AMNESTY INTERNATIONAL

Youth Justice and Other Amendment Bill 2014
Submission 19

Submission to Queensland Parliament
Legal Affairs and Community Safety Committee
Inquiry into Youth Justice and Other Legislation Amendment Bill 2014

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Submitted by

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Executive summary

Amnesty International holds serious concerns relating to all of the policy objectives listed in the explanatory notes that accompany the 'Youth Justice and Other Legislation Amendment Bill 2014'. The proposed amendments to the *Youth Justice Act 1992* breach international human rights standards relating to the fundamental rights of the child. The amendments undermine the fundamental proposition that the best interests of the child are paramount and should be the primary consideration in all actions concerning children –including those undertaken by courts of law, administrative or legislative bodies. They also represent substantial regressions away from well-established international best practices in youth justice.

It is critical that members of the community have the right to feel safe in their homes and in their neighbourhoods. Having property vandalised or stolen and houses broken into are distressing occurrences which can lead to anxiety and feeling unsafe. Amnesty International always calls for perpetrators of human rights violations and crime to be held accountable for their actions. However, the assertions throughout the explanatory notes that the punitive measures contained within the Bill will deter young offenders are unsubstantiated. In contrast, decades of expansive Australian and international evidence conclusively indicate that the proposed reforms would be detrimental to impacted young people and their communities and do nothing to address youth recidivism.

Amnesty International makes three recommendations to the Legal Affairs and Community Safety Committee:

- that the Bill not be passed;
- that the Queensland government work alongside the relevant youth justice and legal agencies to further develop the Blueprint for Youth Justice which reflects the substantive Queensland-based research that has been developed over the years
- the Queensland government implement, in consultation with Aboriginal and Torres Strait Islander peoples, culturally appropriate initiatives, aimed at reducing Indigenous youth incarceration rates.

About Amnesty International

Amnesty International is a worldwide movement of over 4.5 million people that promotes and defends all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international instruments including the *Convention on the Rights of the Child (CRC)* and the *Declaration on the Rights of Indigenous Peoples* (DRIP). Since its establishment over 50 years ago, Amnesty International has always campaigned for survivors and victims of crime and human rights violations to have access to justice and for perpetrators to be held accountable. Amnesty International Australia has 312,000 current active supporters including 40,000 in Queensland. Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International does not receive funding from governments or political parties. Amnesty International is currently conducting research as well as working in collaboration with other organisations to identify recommendations for state and territory governments, including Queensland, to reduce the incarceration rates of Aboriginal and Torres Strait Islander young people

Youth Justice and Other Legislation Amendment Bill 2014

Best interests of the child and youth justice

The preservation of public safety is an acknowledged and genuine aim of any justice system. It is the responsibility of governments to provide appropriate measures to ensure community safety and address youth crime. It is also the responsibility of governments to protect the rights of children who, because of their physical and mental immaturity, need special safeguards and care. Amnesty International is concerned that by passing this Bill, the Queensland government is ignoring its responsibilities.

The United Nations Committee on the Rights of the Child outlines the following necessary considerations that need to be made when developing youth justice policies:

> 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. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.[1]

Juvenile justice policies which both preserve public safety and address the special needs of young people must include the following core elements: the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings.[2]

Identifying repeat young offenders.

Amnesty International is concerned that the concept of 'naming and shaming' is once again being considered by an Australian jurisdiction. In 2008 the New South Wales Standing Committee on Law and Justice recommended that the prohibition of naming children in criminal proceedings should be extended not limited.[3]

Amnesty International warns that this Queensland measure would breach the established principle that the privacy of juveniles should be respected during all stages of criminal and judicial proceedings. It would also lead to the erosion of rules around protecting a child from stigmatisation. This is even acknowledged in the Bill's Explanatory Notes:

> Rules 8.1 and 8.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) provide that a young offender's privacy should be respected and their identifying information withheld from publication. Article 40.2(b)(vii) of the Convention on the Rights of the Child (CRC) similarly provides that every child accused of committing an offence should have their privacy fully respected at all stages of a proceeding against them. The amendments to open the Childrens Court when hearing matters in relation to repeat offenders and to permit publication of repeat offenders' identifying information are arguably inconsistent with these provisions of the Beijing Rules and the CRC.[4]

The Bill's Explanatory Notes justifies this serious deviation from human rights standards as necessary to:

> …balance against the needs to hold repeat offenders properly to account for their actions and the long term benefit to society and to individual offenders themselves from having in place real deterrents which discourage young offenders from persisting in a course of criminal behaviour.[5]

Contrary to this assertion, there is no existing evidence establishing the practice of naming a young offender as a successful deterrent. Research undertaken in the Northern Territory, the only Australian jurisdiction to have implemented such a measure, found that naming is detrimental to the young person and may result in harassment and/or disruption to their education prospects.[6] In some cases, the researchers identified some young people who after being named believed they had to live up to their now notorious reputation.

Back in 1997, the Australian Law Reform Commission was already warning that '*naming children would not make them accountable or assist in their rehabilitation but would merely confirm them as offenders'*. [7] In fact there is research dating back to the 1960s linking the

[1] Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, UN Doc CRC/C/GC/10 (2007) [10].
[2] Ibid [15]
[3] NSW Legislative Council Standing Committee on Law and Justice report, *The prohibition on the publication of names of children involved in criminal proceedings'* , April 2008, rec 4 par 79. Available at:
http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/a6e0bf2fbb2c4cc5ca25743900104238/$FILE/FINAL%20REPORT.pdf
[4] Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, p 13.
[5] Ibid
[6] Duncan Chappell and Robyn Lincoln, *Naming and Shaming of Indigenous Youth in the Justice System: An Exploratory Study of the Impact in the Northern Territory: Project Report* (21 May 2012) Chapter 7
[7] As quoted in Dixon, N. (2002) *Naming Juvenile Offenders – Juvenile Justice Amendment Bill 2002 (QLD)*, Research Brief No 22, Queensland Parliamentary Library, Brisbane, p 8.

stigmatisation that comes from labeling and its ability to lead to higher levels of deviance.[8] Australian researchers have found that deterrence is partly achieved by adequate rehabilitation and that measures that impede positive reintegration into the community have an adverse effect on any rehabilitation efforts.[9]

Finding of guilt while on bail

Amnesty International is concerned that creating a new offence where a child commits a further offence while on bail creates a duplicity in sentencing as the young offender will already be charged and sentenced for that offence if found guilty. Amnesty International is also concerned that this would undermine the right to the presumption of innocence. The presumption of innocence is a fundamental human right of both children and adults alike.[10] Bail is a reflection of that presumption, so the connection between the commission of a crime while enjoying that right is entirely inappropriate.

The Bill's Explanatory Notes states the '*intention behind this new penalty is to create a disincentive to children offending while on bail'*.[11] However as with the other measures in this Bill, there is no evidence to substantiate this assertion. Research shows there is no evidence that monitoring, arresting and detaining young people for breaches of their bail condition reduces re-offending among juvenile offenders.[12] Where the evidence is overwhelming is in the connection between early intervention, the provision of adequate support for young people and reducing repeat offending.[13]

In 2008 the Australian Institute of Health and Welfare reported that the younger a child experienced a period of juvenile justice supervision, the more likely they would be to come back in contact with the juvenile justice system in following years.[14] Similarly, it has also been established that the rate of recidivism is linked to the measures put in place to address an at-risk young person's needs. Not addressing the specific needs and circumstances of at-risk youth increases the likelihood that they will re-offend. Young offenders diverted from court, those who received cautions or participated in youth justice conferences are less likely to reoffend.[15]

Amnesty International notes with concern the complete de-funding by the Queensland government of programs which focused on restorative justice and were successful in turning at-risk kids' lives around. This includes court referred Youth Justice Conferencing which was scrapped despite evidence that it worked. These restorative justice processes brought young people together with their victims. The 2011-2012 Queensland Children's Court annual report said this referral process had a 98 percent success rate.[16]

Admissibility of childhood findings of guilt

The Convention on the Rights of Child emphasises the need to take into account the child's age and the desirability of promoting the child's reintegration and assumption of a constructive role in society.[17] The proposed admissibility of childhood findings of guilt in adult proceedings fails to promote this emphasis on rehabilitation and breaches the presumption of innocence.

The UN Standard Rules for the Administration of Juvenile Justice, known the as the Beijing Rules, clearly state that to avoid sitgmatisation and or prejudments, records of child offenders should not be used in adult proceeding in subsequent cases involving the same offender.[18] The Committee on the Rights of the Child expands on this by recommending the automatic removal from the criminal

[8] Duncan Chappell and Robyn Lincoln (2009) 'Shhh...We can't Tell You: An Update on the Naming Prohibition of Young Offenders', *Current Issues in Criminal Justice*, vol 20, no 3, pp 476-484.
[9] Jodie O'Leary and Robyn Lincoln (2012) 'Look Before Leaping Into a Human Rights Quagmire', Centre for Law, Governance and Public Policy (17 July). http://lawgovpolicy.com/2012/07/17/look-before-leaping-into-a-human-rights-quagmire/
[10] International Covenant on Civil and Political Rights, article 14
[11] Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, p 4.
[12] Youth Justice Coalition (2010) 'Bail Me Out: NSW Young People and Bail', p3.
[13] Ibid
[14] Australian Institute of Health and Welfare (2008), 'Juvenile Justice Supervision' in *Juvenile Justice in Australia 2006-2007,* Chapter 5, p 78.
[15] NSW Auditor General's Report (2007) 'Addressing the Needs of Young Offenders', p17
[16] Childrens Court of Queensland Annual Report 2011-2012, p 6.
[17] Convention on the Rights of the Child, article 40.
[18] The UN Standard Rules for the Administration of Juvenile Justice, (the Beijing Rules) rules 21.1. and 21.2.

records of the name of children who committed an offence upon reaching the age of 18.[19]

The justification that *giving courts sentencing adult offenders a more complete pictures of these offender's histories will enable to them to frame more appropriate sentences,* is in direct contradiction with the agreed standards outlined above. Again no evidence is identified demonstrating the deterrent or preventive benefits this might have.

Automatic transfer of 17 year old to adult corrective service facilities

Queensland has systematically been criticised for considering 17 year-olds as adults in its criminal justice system. In 2012 the Committee on the Rights of the Child again called on Queensland to remove 17 year-olds from the adult justice system.[20] The detention of 17-year-olds in adult prisons leaves them vulnerable and susceptible to the negative influences of adult offenders. The Explanatory Notes acknowledge that this breaches the rules relating to the Administration of Juvenile Justice. Amnesty International is equally concerned that the Bill expressly prohibits any merit-based review or appeal of a prison transfer direction. Placing at risk 17-year-olds in adult corrective service facilities risks exposing vulnerable youth to physical and mental harm.

Removing detention as a last resort

International human rights law makes it imperative for relevant governments to develop non-custodial measures within their legal systems to provide other options and reduce the use of juvenile imprisonment. The Convention on the Rights of the Child; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and the Standard Minimum Rules for the Treatment of Prisoners stipulate that arrest, detention and imprisonment should only be used as a last resort.

The Bill's Explanatory Notes state the removal of this sentencing protocol is to '*deter future offending to protect the community from the impact of youth offending'.*[21] Similarly to the all the other policy objectives of this Bill, there is absolutely no evidence to substantiate this supposed deterrence factor. Within this document is also the acknowledgement that the amendments in the Bill could likely see the increase on young people spending time in detention.[22]

The Australian Law Reform Commission (ALRC) described the detention of children as '*the most extreme of children's contact with legal processes'.*[23]

> The particular characteristics of children, for example their heightened vulnerability to physical and emotional harm and different perceptions of time, make detention a more confronting and difficult experience for them than for adults. Institutional environments, such as juvenile detention centres, can harm some children, with serious social and developmental consequences.[24]

When this ALRC report was published in 1997, there was already evidence then which indicated that detention and other harsh sentencing options were generally ineffective as deterrents to re-offending.[25] A 1996 NSW Department of Juvenile Justice report on juvenile recidivism found that harsher penalties such as custodial orders were associated with higher levels of juvenile re-offending. It further stated that the possibility could not be discounted that custodial orders further criminalise juvenile first-time offenders by contamination through their association with other known offenders.[26] (These concerns are also relevant to automatically transferring 17-year-olds to adult corrective service centres where they will be exposed to a greater plethora of offenders and criminals).

It is incomprehensible that the Queensland government is considering introducing measures which to its own volition will likely increase

[19] Committee on the Rights of the Child, General Comment No. 10: Children's rights in juvenile justice, UN Doc CRC/C/GC/10 (2007) [67].
[20] Committee on the Rights of the Child, Concluding Observations: Australia CRC/C/AUS/CO/4 [84.d]
[21] Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, p 6.
[22] Ibid, p8.
[23] *Australian Law Reform Commission,* 'Seen and heard: priority for children in the legal process (1997) Report 84 [20.1].
[24] Ibid.
[25] Ibid, [19.23]
[26] M Cain Recidivism of Juvenile Offenders in New South Wales NSW Dept of Juvenile Justice Sydney 1996, 1.

youth incarceration rates and in which there is evidence spanning nearly a decade pointing to their failure to deter re-offending behavior.

Amnesty International welcomes the commitment below as stated in the Explanatory Notes for a consultative and evidence-based approach to juvenile justice in Queensland:

> Initiatives such as…the development of the Blueprint to guide long-term, evidence-based reform and the close engagement of non-government organisations and partner agencies in integrated service delivery are intended to address the causes of offending and reduce the incidence of children becoming entrenched in a life of offending.[27]

Given this commitment to collaboration and evidenced-based youth justice policies, Amnesty International questions why the organisational submissions into the 2013 Blueprint survey remain unavailable to the public. It is highly unusual for submissions not to be publicly released. Amnesty International calls on the Queensland government to make public all organisational submissions that were provided to last year's youth justice blueprint survey. The Queensland government must also publicly respond and address the concerns and recommendations contained within them.

As outlined in the Explanatory Notes the following organisations were among those who made submissions to last year's survey: the Queensland Law Society, the Bar Association of Queensland; Legal Aid Queensland; President of the Children's Court; Chief Judge of the District Court; Chief Magistrate; University of Queensland; Griffith University; Queensland Council of Social Services and the Youth Advocacy Network Queensland. Being Queensland-based experts in youth justice their recommendations, research and views would no doubt help inform the public debate on what appropriate measures the Queensland government should introduce as part of its commitment to addressing youth crime.

Indigenous youth over-representation in incarceration rates

The 1991 Royal Commission into Aboriginal Custody recommended that arrest and imprisonment should be a last resort for Indigenous youth. The Queensland Government's policy paper 'Safer Streets Crime Action Plan –Youth Justice' recognises that 63 percent of young people in detention in 2011- 2012 were Aboriginal and Torres Strait Islanders. In contrast Aboriginal and Torres Strait Islander young people represent 6.4 percent of the Queensland population aged 10 to 16. [28]

In addition to state-wide programs, the Queensland government must also implement, in consultation with Aboriginal and Torres Strait Islander peoples, culturally appropriate initiatives aimed at reducing Indigenous youth incarceration rates. Amnesty International is among the many organisations concerned about the hugely disproportionate rate at which Aboriginal and Torres Strait Islander young people are incarcerated – in Queensland and elsewhere in Australia.

[27] Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, p 8.
[28] Australian Bureau of Statistics, Census data for 2011, available at http://www.abs.gov.au/.