Youth Justice and Other Legislation
Amendment Bill 2014
Submission 23

The Youth Justice and Other Legislation Amendment Bill, 2014

A Submission to the Legal Affairs and Community Safety Committee,

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[redacted]

INTRODUCTION

The writer is a retired minister of the Uniting Church and a clinical psychologist; having served predominantly in clinical practice, applied research and executive leadership of community mental health agencies, mainly with marginalized communities involving cross-cultural challenges, especially with Aboriginal adolescents and families. While having served in exchange roles in 2 other states and with the United Methodist Church in the USA, 70% of all professional and vocational work has been done in regional Queensland and in Brisbane.

Since 2007, retirement from executive leadership has made possible significant pro bono work with churches and NFP organizations in the research and development priorities for effective engagement with Murri young people and their families, mainly in the areas of access to education and skills training and in primary health care services. The writer is an Adjunct Professor with the Key Centre for Ethics, Law, Justice and Governance at Griffith University and a professional member of the Australian College of Health Service Management and of the Public Health Association of Australia.

PREAMBLE

- This is a view "from the trenches" ...one person's journey through 40 years of mostly engaging; sometime observing; sometime doing detached analysis and critique with the statistics, performance trends and outcomes pertinent to the journeys of disadvantaged young people in Queensland; increasingly concentrated in the life chances and choices of younger Murri people, particularly in rural/regional/remote areas of the state. Various collaborations and partnerships have been done at different times with a wide range of human service, community development, educational and primary care health agencies. Appalling tragedies and astonishing triumphs have been viewed and shared at close range.
- The writer is broadly informed on the Youth Justice system data profiles of recent years, as provided by the Department of Communities, the Department of Justice and Attorney General, and the Queensland Police Service. Detailed submissions within the frame of these data sets is done capably by colleagues and associates – however the views advanced here are informed by these key statutory agencies.
- Considering the above, and the well publicized intent of a new state government to cut public spending, it was expected that there would be a broad view taken of youth justice – in which the future-oriented economies of front-end loaded prevention and diversion would be chosen over against the short term populism/longer term surge in custodial costs favoured by a populist vote-catching view. Much could have been achieved by looking at the demonstrated impacts of a committed Justice Reinvestment model as in Texas, USA and several provinces of Canada – where relevant and effective support is given to both the victims of crime and the rehabilitation of offenders, especially early offenders.

- It was chilling to learn a few weeks ago of the amendments sought by the Attorney General via this bill. Taken together, these amendments are an egregious nod to those in the wider community who take a generalized, misanthropic and often malicious stance towards young offenders – polarizing the discussion into extreme opposite stances right from the beginning – unwilling to unpack the larger view of statewide performance; the trends and the effective experience of those whose views are informed by solid, successful outcomes in working with young offenders. This is dangerous if it gets to a place where young offenders who could have been mentored and supported well away from a criminal lifestyle – are instead drawn into career criminality – increased danger to public safety and far greater expense to the state budget.
- A shabby backdrop to the current legislative pathway was experienced in mid 2013 via the Safer Streets "survey" conducted by the Attorney General by website. I was one of the 4,100 approx respondents who participated – with much misgiving – to contribute rather than default. The entire design and function of the "survey monkey" questionnaire; the near total lack of open-ended comment made possible – were amateurish and prejudiced. The analysis in the subsequent report from the AG was distorted in several respects – for instance, claiming strong support for several measures which had at best 51% - 60% support – no avenue offered for further consideration. The accompanying web facility for detailed submissions received many strongly evidence-based, constructive proposals from a wide range of NFPs and other community bodies. The writer contributed to several of them. Yet, over the following months, the AG's office refused to release any of these. In all, this episode was a serious lapse of ethical/professional standards and of public trust – unworthy of a state minister in 2014. Does the Parliamentary Committee have access to those proposals from 2013? Is the Committee now availing itself of the proceedings of the Senate Committee of Inquiry into Justice Reinvestment (2013)?

Comment is now made on objectives 1-6 of the current bill:

1.Permit repeat offenders' offending information to be published and open the Children's Court for youth justice matters involving repeat offenders;

1.1 Promoted as "Name and Shame" over recent months, this measure requires closer examination in its likely impacts upon victims and offenders – as well as likely unintended consequences.

1.2 The writer has had close professional involvement with the Lifeline movement and is familiar with the types of needs presented by victims of many types of crime – mostly stealing, break and enter and violence at all levels of severity. From that agency alone, major levels of resource and

support are given to victims of crime. This has improved markedly over the past 10-15 years, especially in the advocacy capacity of NFPs to link people successfully with relevant statutory and other, more specialized avenues of support – which have themselves become better resourced and more responsive. Overwhelmingly, any benefit to the victim of most categories of crime, derived from naming and shaming is likely to be minimal and short-lived. Moreover, the benefit to a victim from a timely, court ordered, well resourced conferencing system on a restorative justice model has been proven in Queensland and elsewhere to be substantial in an overwhelming proportion of cases. Detailed reporting from the Chief Judge of Children's Courts demonstrates this amply. This system was terminated by the government in 2012.

1.3 The practice of naming and shaming a youth offender is the first step in a process where the state says publicly that it has given up on this person. It "stacks the deck" against that person ever being given the benefit of any doubt in their ongoing attempts at education, employment and the other positive experiences into which most young people grow. Is this a society in which the resources of the state (not to mention the media) will be devoted to the stigmatizing of an individual young offender? No balance to be struck in a thorough, painstaking, professional way with young offenders as a general practice? No dramatizing here – a society which gives up on significant numbers of its own (mostly seriously disadvantaged) young people is falling short of the liberal-democratic, vibrant, pluralistic, Judeo-Christian foundations to which many of us aspire.

1.4 The likely, unintended consequences of the envisaged stigmatizing of young offenders include the tangible probability of a significant proportion of those so treated not making their way positively into adulthood. Those particularly disadvantaged by low-achieving or spasmodic employment will adopt a consistently negative self-image. Already, the screening of young offenders in Queensland gives too little weight to the incidence of Foetal Alcohol Spectrum Disorder, especially among Murri offenders. Too many such people will find an ongoing criminal pathway as an easy option/only option. If such people face the accountability of the Youth Justice system – along with

the resources and supports of primary health care services and community acceptance, their chances of re-offending and social damage will be far less.

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

2.1 Clearly, on the face of it, this measure would seem reasonable – within its own logic. Any re-offending should have consequences and the offender needs to do the relevant learning experience.

2.2 In unpacking the question of granting bail; when it can and cannot be done etc., it becomes clear that Children's Court magistrates cannot realistically grant bail to serial offenders or those who have committed a more serious offence. Therefore such offenders are remanded in custody.

2.3 However, there is a different, larger group of early offenders for whom the risk of re-offending while on bail is high – because of an unstable or chaotic home life – or the lack of anything resembling home. This group poses a particular challenge. The idea of something like a "bail hostel" as an alternative to detention/custody appears to be a positive challenge. Some experiments have been done in a few regional centres, with a marked lack of success as I understand it. A different approach to this dilemma is needed. There are several suitably resourced NFPs who are willing to work with the Youth Justice system and QPS to invent various types and levels of non-institutional bail accommodation which would provide various types of age-appropriate and offence-appropriate security and social support. Such an approach, if successful must be better in every respect than taking a young offender on remand a long distance (escorted) to either Brisbane, Rockhampton or Townsville

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;

3.1 The non-recording of a conviction indicates either a lower order offence or a first offence – or both. What is to be gained by anyone apart from the offender by such a measure? If the adult offence is from a consistent but more damaging behaviour (assault/violence) it is understandable that a more realistic assessment of the situation is possible

for the magistrate and the court. If however, this were not the case, it seems to be one more way of "stacking the deck" against the offender. It seems that this distinction is imperative in the implementation of the measure intended.

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;

4.1 It is possible to envisage several areas of intended benefit to be gained from the state by implementing such a measure. Has someone done a cost-benefit projection to the effect that the extra costs of 17 year olds moving into the adult prison system will be exceeded by the savings derived from not having to expand youth detention facilities so rapidly over the next few years? This would be a fraught and perverse calculation as evidenced in the recent experience of the cost of expanding the Cleveland Youth Detention Centre at Townsville – leaving aside its recurrent operation costs.

4.2 Much has been learned in the field of brain behaviour, capacity development and emotional maturation over the past 20 years. Yet so little of this has been applied into the systemic area of offender management. Brisbane and Townsville have an abundance of highly relevant applicable knowledge in these fields to offer to the Youth Justice system. It is abundantly clear that there is a wide diversity of rates of brain development and social maturation among people in the 10-17 age span.

4.3 Contrary to the intended system transfer at age 17, it would be far more advisable to ensure that the above indicated knowledge of diversity in intellectual and social maturation is deployed far more productively in the classification and categorization of both youth and younger adult offenders 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 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;**

5.1 Removal of the bedrock sentencing principle of detention as a last resort would put greater pressure on sentencing magistrates to work with a diminished set of options – if that magistrate is concerned to find a balance between accountable/penalty on one hand and potential rehabilitation of the offender on the other. If a government sanctions or requires its courts to provide only a diminishing range of alternatives to detention – with little regard or cursory regard to the facts of the case and the assessed potential of the offender to learn powerfully and productively; to not re-offend, that government is defaulting on its stewardship to the community –in the fullest social, economic and cultural sense.

5.2 Alternatively, if a government seeks to tap the potential of its relevant researchers and practitioners across knowledge bases directly relevant to the Youth Justice system, this (among other things) would indicate that it is not content to take the "lock em up and throw away the key" option – but seeks to bring the community with it in ensuring that best potentials are developed – not wasted and running up an unaffordable bill.

6. **Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being given a warning;**

6.1 It seems that if an offender has been sentenced to detention and that Boot Camp is the designated option from the court and that the offender escapes, the intended measure would be appropriate. However .....

6.2 The minimal information available to the public, following the tough guy rhetoric which preceded it, gives me grave misgivings about the exact purpose and processes of Boot Camps (both varieties). There is a vast body of international research readily available to the effect that a

strongly punitive, disciplinarian, emotionally intense, time-compressed experience will not succeed in rehabilitating most adolescents. It probably will succeed in punishing them. Those who have been charged with the design and ongoing monitoring of Boot Camps (I have met several of them) are disturbingly unconvincing in their presentation of this project. They are caught in a difficult compromise – playing both ends against the middle – presenting Boot Camps as all things to all people.

6.3 There is a strong and well authenticated body of international evidence that a Boot Camp experience which fosters self-discipline and personal learning (rather than punishment and a harsh physical regime) can be a powerful catalytic experience over a 3-6 month period with a wide range of young people – provided that there is an individuated, ongoing, tailor-made mentoring experience available to the young person. This would likely involve a trusted adult who is capable of "walking with" the young person – offering encouragement, family and social connection, identification of potential in education, employment, recreation. This requires real investment by the state. The dividends are real.

6.4 The above recommendation on alternatives to the present Boot Camp has special relevance to a high proportion of Aboriginal young offenders who are currently 63% of young offenders in detention. The writer is aware of several groups of traditional owners in various regions of Queensland (5 at last count) who have sought to develop their own well resourced and accountable models of authentic Elder-mentoring for young Murri offenders – as alternatives to Boot Camps. Those making the big decisions on these matters are strongly encouraged to form constructive and responsibly resourced collaborations with such groups of traditional owners.