Youth Justice (Boot Camp Orders) & Other Legislation Amendment Bill 2012
Submission 036

Submission to the Legal Affairs and Community Safety Committee

Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012

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Introduction

This submission addresses the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 which has as its objectives (1) the introduction of a Boot Camp Order as an option instead of detention for young offenders and (2) the removal of the option of court referred youth justice conferencing for young offenders. As members of the QUT Faculty of Law Centre for Crime and Justice we welcome the invitation to participate in the discussion of these issues which are critically important to the Queensland community at large but especially to our young people.

If any of the responses require further explanation please contact Dr Kelly Richards at the QUT Faculty of Law. Email: k1.richards@qut.edu.au.

Summary and Recommendations

We acknowledge that this Bill implements a pre-election commitment of the Government. However, we note that there is a very short opportunity for review of the amending legislation and, as such, an in-depth analysis of the proposals has not been conducted. It is possible that there are issues relating to fundamental legislative principles under the *Legislative Standards Act 1992* or unintended drafting consequences which we have not identified.

Recommendations

1. As the Bill is likely to disproportionately impact on Indigenous Youth who are already severely over-represented in the custodial hard end of the justice system we recommend the Bill not be legislated in its current form.

2. We also recommend that the Bill not be legislated in its current form as it is likely to have the opposite impact from what is intended. The evidence is clear that boot camps for young offenders are not effective in reducing reoffending.

3. Given that detention for young people is to be used as a last resort both under international instruments to which Australia is a signatory (such as the United Nations' (1989) *Convention on the rights of the child*), as well as Queensland's own *Youth Justice Act*, we recommend that youth justice conferencing should remain as a diversionary mechanism for the courts.

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Professor Carrington is the Head of the School of Justice in the Law Faculty at QUT and Vice Chair of the Division of Critical Criminology, American Society of Criminology and Chief Editor for The International Journal for Crime and Justice. Kerry is a leading expert in the field of youth justice in Australia. Her contributions spanning 20 years include Offending *Girls (1993)*, (based on a PhD winner of the 1991 Jean Martin Award) and *Offending Youth* (2009).

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Dr Dwyer's current research interests are focused in youth justice. Her reputation in this area is recognised internationally with an invitation to contribute to an international *Handbook of LGBT Communities, Crime, and Justice* to be published by Springer in 2013. Dr Dwyer was also recently awarded a Criminology Research Grant (CRG) to examine 'Reporting Victimisation to LGBTI (Lesbian, Gay, Bisexual, Transgender, Intersex) Police Liaison Services'.

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Dr Richards is a lecturer within the School of Justice. Her specialist areas are youth justice, restorative justice and crime research methods. She has published extensively in the area of youth justice, has conducted numerous empirical studies on this topic and is considered an authority on this topic in Australia.

1. Amendment of the *Youth Justice Act 1992* to introduce a Boot Camp Order as an option instead of detention for young offenders

One of the stated objectives of the boot camp program is to divert young offenders 'from further offending'. Reducing the rate of young people in detention is an admirable goal, as detention has consistently been shown to be criminogenic (ie it fosters reoffending) for young people (Gatti et al. 2009; Huizinga et al. 2003; McAra & McVie 2007) in addition to having a wide range of other negative outcomes for young people, families and communities (Bailey 2009; Brignell 2002).

The evidence is also clear, however, that boot camps for young offenders are not effective in reducing reoffending. Numerous rigorous studies have demonstrated that militaristic correctional boot camps do not reduce the likelihood of reoffending. For example, Wilson et al.'s (2005) meta-analysis of 32 robust research studies of militaristic boot camps concluded that 'this common and defining feature of a boot-camp is not effective in reducing post boot-camp offending'. Similarly, Drake et al.'s (2009) study of nine wilderness and 14 boot camp programs found that boot camps did not reduce recidivism among participants. While boot camps may seem a good option to instilling discipline in young people and leading them towards a more appropriate future path, the research demonstrates these are not outcomes of boot camps.

International research has clearly demonstrated that boot camps and wilderness camps are ineffective unless they include a strong therapeutic focus on education, families and psychological and behavioural change (Wilson & Lipsey 2000). In any case most research suggests that diversion is a more effective method of reducing reoffending (Carrington & Pereira 2009; Cunneen & White 2011). The main objective of diversion is to minimise the harm caused by stigmatisation especially for less serious and young offenders (Chan 2005). The need for diversion programs was recognised after research indicated that reoffending was more likely to occur if a young person received a punitive response to a first offence. Additionally, incarceration, especially for young people, has been found to compound anti-social behaviour through secondary labelling and the

association with more serious, potential future offenders (Bargen 1997; Carrington 1993; Gatti et al. 2009; Johns 2003). Existing research therefore suggests boot camps constitute a punitive response which is highly unlikely to make young people more disciplined or deter them from reoffending, and this is especially so when boot camps are designed in a way to overlooks reintegrating young people back into their communities.

2. Amendment of the *Youth Justice Act 1992* to remove the option of court referred youth justice conferencing

Restorative justice measures such as youth justice conferencing have numerous benefits, including addressing victims' needs, including communities in the criminal justice process, and fostering trust in criminal justice processes – all vital aims of the criminal justice system. In particular, the evidence that victims prefer restorative justice to traditional criminal justice measures is unequivocal (Sherman & Strang 2010).

All Australian jurisdictions except Victoria currently allow both police and courts to refer a young person to a youth justice conference (Richards 2011). Victoria's system is unique in that youth justice conferencing is only used if a young person is at risk of being sentenced to a supervised order (in the community or in detention) (Richards 2011). In this way, Victoria's system offers diversion for young people at the most severe end of the youth justice process. It should be noted in this context that Victoria has consistently had the lowest rate of young people in detention in Australia for many years (Richards & Lyneham 2010). This demonstrates their approach with young people may be more useful in deterring young people from reoffending.

An evaluation of Victoria's program (Success Works 1999) found that 'courts appreciated the additional option of the conference alternative and that the program appeared to have positive benefits for young people, families and victims' (Strang 2000: 11). Research in Queensland has also demonstrated positive outcomes for young people and their families (Hayes 2006). The consistency of positive outcomes across

jurisdictions in Australia suggests maintaining the referral of young people to youth justice conferences is of vital importance if young people are going to be deterred from reoffending in future.

Given that detention for young people is to be used as a last resort both under international instruments to which Australia is a signatory (such as the United Nations' (1989) *Convention on the rights of the child*), as well as Queensland's own *Youth Justice Act*, we contend that youth justice conferencing should remain as a diversionary mechanism for the courts. Indeed, given that reducing the rate of young people in detention is the stated rationale for the proposed introduction of boot camps, it seems incongruous that the abolition of court-referred youth justice conferencing is simultaneously being proposed.

3. Impact on Indigenous youth

The over-representation of Indigenous youth in custody remains one of Australia's most pressing social problems (Cunneen 2008; Snowball 2008). What data are available on youth offending have repeatedly revealed large discrepancies between the proportions of Indigenous and non-Indigenous youth drawn into the youth justice system in every Australian jurisdiction, although some are have higher rates of over-representation than others (Richards & Lyneham 2010). According to national data collected by the Australian Institute of Health and Welfare (AIHW 2012), Indigenous youth account for about one-third of all young people in Australia under youth justice supervision, yet they comprise only around five percent of the Australian youth population. Nationally, Indigenous youth are 20 times as likely to be in unsentenced detention and 26 times as likely to be in sentenced detention as non-Indigenous youth (AIHW 2012). Indigenous youth comprise over half of the juveniles under supervision in Queensland (AIHW 2012). Given this, the introduction of boot camps will impact disproportionately on Indigenous youth and communities and may increase current levels of incarceration.

4. Rates of youth offending

The Explanatory Notes to the Bill state that 'community concern regarding youth offending has been escalating'. Statistics suggest that this concern is not warranted. Certainly studies show that 'rates per 100,000 juveniles in detention in Queensland have been relatively stable compared with the national trend' (Richards 2011) and that rates of detention of child offenders have declined generally in Australia over the last three decades. Youth offending statistics are affected by the diversion options used by the police, as well as by the numbers and levels of policing, and any special strategies such as Operation Colossus in the northern part of the state. 'Community concern' about crime does not always reflect the true rates of crime across Queensland. Policy should be based on valid evidence, not on 'community concern'. With stable numbers of young people being detained in Australia, the research clearly suggests that youth offending is not escalating.

5. Queries concerning the draft legislation

We have some concerns and queries regarding the new legislation and programs that do not seem to be answered by the Explanatory Notes and other materials.

Other stated objectives of the new legislation are:

- To instil discipline
- To instil respect and values
- To support young people to make constructive life choices

There is no definition provided in the proposed legislation as to the meaning of the highly charged term 'boot camp'. The Explanatory Notes state that the program is to be provided 'through an individualised and intensive program which includes strenuous physical activities during the residential phase and offence focussed programs, counselling, substance abuse programs, community reparation, family support and

support to re-engage with learning or employment in both residential and community supervision phases'. 'Boot camp' suggests a deterrence based discipline camp program. Such programs have been proven ineffective at stopping re-offending and in some cases have been found to further alienate young people involved.

The Programs:

- Are the programs based on established youth programs such as Outward Bound? Will there be any choice within the programs? What provision will be made for communication with family?
- What provision is being made for education and schooling while the young people are on the programs?
- What provision is being made for reintegrating the young people once they have completed the programs?

Evaluation of the Programs:

- We note that this two-year trial is costing $2 million. Does this amount include an evaluation of the outcomes of the program?

Indigenous Participation:

- Will the program leaders be required to have undertaken cultural awareness training?
- We are concerned about the ability of a 13-year-old to provide any informed consent to take part in such a trial. Will there be adequate support provided for these children where their parents or guardians are unable to provide this? Is there specific provision for a supporting person from the community to be present to assist Indigenous children in making this decision? Will there be community participation in the programs where Indigenous children are involved? Are the programs holistic and culturally appropriate (Allard et al 2012)?

Consultation:

The Explanatory Notes assert that 'consultation with the following government departments and agencies occurred: the Department of the Premier and Cabinet, Queensland Treasury, Queensland Police Service, Department of Communities, Child

Safety and Disability Services, Queensland Health, Department of Education, Training and Employment, Department of Aboriginal and Torres Strait Islander and Multicultural Affairs and the Commission for Children and Young People and Child Guardian. The Chief Magistrate, Magistrates of the Cairns area and the President of the Children's Court were also provided a copy of the draft Bill for comment'.

- What was the outcome of this consultation process? Were any changes made as a result of suggestions from these groups?

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