Youth Justice and Other Legislation Amendment Bill 2014
Submission 13

Submission to the Legal Affairs and Community Safety Committee regarding the Youth Justice and Other Legislation Amendment Bill 2014

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The Centre for Law, Governance and Public Policy is a not-for-profit university research centre at Bond University. The Centre brings together scholars with a common interest in the development, practices and processes of good public policy. Its aim is to advance just and workable solutions to society's problems and to be an advocate for good governance everywhere.

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The Centre for Law Governance and Public Policy ('the Centre') appreciates the opportunity to make submissions regarding the Youth Justice and Other Legislation Amendment Bill 2014 ('the Bill').

The Centre welcomes the Government's intention relating to the forthcoming *Blueprint for the Future of Youth Justice in Queensland* ('the Blueprint'), which it states will provide strategies to prevent offending, address the causes of youth offending and improve the responsiveness of the justice system.[1] Assuming such strategies are rooted in evidence as to what is effective in youth justice, they will work positively toward the ultimate aim of protecting the Queensland community. It is unfortunate that the Blueprint and any associated legislative reform or announcement of resourcing has not yet been revealed. The Department of Justice and the Attorney-General has expressed that the Bill complements the Blueprint's focus upon providing 'positive alternative pathways for children who have come into contact with the youth justice system.'[2] Putting the Bill on the reform agenda without recourse to the Blueprint could be described as putting the cart before the horse. For example, it is recognised that the proposed amendments 'may increase the likelihood that some children who come in contact with the youth justice system will spend time in detention, either on remand or subject to a detention order', the Explanatory Notes go on to state that 'any increase in the proportion of these categories of offenders being held in detention is likely to be offset by reductions in the number of children entering and becoming entrenched in the youth justice system as a result of initiatives to be delivered under the Government's comprehensive reform agenda.'[3] The problem is that such an assessment cannot be made at this time without knowing the substance of that reform agenda. Instead, it may be suggested that the Government is offering a 'band-aid' solution rather than focusing on the long-term investment that will be required to provide meaningful reform.

The Centre submits that **this Bill should not be passed**. **The Centre particularly opposes the provisions that give effect to the stated objectives to:**

1. Permit repeat offenders' identifying information to be published ('naming') and open the Children's Court for youth justice matters involving repeat offenders;
2. Create a new offence where a child commits a further offence while on bail;
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;
4. Provide for the automatic transfer from detention to adult corrective services facilities of 17 year olds who have six months or more left to serve in detention;
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

[1] Queensland, *Youth Justice and Other Legislation Amendment Bill, Introduction*, (11 February 2014) 46 (The Hon. JP Bleijie – Attorney-General and Minister for Justice).
[2] Department of Justice and the Attorney-General, 'Brief for the Legal Affairs and Community Safety Committee: Youth Justice and Other Legislation Amendment Bill 2014' (17 February 2014).
[3] Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014 (Qld) 8.

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.[4]

The Centre made a submission to the Safer Streets Crime Action Plan – Youth Justice ('the Action Plan'). That submission is attached for the Committee's reference. This submission echoes many of the sentiments expressed in the earlier submission. Particularly, the earlier submission urged the Government to: take an evidence-based approach; ensure that any program or service implemented by any stakeholders is comprehensively evaluated; and recognise the developmental characteristics of young offenders.[5] The Centre submits that the Bill fails to meet those requirements is inconsistent with international obligations and runs counter to the principle of justice reinvestment.

REASONS FOR THE CENTRE'S OPPOSITION TO THESE AMENDMENTS

1. THE PROPOSALS ARE BASED UPON A FUNDAMENTALLY FLAWED EVIDENCE BASE AND/OR IGNORE SUITABLE EVIDENCE

a) The proposals are expressly based upon inappropriate and poorly gathered empirical data.

The Queensland Parliament should not approve legislation which is expressly reliant upon a distorted evidence base. This process point should unite all parties to the debate, as it is merely to advocate a properly reflective approach to law-making. In putative preparation for these proposed changes, the Queensland Government released its Youth Justice Crime Survey, which will no doubt have been critiqued heavily by other submissions received. This survey, offered on an internet platform with minimal security features, failed to guard against:

- Sampling errors;
- Measurement errors (produced by flaws in the instrument's drafting); and
- Non-response errors.

Some of these errors are evident in the available information regarding the survey. Particularly, 4184 people undertook the survey, nearly half the respondents were aged 40-65 years and 76.8% had been a victim, or had a family member who was a victim, of a crime.[6] This group is not representative of the wider Queensland community. A further breakdown of the survey data that considered responses according to age or victim status would have provided a more accurate picture, but even so would not be devoid of error.

To examine this issue further it would be necessary to know more details about the design of the survey. For example, if the survey was anonymous the survey administrators would not have collected IP addresses of respondents. This would potentially permit respondents to answer the

[4] Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014 (Qld) 1.
[5] Attachment A: O'Leary J, Watt B, O'Toole S and Keyzer P, 'Submission in Response to the Safer Streets Crime Action Plan – Youth Justice' (28 June 2013) 2.
[6] Department of Justice and Attorney General, Safer Streets Crime Action Plan – Youth Justice: Crime Survey Outcomes, available at http://www.justice.qld.gov.au/corporate/community-consultation/community-consultation-activities/past-activities/safer-streets-crime-action-plan-youth-justice#survey .

survey multiple times. Even if IP addresses were collected, the anonymity involved in the survey and ease of access to technology could mean that a respondent could still complete multiple surveys using different technology. A Centre member attempted to obtain copies of the survey questions, post survey completion date, to assess any potential for measurement error.[7] Unfortunately no response was forthcoming.

In the specific context of criminal justice, there is a greater need to ensure a sustained information campaign and a holistic debate which confronts the daily realities of social services, care and youth justice systems. The benefits of exposing the public to the specific experiences of those working within the system was revealed by the landmark Tasmanian Jury study in 2011.[8] This study should serve as a warning to all politicians, lawyers, journalists and academics to never assume that public preferences are fixed or unreflective.

The Tasmanian Jury Study found that when members of the public were exposed to all aspects of the criminal trial, and not limited to selective media accounts, there was a high level of agreement with the penalties handed out by the judge. The finding that fifty five percent of jurors chose a more lenient sentence than the judge and only forty four per cent were more severe, underlined that an informed public are not as punitive as many 'vignette' or 'anecdotal' surveys have suggested.

In particular the Jury Study reveals a clear difference between how the sampled citizen jurors responded to abstract questions as compared to when they are provided with increased information and exposed to the real trial and sentencing hearing. In this context, abstract survey questions fail to capture more complex realities. The entire study concluded that members of the public, when informed and allowed to witness their justice system functioning in particular contexts and cases, tended to be less punitive than those watching from afar.

We therefore urge the Queensland Government to be self-critical about its own evidence base for these measures, and abandon these reforms. Having a public debate must entail promoting the public visibility of the everyday challenges faced by those within the youth justice sector, rather than collapsing democratic deliberation into the dubious vessel of unstructured surveys. Public disclosure of the almost seventy written submissions in response to the Action Plan would have gone some way towards promoting such debate. Without access to those surveys the picture is distorted.

b) The proposals do not stem from evidence from an adequate evaluation framework.

The Centre understands that the Government will present a further amendment to parliament during the Bill's consideration-in-detail stage. Detail of that amendment has now come to light in the Department of Justice and Attorney-General's Brief to the Legal Affairs and Community Safety Committee. That document suggests that the proposal will be to 'require a court sentencing a recidivist UUMV offender for a further UUMV offence to sentence that child to a sentenced youth boot camp program under a new category of order, a boot camp (motor vehicle) order. A "recidivist

[7] Email correspondence from Jodie O'Leary to mailbox@justice.qld.gov.au on 18 December 2013 and 20 January 2014.
[8] Warner K, Davis J, Bradfield R and Vermey R, 'Public Judgement on Sentencing: Final Results from the Tasmanian Jury Sentencing Study' (2011) 407 *Trends & Issues in Crime and Criminal Justice*.

UUMV offender" will be defined in the YJ Act as an offender who has been found guilty of committing two or more UUMV offences in the previous 12 month period.' [9] The order will originally only apply to children who reside in Townsville.

The Centre is particularly concerned that the sentenced youth boot camp orders will be mandatory and that the requirement of the young offender's consent is proposed to be removed. Although the Government has expressed that 'early indications from these boot camps are that they are proving effective in changing young people's behaviour'[10] there is no information readily and publicly available to support those claims. It would seem unlikely, given the length of time these camps have been operating, that an appropriate evaluation could have been conducted to support this claim. Nor is there sufficient information regarding the program in the sentenced youth boot camp for proper evaluation of these camps according to best practice. Forcing segregation of young people during the residential phase of the sentenced youth boot camp seems contrary to best practice, which emphasises reintegration.

c) The proposals are inappropriately selective.

The proposals represent isolated, counterproductive responses to recidivist youth offending; a problem which is multidisciplinary and complex. One gets the sense of a punitive smorgasbord approach to youth justice, rather than a solidly-reasoned, well-researched, systemic analysis. Assuming for the moment that the survey was valid, this is borne out by the fact that the removal of detention as a last resort requirement was supported by only 47.8% of respondents to the Crime survey and naming also had less than 50% support.[11]

The Queensland Government has recognised that the area of youth justice is dominated by intersecting and overlapping vulnerabilities.[12]

Contrary to international evidence regarding fitness limitations experienced by young people, recent research has indicated that Queensland's young offenders are half as likely as their adult counterparts to be found unfit for trial.[13] This research also discovered that many more young people were identified by practitioners as lacking in requisite fitness capacities than were referred to a Court for an assessment of fitness. This research suggests that there may be a significant number of young people who are being sentenced in Children's Courts despite being unfit. Subjecting such young people to the more punitive approaches suggested in the Bill compounds the problems of this legislative gap in Queensland, further disadvantaging children with intellectual and/or other cognitive impairments and/or mental illness.

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[9] Department of Justice and the Attorney-General, 'Brief for the Legal Affairs and Community Safety Committee: Youth Justice and Other Legislation Amendment Bill 2014' (17 February 2014).

[10] Queensland, *Youth Justice and Other Legislation Amendment Bill, Introduction*, (11 February 2014) 46 (The Hon. JP Bleijie – Attorney-General and Minister for Justice).

[11] Department of Justice and Attorney General, Safer Streets Crime Action Plan – Youth Justice: Crime Survey Outcomes, available at http://www.justice.qld.gov.au/corporate/community-consultation/community-consultation-activities/past-activities/safer-streets-crime-action-plan-youth-justice#survey .

[12] Safer Streets Crime Action Plan – Youth Justice (March 2013) 9.

[13] O'Leary J, O'Toole S and Watt, B D, 'Exploring Juvenile Fitness for Trial in Queensland' (2013) 20(6) *Psychiatry, Psychology and Law* 853-866.

The intersection of intellectual disability with youth offending is clear as 17% of all young offenders in detention in Australia have an IQ below 70.[14] Further, evidence suggests that almost 90% of young people in detention have symptoms of mental illness,[15] and around 60% meet the full diagnostic criteria for at least one psychiatric disorder in the six months prior to detention.[16] Approximately 80% of young people in detention have experienced multiple traumatic events during their lifetime including, physical assault, threats of violence and sexual assault, and at least half of young people in detention have recent symptoms of alcohol or drug abuse or dependence.[17] Around half of those young people in detention are no longer living with their parents,[18] and in Queensland, 72% of the young people in the youth justice system are known to the child protection system.[19] Queensland has the highest rates of children in state care, and entering state care, in Australia.[20]

In its last report on Australia, the United Nations Committee on the Rights of Child delivered a stinging critique of the care system currently operating in this nation:

> The Committee is deeply concerned at the significant increase, of approximately 51 per cent between 2005 and 2010, in the number of children placed in out-of-home care and the absence of national data documenting the criteria and decision leading to the placement of a child in care. The Committee is also seriously concerned that there are widespread reports of inadequacies and abuse occurring in the State party's system of out-of-home care, including:
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> (a) Inappropriate placements of children;
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> (b) Inadequate screening, training, support and assessment of care givers;
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> (c) Shortage of care options; poorly supported home-based carers and mental health issues exacerbated by (or caused in) care;
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> (d) Poorer outcomes for young people in care than for the general population in terms of health, education, well-being and development;
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> (e) Abuse and neglect of children in care;
>
> (f) Inadequate preparation provided to children leaving care when they turn 18;

[14] For a discussion of this, see Richards K, 'What Makes Juvenile Offenders Different from Adult Offenders?' (2011) 409 *Trends & Issues in Crime and Criminal Justice*.

[15] Bickel R and Campbell A, 'Mental health of adolescents in custody: the use of the "Adolescent Psychopathology Scale" in a Tasmanian context' (2002) 36 *Australian and New Zealand Journal of Psychiatry* 603-609.

[16] Teplin L A, Abram K M, McClelland G M, Dulcan M K, & Mericle, A A, 'Psychiatric disorders in youth in juvenile detention' (2002) 59 *Archives of General Psychiatry* 1133-1143.

[17] Abram K M, Teplin L A, Charles D R, Longworth S L, McClelland G M, & Dulcan M K, 'Posttraumatic Stress Disorder and trauma in youth in juvenile detention' (2004) 61 *Archives of General Psychiatry* 403-410.

[18] Prichard J and Payne J, 'Alcohol, Drugs and Crime: A Study of Juveniles in Detention' Research and Public Policy Series no. 67, Australian Institute of Criminology (2005)

[19] See Commission for Children and Young People and Child Guardian, *Child Guardian Report: Youth Justice System 2011–12*.

[20] Tilbury C, 'A "stock and flow" analysis of Australian Child Protection Data' (2009) 4(2) *Communities, Children and Families Australia* 9.

(g) Aboriginal and Torres Strait Islander children who are often placed outside their communities, and in that context, the need for more Aboriginal care providers.[21]

A holistic treatment of a young offender's situation is increasingly impossible in a context where there are continued cuts to mental health and social services. The need for a community-based approach to youth justice is supported by the 2010 inquiry by the Commonwealth Standing Committee on Family, Community, Housing and Youth.[22] This found that a child's community impacts heavily on a child's behaviour; with the most significant factor being the link between experiencing violence and a higher risk of juvenile crime.

The 'band aid' model of youth justice reform should be rejected as it proceeds without regard to the overarching causes of youth offending behaviour and the pressures on their carers and those working within the justice system. The principle of detention as a last resort, in particular, has been a primary method for encouraging our service providers to confront young offenders' problems holistically instead of (temporarily) incapacitating them in detention. The existing balancing process represents a rare moment for a struggling system to reappraise and reshape its responsibilities towards children.

The expansion of naming, introduction of an offence of reoffending whilst on bail, and removal of the detention as a last resort principle serves to further water down the compatibility of the main operative provisions of the *Youth Justice Act 1992* (Qld) ('YJA') with the fundamental goals currently contained in its Schedule 1. Schedule 1 of the YJA was introduced in reaction to recommendation 15 of the 1999 *Report of the Commission of Inquiry into Child Abuse in Queensland Institutions.* Its creation was an important signal of the inherent rights of children to have their situations assessed holistically, and the importance of avoiding any imbalance or invisibility in our society's approaches to caring for them. The heritage of Schedule 1 – and by extension the detention as a last resort principle – is particularly poignant at a time when the Royal Commission on Sexual Abuse is ongoing. The Centre asks all politicians to link the debate on these narrow and random criminal justice reforms to the broader question of whether we, as a society, are providing the best environment for our children to grow. Children's lives should not be instrumentalised or compartmentalized in our public debate, but rather the system as a whole should be driven by an overarching commitment to their best interests.

A recent landmark article by one of Australia's leading developmental psychologists, Dr Judy Cashmore AO, sums up the compelling reasons to ensure a system-wide approach in our debate, our implementation and legislative process:

> Maltreated adolescents across Australia need early intervention and support, in part at least to try to reduce the risk of their later offending. We need to understand how many children in care are involved in offending and what interventions and services are successful in preventing later offending (Jonson-Reid, 2002, 2004), especially for maltreated children and adolescents. It seems

[21] United Nations Committee on the Rights of the Child, Concluding Observations on the 3rd and 4th Periodic State Reports of Australia, UN Doc CRC/Aus/CO/4 at paragraph 51.
[22] The House of Representatives Standing Committee on Family, Community, Housing and Youth, *Avoid the Harm - Stay Calm* (Report the inquiry into the impact of violence on young Australians), July 16 2010, Canberra: Parliament House.

very likely that some prevention measures are working, but we have little information about who these work for and under what circumstances. It is important to build this knowledge and to increase the focus on adolescent and child protection, on the understanding that intervening early means intervening early in the pathway as well as early in life. The window for effective intervention, especially in relation to offending behaviours, is not closed after early childhood, though it is likely to be more expensive to intervene at later ages. Crucially, state parental responsibility for children and young people in care must not stop once they have offended and become troublesome as well as troubled.[23]

2. THE PROPOSALS DO NOT RECOGNISE THE DEVELOPMENTAL CHARACTERISTICS OF YOUNG OFFENDERS

Adolescence is a period of significant growth and development. Youth experience multiple changes in physical development, peer and family relations, and increasing amounts of autonomy. Neuroscience highlights ongoing neurological development throughout adolescence into early adulthood. During this time of development, adolescents are prone to engage in risky activities with limited consideration for longer term consequences.[24] Involvement in risky behaviours increases the potential for youth to be involved in offending behaviours. Offending behaviours and contact with the justice system peaks during adolescence and begins to decline upon the transition to adulthood.[25] Fortunately, the majority of youth who engage in offending will not continue upon becoming an adult.

Developmental psychology highlights that a small proportion of youth who engage in offending continue into their adult years. The risk of continued offending into adulthood is greater for youth who become ensnared in the consequences of their offending.[26] Involvement in offending behaviours reduces the opportunities for later involvement in more prosocial and constructive pursuits. Offending youth may drop-out of educational contexts, participate in minimal structured activities and engage in unsupervised activities. Through involvement in offending, youth may gravitate toward other offending peers and limit their opportunities for socialising with non-offending youth. Their family relationships may become increasingly fragmented, limiting opportunities for family members to have positive influences in redirecting youth away from offending. Some offending youth develop significant alcohol and drug problems. The sequela of the outcomes of offending are limited opportunities to return to a more conventional and non-offending lifestyle.

Naming of young offenders, opening children's courts, allowing juvenile criminal histories to be admissible in adult court, and detention sentences increase the potential harmful consequences associated with offending behaviours. Naming is likely to increase the potential for ensnaring

[23] Dr Judy Cashmore, 'The link between child maltreatment and adolescent offending: the systems neglect of adolescents", (2011) 89 *Family Matters*, Australian Institute of Family Studies.
[24] Steinberg L, 'A Social Neuroscience Perspective of Adolescent Risk-Taking' (2008) 28 *Development Review* 78.
[25] Richards K, 'What Makes Juvenile Offenders Different from Adult Offenders?' (2011) 409 *Trends & Issues in Crime and Criminal Justice.*
[26] Moffitt T E, 'Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy' (1993) 100 *Psychological Review* 674 – 701.

offending youth by limiting their opportunities for involvement in constructive activities. Naming reduces the opportunities for young offenders to be accepted in mainstream education and supervised recreational activities, and to be accepted by conventional, non-offending peers. Incarceration in detention centres limits young peoples' connections with the larger community. Detention disrupts schooling in the community and disrupts family relationships. Whilst in detention, offending youth develop friendships with other offending youth. Increasing networks with offenders and reducing relationships with non-offenders is one of the most robust predictors of persistent offending.[27]

A recent statistical review of 548 independent studies on interventions with juvenile offenders indicates that the Bill at best will have no effect upon rates of recidivism among offending youth.[28] At worst, such an approach will increase the risk of continued offending behaviours. Interventions that involve cognitive behavioural therapy, multiple services, skill building and/or restorative justice more reliably lower rates of continued offending.

a) Detention should continue to be a last resort for offenders.

The proposed measures run the risk of disrupting the traditional dynamic whereby a majority of young people 'grow out' of offending and adopt law abiding lifestyles as they grow older. Detention can operate to disrupt the 'aging out' process as it restricts the youth's natural engagement with their family, school and work.

Available research shows that detention tends to foster further criminality, resulting ultimately in a more unsafe community. Recidivism is likely to be increased where impressionable young offenders mix with other young offenders and learn criminal behaviours from other elements in the peer group. The overarching failures of interventions premised upon instilling a fear of detention, was well captured in the New Zealand Ministry of Youth Crime, *Tough is Not Enough - Getting Smart About Youth Crime Report* (2000), which stressed the inappropriateness of:

> Shock tactics, punitive, deterrent and 'punishing smarter' approaches, including scared straight, boot camps, corrective training and shock parole probation. These are interventions where the primary focus is on punishment, inducing fear of prison and harsher treatment with little or no emphasis on teaching new skills or reducing risk factors.[29]

This has been echoed by Michael Cain, a Senior Policy Officer for the New South Wales Department of Justice who notes that 'labelling, stigmatization, contamination, pro-criminal role modeling and criminal networking may be unintended consequences [of such penalties].'[30]

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[27] Watt B D, Howells K and Delfabbro P, 'Juvenile Recidivism: Criminal Propensity, Social Control and Social Learning Theories' (2004) *Psychiatry, Psychology and the Law*, 141 - 153.
[28] Lipsey, M W, 'The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview' (2009) 4 *Victims and Offenders* 124 - 147.

[29] Available at: http://www.myd.govt.nz/documents/resources-and-reports/publications/tough-is-not-enough-2000-nz-.pdf .
[30] See Cain M, 'Recidivism of Juvenile Offenders in New South Wales' (1996) available at: http://www.djj.nsw.gov.au/pdf_htm/publications/research/RecidivismJuvenileOffendersNSW.pdf .

Removing detention as a last resort for children, and other accompanying proposals, suggest a refusal to acknowledge the specific dynamics of young offenders as compared with more mature offenders. As previously discussed, there is a wealth of medical evidence which suggests that children generally have diminished executive function, including the 'capacity for forward planning, delaying gratification and for regulating impulse.'[31] The differing capacity and hence culpability of children has received judicial recognition in the United States in cases such as *Roper v Simmons* 543 US 551 (2005) and more recently in *Miller v Alabama* 132 SCt 2455 (2012). Speaking extra-judicially, New South Wales Magistrate Paul Mulroney has linked the delay in executive functions to the type of criminal activity in which many young offenders often engage. His Honour notes that a sizeable proportion of 'young offenders … are opportunistic, there is little, if any, forethought of consequences and there is peer pressure or groupthink'.[32]

Furthermore, the Government has not provided any clear statement of what removing the principle of detention of last resort would achieve. The Action Plan submitted that the 'removal [of the principle] may allow courts to consider a broader range of options when sentencing young offenders'.[33] This statement is both vague and misleading, underlining the unfocused nature of the government's interventions. Removing the principle of last resort does not broaden the options available for sentencing, rather it alters the priority which a judge may accord to already existing different options. More recently, the Department of Justice and Attorney-General has stated that 'it is anticipated that removal of the principle may, by freeing up the sentencing process, result in children spending less time in custody on remand awaiting sentencing. This is a desirable outcome in and of itself, contributing to reducing the unacceptably high proportion of children in detention centres who are being held on remand.'[34] This seems illogical. The principle of last resort applies to all children in detention, whether on sentence or remand. It is unclear how removing a principle that requires pause before detaining a child on remand or sentence (especially when combined with a new offence of offending whilst on bail that will inevitably negatively impact a young person's future bail prospects and pad out a young person's criminal history) will act to lower numbers in detention. It is unclear how the sentencing process is freed up; the Court will still, appropriately, need to obtain a pre-sentence report before making a detention order and will need to give reasons for its decision to order detention.[35]

b) Further opening the Children's Court and naming will not lead to protection of the community.

Currently, only the Northern Territory opens its courts and permits children to be named as a matter of course, unless the Court orders otherwise.[36] Most Australian jurisdictions place a moratorium on

[31] Robertson C, New South Wales Standing Committee on Law and Justice, 'The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings' Report 35 (2008) x.
[32] Paul Mulroney, 'Sentencing Children and Young People – A Judicial Officer's Perspective' (Paper presented at the Sentencing Conference, National Judicial College of Australia/Australian National University, Canberra, 8–10 February 2008) 5.
[33] Safer Streets Crime Action Plan – Youth Justice (March 2013) 8.
[34] Department of Justice and the Attorney-General, 'Brief for the Legal Affairs and Community Safety Committee: Youth Justice and Other Legislation Amendment Bill 2014' (17 February 2014) 12.
[35] *Youth Justice Act 1992* (Qld) ss 207 and 209.
[36] *Youth Justice Act 2005* (NT) s 50(1).

naming with specific exceptions.[37] Most Australian jurisdictions also close children's courts to the public.[38] These protections reflect the internationally accepted evidence surrounding the negative impacts of stigmatization and their associated impact on reoffending.[39] In Victoria the Children's Court has quoted with approval Rehnquist J who provides that naming young offenders 'may seriously impair the rehabilitative goals of the juvenile justice system and handicap the youths' prospects for adjustment in society and acceptance by the public.'[40] Similar comments have been made in Western Australia.[41] Even in the Northern Territory the Court has articulated:

> the fact now almost universally acknowledged by international conventions, State legislatures and experts in child psychiatry, psychology and criminology, that the publication of child offenders' identity often serves no legitimate criminal justice objective, is usually psychologically harmful to the adolescents involved and acts negatively towards their rehabilitation.[42]

Such a result is not just theoretical. It has been borne out in the Northern Territory. A recent study of the impact of the Northern Territory naming provisions by Duncan Chappell and Robyn Lincoln demonstrated that naming young offenders often encourages 'a self-fulfilling prophecy' and results in 'harassment and/or disruption to their education'.[43]

New South Wales, the state which has legislation that is most closely aligned to the current Queensland position, considered expansion of the ability to name in that state, but rejected such a proposal. The Standing Committee on Law and Justice noted that the sentences themselves reflect community outrage, denounce the crime and acknowledge the harm caused to victims.[44] In addition, in that state, confidential youth justice conferences (which have been excessively limited in Queensland)[45] were identified as providing venues to 'shame constructively and supportively to help the offender reintegrate into the community.'[46] Conversely, the proposed amendments in Queensland (as now known) are not re-integrative.[47] As they stand they can only further exclude

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[37] See O'Leary J, 'Naming Young Offenders: Implications of Research for Reform' (2013) 37 *Criminal Law Journal* 377.
[38] The exceptions being the Northern Territory, Victoria and Western Australia.
[39] See eg, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice,* GA Res 40/33, UN GAOR, 40th sess, 96th plen mtg, UN Doc A/RES/40/33 (29 November 1985); Bouffard LA and Piquero NL, 'Defiance Theory and Life Course Explanations of Persistent Offending' (2010) 56 *Crime Delinquency* 227; Richards K, 'What Makes Juvenile Offenders Different from Adult Offenders ?' (2011) 409 *Trends & Issues in Crime and Criminal Justice* 1; Robertson C, New South Wales Standing Committee on Law and Justice, 'The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings' Report 35 (2008) xi.
[40] *HWT v AB* [2008] V Ch C 3 at [24].
[41] *R v MJM* (2000) 24 SR (WA) 253 at [8].
[42] *MCT v McKinney* (2006) 18 NTLR 222 at [20].
[43] Duncan Chappell and Robyn Lincoln, 'Naming and Shaming Indigenous Youth in the Justice System: An Exploratory Study of the Impact in the Northern Territory: Project Report' (21 May 2012) at 23, 122.
[44] Robertson C, New South Wales Standing Committee on Law and Justice, 'The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings' Report 35 (2008) ix.
[45] See discussion in Attachment: O'Leary J, Watt B, O'Toole S and Keyzer P, 'Submission in Response to the Safer Streets Crime Action Plan – Youth Justice' (28 June 2013) 9.
[46] Robertson C, New South Wales Standing Committee on Law and Justice, 'The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings' Report 35 (2008) ix.
[47] See O'Leary J, 'Naming Young Offenders: Implications of Research for Reform' (2013) 37 *Criminal Law Journal* 377, 382.

young people from their communities, subject to the whim of the media, and will be ineffective as a deterrent.[48]

The Standing Committee on Law and Justice also accepted the importance of rehabilitation being greater 'when a juvenile offender is involved, since the benefits flowing to the offender and the community will continue for the rest of their life.'[49] The Courts have reiterated the benefits of rehabilitation to community protection. For example in *R v SBU* [2012] 1 Qd R 250 at [38] rehabilitation was expressed as being in the community's interest.[50] The amendments will undermine rehabilitation and consequently undermine the Bill's aim to make Queensland safer.

3. THE BILL VIOLATES AUSTRALIA'S/QUEENSLAND'S INTERNATIONAL LEGAL OBLIGATIONS

The proposed measures violate Australia's and Queensland's obligations under the United Nations Convention on the Rights of the Child ('CROC'). In particular, the Bill runs contrary to Article 3 of CROC, which provides that 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. The principle of the best interests of the child represents a fundamental principle of the Convention, which must inform the implementation of all Convention provisions. In the context of criminal justice, the Committee on the Rights of the Child has stressed that:

> Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.[51]

International human rights law in this area is well developed, as reflected by the entrenchment of the principle of detention as a last resort in a wide variety of jurisdictions around the world. The Committee on the Rights of the Child has singled out the area of youth justice as one in which the principle of the bests of interests of the child has particular and heightened relevance.[52]

The Convention is also reinforced by the existence of globally agreed standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 ('the Beijing Rules') and the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 ('the Riyadh Guidelines'). These rules and guidelines operate alongside the Convention to promote the understanding and aid the implementation of the State Parties' obligations.

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[48] Ibid, 379-382.
[49] Robertson C, New South Wales Standing Committee on Law and Justice, 'The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings' Report 35 (2008) ix.
[50] *R v SBU* [2012] 1 Qd R 250 at [38].
[51] UN Committee on the Rights of the Child, *General comment No 10 (2007) on Children's Rights in Juvenile Justice* UN Doc. CRC/C/GC/14 [10].
[52] See the Committee on the Rights of the Child's 'General Discussion Day on juvenile justice', reported at UN Doc CRC/C/37 (1995) [212].

Article 37(b) imposes an obligation on States to ensure that 'arrest, detention or imprisonment of a child … shall be used only as a measure of last resort and for the shortest appropriate time'. This is complemented by rule 19.1 of the Beijing Rules, which calls for the 'least possible use of institutionalisation', in order to ensure 'the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period'. The United Nations has already urged Queensland to 'bring the system of juvenile justice fully into line with the Convention', even prior to these amendments. The Committee on the Rights of the Child has long stated that:

> Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 must be *strictly forbidden*.[53]

The proposals also run counter to the aims of Article 40(1) of CROC which provides that children in conflict with the law have the right:

> to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Other international treaties to which Australia is a party also embody an understanding that juveniles have a diminished amount of culpability because of their mental development. Article 14(4) of the International Covenant on Civil and Political Rights requires that 'in the case of juvenile persons, the [criminal law] procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.' The UN Convention Against Torture and the International Convention on the Elimination of Racial Discrimination also require that the age of the juvenile and his or her status as a minor at the time of the offence must be considered at sentencing.

Any implementation of mandatory attendance at boot camp or other limitations upon judicial discretion are also unacceptable in the light of CROC and the Beijing Rules, rule 17.1 which requires 'careful consideration' of any restrictions upon the personal liberty of a juvenile, and that the law always offer the judge the means by which to enforce penalties consistent with the best interests of the child. An individual sentence should 'always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and needs of the juvenile as well as to the needs of society.'[54] Legislative interference which overpowers the consideration of individual circumstances and rehabilitation prospects is to be avoided.

The proposed expansion to naming is a violation of the Convention, with Article 40(2)(b) protecting the right of the child to have his or her privacy respected at all stages of proceedings. The need to protect children from the harm caused by undue publicity and the process of labelling is required by rule 8 of the Beijing rules which state that 'in principle, no information that may lead to the identification of a young person accused or convicted shall be published'. Rule 22.1 states that:

[53] General Comment 10, above n 49, [89].
[54] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice,* GA Res 40/33, UN GAOR, 40th sess, 96th plen mtg, UN Doc A/RES/40/33 (29 November 1985) rule 17.1.a.

Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

The Centre also stresses the international legal obligation of Queensland and Australia to ensure adequate specialisation and training within the youth justice system. Article 40(3) of CROC requires that states seek to promote laws, procedures, authorities and institutions specifically applicable to children in conflict with the law. Paragraphs 9 and 58 of the Riyadh Guidelines further specify this obligation to require specialised personnel at all levels of the youth justice system, trained to respond to the special needs of young persons and familiar with the use, to the maximum extent possible of programmes and diversion possibilities. Rule 22 of the Beijing Rules stresses that the need for specialisation extends to ensuring 'the necessary professional competence of all personnel dealing with juvenile cases', with the accompanying commentary recommending a minimum training in law, sociology, psychology, criminology or behavioural sciences be required. Within the United Nations legal system, such practical safeguards are considered as important as more formal steps such as organisational specialisation and independence. The greater use of detention and the transfer of 17-year-olds to prison violate this principle.

The Centre is also particularly concerned with the adverse effect removing the principle of last resort will have on Indigenous youth in detention. The UN Human Rights Committee has emphasised the damaging effects which segregation or isolation from family and community can have upon indigenous people, and has stressed that this particular vulnerability must be taken into account in decision-making.[55] Given the overrepresentation of indigenous youth within the detention centre population, any proposed changes to detention will have a disproportionate impact upon a vulnerable group who have been held to suffer to a greater extent under conditions of detention. Such actions will inevitably raise questions of compliance with Australia and Queensland's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

Finally, the Centre would like to restate our opposition to the imprisonment of 17 year olds as adults. This is anomalous within Australia and contrary to international human rights law. It is also inconsistent with the age of adulthood recognised in other areas of the law in Queensland. We strongly endorse the 2010 position paper of the Commission for Children and Young People and Child Guardian, which called on the Queensland Government to end this system.[56]

[55] *Brough v Australia*, Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, UN Doc CCPR/C/86/D/1184/2003, Communication No 1184/2003 [9.1] and [9.4].
[56] Commission for Children and Young People and Child Guardian Queensland, Position Paper on the issue of 17 year olds in Adult Prisons, 15 November 2010. Available at: http://www.ccypcg.qld.gov.au/pdf/publications/papers/17-year-olds-Policy-Position-Paper.pdf .

4. THE PROPOSALS, IN ENCOURAGING THE USE OF DETENTION, RUN COUNTER TO THE PRINCIPLES OF JUSTICE REINVESTMENT

The underlining logic of these proposed measures will crowd out the possibility of using justice reinvestment philosophies in Queensland.[57] While other considerations, such as the best interests of the child should of course remain paramount, it is very important to note the extraordinary opportunity cost of detaining an individual youth. On average *Balanced Justice* estimates the annual cost of detaining an Australian child at $237,980 or $660 a day.[58] To put this expense in perspective, for the same price as detaining one young person, ten could be sent to the most expensive boarding schools in Australia. Justice Reinvestment tracks the distortions produced by such detention centric approaches and argues that youth justice interventions should be grounded in a four step research methodology:

1. Analysis and Mapping
2. Development of options to generate savings and improve local communities
3. Quantify savings and reinvest in high needs communities
4. Measure and Evaluate impact.

Lest justice reinvestment be viewed as an innately academic concept, it is important to note that one of its most prominent recent proponents has been the State of Texas. Texas has the second highest imprisonment rate in the United States of America and is renowned for tough crime polices, which led to a 300% increase in its prison population between 1985 to 2005.[59] Yet justice reinvestment has been adopted at the core of a fundamental change away from a culture of imprisonment.

As has been discussed more fully by Mick Gooda, Aboriginal and Torres Strait Islander Social Justice Commissioner and member of the Australian Human Rights Commission,[60] the programme began by identifying 'high stakes communities' where offenders came from, as well as identifying the key systematic factors that led to prisoners re-entering the system. The second step, the development of options, saw the Texas Legislature hearing evidence on the prison populations and gaining input from a range of advocates, stakeholders and community members. It then produced a reform agenda, which attended to all elements of the system. Step three, quantification and reinvestment into high needs communities, saw Texas reinvesting $241 million that would have otherwise been

[57] For further discussion of justice reinvestment see Attachment A: O'Leary J, Watt B, O'Toole S and Keyzer P, 'Submission in Response to the Safer Streets Crime Action Plan – Youth Justice' (28 June 2013) 3.
[58] See: http://www.balancedjustice.org/detention-and-bail-for-children.html .
[59] The short summary of the Texas experience contained in this submission receives a more extensive consideration in, *inter alia*, Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice & Native Title Report 2009*, Chapter 2, Australian Human Rights Commission (2009). Relevant statistics can be viewed at: The Council of State Governments Justice Center, *Justice Reinvestment State Brief: Texas* (2007) 2. Available at http://justicereinvestment.org/states/texas/pubmaps-tx.
[60] See: https://www.humanrights.gov.au/news/speeches/justice-reinvestment-and-its-importance-aboriginal-communities-2012 .

spent on prison construction. Finally the last step, evaluation, is ongoing; however with the Texas experience is continuing to produce positive feedback.[61]

The United Kingdom has also taken steps towards a justice reinvestment philosophy, with the 2010 Report of the House of Commons Justice Committee noting the significance of the Texas initiative, while also noting the negative impact of Britain's era of 'criminal justice hyperactivity' which expanded the number of offences requiring imprisonment. The Standing Committee stressed that 'prison is a relatively ineffective way of reducing crime for other than serious offenders who need to be physically contained for the protection of the public.'[62]

The Centre reiterates that it does not support this Bill. The Legal Affairs and Community Safety Committee should recommend that the Bill not be passed.

[61] A fuller account and breakdown of the Texas experience summarised in this paragraph is provided in Tony Fabelo 'Be more like Texas' (20 I 0) 12(1) *Justice Research and Policy* 113. The Centre would also highlight the role which the Australian Justice Reinvestment Project has played in promoting such experiences and showing their possible application to the Australian criminal justice system, further information at: http://justicereinvestment.unsw.edu.au/ .

[62] House of Commons Standing Committee on Justice, *Cutting Crime: The Case for Justice Reinvestment,* First Report of the Session 2009-2010, (London: The Stationery Office Limited, 2010) 5.

Submission in response to the Safer Streets Crime Action Plan – Youth Justice

28 June 2013

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The Youth Justice Research Division ('YJRD') thanks the Queensland Government for this opportunity to contribute in response to its 'Safer Streets Crime Action Plan – Youth Justice' ('the Action Plan'). The YJRD would welcome the opportunity to provide more detailed submissions on specific proposals arising from this process. The YJRD acknowledge and applaud the Government's proposal to provide a Blueprint to 'further assist young people and their families to demonstrate their full potential.' The YJRD urges the Government, in developing an innovative 'youth justice system that leads the nation', to:

- take an evidence-based approach. The implementation of any legislation, program or service should be informed by evidence as to what works and what does not work in youth justice;
- ensure that any program or service implemented by any stakeholder is comprehensively evaluated; and
- recognise that developmental characteristics of young offenders impact on their involvement in criminal activity and the justice system (Scott & Steinberg 2008). These characteristics differentiate young offenders from adults and justify a separate system of youth justice.

Any concern about a spike in youth offending is unwarranted. The percentage of young offenders in Queensland has remained relatively unchanged for a number of years. In fact it has decreased in the last couple of years (ABS 2013; CCQ 2012).

The President of the Children's Court of Queensland ('CCQ') stated in his 2012 Annual Report that '[t]he statistics seem to demonstrate that there are a small number of persistent offenders who are charged with multiple offences' (CCQ 2012, p. 6). It is these offenders that need the most assistance. Many of these offenders will have a child protection history, be homeless (AIHW 2012a), be in out-of-home-care, engage in substance abuse, have a mental and/or physical illness, and/or low levels of educational attainment (AIHW 2011).The YJRD suggests that assistance to these young people is best achieved through early, front-end intervention, taking an evidence-based and holistic approach. This submission addresses these issues, and specifically responds to a number of the questions raised in the Action Plan.

EARLY INTERVENTION

The Action Plan sets out the following questions:

Is the Early Intervention Youth Boot Camp a good way to get young people back on track and back in school?

Are there other ways to get young people back on track?

What other strategies are there to intervene early and prevent young people starting to offend in the first place...?

How can future investment in youth justice enable the most efficient and effective delivery of services to young people?

Future investment in youth justice should be guided by the principles of 'justice reinvestment' (Law Council of Australia 2013). Funds directed toward the expansion of custodial facilities should be redirected to crime prevention, reduction and rehabilitation (Smart Justice for Young People 2013, p. 11). Justice reinvestment involves geographic analysis of justice system data to determine which community and neighbourhood 'hotspots' contribute most to prison admissions and identify those communities and neighbourhoods to which people in prison often return after their release. Once these hotspots have been identified, further data analysis is undertaken to identify any particular service gaps or systemic or legislative factors which may be contributing to the high rate of prison admissions or offending in those areas. A range of reinvestment options are then generated which are designed to redirect funding that would otherwise be spent on incarceration of people from hotspot areas and reallocate it towards more effective initiatives as determined on the basis of the empirical data.

In the United States of America, reinvestment has often involved funding of 'front-end' initiatives such as early-intervention, post-release and other preventive community programs. Reinvestment may also involve specific policy and legislative changes, such as financial incentives to encourage courts to use alternative sentencing options or changes to bail and remand laws.

Justice reinvestment has successfully facilitated the transformation of numerous incarceration-focused justice systems across key American states and local jurisdictions toward prevention and community-oriented justice systems. It simultaneously created significant cost efficiencies for state and local governments (see Legal and Constitutional Affairs Reference Committee 2013, p. 48). Following a recent inquiry into the value of justice reinvestment to criminal justice in Australia, the Legal and Constitutional Affairs References Committee supported the implementation of justice reinvestment in Australia (Legal and Constitutional Affairs Reference Committee 2013). If the Queensland Government wants an evidence-based, cost-effective approach, justice reinvestment is a philosophy of intervention that warrants serious consideration.

Front-End Initiatives

Research clearly indicates that individual, family, peer and wider community factors contribute to the risk of being involved in the justice system (Watt, Howells &

Delfabbro 2004). Programs and/or services should focus on increasing young people's engagement with education, family or leisure pursuits in an attempt to reduce the number of youths entering the criminal justice system (NSW Attorney General and Justice 2009, p. 6). Family-based interventions that increase parents' capacity to care for their children have long been identified as strategies to prevent the initial involvement in offending behaviours (Watt, Dadds, Best & Daviess 2012). In light of the observations made by the President of the CCQ in his 2012 Annual Report, the YJRD recommends that Queensland increase investment in programs and services that increase young people's engagement with education, family and leisure pursuits.

Early Intervention Youth Boot Camps

It is unclear whether the Early Intervention Youth Boot Camp ('EIYBC') on the Gold Coast is/was effective in addressing the complex needs of at risk youth. It is disappointing that the evaluation of the Gold Coast trial was not completed prior to tenders being called to roll out EIYBCs to Rockhampton and the Fraser/Sunshine Coast.

The Gold Coast's program involves an initial ten-day, short-term confinement program ('the first phase') which emphasizes structure, routine, discipline, respect and physical activity (Department of Justice and Attorney-General 2013). Research indicates that the militaristic nature of boot camps are not effective in reducing recidivism, and thus cannot be suggestive of a way to get young people back on track (Wilson et al 2005). The associated disruption from school and family seems unnecessary and contrary to the evidence that suggests that engagement with these institutions has a positive impact on at risk youth. The second phase of the EIYBC that involves referral to community-based services is commendable. Especially if those programs said to be available in the Sentenced Youth Boot Camp ('SYBC') program, such as 'intensive family support and the delivery of the [sic] cognitive behavioural therapy' (Department of Justice and Attorney-General 2013) extend to the EIYBC. However, the second phase of the EIYBC could and should be decoupled from the first phase to achieve the same result.

LEGAL PROCESSES

Questions relating to improvements in legal processes also featured in the Action Plan.

How could the legal system be improved so young people charged with crime are dealt with quicker?

What other areas should be reviewed to try to reduce the number of young people committing crimes?

The YJRD provide comment upon two areas of the legal process:

Young People who are Potentially Unfit for Trial

Inconsistent with international research detailing unique fitness competency limitations experienced by young people, recent research demonstrates that young people in Queensland are half as likely as adults to be found unfit for trial (O'Leary, O'Toole & Watt 2012). The low rate of referral of young people to the Mental Health Court largely accounts for this discrepancy. The same research revealed that many more young people were identified by legal and youth justice professionals as potentially unfit than were referred to the Mental Health Court. The main reasons for non-referral appear to be pragmatic or tactical (Watt, O'Leary & O'Toole, forthcoming). That is, the delay occasioned by referral to the Mental Health Court, the perceived uncertainty in outcome in the Mental Health Court and the lack of facilities designed specifically for young people found unfit for trial weighed against resort to this avenue. Delays are particularly inappropriate for young people (see *Convention of the Rights of the Child* ('*CROC*') art 40(2)(iii) & *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('*Beijing Rules'*) r 20.1). Children's Court Magistrates should be given power to order the expert and timely assessment of a young person's fitness in order to make consequential orders. It should be noted that facilities for young people on forensic orders are currently inadequate (O'Leary, O'Toole & Watt 2012). This needs to be addressed urgently.

Criminal History Proposal

Evidence suggests that most young people grow out of criminal activity (Richards 2011; Mulvey 2010; Piquero et al 2001). However, if young people are labelled and feel stigmatised they are more likely to reoffend (McGrath 2009; Hosser et al 2008). The current law permits courts when sentencing an adult to consider only their recorded juvenile convictions. Arguably, public interest considerations go some way to justifying such recourse for the inevitably more serious offending behaviour that would result in the recording of a conviction. However, the proposal noted in the Action Plan to extend judicial access to the full juvenile criminal history (including where convictions are not recorded) is unnecessary and detracts from the purpose of not recording a conviction, which is to avoid such stigmatisation.

BAIL

What new ways could support young people on bail to stay out of trouble?

What other areas should be reviewed to try to reduce the number of young people committing crimes?

To ensure that young people are not refused bail due to lack of or unstable accommodation, it is essential that funding for suitable residential bail support services, such as the Youth Bail Accommodation Support Service ('YBASS'), be continued and extended state-wide.

Currently, some young offenders within Queensland are provided with the opportunity to participate in a conditional bail program (Youth Justice Services 2012). The conditional bail program, as supervised by Youth Justice Services, should continue to be reserved for young people who the court believes to be highly unlikely to comply with bail conditions without structured supervision. Further, the supervision of conditional bail needs to continue to be administered on the basis that a person is innocent until proven guilty in a court of law. For this reason it would be inappropriate for a court, in undertaking bail supervision, to make orders intended to address a young person's alleged offending behaviour, where that offending has not yet been admitted or proven. Accordingly, conditional bail supervision by Youth Justice Services should continue to be directed to improving a young person's prospects of complying with bail conditions.

Breach of Bail Proposal

The current Queensland approach of bringing those young people accused of breaching bail before a court for reconsideration of their bail is preferable to the proposal mentioned in the Action Plan to make breach of bail an offence. The law properly distinguishes sentences (which follow a criminal conviction) and bail (which is intended to ensure an accused attends court). This distinction should not be further blurred (see Stubbs 2010). The New South Wales Law Reform Commission ('NSWLRC'), in its recent review of bail, correctly observed that functions of the criminal justice system, such as denunciation, punishment and deterrence, 'are not the province of bail law' (NSWLRC 2012, p. 17, [0.5]). The proposal, to make 'breach of bail an offence to reduce the number of repeat young offenders', exceeds the province of bail law and, if the recent experience of New South Wales is any guide, will not be effective. Even in New South Wales where there is no offence of breach of bail, the NSWLRC noted that arrests for failure to comply with bail conditions had increased, resulting in more young people in detention and an increase in court time but there was no evidence of a corresponding 'statistically significant reduction in crime as a result' (NSWLRC 2012, p. 14, [0.50]). The criminalisation of bail breaches will increase offending rates of young people.

Young people are often subjected to multiple (see NSWLRC 2012, p. 195, [12.17]), stringent bail conditions aimed at controlling their behaviour, such as curfews and non-association requirements (NSWLRC 2012, p. 14, [0.49]; p. 197, [12.23]), sometimes unrelated to their offending (Stubbs 2010; NSWLRC, 2012, p. 194, [12.13]-[12.14]). Yet, young people are often dependent on others to meet their bail

conditions (NSWLRC 2012, p. 169, [11.9]-[11.10]). Combined with developmental considerations, these factors make it more difficult for young people to comply with bail conditions (NSWLRC 2012, p. 193, [12.12]) and justify the current differential treatment for young people who breach bail.

SENTENCING

The majority of questions in the Action Plan related to sentencing young people and addressing concerns about recidivism.

Is the Sentenced Youth Boot Camp a good way to stop the cycle of youth crime and close the revolving door of youth detention?

Are there new options the court should have available to them when sentencing young people?

How can sentencing better address the causes of offending by young people?

What else could be done to address the causes of crime for young people already in the justice system?

What other areas should be reviewed to try to reduce the number of young people committing crimes?

Are there other ways to stop the cycle of youth crime and detention for people who are committing serious or repeat crimes?

To assist young people to stop offending ... what kinds of services or programs are needed...?

What other strategies are there ... to prevent [young people] from continuing to offend?

Are there other ways to get young people back on track?

The sentencing of young people in Queensland should focus on rehabilitative programs that address the underlying causes of offending behaviour, provide diversionary community-based options that connect youth with work and job training, and secure accommodation opportunities. Those programs 'aimed at nurturing a positive change in young people, and in particular those employing cognitive behavioural techniques, are the most effective overall. Those based on strategies of control or coercion – on surveillance, deterrence, and discipline – are far less effective and in some cases can actually make matters worse' (Ross et al 2011, p. 3; see also Noetic 2010). Sentencing practice should reflect the finding that the more restrictive an intervention, the greater its negative impact (Richards 2011). In that vein the YJRD submit that:

Sentences for Young People Should Include Evidence-Based Therapeutic Interventions.

As previously explained, individual, family, peer and wider community factors contribute to the risk of re-offending among youth involved in the justice system (Watt, Howells & Delfabbro 2004). A recent statistical review of 548 independent research samples with young offenders demonstrates that the provision of cognitive-behavioural skills training and coordination of services to meet the complex needs of young offenders have the greatest effect in reducing rates of re-offending (Lipsey 2009). Importantly the largest reduction in further offending occurs when intensive interventions are made with youth who are at the highest risk of persistent offending (Sawyer & Borduin 2011). Therapeutic home-based intervention programs tailored to the needs of the young offender and overseen by dedicated case workers are, demonstrably, best practice in juvenile justice (Ross et al 2011; Noetic 2010; Allard, Ogilvie & Stewart 2007). Orders that allow youth justice case workers to tailor the degree and frequency of their interventions based on a young person's circumstances and responsiveness are preferable, as those case workers are in the best position to ensure that the amount and type of intervention is appropriate in all the circumstances.

Not only are evidence-based therapeutic interventions effective at reducing recidivism, but they also perform well in cost/benefit analyses (Drake, Aos & Miller 2009). A particular challenge within Australia has been the implementation of multi-systemic therapy programs, though this has been achieved within the Western Australia Health System and in New Zealand. Within Queensland, some evidence based programs are currently being implemented, including Aggression Replacement Therapy and mentoring services (eg, youth workers; Lipsey 2009).

The Principle that Detention is a Last Resort Must Be Maintained.

The Action Plan stated that '[c]onsideration is also being given to removing the principle that when sentencing a young person for an offence, detention should be the last resort.' This proposal is inconsistent with the evidence of what works. Evidence shows that detention is not effective in reducing recidivism among young people (McGrath & Weatherburn 2012), and, by definition, incarceration disengages young people from society (Smart Justice for Young People 2011, p. 1).

The proposal that detention should not be the last resort is also inconsistent with the *Convention on the Rights of the Child* art 37(b) and the *Beijing Rules* r 19.1. All Australian jurisdictions currently provide for detention of young people to be a measure of last resort.

Young offenders tend to be involved primarily in non-violent offences (CCQ 2012, p. 16). Detention should be reserved for people who are a danger to society and who

are capable of understanding what they did was wrong: repeat, violent offenders who do not have intellectual disability or mental health issues (a secure hospital should be available for youth in those categories) (Keyzer 2011).

Deterrence Should Not Be a Priority in Sentencing Young People.

Research has shown that due to developmental characteristics, young people engage in dangerous or risky acts despite knowing the risks involved (Cauffman & Steinberg 1995). Long-term impacts or consequences of their behaviour are less likely to enter into a young person's decision-making processes (Steinberg 2009). Rather, young person's actions 'are largely influenced by feelings and social influences' (Steinberg 2005, p. 72), including excitement, stress and the presence of peers (see O'Brien et al 2011; Steinberg 2007). Deterrence as a sentencing purpose is particularly ineffective for young people and so it should be given little weight in the sentencing exercise.

The Courts Power to Order Diversion to a Youth Justice Conference Should Be Restored.

Under the previous legislation, more than half of the referrals to youth justice conferencing were made by courts, with the remainder by police (CCQ 2012, p. 7). While there is conflicting evidence regarding the impact of youth justice conferencing on recidivism (see Smith & Weatherburn 2012; see also discussion in Noetic 2010, p 38), it is clear that conferencing at least has the same impact as courts on reoffending (Smith & Weatherburn 2012). As such, given the economic benefits (Noetic 2010, p. 38), high rate of satisfaction among conference participants (Trimboli 2000; Noetic 2010, p. 38; see CCQ 2012, p. 7.), and requirement under the *Beijing Rules* r. 11 for diversion where appropriate, youth justice conferencing should be favoured. Taking away the option of court-ordered youth justice conferencing will have a significant and negative impact on the benefits associated with this measure.

The Proposal Referred to in the Action Plan Regarding Further Provision for Naming and Shaming in Queensland be Rejected.

The proposed expansion of the existing naming laws to 'repeat young offenders' does not recognise the unique developmental characteristics of young people (O'Leary, forthcoming). Considering these characteristics, a presumption against naming (as exists in the Australian Capital Territory, South Australia, Victoria, Tasmania and, for those matters dealt with in the Children's Court, in Western Australia) should be preferred (O'Leary, forthcoming).

Expanding the naming laws in Queensland will impede the potential rehabilitation of young offenders and does not act effectively as a general deterrent (Lincoln 2012; O'Leary & Lincoln 2012). The only jurisdiction with more expansive naming laws than

Queensland is the Northern Territory. In the Australian States and Territories, the Northern Territory consistently rates among the highest in proportion of offending young people (ABS 2013) and has the highest proportion of young people in detention (AIHW 2012). Further, research relating to the naming of juveniles convicted of criminal offences in the Northern Territory found that naming has harmed young people, resulting in harassment and/or disruption to their education (Chappell & Lincoln 2012).

Sentenced Youth Boot Camp Should be Avoided.

Decades of international research reveals that boot camps are ineffective in stopping the cycle of youth crime (Lincoln 2012a). Particularly, the techniques used in the residential phase of the SYBC implement traditionally unsuccessful philosophies, including through short-term confinement, strict discipline and tough physical activity, which fail to address the causes of youth crime (Lincoln 2012a). Findings repeatedly show that boot camps are ineffective in addressing psychological, cognitive and familial needs (Richards & Lyndeham 2012). Instead, sentenced youth are segregated (for one month under the SYBC residential phase) and inadequately equipped with the necessary skills for reintegration into the community (Parent 2003).

Closing the revolving door of youth crime primarily requires the identification of the causes of youth crime. While the community supervision phase of the SYBC may, if appropriately tailored, go some way to identifying and targeting the causes of youth crime, the legislative limitation of a maximum of five months of community supervision seriously hampers any potential benefit.

REINTEGRATION

Two of the questions around detention services in the Action Plan relate to the issue of reintegration.

What types of programs should be available inside detention centres and on release from detention?

Would it be appropriate for young people in detention to be granted a leave of absence, or in some cases early release, i.e. to attend work?

Gradual reintegration into the community increases the chance of success for young offenders and reduces the risk of re-offending. Comprehensive assessment and treatment planning, which identifies the range of risks and protective factors for young people, is essential. Planning and coordinating services to reduce risk for continued offending and increase strengths for young people enhances the potential for better functioning in the community and lower risk of continued offending (Lipsey

2009). Reintegration services should be provided for all incarcerated youth including sentenced and remanded juvenile offenders.

COORDINATED DELIVERY

The final questions that the YJRD considers relate to the manner of delivering youth justice services.

To assist young people to stop offending ... who is best placed to deliver these services?

How can government and non-government services deliver a more coordinated response to young people and their offending?

Young people involved in the justice system can have complex needs relating to education, mental health, family and other relationships, substance abuse, and the development of pro-social attitudes. Multi-agency coordination is essential to address these problems. The 2010 *Review of Effective Practice in Juvenile Justice (NSW)* found that the complexity and scope of an effective response to juvenile crime necessitates a whole-of-community approach, involving coordination between state and local agencies responsible for administering juvenile justice, the police, welfare agencies, schools, health authorities, etc (Noetic 2010). The failure of governments to address these complex problems due to poor multiagency coordination is one reason many young people enter and re-enter the justice system.

The Queensland government should pilot alternative models of service delivery such as:

- the Youth Offending Team ('YOT') model established in England in the late 1990s. The YOT is a multi-agency team that includes representatives from social services, police, probation, education and health. YOTs undertake the same work as is currently offered by Youth Justice workers, such as community based supervision, preparation of court reports and post-release support. The multi-agency approach streamlines service provision and reduces duplication.
- complex needs assessment panels (Watt, Robin, Fleming & Graf 2013) that coordinate the provision of care across multiple agencies, resulting in better continuity of care and engagement with services. Complex needs panels develop comprehensive plans to meet the diverse array of needs for clients with co-occurring difficulties while facilitating the integration of multiple services.

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YOUTH JUSTICE RESEARCH DIVISION MEMBERS

Patrick Keyzer
BA (Hons), LLB (Hons), LLM, Grad Dip Legal Prac, PhD

Patrick is a Professor of Law at Bond University and Director of the Centre for Law, Governance and Public Policy. Keyzer has written or edited 23 books, including *Sex Offenders and Preventive Detention* (Federation Press, 2009), *Dangerous People* (Routledge, 2011) and *Preventive Detention: Asking the Fundamental Questions* (Intersentia, 2013). He regularly contributes to the *Criminal Law Journal* and to *Psychiatry, Psychology and Law*. In 2006 Keyzer undertook a consultancy to the NSW Department of Ageing, Disability and Home Care relating to the treatment of people with intellectual disability in the NSW criminal justice system, and has recently concluded a consultancy with the Endeavour Foundation relating to access to the Disability Care system.

Robyn Lincoln
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Robyn is an Assistant Professor in Criminology at Bond University where she has taught and researched for the past twenty years. Her research interests have ranged from runaway and homeless youth, to violence in Aboriginal communities, to fraud by medical practitioners. Robyn's recent work has centred on the new field of forensic criminology where she has examined forensic interviewing techniques and miscarriages of justice. At present she is engaged on a number of projects including one study that explores the consequences of naming Indigenous youth involved in justice proceedings and others in the crime prevention arena. She has co-authored books such as *Justice in the Deep North*, *Jean Lee: The Last Woman Hanged in Australia, Crime on My Mind* and *Crime Over Time*; as well as journal publications on criminal profiling, inequality and crime, DNA evidence, forensic interviewing, sex offenders and Indigenous justice.

Jodie O'Leary
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Assistant Professor in the Faculty of Law, Bond University, Jodie teaches and researches in criminal law. In practice Jodie worked mainly at Legal Aid Queensland, in the Youth Legal Aid team, during which time she edited and contributed to a joint Legal Aid, Department of Communities publication entitled *Juvenile Justice – A Legal Practitioners Guide* (2003 – 4th edn) and travelled state-wide to educate practitioners about the amendments to the then *Juvenile Justice Act*. Jodie joined Bond full time in 2005. In 2009 she was project manager for the project 'Homicide in Abusive Relationships', the final report of which led to legislative reform in Queensland. In 2011 she was awarded a Vice-Chancellor's Research Grant, along with Suzie O'Toole and Dr Bruce Watt, for an ongoing project examining Juvenile Fitness for Trial in Queensland.

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Suzie is a Senior Teaching Fellow at Bond University who teaches criminal law and criminal procedure. Suzie graduated with a Bachelor of Social Work from the University of Queensland and a Bachelor of Laws (1st Class Honours) from the University of Technology, Sydney. Suzie worked as a social worker with juveniles in London and Sydney and worked as a criminal defence lawyer representing young people in Sydney before joining Bond University in 2007. Her most recent publication in the journal *Psychiatry, Psychology and Law* explores mental health service provision in the courts. Her doctoral research is on the same topic.

Bruce Watt
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Dr Bruce Watt is a Forensic and Clinical Psychologist, employed as an Assistant Professor with Bond University. He lectures in psychological assessment and forensic psychopathology. Commencing his career researching interventions with incarcerated violent offenders, he has subsequently investigated family based interventions for antisocial youth, predictors of juvenile violent recidivism, community correlates of violence and psychopathy. Currently he is evaluating a return to work assist program, animal cruelty and firesetting among juvenile offenders, as well juvenile fitness for trial. Beyond academia, Bruce's private practice specialises in forensic psychology assessment for Children's Court, Criminal Court and Family Law. He has worked and provided supervision in child and youth forensic mental health services for 15 years.