



# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

G P O   B o x   2 2 8 1   B r i s b a n e   4 0 0 1

visit and contact us at [www.qccl.org.au](http://www.qccl.org.au)

Youth Justice and Other  
Legislation Amendment Bill 2014  
Submission 008

The Secretary  
Legal Affairs and Community Safety Committee

By Email: [lascs@parliament.qld.gov.au](mailto:lascs@parliament.qld.gov.au)

Dear Sir

## Youth Justice and Other Legislation Amendment Bill 2014

Thank you for the opportunity to make a submission in relation to this Bill.

### A Crime Wave?

Underlying this Bill is the proposition that there is some sort of youth crime wave affecting the community. The Australian Bureau of Statistics Paper 4519.0 – Recorded Crime – Offenders – 2010 -2011 shows that youth offender rates in Queensland decreased in 2010-2011 compared with 2009-2010.

The Children's' Court of Queensland Annual Report 2011-2012 showed that:

"Again there was an overall decrease in the number of juveniles whose cases were disposed of in all Queensland Courts in 2011-2012. The decrease was 6.9% following a decrease of 8.6% in 2010-2011."

That report did show that there are a small number of persistent offenders who were charged with multiple offences, resulting in an increase in the number of offences alleged.

This is in fact consistent with long-standing research which shows that some 70% of juvenile offenders appear in Court only once with another 14.9% appearing in Court only twice.<sup>1</sup>

### Basic Principle

Since the end of the 1800's there has been a shift from the punishment of children to the treatment of children and a clear acknowledgement that their age should be taken into account. This is because children are morally different from adults as a result of the fact that they do not have the same judgment skills, self-control and ability to know right from wrong. Children take more risks, pay less attention to negative consequences, are impulsive and look at short term outcomes and not a long term perspective. They also suffer more from peer pressure.

<sup>1</sup> Weatherburn *Law and Order in Australia*, The Federation Press 2004, page 58

Because children are impulsive and do not plan for the future, the concept of deterrence has a particularly limited application to them.

These views of the differences between adults and children have recently been profoundly reinforced by modern neuro-scientific<sup>2</sup> research.

### **International Obligations**

These principles are very strongly reflected in international obligations to which Australia is a party. Article 37(b) of the Convention of the Rights of the Child provides that imprisonment is to be a measure of last resort for a child and only for the shortest appropriate period of time.

The United Nations Standard Minimum Rules for the Administration of Criminal Justice, commonly referred to as the Beijing Rules, provides that, "In principle no information that may lead to the identification of a juvenile offender shall be published." Whilst not binding these rules were developed on the basis of leading criminological research and represent a highly persuasive body of opinion.

### **Proposals**

We turn now to consider the changes proposed in the Bill.

#### *Naming of Children*

First of all we note that Queensland Judges already have a discretion to name children charged with offences that involve violence against a person that is particularly heinous. This is contained in section 34 of the *Youth Justice Act 1992*.

The QCCL opposes the changes to the current law.

A similar proposal was rejected by the New South Wales Legislative Council Standing Committee on Law and Justice in 2008 which accepted that the stigmatisation coming from being named may lead to an increase in recidivism.

That committee of New South Wales Legislative Council was in fact of the view that, "Naming juvenile offenders would stigmatise them and have a negative impact on their rehabilitation, potentially leading to increased recidivism by strengthening a juveniles bonds with criminal subcultures and their self identity as a criminal or deviant and undermining attempts to address the underlying causes of offending."<sup>3</sup>

The New South Wales Parliamentary Committee could find no evidence of any research supporting the proposition that naming children would reduce recidivism rates.

The Committee went on to acknowledge that it is important for juvenile offenders to recognise their actions have caused harm and it is right that they should experience shame. However, the Committee Said, "The shame should be constructive, promoting rehabilitation and assisting the child to make a positive contribution to society over the rest of their lives."<sup>4</sup> Reintegrative shaming, as utilised in youth justice conferences is an example of the constructive use of shame. However, the QCCL notes with

<sup>2</sup> See *Age of Criminal Responsibility is too low, say brain scientists* – The Guardian, 13 December 2011

<sup>3</sup> The Prohibition on the Publication of names of Children involved in Criminal Proceedings Legislative Council Standing Committee on Law and Justice April 2008 page XI

<sup>4</sup> Ibid para 3. 1113

disappointment that this government has abolished youth justice conferencing in complete disregard of the evidence of its benefits.

Kelly Richards in a paper for the Australian Institute of Criminology entitled *What makes juvenile offenders different from adult offenders*<sup>5</sup> makes the following statement at page 6:

“Labelling and stigmatisation are widely considered to play a role in the formation of young peoples’ offending trajectories – whether young people persist with or desist from crime. Avoiding labelling and stigmatisation is therefore a key principle of juvenile justice intervention in Australia.”

Rather than rehabilitating young offenders it is the QCCL’s view that naming them would in fact serve to destroy their prospects of rehabilitation. This is particularly so when you consider the statistics quoted previously which demonstrate the vast majority of juvenile offenders only appear before the Courts once. That small group of repeat offenders who appear to be the focus of the government’s concern are not going to be deterred by the prospect of being named. In fact, as the New South Wales Committee found the likelihood is that they will be reinforced in their behaviour. Being named would become a badge of honour rather than a deterrent. The Committee went on at paragraph 3.117 of its report to say that it did not, “believe naming juvenile offenders will act as a significant deterrent to either the offender or other would be offenders.”

Furthermore, this policy has already been attempted in the Northern Territory where the research clearly indicates that the naming of children is detrimental to them as it results in harassment and the disruption of their educational and other prospects.

*Removing the principle that detention should be the last resort*

In Ms Richards’ paper<sup>6</sup> it is noted that prisons are the universities of crime which enable offenders to learn more and better offending strategies and skills. The author cites a Canadian study which found that, “Contact with the juvenile justice system increased the cohort’s odds of judicial intervention by a factor of 7. ...The more restrictive and intensive an intervention the greater is its negative impact, with juvenile detention being found to exert the strongest criminogenic effect.”

These types of policies involving applying greater detention to children have been implemented for the last twenty odd years in the United States. It is surprising to see this government seeking to follow those policies when they have been demonstrated to be complete failures (see Justice Policy Institute – Common Ground: Lessons Learned from Five States that reduced juvenile confinement by more than half – February 2013).

In a paper entitled “No Place for Kids – The Case for Reducing Juvenile Incarceration”<sup>7</sup> it was said that:

Programs employing therapeutic counselling, skill building, and case management approaches all produced an average improvement in recidivism results of at least 12%. By contrast, programs oriented towards surveillance, deterrence, or discipline all yielded weak, null, or negative results... A recent

<sup>5</sup> Trends and Issues Paper No. 409 February 2011

<sup>6</sup> Ibid pages 6 to 7

<sup>7</sup> The Annie E Casey Foundation 2011 at page 16 <http://www.aecf.org/KnowledgeCenter/Publications>

review found that cognitive behavioural training programs are associated with a 26% reduction in recidivism, the most of any treatment modality.

That document goes on to point out that the cost of incarceration is far more than alternative programs. We would consider this to be a particularly telling point for the current government. We find no reason for believing that the situation would be any different in Queensland than the United States.

#### *Reference to Criminal Histories as an Adult*

This proposal to allow childhood criminal histories to follow a person into adulthood is entirely inconsistent with the basic premise of youth justice that people should not be tagged with their juvenile indiscretions into adulthood. This is essential to their being rehabilitated into society.

In the QCCL's view the current law is appropriate for dealing with the issue of the admissibility of childhood criminal histories. The current law provides that only evidence of a "recorded conviction" of a previous childhood offence is admissible against any person during a proceeding for an adult offence. This gives the Court the power in appropriate cases to record convictions against child offenders that will be admissible against the child as an adult.

The current proposal will inevitably result in an increased Queensland prison population with associated increased operational costs and long term cost to the community.

#### *Offence of Breach of Bail*

The primary purpose of bail is to ensure that a person does not avoid their trial. It should not be used for punitive reasons.

In its submission to the *Blue Print for the Future of Youth Justice* the Legal Aid office of Queensland at page 4 made the following telling points:

1. Even in cases where a child is unlikely to serve a term of imprisonment for the original offence bail is unlikely to be granted if the child has reoffended while on bail.
2. Historically bail is more onerous for children than for adults. It is rare for a child to be released without any bail conditions such as a curfew or residential condition. The absence of an offence for breach of bail has allowed the courts to adopt innovative conditions to address a child's reoffending.

This provision appears to be based on the notion that a Judge or Magistrate should be aware of any breach of bail when sentencing. This object can be achieved without creating an offence by providing that proof of breach of bail is noted on a criminal history which can be disclosed to the Court.

#### *Automatic Transfer of 17 year olds to Adult Prison*

It is said that the object of this provision is to reduce overcrowding in youth detention centres.

The Council notes from the consultation paper at page 10 that on average 70% of young people in detention are on remand. This is extraordinary. In the QCCL's view the Queensland government would better focus its efforts on reducing the very high

number of people in detention on remand than transferring children into adult prisons to improve their education in the world of crime.

The Council records its objection to proposed Section 276E removing the decisions from review pursuant to the *Judicial Review Act*.

*Retroactive Provisions*

Clauses 359 and following clearly give this legislation retrospective operation. Inevitably clauses 359, 360 and 361 will result in an increased penalty for a person sentenced after the commencing of the legislation from what would have been imposed under the former law. Similarly Section 363 will result in increased punishment from what a person would have been subject to had the current law remained in place. We refer in that regard to *Bakker v Stewart* [1980] VR 17.

We trust this is of assistance to you in your deliberations.

Yours faithfully



Michael Cope  
President  
For and on behalf the  
Queensland Council for Civil Liberties  
25 February 2014