



AASW(Qld) submission on the Youth Justice and Other Legislation Amendment Bill 2019

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Queensland Branch Office– Brisbane
5/43 Vanessa Boulevard, Springwood
BRISBANE, QLD 4127
PO Box 1024
SPRINGWOOD QLD 4127
T 07 3090 3718
E aaswqld@asw.asn.au www.aasw.asn.au

Enquiries regarding this submission can be directed to:

Queensland Branch President:
Ellen Beaumont

Email: [REDACTED]

Queensland Branch Manager
Ms Mere Vitale
Email: aaswqld@asw.asn.au

Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 12,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, social inclusion, and discrimination.

The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Social workers consider the relationship between biological, psychological, social and cultural factors and how they impact on a person's health and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may have a negative impact, such as inequality, injustice and discrimination.

Social workers work with young people engaged with the youth justice sector through a variety of contexts. This includes working within youth justice, child protection or within community organisations as case managers, AOD, housing and mental health workers to support young people who encounter the justice system. Through this work, our members have observed the impact of the justice system on young people, their families and the wider community. Consultation was undertaken with members experienced in the youth justice system and prepared jointly by the members of the AASW (Qld) Social Policy Sub-Committee to prepare this submission.

Submission

The AASW Queensland Branch (herein the 'AASW'), welcomes the opportunity to contribute to the consideration of the *Youth Justice and Other Legislation Amendment Bill 2019* (the Bill), a significant legislative and policy process. We commend Queensland Government for this timely review and support the commitment to the 'Four Pillars' objectives as a policy position for youth justice reform: intervene early; keep children out of court; keep children out of custody; and reduce re offending.

The report by Mr Robert Atkinson AO, APM in the 2018 *Report on Youth Justice* highlighted important systemic and structural issues that have led to practices which have, in our view, harmed children and young people. It is evident that a focus on prevention and early intervention is crucial and involves structural and systemic level changes to address the reason why children and young people offend in the first place, and that particularly address issues of poverty, trauma, racism and discrimination. It is noted that prevention and early intervention strategies are not presented as part of this process, and we believe there needs to be a well-integrated strategy that sees a focus on prevention, early intervention and tertiary intervention operating in parallel. This view is supported by international literature that highlights the need to focus on strengthening communities to address the reasons why crime occurs and the links between high rates of incarceration and poverty (Allard, Chzanowski, & Stewart, 2012; Australian Social Inclusion Board, 2011; Gooda, Priday & McDermott, 2013; Homel, Bumbarger, Freibert & Branch, 2017; Vinson, 20017; Vinson & Homel, 1975).

As argued by Byrne:

“Until we address the underlying community factors that social ecologists have long argued are associated with crime—including location in high-risk neighborhoods, culture, resource availability, jobs, poverty, and a breakdown of informal social control mechanisms—even high-quality, resource-rich rehabilitation programs are not likely to result in broad-scale desistance from crime among individual offenders.” (2008, p. 270)

In conjunction with this bill, the AASW advocates for the implementation of a strategy that addresses the above factors associated with justice involvement. The AASW considers it imperative that all aspects of this strategy are:

- appropriately funded and resourced to ensure their success, recognising that appropriate investment in the full continuum will reap longer term benefits to our society; and
- supported by a robust education strategy for all stakeholders involved in working with children and young people in this area, which includes a cultural shift in terms of attitudes and beliefs.

Commentary on the Bill and Amendments

This section addresses key points identified by the AASW in the order set out in the Explanatory Notes and the Bill.

- The AASW supports a child focused framework underpinning the policy objectives. The AASW recommends that the framework must conform with the provisions of relevant human rights legislation and conventions, including the United Nations *Convention on the Rights of the Child*, the *Universal Declaration of Human Rights* and the *Queensland Human Rights Act 2019*.
- In relation to Principle 7 of the Charter of youth justice principles, the AASW supports the importance of finalising proceedings against a child as soon as practicable and requiring the youth justice system to give priority to proceedings for a young person remanded in custody. However, we also recognise that this could result in unintended consequences for adults in an already overburdened system. This should not be an either/or allocation of scarce resources and should be accompanied with further resourcing, as discussed further below.
- The AASW agrees with the importance of the inclusion of the following three new principles in the Charter of youth justice principles in Schedule 1 of the Youth Justice Act as these appropriately recognise the additional vulnerability and special status of children.
- The AASW supports the move for closer linking between the Youth Justice, Court and Police systems which proposed in the Bill. The AASW strongly supports the principle that incarceration is the least preferred option. However, we would argue that this needs to be strengthened as a key issue when a young person is placed in remand due to not having somewhere safe to go to, is this can become a default 'placement' which is unacceptable.
- The Bill amends the *Police Powers and Responsibilities Act 2000* to require Police to contact a legal aid organisation before questioning a child in relation to an indictable offence. Our members have provided anecdotal feedback that young people are often questioned without a parent present, without consultation with Youth Justice, without the opportunity to speak with a lawyer; or with appropriate cultural or accessibility needs being met. As such, the AASW supports this amendment. It is our view is that this needs to be the default position so that every young person has access to legal representation.
- In relation to Section 48AC, the AASW recognises the importance of including Aboriginal and/or Torres Strait Islander Community Justice Groups (CJG) in decision making and support for an Aboriginal and/or Torres Strait Islander person. While we recognise the importance of identifying conflicts of interest, it is also recognised that particularly in more remote and regional communities, along with metropolitan areas where families and people are interconnected as per cultural norms, that it is likely that members of the CJG would be connected or known to each other. Our concern is that a young person could be disadvantaged as a result of potentially being excluded in support and decision making. Further clarification with regard to the consequences of this section when such a conflict is identified and the process that follows is needed. The AASW considers it important that we do not disadvantage a child from community where they or the victim will be known, particularly in smaller communities where avoiding conflicts of interest may be difficult.
- In relation to Sections 48AD and 48AE the AASW commends the focus away from a risk averse philosophy regarding the remand of a young person during periods of adjournment. As identified in the consultation documents, it is an important principle to ensure that keeping a child in detention is a last resort where there are safety risks and while court matters proceed. However, the safety of the young person has been left undefined. While the Bill specifies a range of

matters under section (2), the AASW believes that the bill should contain a clearer definition which refers specifically to the human rights instruments listed above.

- The AASW agrees with the proposed bail amendments. We believe this is a clearer, more child focused framework. This bill demonstrates the need for a whole of community framework that ensures that a young person has appropriate support and options to mitigate against the ‘unacceptable risk’ if released from bail. Investing in these services and supports is essential to achieve a whole of community response to scaffold the support required and safeguard the young person and community.
- The AASW strongly supports the importance of the following features that appear in the Bill:
 - Education and attitudinal changes within the law enforcement and judiciary systems to ensure both compliance with and understanding of the reasoning behind the changes.
 - A stronger information sharing and collaborative framework that involves both shifts in attitude towards a truly whole of system approach and appropriate resourcing to achieve this.

Further Changes needed for the Youth Justice System

This Bill contains welcome provisions but demonstrates shortcomings in the current system which it fails to address. The Bill should be supported by further provisions as part of the wider strategy informed by the 2018 *Report on Youth Justice*. The AASW recommends that to achieve transformational change in the state’s Youth Justice space, the following are essential:

1. A well-resourced support system that sits around the young person and their family. This is essential if we are to achieve a more just system that decreases the number of young people, and in particular Aboriginal and/or Torres Strait Islander children in the youth justice system.
2. Appropriate funding to resource the achievement of the recommendations from the *Working Together Changing the Story: Youth Justice Strategy 2019-2023*. The changes proposed in the Youth Justice Strategy and the Bill require significant attitudinal, practice and cultural shifts at multiple levels including Police, Youth Justice, the judiciary and legal professionals along with Community Justice Groups. Without appropriate funding and a parallel process that focuses on appropriately resourcing prevention, early intervention and tertiary intervention level systems, our concern is that this will fail.
3. A particular regard to ensuring that services are culturally appropriate in a meaningful way which means working closely with communities, and importantly education of non-Aboriginal and/or Torres Strait professional staff to ensure they understand and do not perpetuate racist and discriminatory practices.
4. The AASW recommends that appropriate resourcing is required with parallel investment in prevention and early intervention strategies to reduce children, young people and adults entering the justice system.
5. The AASW recommends that there needs to be stronger links between the justice system and youth specific support services so that young people are not placed in remand when they have nowhere else safe to stay. This requires the connection of the young person to appropriate support services to be a clear priority and that those support services must be readily available.
6. The AASW recommends that Police, the judiciary and relevant services receive education and training around the unique needs of young people with disabilities and in particular intellectual disabilities; language impairment and young people experiencing mental health distress or challenges. The AASW would further argue that protections should exist to privilege the unique needs of a young person when in custody including, but not limited to:
 - an advocate/support person should always be present for interviews;
 - a framework for informed consent should be developed when asking a young person to make decisions regarding their interactions with the Police and courts; the employment of appropriately trained allied health practitioners to provide assessment and support case planning. While the AASW recognises these positions are being introduced, they are often

shared across regions which limits their capacity to support the number of young people who require this type of support.

7. While we note that the Bill makes no reference to the use of Murri Courts, we understand that these have been effective and provide an important culturally appropriate service to Aboriginal young people. Notwithstanding this, the AASW is aware that Murri Court proceedings may take months to conclude, often with multiple adjournments and the requirement to engage community services invoked upon the young person. During this time, the young person is often released with bail on their own undertaking, with little support that can be provided by Youth Justice. It has been reported by young people who have engaged the Murri Court that the lengthy time frame to have matters finalised, along with a lack of support from Youth Justice, causes a disconnection from the justice process, and is an underpinning proponent in recidivism during periods of adjournment.
 - The AASW recommends that there needs to be consideration given to a more explicit framework to support this process and to enhance the capacity of the Murri Courts to better support young people.
8. The AASW argues that currently there is little scope for Youth Justice to provide support to families engaged in court processes during the period of adjournment. If a young person is granted bail and required to reappear at a future date, they are not able to access Youth Justice resources or supports - this level of support is only triggered on the occasion where a Conditional Bail Program (CBP) is ordered, and this can be both an onerous and punitive measure in and of itself. While engaging community support services and making referrals is within Youth Justices power for this period. The AASW believes that the intake, rapport building and implementation timeframe often exceeds the period of adjournment, creating barriers to effective engagement to support the young person in remaining out of detention. The risk here is that a young person returns to the context in which they were able to offend in the first place, with little support for change and exposing them to increased risk of reoffending. This can then justify an argument that the young person should be remanded in custody as an interim solution. The AASW recommends that the bill should be accompanied by provisions for services to avoid this situation.
9. The AASW highlights the importance of family led decision making approaches when a young person becomes linked with the youth justice system. The models developed in New Zealand for example have been identified as important and beneficial. Furthermore, this is a more constructive and culturally appropriate way of practising with Aboriginal and/or Torres Strait Islander young people and their families. Key to this is training and a stronger emphasis on engaging in family led decision making in the work of Youth Justice.
10. The AASW also highlights the existing gap in the ability of services to intervene with a high risk young person before the age of 10, particularly where it is likely that the child has already had contact with the youth justice system. We recognise the body of evidence that has been developed by researchers such as Professor Ross Homel and others that encourage greater emphasis and investment in prevention and early intervention in this area (Allard, Chzanowski, & Stewart, 2012; Australian Social Inclusion Board, 2011; Byrne 2008; Gooda, Priday & McDermott, 2013; Homel, Homel, Vinson, 20017; Vinson & Homel, 1975).

Conclusion

We submit that these features are crucial to ensuring a youth justice system that maintains the human rights of our citizens, has regard for the unique needs of children and young people and balances the responsibility for keeping children and young people out of the justice system. Importantly, the youth justice system needs to work in parallel with the broader structural, social and community systems to address the reasons why children and young people offend in the first place. These parallel systems need to be well-resourced to be able to undertake this work in a meaningful way, which need to be delivered alongside the amendments listed in the proposed bill.

Thank you again for the opportunity to contribute to this important shift in legislation and the commitment to achieving the Four Pillars as recommended by Mr Robert Atkinson AO APM in the 2018 Report on Youth Justice. The AASW Queensland Branch looks forward to working with the Queensland government to support these changes and deliver a better service system for young people.

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