



Youth Justice and Other  
Legislation Amendment Bill 2014  
Submission 004

24 February 2014

Research Director  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE Q 4000

Dear Sir/Madam

**Re: Youth Justice and Other Legislation Amendment Bill 2014**

We refer to the letter from the Chair dated 13 February 2014 seeking submissions on the above-mentioned Bill by 26 February 2014.

Protect All Children Today Inc. (PACT) is a non-profit community organisation established in 1986 as a service provider of court support as well as advocating on behalf of children young people and their families.

PACT's Child Witness Support Program provides support for children and young people who are required to give evidence in the courts, either as victims of, or witnesses to, a crime.

We offer the following comments in relation to the proposed amendments to the Youth Justice and Other Legislation Amendment Bill 2014.

We would like to preface these comments by stating that sadly, child Defendants are often former victims of crime. Children tend to learn through observation and exposure. Therefore, the need for early intervention is critical.

**1. Permit repeat offenders' identifying information to be published and open the Children's Court for youth justice matters involving repeat offenders.**

PACT is concerned that the identification of offenders could lead to victims or witnesses being identified. The suggested approach could also impact negatively on non-offending family members, such as siblings of the accused. This would then expose them up to unnecessary victimisation.

The proposed reform does not take into account a situation where a child is the co-accused. PACT support many children and young people who are victims or witnesses in one matter and an accused in another. Therefore, the release of personal information in these situations may result in the contravention of the Fundamental Principles of Justice for Victims of Crime.

In relation to the proposed application for non-disclosure of personal information, PACT is concerned with the fact that child victims and witnesses are unlikely to have the necessary knowledge or capacity to make an application in a timely manner, or at all.

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*Vice Regal Patron: Her Excellency, Ms Penelope Wensley AC, Governor of Queensland*

It is imperative that child victims, witnesses and their carer's be made aware of their ability to apply for a non-publication order. The knowledge and capacity of Police Prosecutors, who carry large caseloads, will need to be strengthened to ensure they are able to inform victims and witnesses of their rights and to advocate on their behalf if necessary.

PACT strongly supports the closure of courts for all sexually related matters to protect the victim. PACT believes that the court should be closed in every case in which the complainant or witness is a child, regardless of the crime. Should this not occur as of right, then the nominated Police Prosecutor will need to inform victims of matters involving repeat offenders which may result in the court being open, so that they, or the Prosecutor advocating on their behalf, can apply for the court to be closed.

PACT also expresses concern that the application process will result in further delays to the finalisation of matters involving children and young people, which will only serve to further traumatising of child victims and witnesses.

There also needs to be greater protection of all child victims and witnesses in Children's Court matters. The establishment of a sufficient number of Vulnerable Witness Suites should be considered so as to assist in addressing this issue. The provisions of the *Evidence Act* brought about by reforms to the *Evidence (Protection of Children) Amendment Act 2003* should ensure the use of CCTV to all child complainants and witnesses including non Affected Child Witnesses (ACWs), such as witnesses to violent offences where there is no prescribed relationship.

**2. Create a new offence where a child commits a further offence while on bail.**

Whilst in principle PACT supports the intention behind the proposed new penalty, that is to create a disincentive to children offending while on bail, PACT is concerned to ensure that steps are taken to provide for adequate communication of the penalties of committing further crimes to young offenders. The deterrent will only be successful if young offenders are adequately pre-warned of the consequences of re-offending.

PACT believes that this initiative provides a disincentive for a plea to be made by a youth offender, which will place further burdens on the court process, members of the Judiciary and staff and lead to delays in matters being heard and dealt with.

**3. Permit childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing a person for an adult offence.**

PACT is very concerned that the suggested approach does not account for the fact that children and young people are not always equipped from a cognitive perspective, to foresee the consequences of their actions. Their lack of insight and maturity often leads to poor decision making and behaviour, being in the wrong place at the wrong time, being negatively influenced by their peer group and so on.

Many adults report to have done reckless things in their youth for which they regret and these should not be held against them as adults.

PACT does not believe that there is adequate justification to release information about past crimes, where no conviction has been recorded. This would appear to be contrary to a person's natural right to the fundamental principles of justice and contrary to the principle behind the discretion afforded to the Courts in determining whether a conviction should be recorded.

**4. Provide for the automatic transfer from detention to adult corrective facilities of 17 year olds who have six months or more left to serve in detention.**

Firstly, PACT raises the fact that the point at which a young person becomes an adult varies greatly; it is not the case that each young person is of adult mind and cognition from the age of 17.

The Queensland Criminal Justice System recognises that 17 year olds are of sufficient maturity to be held fully accountable for their actions. However, this is contrary to research undertaken by many youth development experts.

The age of the youth when committing the offence should definitely be taken into consideration, as significant development and growth occurs between the ages of 15 and 18.

The positive steps taken by a youth offender to rehabilitate whilst in detention should also be a considering factor. With transfers to occur automatically, the people in possession of the facts (such as Detention Officials), are removed from the decision making process.

Automatically transferring a child to an adult facility without appropriate transition measures and in the absence of any consideration of the individual's needs and level of functioning will expose young offenders to unnecessary stressors. Moreover, in the absence of ongoing and appropriate rehabilitation programs, or the introduction of secure youth housing, youth offenders will be exposed to, and/or influenced by, adult criminals unnecessarily. The impact of this will be increased recidivism and/or will result in more youths becoming victims of violent crimes by older prisoners. The trauma and long term effects of this must be considered.

The increase in the costs of incarceration is likely to lead to less money being available for victim services and preventative and rehabilitation programs.

- 5. Provide that, in sentencing any adult or child for an offence punishable by imprisonment, the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment (in the case of an adult) or detention (in the case of a child) should only be imposed as a last resort.**

Imprisonment of children and young people should be the last resort wherever possible, with other forms of restorative justice being offered. Increase in the costs of incarceration is likely to lead to less funding being available for victim services and preventative and rehabilitation programs. Insufficient provision of these services and programs breaches international human rights obligations.

The court administration costs need to be factored in with adequate funding allocated to ensure that delays are minimised, as these impact negatively upon victims.

- 6. Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being give a warning.**

As stated previously, children and young people are not cognitively equipped to foresee the consequences of their actions and need to receive warning about the implications of breaching a boot camp order, in order for it to act as a deterrent.

PACT also believes that this will increase the court caseloads, resulting in further delays for victims.

- 7. Make a technical amendment to the *Youth Justice Act 1992*.**

PACT is supportive of steps taken to remove ambiguity in relation to community based orders.

Please note, the above comments reflect PACT's child focussed philosophy, which is mandated by:

**Convention on the Rights of the Child -**

- **Article 3.1** *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".*

- **Article 19** *“Children must be protected against all forms of physical and mental violence”.*

**Section 21 AA of the Evidence Act 1997** – States that with respect to a child witness the court is; *“to require wherever practicable that an affected child’s evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence.”*

In closing, we would caution against implementing new laws for all juveniles when only 10 percent of offences are committed by young offenders. Further, these proposed reforms seem to contravene existing international law, as outlined above.

We greatly appreciate the opportunity to provide comment on these pieces of legislation and trust that our input has been of value.

Yours sincerely



Alexandra Marks  
**Chairperson**



Jo Bryant  
**Chief Executive Officer**