatment.

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[8] Op cit 139
[9] Justice Policy Institute *Common Ground*, Page 20

> Early intervention programs offer us one avenue for achieving this, but it's doubtful whether early intervention on its own would ever be enough to deal with the parenting problems that lie behind juvenile crime...this leaves us with just one option: doing more to ameliorate the conditions that foster inadequate parenting in the first place.
>
> ...we need to reduce long term unemployment, encourage more flexible working arrangements for parents, and ensure that poorer families either get access to quality child care or adequate income support if they elect to stay home during the first year or so of a child's life. We also need to slow down the spatial concentration of poverty and revitalise neighbourhoods where disadvantage and crime have become deeply entrenched.
>
> How might we do this? Well, by dispersing public housing...by making a special effort to improve school performance in crime prone neighbourhoods we can reduce the risk or period of unemployment. By investing in targeted labour market programs we can help break the nexus between chronic unemployment and crime in areas of high unemployment. By strengthening local schools and sporting clubs we can combat the influence of delinquent peers and provide some of the supervision that parents may fail or find themselves unable to provide."

This country has experienced a sustained period of economic growth stretching back some 22 years beginning in the last years of the Keating government. Despite this there has been a persistent hard core of long term unemployed concentrated in a few areas of the country. Contrary to coming wisdom these things are not a product of a so called culture of dependency[11]. Probably in the not too distant future, there will be another economic downturn. We will at that time reap the consequences of failing to address these issues properly at a time of economic growth as opposed to resorting to policies which may win votes but have no scientific credibility.

We trust this is of assistance in your deliberations.

Yours faithfully

Michael Cope
Executive Member
For and on behalf the
Queensland Council for Civil Liberties
1 March 2023

[11] http://www.jrf.org.uk/publications/cultures-of-worklessness