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Australians for Native Title and Reconciliation QLD Sea of hands

Justice • Rights • Reconciliation

A Submission to the Legal Affairs and Community Safety Committee

Parliament of Queensland

THE YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2019

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[redacted]

PREAMBLE

Across 20 years, ANTaR Queensland has drawn on the insights, energies, and resources of people from the general community who support the full realization and equitable participation of our First Peoples in all areas of community life. Walking beside Murri people in many communities across Queensland; knowing them as friends and colleagues; advocating with them in challenging social, economic and political causes – these have been both a responsibility and an inestimable privilege for us.

Since 2013, ANTaR Q has worked as a key member of the Balanced Justice Campaign – a loosely knit network of people from outside government; including 7 professional and research disciplines, united in our purpose to reform of the Youth Justice (YJ) system of Queensland. Several of the 23 policy contributors to this network have been or are currently members of ANTaR Q. Our campaign charter for YJ reform (taken to the 2015 and 2017 state elections) is attached. Most of the 23 have made submissions to the YJ reform process in their own right over recent years. The writer was one of 17 members of the voluntary stakeholders advisory group which assisted Ministers D'Ath then Farmer in the preparation and implementation of statutory removal of 17 year old offenders into the youth justice jurisdiction (2017-18). Viewpoints and perspectives in this submission are entirely those of ANTaR Q.

ANTaR Q has always travelled light organizationally. It is lightly staffed. It does not receive government funding. It prioritises the energizing, inspiring and equipping of its members to be strategically involved or supportive in the several types of pressing engagement faced by First Peoples today and tomorrow. Our current 400 (approx) members and supporters are dispersed across the state. Prominent among them are significant numbers of late career and early retired professionals who have served around the state across several decades of their careers. These include teachers, doctors, health and disability services, human services, legal and law enforcement professionals and clergy.

ANTaR Q commends the government for the bold objectives it has set for itself in making the twin priorities of Youth Crime Prevention and Community Safety the core of the YJ reform process. Having considered this bill, we are eager to support the best deployment of the full resources of government and community – towards seamless, efficient and effective practice in the YJ system. The writer has studied the bill under consideration and attended the briefing webinar in recent weeks. Given the heavy over-representation of First Peoples youth in the YJ system and, in particular, those among them who have significant experience of out-of-home care, mental health, intellectual disability and other disabling conditions, it is through this lens that the following experience and opinion is offered:

OBJECTIVES OF THE BILL

1. Reduce the period in which proceedings in the youth justice system are finalized

1.1 It is an intuitive desire for many members of the general community that any child on charges in the Childrens Court should be dealt with as expeditiously as possible – for the best of reasons. It is recognized that, behind this commendable desire, there are many matters of due process to be dealt with. Additionally, in the geographic and demographic reality of Queensland today, there are serious obstacles to be faced in relation to matters such as ensuring adequate legal representation for the defendant; ensuring that the defendant is fit to plead; understanding physical and mental health capacities of the defendant; fixing fair and practicable bail conditions when the magistrate defers a hearing.

1.2 It has been proposed within the Childrens Court reform process that a young defendant should have the relevant charge or charges heard as soon as realistically possible – and within 24 hours from the time of arrest. While seen as a counsel of perfection in some respects, this is worth striving for as a new benchmark for the court. Will this be achievable for a high proportion of defendants in metro Brisbane and 9 larger regional centres? Clearly, it will demand new types and levels of agility and close-range, inter-agency teamwork – a serious challenge for several agencies directly relevant to the process. As an example, there might be a hypothetical 11 year old from a small town between Toowoomba and Charleville; Indigenous; neglected and abused at home; already 2 years experience in out-of-home-care; disengaged from school; living with a single parent alcohol dependent; no previous record of offending; currently arrested on burglary and car theft charges. Can this defendant be remanded into suitable care and supervision in a nearby larger town until the charges are dealt with in court? Could this happen in a period of days rather than weeks? Can the best efforts of all relevant agencies ensure that the child does not live in a police watch-house and is not taken under escort to a youth detention centre? Such challenges remain common across the state. Can the Youth Justice Department in concert with the QPS and the Childrens Courts bring new resolve, increased resources and best practice outcomes to such situations?

1.3 Are all relevant state agencies well motivated and suitably led – in order to give their finely tuned best inputs into the new processes? To give their best to unprecedented quality in collaborations and skilled team work needed for the desired improvements in managing young defendants? In particular, does the QPS (from top to bottom) see itself as embracing a new learning curve in fruitful collaboration with the other relevant agencies? Will such a learning curve be realistically resourced? The desired improvements in management and care of young defendants will stand or fall on the quality of astute, high performing, inter-agency teamwork.

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

2.1 This is self-evidently commendable. It needs to be seen in the context of the power of magistrates to divert a first offender or one who has been apprehended on several lower range charges – away from court proceedings into youth conferencing or a comparable process. It follows then, that the removal of legislative barriers to enable more of those charged to be granted bail will increase the magistrate's options in dealing with the specific facts of the case in question. For many young defendants, the period of bail can be productively used – whether for skilled, constructive intervention with family matters; education or accommodation arrangements; assessment of physical, mental and disabling conditions; pre-vocational training or employment opportunities.

2.2 In the case of First People defendants, a more flexible bail regime could enable productive connection with country to be commenced or re-established – with designated Elders and youth workers. Such practices are currently viable in most regions of Queensland. Examples of conspicuous success in this sphere are seen in the Rockhampton (Darumbal) area, the Townsville (Birrigubba) area – as well as on a smaller scale in several Cape communities. Scope for such practices exists in several other regions.

3. Ensure appropriate conditions are attached to grants of bail

3.1 Greater flexibility in the granting of bail by a magistrate carries with it an obvious increase in the range of applicable conditions set. In each case, the conditions set will need to be tailored to ensure that the defendant will not re-offend; will be safe; will be assisted as far as possible to take opportunities to consider alternative strategies and pathways to get his/her life to a better place; crucially, to avoid re-offending.

3.2 Some magistrates are known positively for their willingness to be resourceful and practical in using currently limited options for the setting of bail conditions. Within the difficult time constraints of court proceedings, it is to be expected that there will be marked progress by magistrates in the deployment of court staff – in order to get best advice from the increased collaborative efforts of the relevant state agencies and others such as community lawyers and community based youth workers. Experience in several other jurisdictions shows that prevention of re-offending is strongest when bail conditions and related opportunities are applied to the actual life circumstances of the child.

4. Introduce a new information sharing regime to assist government and non-government organizations to assess and respond to the needs of young people in the youth justice system

4.1 Earlier comments related to the unprecedented degree of high quality teamwork by a mix of government agencies also apply here. It appears that there are some early and encouraging signs of such multi-agency constructive action in the Townsville area: both in the close range work of the relevant government agencies in constructive early intervention with troubled families – and in their productive collaboration with high value community agencies. Where there are remaining instances of the legendary silos, those who are relevant decision makers must be seized by the imperative of preventing a life of crime – as well as contributing to safety in the general community.

4.2 While the previous comment can easily appear to be simplistic and not appreciating the accumulated web of legislation, regulation and established protocol, the government is urged to take the opportunity to review carefully all legislation which inhibits timely and efficacious joint actions and strategies – remembering that the central purpose is prevention of crime and enabling restorative practices with young offenders and at-risk young people

5. Clarify that conditions requiring the use of an electronic device cannot be imposed on a child

5.1 The writer has taken opportunities to be thoroughly briefed on the potential uses and likely outcomes of using electronic devices with young offenders (aged 10-18 years). Part of the briefing process was a workshop demonstrating the uses and limitations of such devices as experienced by the South Australian youth justice system. I was left with the conclusion that the only justified use of such a device with young offenders would be in the very rare instance of an offender who is a proven serious danger to other people – whether in custody or in the general community. Wider use than this with young offenders is highly likely to be counter-productive and criminogenic.

6. Authorise the use of body worn cameras and the capture of audio recordings through CCTV technology

6.1 There seems to be wide agreement among youth justice practitioners and researchers That the use of body-worn cameras linked into CCTV surveillance systems in relevant government premises is a positive practice. In a basic, comprehensive sense, it has deterant value and provides important evidence when needed. When practised as intended, monitored and audited competently and serviced proficiently, it contributes

towards keeping everyone honest. In this spirit, the legislative mandate for such practices needs to be clear and positive.

7. Provide that in sentencing a young person for the manslaughter of a child under 12 years, courts must treat the defencelessness of the victim and their vulnerability as an aggravating factor

7.1 A young defendant charged with the manslaughter of a child under 12 years must be sentenced according to the precise circumstances of the crime committed. Accordingly, if the offender can be clearly recognised as someone who has physical and/or intellectual advantage over the defendant, due weighting must be given to these factors in sentencing. It is recommended that sentencing legislation require such consideration to be made by the sentencing judge.

8. Allow the Office of the Public Guardian's community visitor program for children to visit young people who may reside at a child accommodation service provided or funded by the Department of Youth Justice

8.1 It is well established in several other jurisdictions (Ontario, Quebec, New Zealand) directly comparable with Queensland, that the positively managed access of statutory community visitors to places such as bail hostels or more secure, supported facilities outside youth detention centres is a positive and productive practice. Therefore it is recommended that the legislative basis for such practices be clear, positive and straightforward.

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Youth justice in Queensland

The consequences aren't minor

The importance of rehabilitation as a fundamental principle of a juvenile justice system cannot be overstated. It is in all of society's interest that appropriate chances of rehabilitation are provided to a child offender. Early measures have the greatest prospect of success from turning a child away from a life of crime. An overly punitive juvenile justice system carries the danger of abandoning offending children and condemning them to continuing to offend.

President of the Children's Court of Queensland
His Honour, Judge Michael Shanahan
Children's Court of Queensland Annual Report 2013-14

2017

Balanced Justice

Youth justice in Queensland

Balanced Justice is a network of concerned community and church groups that seeks to enhance the safety of all Queenslanders by promoting understanding of criminal justice policies that are effective, evidence-based and human rights compliant.

We promote youth justice policies that are targeted to deal with the causes of children's offending. Dysfunctional families, child abuse and neglect, mental health issues, poverty, social and economic disadvantage in communities, delayed language and development, and the incapacity of abused, neglected and unhealthy children to engage with education are all factors contributing to childhood offending.

The majority of young offenders come from locations experiencing social and economic stress, including Aboriginal and Torres Strait Islander communities in northern and regional Queensland.

- Between 2014–15 and 2015–16, the youth offender rate in Queensland decreased by 1% from 2,671 to 2,632 youth offenders per 100,000 persons aged 10–17. This was the lowest youth offender rate in Queensland since the beginning of the ABS time series in 2008–09.[1] The numbers have reduced even in so-called youth crime 'hot spots'.[2]
- 70% of young people in detention are Aboriginal and/or Torres Strait Islander.[3]
- Young people in the child protection system are 12 times as likely as the general population to also be under youth justice supervision.[4]

Two key challenges we need to address together as a community

- How best to address the causes of youth offending in a manner that builds stronger families and communities, identifies children's problems early, builds pride in a civil society where children are nurtured and education is valued.
- How best to ensure that the causes of offending are addressed holistically with family/community issues, while protecting community safety.

Evidence tells us

- Punitive sentencing practices, including mandatory sentencing, are ineffective. They do not address the holistic needs of the children and their families and do not adequately protect society.
- Youth detention facilities do not always meet duty of care requirements, fail to rehabilitate and entrench offending life styles.
- International comparisons demonstrate that Queensland and Australia's youth and adult imprisonment rates are too high **and result in more, not less crime**.

The way forward

There is a body of best practice evidence in Australia and overseas that the best outcomes are achieved where:

- The role of the criminal justice system is defined as *"working with other human service agencies to keep peace in society".* This overarching goal opens up a range of positive options for police, courts and human service agencies to work in concert to address the drivers of anti-social behaviour, particularly for young people (children).
- Those people with constructive ideas and a desire to improve circumstances for their families in communities are best empowered to lead change.
- Responses to social dysfunction and crime are *situational* or *place based* and are led by an empowered *guiding coalition* of local leaders and catch the imagination of the local population as the way to a desirable future.
- The role of government and other service providers changes from one of doing things **to and for** communities (a top-down approach) to one of **enabling and capacity building** such that individuals and families are empowered to build strong communities.
- Children at risk are identified as early as possible, assessed for language and other developmental problems and provided appropriate support and therapy.
- Young people are supported, as a high priority, to maintain engagement with education and are mentored into positive recreational and developmental activities that are enjoyable for them.
- Recognition that young offenders require *healing,* mentally and physically, and First Nation young offenders require *cultural healing on country.*
- Sentencing practices are founded in *restorative justice* principles, and family and community empowerment strategies are driven by *justice reinvestment* principles.

Call to parties

With other community groups who work with young people in, or on the edges of, the criminal justice system, we call on all Queensland parties to individually commit to and unite in ensuring the implementation of the following critical measures:

1. Commit consistently to evidence based policy making when dealing with young offenders and those at risk of offending.
2. Ensure that court processes provide a more holistic approach to dealing with children who offend.
3. Increase diversion and cautioning by police.
4. Address the education needs of all children at risk of offending, especially those who are excluded or suspended from schools.
5. Ensure the timely and effective comprehensive health screening of children who come into contact with Child Safety as well as Youth Justice, with particular attention to foetal alcohol spectrum disorder (FASD).
6. Implement a system to address the criminalisation of young people in the child protection system including the need for each child to have a dedicated advocate so that there is a ''One file One child'' system in place. Ensure that there is one carer who remains responsible for the child's wellbeing, despite the child entering the youth justice system.
7. Ensure that young people are not placed in custody because of a lack of accommodation, or as a substitute for appropriate child protection, mental health or other social measures.
8. Build authentic and productive relationships with Traditional Owners in relevant regions for the effective involvement of Elders and other appropriate First Peoples in the rehabilitation of young offenders.
9. Ensure government investment in more intensive and meaningful training requirements (in particular, cultural competence training) for those working in the youth justice area, including police, lawyers, youth justice residential and detention workers.
10. Provide more stable funding for existing community youth justice programs where evaluations are demonstrating effectiveness.
11. Recognise the achievements of smaller localised youth justice programs and providing support and funding to extend the programs to other communities.
12. Raise the minimum age of criminal responsibility in accord with the expectation of the UN Committee on the Rights of the Child.

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