



Submission to the

Legal Affairs and Community Safety Committee

*Youth Justice and Other Legislation
Amendment Bill 2019*

10 July 2019

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INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the Queensland Parliament's Legal Affairs and Community Safety Committee's invitation calling for submissions in response to the *Youth Justice and Other Legislation Amendment Bill 2019*.

ABOUT PEAKCARE

PeakCare is a not for profit peak body for child and family services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has around 60 members which are a mix of small, medium and large, local and statewide, mainstream and community controlled Aboriginal and Torres Strait Islander non-government organisations that provide prevention and early intervention, generic, targeted and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster and kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of registered Supporters made up of individuals and other entities with an interest in child protection and related services and who are supportive of PeakCare's policy platform around the safety, wellbeing and connection of children and young people, also subscribe to PeakCare.

ABOUT PEAKCARE'S SUBMISSION

Given the overlap of children and young people at risk of entry to, or in the youth justice system, with those engaged with the child protection system, PeakCare has a strong interest in youth justice reform and effective, timely and wholistic responses and interventions to children, young people and their families. With a longstanding history in advocating for better understanding and management of the intersection between the child protection and youth justice systems, PeakCare's motivation in lodging this submission reflects the following:

- the need to address both the welfare *and* the justice needs of young people who have been or who are in contact with the child protection system and the youth justice system, particularly young people subject to dual (interim or finalised) orders
- ensuring local access to prevention and early intervention services, responses and programs for children, young people and families to 'nip problems in the bud' or 'turn their lives around' - the right service at the right time from the right provider for the right amount of time
- young people's entitlement (and that of their families) to understand and to participate in administrative and judicial decision-making

- congruence in legislative frameworks and the administration of youth justice, child protection and intersecting service systems (eg. education and training, youth development, family support, housing and homelessness, legal services and legal aid, health, and drugs and alcohol mis-use) directly or indirectly delivered across Queensland Government agencies
- the impacts and opportunities presented by adopting specialist and other reforms to court processes and policing practices across Queensland
- developing specific strategies to address the disproportionate representation of Aboriginal and Torres Strait Islander young people in the youth justice system, and
- the importance of underpinning policy directions and reforms with research evidence

Consistent with these areas of interest, PeakCare supports the reforms already in train through the *Working Together Changing the Story: Youth Justice Strategy 2019-2023* which focus on intervening early to address risk factors, increasing diversion options to keep young people out of court and out of custody and targeted programs to reducing reoffending.

PEAKCARE'S RESPONSES TO THE PROPOSED AMENDMENTS

The following responds to the proposed legislative amendments and their apparent intentions.

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

PeakCare supports the proposed amendments aimed at emphasising the importance of timeliness and prioritising proceedings for young people remanded in custody.

Those young people subject to statutory child protection intervention as well as youth justice intervention may have particularly complex needs and circumstances, compounded by struggles deleteriously impacting family relationships and dynamics, abuse and neglect, domestic and family violence, poor educational attainment, and other profound difficulties such as disability, mental health concerns and alcohol and other drug misuse which, combined with adolescent developmental psychosocial immaturity, can vastly increase vulnerability to entering the youth justice system. Delays in finalising matters impact on access to other needed supports and services, further compounding existing difficulties and potentially being detrimental a young person's wellbeing.

The proposed amendments to the youth justice principles, and other measures including flexibility regarding the use of pre-sentence reports, parents and legal organisations being promptly advised, bringing young people who have been arrested and detained before the court within 24 hours and ensuring a notice to appear requires the young person to appear in a location convenient for them to access, which are designed to reduce delays in proceedings, are supported by PeakCare.

PeakCare is particularly concerned, along with all stakeholders, about young people being detained in adult watch houses for extended periods, and supports the proposal that these young people are included in the 24 hour timeframe so they may be brought promptly before the court.

Removing legislative barriers to enable young people to be granted bail

PeakCare has for some time advocated, along with a range of other stakeholders, about the concerning situation for young people refused bail and held in detention on remand in Queensland. The Australian Institute of Health and Welfare (AIHW) annual *Youth Justice in Australia 2017-18* report, released in May 2019, shows that on an average day in 2017-18, 87% of young people in detention in Queensland were unsentenced (awaiting the outcome of their court matter or sentencing), which was the highest in the nation. Young people in Queensland also spent the longest amount of time in unsentenced detention at 63 days (almost double that of South Australia where young people spent the least amount of time in unsentenced detention). Compounding this concern is that completed periods of detention on remand were more likely in Queensland than other jurisdictions, to be followed by a community based sentence than by a detention sentence.

PeakCare supports the proposed measures to simplify and clarify a new child-focused bail decision making framework and better enable young people to be granted bail, including:

- emphasising 'detention as a last resort'
- an explicit presumption in favour of release
- child-specific factors which must be considered when deciding whether to release a young person, including the need to preserve the relationship between a young person and their family, the young person's prior exposure to trauma, their age and maturity, cognitive capacity and developmental and medical/disability needs, and if the young person is Aboriginal and Torres Strait Islander, their need to retain connection to their family and community, and
- in addition, for young people aged under 14 years, consideration of their particular vulnerability and entitlement to special care and protection must be taken into account

PeakCare also strongly supports the proposal of making it explicit that police or courts are not able to detain a young person solely because they lack appropriate accommodation or have no apparent family support.

However, PeakCare notes that homelessness and lack of appropriate (safe and supported) accommodation for some young people being considered for bail, or being released from detention, is a very real issue which will require a coordinated response and additional resourcing to enable the proposed amendments to be successfully implemented by the police and courts.

PeakCare strongly contends that it is 'not the job' of the youth justice system to address issues of concern such as a young person's homelessness or lack of safe accommodation within their family home or other living arrangement, nor is it the responsibility of the youth justice system to ensure that young people are receiving appropriate support and assistance in relation to other aspects of their safety and well-being. This would represent a mis-use of the youth justice system and inadvertently create a 'netwidening' effect where young people are inappropriately drawn into the youth justice system in order to have their needs met.

There is nevertheless a clear responsibility held by the youth justice system to operate collaboratively with other service systems (such as those with explicit responsibilities to address

matters of concern in relation to child protection, health and mental health, education, disability support, housing, and so on) in ensuring that when young people encounter the youth justice system, this triggers a suitable level of engagement by these other service systems. The youth justice system must also not be administered in a manner that impedes or detracts from the support and services provided by these other systems.

Ensuring appropriate conditions are attached to grants of bail

PeakCare shares stakeholder concerns about onerous and unsustainable bail conditions which are often not specific to the individual circumstances of a young person's alleged offending and can lead to a higher likelihood of them breaching bail conditions.

PeakCare supports the proposed amendments to ensure bail conditions are fair and proportionate, time limited, targeted at mitigating specific risks identified and tailored to a young person's circumstances and ability to comply, recognising that young people usually do not have the same access as held by adults to financial or other resources or the 'control' over conditions to which they are sometimes made subject such as their accommodation. PeakCare also supports the proposal that police officers must consider alternatives to arrest when responding to young people who have breached bail conditions.

Providing a contemporary information sharing regime

There are many factors that influence young people coming into contact with the youth justice and child protection systems, and the issues are much broader than these systems alone. The lack of integration between systems and services and lack of alignment between social policies impacting on children, young people and families (such as housing, social security payments, employment etc), is an ongoing concern contributing to challenges in effectively meeting the needs of young people within the child protection and youth justice systems.

PeakCare strongly supports the need for multi-agency collaborative efforts, and as such supports the proposals enabling better information sharing and coordinated responses to meet the needs of young people charged with an offence, and their families.

Ensuring electronic tracking devices cannot be used on a child

From a child rights perspective, PeakCare strongly supports the exclusion of electronic tracking devices being used for young people. Taking into account the characteristics and behaviours of young people during this stage of their development, especially when this has been impacted by the trauma of childhood abuse or neglect, use of these devices are likely to:

- prompt many young people to impulsively attempt to ‘fool’, ‘test out’ and/or remove the device which may result in physical or psychological harm and unnecessarily escalate their engagement in the youth justice system through perceptions being formed about their ‘non-compliance’
- embarrass and humiliate young people with the visibility of the device further criminalising and estranging them from their communities, thereby counteracting efforts that should be in place to promote their positive connection or re-connection with their families, communities and culture, or
- elicit responses often born out of youthful bravado which superficially (but erroneously) suggest that young people are wearing the device as a ‘badge of attainment’ that earns the respect of peers, thereby further criminalising them and making their constructive engagement in pro-social behaviours, activities and networks more difficult

Authorising the use of body worn cameras and CCTV

PeakCare defers to other agencies with more specialist knowledge in relation to this topic, but as a general concept, PeakCare supports the use of cameras and CCTV to improve the safety of staff and young people in detention centres, with appropriate safeguards in place to preserve young people’s rights.

In sentencing a young person for the manslaughter of a child under 12 years, the defencelessness and vulnerability of the victim must be treated as an aggravating factor

Again, PeakCare does not have the specific expertise to provide advice in this area and will defer to other agencies. However, it is noted that this proposal to remove discretion in sentencing would appear to be in contradiction to previous proposed amendments which emphasise the recognition of the special needs and individual circumstances of young people in contact with the youth justice system, particularly for those under the age of 14 years.

The requirements in the *Criminal Code and Other Legislation Amendment Act 2019*, which resulted in amendments to the *Penalties and Sentences Act 1992*, specifically refer to adult offenders and the *Penalties and Sentences Act 1992* does not apply to children, so it is unclear why this proposal seeks to align young people’s sentencing in the *Youth Justice Act 1992* with adult sentencing when all the previous amendments have been based on the approach that children who have committed offences must be responded to differently than adults who offend. On the face of it, this proposal does not seem consistent with the other amendments and does not appear to be appropriate.

Allow the Office of Public Guardian's community visitor program for children to visit young people in accommodation services provided or funded by youth justice

PeakCare supports the community visitor program visiting young people in accommodation services provided or funded by youth justice, as another safeguard in protecting the rights and interests of young people who, due to their circumstances, may be regarded as vulnerable.

Thank you for the opportunity to provide submissions on aspects of the *Youth Justice and Other Legislation Amendment Bill 2019*.

Yours sincerely



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Reference

Australian Institute of Health and Welfare 2019. Youth Justice in Australia 2017–18. Cat. no. JUV 129. Canberra: AIHW.