

The Commission for Children and Young People and Child Guardian  
promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

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**Advice to:** Research Director, Legal Affairs and Community Safety Committee  
**Topic:** Youth Justice and Other Legislation Amendment Bill 2014  
**Date due:** 26 February 2014

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Thank you for providing the Commission for Children and Young People and Child Guardian (the Commission) with the opportunity to comment on the Youth Justice and Other Legislation Amendment Bill 2014 (the Bill).

**Summary of the Commission views:**

**1. Commission's concerns**

There are significant risks associated with:

- removing the sentencing principle that detention should only be imposed as a last resort
- the publication of information identifying repeat offenders, and
- the automatic transfer of 17 year olds from youth detention to adult correctional facilities.

**2. Commission's recommendations**

The Commission recommends that the Bill includes:

- a requirement for a review of the reforms
- a requirement that eligible 17 year olds in youth detention must have a transitional case management plan prepared by Corrective Services prior to transfer to adult correctional facilities, and
- a definition to explain what is meant by '*not a first time offender*'.

**3. Amendments in Committee – Mandatory Sentenced Boot Camp Order**

The Commission notes that the Bill will be amended to impose a mandatory sentence of a boot camp order for young recidivist motor vehicle offenders.

The proposal needs careful consideration to ensure that the effectiveness of sentenced boot camps is not compromised by young offenders who are unsuitable candidates or are unlikely to benefit.

**Commission's concerns**

The Commission has previously raised concerns about the youth justice reforms during public consultation on the *Safer Streets Crime Action Plan – Youth Justice*. The Commission's feedback can be found on the Commission's web site.

<http://www.ccyqcq.qld.gov.au/resources/submissions.html>

The Commission has reviewed the Bill and the Explanatory Notes and concludes that there are significant risks associated with the youth justice reforms to:

- remove the sentencing principle that detention should only be imposed as a last resort
- publish information identifying repeat offenders, and
- automatically transfer 17 year olds from youth detention to adult correctional facilities.

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The Commission is particularly concerned that the evidence is not currently available to conclude that the policy intent of the proposed reforms to deter young people from offending will be achieved. Indeed there may also be risk that repeat offenders for example, will be further entrenched in a criminal lifestyle.

The publication of information identifying repeat offenders and the opening of the Childrens Court for repeat offenders is particularly problematic as many young offenders who come before the courts are also involved in the child protection system. This raises the potential for a breach of the *Child Protection Act 1999* which prohibits the publication of information that identifies or is likely to lead to the identification of a child within the child protection system.

The Commission notes that Aboriginal and Torres Strait Islander children and young people who are overrepresented in the criminal justice system are likely to be the group most impacted by the Bill's proposals. The youth justice reforms have the potential to disproportionately affect Aboriginal and Torres Strait Islander young people for example through increasing incarceration rates and damaging future employment opportunities for young people who have been 'named and shamed'.

## **Commission's recommendations**

To assess whether or not the Bill achieves the desired policy intent, meets community expectations or interferes with rehabilitative efforts the Commission recommends that the Bill includes:

- a requirement for a review of the reforms
- a requirement that eligible 17 year olds must have a transitional case management plan prepared by Corrective Services prior to transfer to adult correctional facilities, and
- a definition to explain what is meant by '*not a first time offender*'.

## **Review of reforms**

There is a paucity of evidence to support the view that measures such as naming and shaming are effective in preventing recidivism or deterring other young people from committing crimes. Similarly the alternative argument that the approach will have unintended negative outcomes also lacks hard evidence. The Commission recommends that a review mechanism for the reforms is embedded into the legislation and that the review takes place three years from commencement. Reviewing and evaluating the reforms will be the first opportunity to establish a valid and robust evidence base on the deterrent effects of the reforms. It will also benefit government by informing the decision-making process. The evaluation should gather comprehensive information to assess whether the reforms:

- achieve the intended policy intent
- meet community expectations
- interfere with other government initiatives and programs aimed at rehabilitating young offenders and '*closing the gap*' on Indigenous disadvantage
- result in unintended adverse consequences for young offenders and their families.

## **Pre-transitional case planning for 17 year olds**

Youth detention centres are highly structured environments where young people have access to crime prevention programs, general schooling and training throughout the day.

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It is contrary to the community's interests for the rehabilitative gains made by 17 year olds to be jeopardised by automatic transfer to adult correctional facilities. A planned approach for 17 year olds who meet the criteria for automatic transfer should be mandatory.

The Commission recommends that the legislation includes a requirement that Corrective Services develop a transitional case management plan prior to the automatic transfer of a 17 year old to an adult correctional facility. This will ensure that young people transferring to an adult correctional facility have been fully prepared for what to expect in an adult prison and can build on educational, therapeutic and rehabilitative programs commenced while in youth detention.

Pre-transitional planning should also determine the appropriate level of security in the new facility to avoid the young person being automatically placed in a maximum security unit, as is the usual practice for new prisoners.

### ***Definition of 'not a first time offender' (repeat offender)***

While a number of the Bill's provision are directed at '*repeat offenders*' as inferred by the use of '*not a first time offender*' the term '*repeat offender*' is not used directly. Consequently, the Bill appears to target all repeat offenders regardless of the frequency or seriousness of the repeat offences.

The Commission recommends that the Bill includes a definition for '*not a first-time offender*' to distinguish between those individuals who are serious serial offenders and those who offend infrequently and commit minor offences. This will ensure that those young people who are at low risk of reoffending will not have their rehabilitation hampered by having their identities publically revealed.

### ***Amendments in Committee – Mandatory Sentenced Boot Camp Order for young recidivist motor vehicle offenders***

The Commission also notes that the Attorney-General has advised parliament that the Bill will be amended during the Committee stage to impose a mandatory sentence of a boot camp order for '*recidivist motor vehicle offenders who have been found guilty of two or more motor vehicle offences in the previous 12 months and are found guilty of a further offence for unlawful use of a motor vehicle*'.

The Commission has not had the opportunity to consider the amendment in detail but welcomes initiatives which divert young people from youth detention. However, the proposal needs careful consideration to ensure that the effectiveness of sentenced boot camps is not compromised by young offenders who are unsuitable candidates or are unlikely to benefit. A pre-sentence assessment is preferred to exclude candidates who pose heightened safety or security risks or may detrimentally affect the program effectiveness for all participants.

Please do not hesitate to contact Ms Adrienne Schneider, Senior Policy Officer, Strategic Policy and Research [REDACTED]; e-mail: [wmaster@ccypcg.qld.gov.au](mailto:wmaster@ccypcg.qld.gov.au) should any aspects of this advice require clarification.