

Legal Affairs and Community Safety Committee

Youth Justice and Other Legislation Amendment Bill 2019

Submission



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Introduction

Anglicare Southern Queensland (Anglicare SQ) welcomes the opportunity to make a submission to the Legal Affairs and Community Safety Committee in relation to amendments to the *Youth Justice and Other Legislation Amendment Bill 2019*. We support the Government's stated commitment to youth justice reform based on sound evidence of what works and an increased focus on restorative justice, early intervention and rehabilitative approaches to reducing youth offending.¹

As identified in the Explanatory Notes, this Bill makes a number of priority amendments to remove legislative barriers that may contribute to children and young people* being refused bail, breaching bail conditions or remaining in detention on remand for an extended period. Our submission focuses on these three priorities.

Anglicare SQ's experience

Our comments below reflect the direct expertise and experience of Anglicare SQ in working directly with many thousands of vulnerable children, young people and their families for more than twenty years. In addition to the recent establishment of our two Supported Community Accommodation (SCA) Services and the Bail Support Service (BSS) that Anglicare SQ runs in partnership with the Department of Child Safety, Youth and Women, we draw on experience that includes the operation of child and family programs across a geographic footprint double the size of the United Kingdom: Foster and Kinship Care, Residential Care, Family Intervention Services (FIS), Intensive Family Support (IFS); Secondary Family Support (SFS) and Supported Independent Living Services (SILS).

In the most recent financial year 2017–18, Anglicare provided 383,000 nights of care for children and young people through foster and kinship care and supported accommodation, providing care to more than 1,000 young people on any one night. Twenty-seven per cent of children in our Children and Families programs are from Aboriginal and/or Torres Strait Islander backgrounds, and we work closely with Elders and local community to help connect them with kin and country. We also have an active recruitment and employment pathway to continue increasing the number of Aboriginal and Torres Strait Islander staff working within Anglicare SQ.

During 2017–18, our Residential Care and Supported Independent Living Services placed 146 children and young people aged from 8–17 years in appropriate accommodation. We continue to provide residential care and support to children and young people in a home setting as an alternative to foster and kinship care in 16 locations across southeast Queensland. Our residential care workers provide high-quality daily care and support to children and young people.

Our Family Support and Intervention programs provided more than 24,100 hours of support to families in the community in 2017–18. In Gympie, we have become a hub for family support services. We received funding for two Secondary Family Support services for the Sunshine Coast and Gympie, where we provided up to 8,000 hours of support to high risk vulnerable families.

Our Children and Parenting services provided support to parents, children and young people across 33 service locations. During 2017–18, we supported 589 parents, children and young people with a range of challenges including family communication; school issues and bullying; behavioural issues; coping with family violence; emotional resilience and development; and anxiety, depression and emerging mental health

* We specifically refer to 'children and young people' in many places in this submission in recognition that the current minimum age of criminal responsibility includes 10 year olds who are, in fact, children.

concerns. We also offered a wide range of group programs to 1,584 parents and children, including playgroups, parenting groups and kids' clubs; children's wellbeing groups; and family events.

We provided counselling and accommodation services in Beenleigh, Mount Gravatt and Cleveland to 1,078 young people aged 12–18 who were at risk of homelessness or who were homeless. Our crisis accommodation was fully staffed on a 24-hour basis. We also supported 434 young people aged 14–17 at risk of not completing Year 12 through the Youth Support Coordinator initiative, which promotes social inclusion and increased participation in education and training. Our experience in specialist support services includes drug and alcohol education and court diversion programs for young people; domestic violence 'respectful relationships' youth courses; and counselling for children whose parents have been affected by drug or alcohol use.

Given this experience, Anglicare SQ offers the following considerations to inform proposed changes to the *Youth Justice and Other Legislation Amendment Bill 2019*.

Summary of our recommendations

Anglicare SQ **strongly supports:**

- strategies to reduce the time taken to finalise proceedings in the youth justice system;
 - the removal of legislative barriers to enable more children and young people to be granted bail, so that wherever appropriate young people can be released rather than remanded in custody;
 - more appropriate, practical and culturally-appropriate conditions attached to grants of bail for children and young people;
 - raising the minimum age of criminal responsibility to at least 14 years; and
 - expanded funding and rollout of outreach bail support service models in multiple locations across the state.
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Priority amendment 1

Reduce the period in which proceedings in the youth justice system are finalised

Anglicare SQ **strongly supports** strategies to reduce the time taken to finalise proceedings in the youth justice system. Multiple adjournments of cases for children and young people have a number of detrimental impacts for young people, which include the following:

- The length of time between the action and the consequence makes it difficult for children and young people to link the two, effectively undermining the impact of any outcome. The functions of reasoning and impulse control are the last to mature in all human brains, much less those which have suffered damage through neglect and trauma. Children in these circumstances simply may not have the neurological capacity to understand and connect all of the consequences of their actions, particularly when there are extended periods of time between the two. For this reason we also **strongly support raising the minimum age of criminal responsibility to at least 14 years**, reflecting an international evidence base that shows that the brains of children and young people are still in a state of development, and that trauma and neglect further delay high level reasoning skills.
- If court dates are adjourned multiple times without any outcome being reached, this can lead to heightened anxiety (see Box 1), particularly for the many children and young people in the justice system who manage mental health issues. Alternatively, Court dates become routine and meaningless from the child or young person's perspective. Either of these scenarios can lead to children or young people not attending when required, and consequent negative implications when the case is finally heard.
- Children and young people on remand may serve more time in detention waiting for their cases to be heard than they receive as a sentence. Apart from the injustice involved in this scenario, it means that the child or young person leaves court 'free', with what they perceive as no further ramifications arising from their offence. The connection between the offence and the outcome is even further weakened.

Box 1

Anglicare assisted a young boy after he was released on bail from the watch house. He had no shoes or other belongings, and no place to sleep.

Numerous attempts to find emergency/ long term accommodation options were unsuccessful, but we were able to assist him in linking up with his brother for a few nights.

Anglicare offered to purchase shoes for the child. He thanked us, and commented "otherwise I would have had to steal some". We also supported this young boy to purchase a change of clothes, basic toiletries and food, and to gain transport to his brother's home to sleep.

Over time Anglicare staff have engaged with and regularly supported the child and his family. He displays a large amount of social anxiety and has historically not attended court appearances due to this. Anglicare has provided transport and court support at each appearance and he has been able to successfully attend all court and legal appointments since connecting with our service.

Priority amendment 2

Remove legislative barriers to enable more young people to be granted bail

Anglicare SQ **strongly supports** the removal of legislative barriers to enable more children and young people to be granted bail, so that wherever appropriate they can be released rather than remanded in custody.

The largest proportion of children and young people represented in the youth justice system are there because they have made poor or impulsive decisions, or engaged in risk taking, as a result of normal developmental processes.² Exposing these children and young people to the trauma of time in detention is counter-productive: diversion is much more effective,³ and most will simply 'age out' of the justice system as they become more mature.⁴

The small proportion of serious and/or repeat offenders in the youth justice system are most likely to be children or young people who have life experience of ongoing trauma and neglect. Without denying the importance of community safety, granting bail in conjunction with therapeutic and integrative programs that aim to address the effects of trauma, and enable connection of children and young people to family and community, is much more likely to reduce recidivism than detention. Alternatives to remand such as Anglicare's Supported Community Accommodation (SCA), with the option of step down [family] support post-exit, have proven successful for children and young people at both of our locations (see Box 2). Variations on the model, such as Youth Foyer-like supported accommodation,⁵ would also provide positive alternatives to remand.

We note that the Bill addresses the issue of children and young people being remanded in custody simply because they have nowhere else to go, or because they identify a location that is considered inappropriate. The issue here is how children and young people in these circumstances can be supported in the community without recourse to remand. While recognising that many of these locations are not optimal, Anglicare's Bail Support outreach program contributes to the safety and appropriateness of a child or young person's situation through

Box 2

Some outcomes from Anglicare's Supported Community Accommodation (SCA) program (as at Dec 2018) included:

- 10 of the 11 young boys placed in SCA had either returned home to family or were supported to transition to accommodation services.
- All of the boys successfully returned to a learning environment either through attendance at TAFE, job skilling or employment.
- Two of our four young girls successfully transitioned out of the service to family, with both girls returning to education and/or employment. Neither has re-offended.
- Across both sites, young people engage in activities such as:
 - onsite programs including Aggression Replacement Therapy and mindfulness
 - a pre-tenancy course with Tenants Queensland
 - practical learner driving experience
 - onsite music studio and gym programs
 - Logan PCYC Breaking the Cycle program
 - volunteering at Redlands Community Garden, gaining a professional referee as a result.

Box 3

Our young client, aged 13, was on remand, being held in BDYC. When his bail was not granted, Anglicare connected with the child's family, who identified as Samoan, and linked them with a culturally appropriate youth worker. Meetings with the family and the child identified:

- The young boy didn't have a bedroom and was sleeping in the garage. This made supervision difficult and increased his opportunity to leave home at night.
- The parents struggled with the child's behaviours and how to manage these. They also had significant medical concerns of their own.
- The young boy recognised that he offended when he was bored. He wasn't attending school, but he had interests in football, church and boxing.

Anglicare's youth worker worked regularly with our young client to create plans and goals for when he was released and to ensure that he maintained a connection with the youth worker upon his release. The Anglicare coordinator and youth worker worked alongside the family to:

- identify a bedroom space and a rebuilt TV and game console to increase motivation for him to stay home at night;
- plan youth worker support for the afternoon/early evenings to model and support the family with behaviour management;
- provide advocacy around the child's return to school/sporting activities; and
- link his parents with an organisation who could assist with an NDIS application.

Legal representation at our young client's bail hearing stated it was very unlikely that he would be granted bail due to his very high number of offences. Anglicare supported the family at court and assisted his mother in preparing to address the Magistrate. Anglicare also prepared a letter detailing the supports in place for the child. He was granted bail with strict conditions, and has been with his family for three weeks to date. He is successfully completing programs and attending school.

practical and social support — ensuring that the child or young person has sufficient food, clothing and shoes, for example, and building relationships of trust that enable us to work with the individual toward more appropriate living arrangements (see Boxes 1 and 3).

Anglicare is also trialling an outreach service with the Gold Coast watch house. Watch house staff rarely have the skills or qualifications to understand and work with traumatised children and young people, and their role puts them in a position where they are often not trusted by the young people. Children and young people are at their most vulnerable in this situation and, with support, will often be open to diversionary strategies that can help to keep them out of the justice system in the future.

We strongly support the expanded funding of outreach models such as those above in multiple locations across the state.

Priority amendment 3

Ensure appropriate conditions are attached to grants of bail

Anglicare SQ **strongly supports** more appropriate, practical and culturally-appropriate conditions attached to grants of bail for children and young people.

As noted by The Hon. Di Farmer, Minister for Child Safety, Youth and Women, in the Explanatory Speech accompanying the introduction of this Bill:

For some children, intensive and onerous bail conditions are likely to be counterproductive and increase the likelihood of a young person breaching their bail conditions and being remanded in detention for the breach.

Anglicare's experience working with children and young people provides a range of examples demonstrating the pressing need for this amendment.

Cultural considerations should be core in any deliberations about bail conditions. We have had situations where young people have been in breach of bail conditions for attending funeral ceremonies, which occurred over the course of several days, for a grandparent. Maintaining their bail conditions in these circumstances comes at the cost of maintaining connection with family and community, as well as increasing the emotional hardship that accompanies the death of someone important in a child or young person's life.

Other bail conditions can be physically impossible to meet. For example, if the only accommodation available is overnight-only, children or young people on curfews that include an obligation to maintain 24-hour contact with a youth worker or an adult are automatically in breach as soon as they follow a directive to leave the premises in the morning.

Other cohorts of children and young people on bail who face particular difficulties in meeting impractical and onerous bail conditions include those born in New Zealand who are Australian residents but not citizens, and therefore receive no income support. With no income, they have little chance of obtaining accommodation or meeting the requisites for employment. If they are estranged from their families, these young people are dependent on charity or theft to survive.

Similarly, the cohort of 14–15 year olds can find themselves homeless, with no or little support, and face significant difficulties in meeting bail conditions. This group is largely too young for a Centrelink allowance, and often too old or resistant to participate in a Child Safety system that is already under pressure.

Breaching bail is not an offence for young offenders. However, breaches are considered in court when the child or young person's case is heard, and can be interpreted as a sign that an individual is uncooperative, defiant or disinterested in taking responsibility for their behaviour.

In conclusion

Anglicare SQ strongly supports the diversion of children and young people from the court system wherever possible. The proposed amendments, addressed above, provide sensible strategies to help achieve this outcome, and acknowledge the realities of day-to-day life for most children and young people who find themselves in the youth justice system.

We would however urge the Queensland Government to take a further step: the proposed changes are fully in keeping with the rationale for raising the minimum age of criminal responsibility to at least 14 years. In addition to practical benefits such as helping to address demand pressure on the youth justice system, and resolving issues related to very young children and 17 year olds sharing the same facility, the proposal for 'raising the age' is based on international evidence, and is consistent with early intervention initiatives that aim to keep families and children out of the child safety and youth justice systems.⁶

'Raising the age' would further support the Queensland Government's proactive commitment to a youth justice system in Queensland that "values and supports the future of the children and young people it is responsible for".⁷

References

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- 2 Stewart, Anna (2013). Youth Justice: A Balanced Approach. School of Criminology and Criminal Justice, Griffith University. Presentation to Youth Advocacy Centre Public forum, 29 May.
- 3 Jesuit Social Services (2013). *Thinking Outside: Alternatives to Remand for Children* (Research Report). Richmond, Jesuit Social Services. jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_-Final_amend_15052013.pdf
- 4 Richards, K. (2011). What makes juvenile offenders different from adult offenders? *Trends & Issues in Crime and Criminal Justice*, No. 409 February. Canberra: Australian Institute of Criminology. www.yac.net.au/wp-content/uploads/2013/06/KR-paper.pdf
- 5 eg Foyer Port Adelaide. www.stjohnsyouthservices.org.au/services/foyer-port-adelaide
- 6 Queensland Government (2019). Report shows Queensland making progress on child safety, youth justice. Media statement, The Honourable Di Farmer, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence. 22 January 22. statements.cabinet.qld.gov.au/Statement/2019/1/22/report-shows-queensland-making-progress-on-child-safety-youth-justice
- 7 The Attorney-General, The Hon. Yvette D’Ath. 1 Dec 2015. Explanatory Speech. www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/151201/YJOLAB.pdf