Making Queensland Safer Bill 2024

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The Secretary
Justice, Integrity and Community Safety Committee
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Dear Madam

MAKING QUEENSLAND SAFER BILL

Kindly accept this submission on behalf of the QCCL in relation to the above Bill.

First, we record our opposition to the extraordinarily fast process which has been applied to the passage of this legislation. The concept of the "mandate"must be one of the most abused concepts in politics. Every piece of legislation has the prospect of benefiting from a proper review by a committee.

We note, that given the extremely limited time available to us and the limited voluntary resources of the Council we have not been able to comment on every aspect of the Bill. Thus, our failure to comment on something should not be taken to mean that we approve of it.

1. Tragedies

This law, like many tough on crime measures has been introduced in part in response to certain tragic situations. However as is always the case public policy must have regard to a broad range of considerations no doubt including but extending beyond the circumstances of any single case or cases no matter how tragic.

2. Damning admissions

However, mostly the Bill is rooted in unscientific and political considerations. That this is so is demonstrated by the *Human Rights Act* compatibility statement.

The statement says that the legislation "will lead to sentences for children that are more punitive than necessary to achieve community safety" (page 5).

Also, on page 5 the Attorney says, "I also recognise that, according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation."

What is truly extraordinary is that the Attorney, an experienced lawyer, has made a clear admission of the injustices that will be perpetrated in the future with no concerns for consequent human harm. That harm will flow not only to the incarcerated offenders but their later victims.

3. The facts

Almost 69 per cent of youth released from Queensland prisons will reoffend and return behind bars in less than 12 months. This is the second highest reoffending rate of all the States and Territories in Australia. Rather than rehabilitating youth offenders, prisons are perpetuating cycles of crime[1].

Queensland houses more young people on average per day in detention than any other State or Territory with 285 offenders held in detention each day on average in 2023.

Scientists have confirmed that the brain does not fully mature until age 25, and this lack of brain maturity makes lawbreaking and other risky behaviours more common during adolescence. Research also shows that as their brains develop, the vast majority of youth age out of lawbreaking. Most youth who enter the justice system (63%) never return to Court on charges[2].

Unfortunately, incarcerating adolescents impedes their ability to mature psychologically – exactly the opposite of what's needed to foster positive behaviour change. Studies find that youth who are incarcerated develop psychosocial maturity at far slower rates than comparable peers who remained outside the system[3].

A 2011 analysis found that the States of the United States that made the largest reductions in youth incarceration from 1997 to 2007 saw a greater decline in youth arrest rates than States that made smaller reductions or increased youth incarceration[4].

In other words, the purported solution to the problem of youth crime, actually makes the situation worse.

4. The Provisions

We turn now to consider particular provisions of the Bill.

(a) Clauses 4 and 5

The amendments made by this clause 4 give the media the right to be present in Court not only at first instance sentencing but also an appeal proceeding, a sentence review or a proceeding for the sentencing of a child. Extending the scope of criminal proceedings to include appeal proceedings or a sentence review will mean there is a risk of more damaging media scrutiny.

Clause 5 gives the provisions in clause 4 retrospective effect to provide for existing exclusion orders to be set aside as of right.

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[1] Productivity Commission, Report on Government Services (Report, 22 January 2024) Part F, Section 17, Table 17A.26

[2] Arain et al. 'Maturation of the adolescent brain' (2013) 9 Neuropsychiatric Disease and Treatment; Alison Burke, 'Under construction: Brain formation, culpability, and the criminal justice system' (November-December 2011) 34(6), International Journal of Law and Psychiatry.

[3] Why Youth Incarceration Fails: An Updated Review of The Evidence https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/ (published March 2003)

[4] ibid

We did not object to the amendments made in May 2024, allowing the victim or a relative or representative of a victim to be present in the Court, subject to the power of the Court, in appropriate circumstances to remove such persons.

However, we object to the media, having a right of access to the Court. In our view, the objective of the youth justice system is rehabilitation. This objective is facilitated by allowing as little information as possible about the child to become public. The law concerning media access to the Court should not be changed from its current situation.

(b) Clause 7

Clause 7 amends section 328A (Dangerous operation of a vehicle) by inserting in subsection (6) of this section the following " previously convicted, for an offender who is an adult, includes a previous finding of guilt, within the meaning of the *Youth Justice Act* schedule 4, against the offender as a child". Schedule 4 of this Act states: " finding of guilt means a finding of guilt or the acceptance of a plea of guilty by a Court whether or not a conviction has been recorded"

Section 148 of the Youth Justice Act 1992 stipulates that evidence of childhood finding of guilt is not admissible against an adult as subsection (1) clearly states: " In a proceeding against an adult for an offence there must not be admitted against the adult evidence that the adult was found guilty as a child of an offence if a conviction was not recorded."

Subsection 328 A (1) describes the offence of dangerous operation of a vehicle and this offence is classified as a misdemeanour. However, subsections (1A) and (2) outline what are the aggravating circumstances relating to the commission of this offence that thereby constitutes the commission of a crime.

The proposed insertion of "previously convicted" in s. 328A(6) means that if such insertion is enacted s328A (3) will now effectively repeal the operation of s. 148 of the *Youth Justices Act* as this subsection mandates: "If the offender has been:

(a) previously convicted either upon indictment or summarily of an offence against this section committed while the offender was adversely affected by an intoxicating substance; or

(b) twice previously convicted either upon indictment or summarily (or once upon indictment and once summarily) of the same prescribed offence or different prescribed offences; the Court or justices shall upon conviction, impose the whole or part of the punishment, imprisonment."

This proposed amendment viewed in the context of existing subsection (3) (where already the existing punishment for the offence is by way of mandatory sentencing of imprisonment which interferes with the Court's sentencing discretion) will undermine the prospective, beneficial and rehabilitative purpose of section 148 of the *Youth Justice Act* given to those adults who are facing proceedings against them for an offence cannot have admitted against them in such proceedings evidence that they were found guilty as a child of an offence if a conviction was not recorded. In this regard it is relevant to note 9 (d) of the Youth Justice principles which states that a child who commits an offence should be dealt with in a way that recognises the child's need for guidance because children tend to be dependent and immature. The abovementioned proposed amendment retrospectively and prospectively erodes the therapeutic benefit provided by this provision when considered in conjunction with s. 148 of

the Youth Justices Act which would justify a children's Court not recording a conviction for an offence.

(c) Clauses 14 and 24

Clause 14 abolishes the principle that detention should only be imposed as a last resort and elevates impact on the victim to primary status.

Clause 24 abolishes the requirement that when imposing detention, the Court must be satisfied there is no other appropriate sentence.

These sections are a clear violation of the *Human Rights Act* which reflects international principle and scientific understanding developed over the last 100 years and set out above.

Kelly Richards in a paper for the Australian Institute of Criminology entitled *What makes juvenile offenders different from adult offenders*[5] notes 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."

In a paper entitled "No Place for Kids – The Case for Reducing Juvenile Incarceration"[6] 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.

(d) Clause 28

This clause allows for the naming of kids sentenced under section 175A where an offence involves violence against a person and the Court considers the offence to be particularly heinous.

The idea of naming and shaming children has been repeatedly rejected.

In 2008 a committee of the 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 juvenile's bonds

[5] https://www.aic.gov.au/publications/tandi/tandi409

[6] https://www.aecf.org/resources/no-place-for-kids-full-report

with criminal subcultures and their self identity as a criminal or deviant and undermining attempts to address the underlying causes of offending."[7]

The Committee went on to acknowledge that it is important for juvenile offenders to recognize 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."[8] Reintegrative shaming, as utilized in youth justice conferences is an example of the constructive use of shame.

Rather than rehabilitating young offenders it is the QCCL's view that naming them would in fact serve to destroy their prospects of rehabilitation. 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."

Our preferred position would be children should never be named. But accepting that position has no chance of success we submit that the law should stay as it is.

(e) Clause 48

The proposed amendments to ss 148 - 148AB of the *Youth Justice Act* will mean that when sentencing adults, Courts can admit evidence of findings of guilt as a child even if no conviction was recorded and give more weight to certain offences (dangerous operation of a motor vehicle). Courts may treat these findings as equivalent to a conviction for sentencing purposes.

They will also allow the Courts to consider the childhood finding of guilt for 5 years from the date of last offending. We make the following observations on this proposal

1. This proposal erodes the principle that childhood offending should generally be rehabilitative and not prejudicial to an individual's adult life by prolonging the punitive shadow of childhood offences into adulthood.

2. In *R v Patrick* [2020] QCA 51, 10 [43] (Sofronoff P, Fraser JA and Boddice J agreeing), the Qld Court of Appeal commented on the 'immaturity in thinking that hampers a child's judgment, as well as a child's lack of experience' results in the commission of offences 'without being conscious of the potential consequences'. It noted that 'for this reason, the moral blameworthiness of a child for the consequences of offending cannot always be the same as that of an adult'.

3. Allowing for findings of guilt to be considered as convictions prevents children and young people from being able to build identities and futures for themselves outside of/separate from the 'criminal' label that they have been branded with. It will limit their employment opportunities, housing and future prospects in many ways.

[7] 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 – report found here https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1841

[8] Ibid para 3. 1113

4. It is important to limit the period of time for which criminal records of juvenile offenders can be retained. One option is expunging the record when the child reaches the age of 18; alternatively, deletion after a specified period such as two or three years where no further similar offences have been committed in that time. Five years is a long time for a previous finding of guilt to be held over a child's head and can hold them back from making a fresh start in their adult lives. It is important for children to know that offending committed when they were youths, while their brains are still developing, will not hold them back for the rest of their lives[9].

5. In sociology, research from labelling theory suggests that being labelled as a criminal in adolescence increases the likelihood of future offending due to societal rejection and reduced opportunities. In this article it says the following:

> Labelling theory, which emerged in the 1960s, posits that young people who are labelled 'criminal' by the criminal justice system are likely to live up to this label and become committed career criminals, rather than growing out of crime, as would normally occur. The stigmatisation engendered by the criminal justice system therefore produces a self-fulfilling prophecy—young people labelled criminals assume the identity of a criminal. Labelling and stigmatisation are widely considered to play a role in the formation of young people's 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.

6. In most jurisdictions, for example, juveniles who participate in a restorative justice conference and complete the requisite actions resulting from the conference (such as apologizing to the victim and/or paying restitution), do not have a conviction recorded, even though they have admitted guilt. .

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.

5. What should be done?

The QCCL says that the fundamental objectives of the youth justice system should be to:

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

[9] see the discussion of this by the Australian Law Reform Commission here https://www.alrc.gov.au/publication/seen-and-heard-priority-for-children-in-the-legal-process-alrc-report-84/19-sentencing/criminal-records/

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

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

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[10] or training in basic life skills."

As Dr Weatherburn went on to point out a far better approach than that proposed by this Bill 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[11]."

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

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

Please direct correspondence concerning this submission to president@qccl.org.au

Yours Faithfully

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
3 December 2024

[10] See also footnote 6

[11] That these views are still supported by the evidence is supported by *Why Youth Incarceration Fails: An Updated Review of The Evidence* footnote 3 above