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Parliament House
George Street
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Dear Mr Hastie

Re: Youth Justice and Other Legislation Amendment Bill 2014 Submission

We welcome this opportunity to make a submission regarding the *Youth Justice and Other Legislation Amendment Bill 2014*. As academics from the School of Criminology and Criminal Justice at Griffith University, we have a strong interest in helping to develop measures that can reduce the impact of youth crime on victims, offenders and communities. We previously provided a submission to the *Youth Justice Blueprint Information Paper* that outlined our concerns in relation to the proposed policy options, and in this further submission we reiterate and emphasise many of the same important issues. We are disappointed to note that in most instances, the Bill presented adopts either the most severe option presented in the Blueprint or, indeed, adopts an even more restrictive and severe response.

We do not believe that the evidence supports the need for any of the proposed policy objectives of the Bill. There has not been any significant increase in the rates or seriousness of offending by young people in Queensland (QPS, 2007-2012). While persistent or chronic offenders may be a source of concern, their offending can effectively and efficiently be reduced through the use of evidence-based interventions that address the risk factors for offending (Freiberg & Homel, 2011; Ogilvie & Allard, 2011). Adopting a "get tough" response will only exacerbate the problem. Naming and shaming and increased use of more severe penalties are likely to be criminogenic and result in increased offending, at great cost to the Queensland community. International jurisdictions who have previously adopted such responses are now recognising that they are not economically sustainable and are emphasising the crucial importance of interventions (i.e., Washington State). Our submission responds to the first five policy objectives of the bill.

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

Current provisions of the *Youth Justice Act 1992* and the *Children's Court Act 1992* restrict court access and the publication of identifying information about young offenders, except in certain specified circumstances. Publication orders have rarely been made. The Bill provides

that all young people that have a previous offence may be identified through publication and provides that courts may 'opt out' or prohibit publication after considering relevant circumstances.

Based on our research with the 1990 Queensland Longitudinal Database (QLD), the proposed change could result in the publication of identifying information for about 5.2% of young people in Queensland and 36.3% of all young offenders (Little et al., 2011). The publication of identifying information about children who are, in the end, found not guilty is of particular concern, given that 4.7% of offences heard in the Childrens Court result in a not guilty finding (Allard et al., 2009). Publically identifying young offenders can produce two main unintended consequences. First, public identification can stigmatise the young person and make future offending and other problematic behaviours more likely, because reintegration into communities becomes more difficult (Cechaviciute & Kenny, 2007; Maruna et al., 2004). Second, public identification can lead to negative labelling and diminish the young person's future labour market success (Davies & Tanner, 2003). Potentially, public identification can also have an unwarranted negative impact on the offender's family members, particularly siblings.

Our View: There is no research evidence from anywhere in the world that supports public identification and naming and shaming as a way to reduce youth offending. Permitting repeat offenders' identifying information to be published will serve to stigmatise young people, leading to increased risk of further offending and limiting their access to legitimate employment opportunities. If enacted, we hope courts will make publication prohibition orders as a matter of course giving due regard to the rehabilitation prospects and needs of the child.

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

Currently it is not an offence under the *Bail Act 1980* for a child to breach bail conditions, although such a breach may result in arrest and return of the child to court. Most bail conditions are behavioural, in that they impose curfews, residential requirements, or restrict attendance at places such as shopping centres. The Bill provides for the introduction of a new offence where a child who is on bail reoffends and proposes a maxim penalty of 1 year's imprisonment.

The introduction of the new breach of bail offence could result in a child being punished more severely than would currently occur. This would have the effect of increasing recorded offending within the community with no real substantive change in offending. It is also likely to result in an increase in the number of children on remand and in detention, which comes at considerable costs to the community. It costs $683 per day ($249,295 per annum) to supervise each child on remand/detention (Bleije, 2012) and these forms of punishment are criminogenic. Evidence indicates that detention increases reoffending by between four and 14 percent when compared to community-based alternatives (Smith, Goggin & Gendreau, 2002; Villettaz, Killias & Zoder, 2006). Therefore, the upfront cost of using remand/detention more frequently will also have the effect of increasing future offending. Increased reoffending will result in increased workload and costs for the criminal justice system, victims and the Queensland community (Allard et al., 2012). Should the number of children on remand/detention exceed capacity, significant capital investment may be required. For

example, the 48 bed expansion of the Cleveland Youth Detention Centre cost $170 million (Passmore, 2009).

Our View: There is no evidence to suggest that creating the new 'breach of bail' offence will reduce offending. Instead, the new offence will likely result in an increase in the number of young people on remand and detention, with significant costs for the community.

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.

Courts already have the option under the *Youth Justice Act 1992* to record convictions for serious offences by children, and to have that conviction recorded and available to future courts. The Bill provides that any offence committed as a child may be admitted into evidence when sentencing an adult.

Philosophically, the youth justice system exists because children and adolescents are developmentally immature, impressionable and vulnerable. As individuals move into adulthood, most naturally age out of crime and they should not be held accountable for youthful mistakes. Our research with the 1983/84 QLD indicates that one-tenth (13.6%) of the population are found guilty of an offence by both the youth and adult justice systems before they turn 24 years old and one-fifth (18.5%) of offenders have contact with both systems (Stewart et al., 2007). Therefore, the proposed change will affect a considerable proportion of the Queensland population.

Making offences committed as a child admissible to adult sentencing courts will likely result in an increased use of community-based sentences and incarceration of adults. On average, it costs $5,183 annually to supervise each adult on a community-based order and $116,267 annually to incarcerate an adult (Productivity Commission, 2013). Given that incarceration is criminogenic, the initial costs associated with increased use of these penalties are likely to increase significantly.

Our View: Offences committed by children should not generally be available to adult sentencing courts. The Bill will most likely result in the use of more severe penalties and increased recidivism, at great cost to the Queensland community.

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.

Currently, the *Youth Justice Act 1992* requires courts sentencing children to consider making a transfer order shifting them to the adult system once they turn 17 or 18 years old. It also requires that such orders are only made after consideration of several factors, including: the duration of detention; the earliest day the child may be released from detention and their age when released; issues relating to the vulnerability or maturity of the child; the availability of relevant services and programs; and the likely impact on the detention centre if the transfer order is not made. The Bill proposes that all 17 year olds that have six or more months on their detention orders will automatically be transferred to adult prison.

The current proposal is far more severe than the Blueprint paper proposal, which suggested that transfers should be automatic from the age of 18 years. In the brief provided by Department of Justice and Attorney General to the Committee, it is argued that the automatic transfers *".. recognises that 17 year olds are of sufficient maturity to be held fully accountable for their actions, including being treated as adults .."* (p6). This takes no account of the fact that the actions that these individuals were involved in occurred prior to the young person's 17th birthday, and it is the maturity of the young person at time of offence, rather than time of sentence, that ought to be the key factor driving accountability. Furthermore, it can take a considerable amount of time for a young offender to be processed through the criminal justice system. By the time the formalities of the court process have been completed, particularly for the more serious offences, the young person may be considerably older (even aged beyond 17 years) at sentence.

The transfer of 17 year olds to adult prison is also of considerable concern because it further contravenes Queensland's international obligations under the UN *Convention of the Rights of the Child.* It will result in an increased number of 17 year olds in adult prison and reduce the availability of treatment options for those transferred, as adult prisons do not provide the same range and scope of treatment programs currently available to juvenile offenders. Automating the transfer process also removes the safeguards that currently exist and must be taken into account when courts make a transfer order.

Our View: The current system already provides a mechanism to have offenders transferred to the adult prison system where circumstances are considered appropriate by a court. There is no evidence to support the removal of the fundamental safeguards currently in place, and to automate such transfers. Such transfers would appear to be in further contravention of the UN *Convention of the Rights of the Child.*

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

Currently, the *Youth Justice Act 1992* stipulates that detention should be an option of last resort. This is a shared principle across all Australian jurisdictions (Chrzanowski & Wallis, 2010), and is articulated as a principle in the UN *Convention on the Rights of the Child* and the UN *Standard Minimum Rules for the Administration of Juvenile Justice.* Contrary to the position argued in the Explanatory notes to the Bill (p12), this provision does not 'unduly inhibit' the court in making sentencing orders that appropriately reflect the severity of offending, as the presumption does not restrict sentencing options; it merely requires that courts consider other alternatives first. The Bill removes the requirement for the court to consider alternative options and expressly requires courts not to have any regard for this principle.

Removal of this principle would further breach international obligations and result in Queensland legislation being inconsistent with other jurisdictions around Australia, as well as most comparable countries around the world. The increased use of detention/incarceration that may result from removal of this principle is of concern because these penalties are criminogenic and are very costly for the Queensland community. Other jurisdictions that have embraced a justice framework and increasingly used detention and imprisonment are

now using alternatives because the cost of these penalties became unsustainable (i.e., Washington State).

It is further noted that the proposed amendments in relation to this objective also result in the removal of the current principle that any detention should be for the least amount of time justified in the circumstances. This principle currently applies to both persons held on remand and those in detention on sentence, and the removal of this principle will only serve to increase the duration of time spent in remand, detention and prison. This places increased pressure on the current system, but also further increasing the likelihood of reoffending.

Our View: There is no evidence to support the removal of these fundamental principles. If removed, it may lead to an increased use of detention, increased reoffending, and increased costs for the Queensland community.

Thank you for the opportunity to make this submission, and we are happy to provide further information or clarification, including the references cited in this submission.

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Hennessey Hayes
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