

The following submission is made on behalf of the Qld Section of the Australian Psychological Society's (APS) College of Forensic Psychologists and is supported by the APS National Office. Correspondence in regards to this submission can be forwarded to the Executive Committee of the Queensland Section of the APS College of Forensic Psychology at

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The authors of this document welcome the opportunity to provide feedback on the *Youth Justice and Other Legislation Amendment Bill 2015*.

Overall support is provided for the key objectives of the Bill. Of particular note, the removal of boot camp (vehicle offence) orders and boot camp orders as a sentencing option, and the reinstatement of the principle that imprisonment is a sentence of last resort, are strongly welcomed. The limited evidence base for the use of boot camps as an approach to juvenile rehabilitation is one of a number of reasons that this recommendation is supported.

Consistent with the evidence provided by the Legal and Constitutional Affairs References Committee for the Federal Senate, in a report arising from a 2013 inquiry into the value of justice reinvestment and the deleterious impact of incarceration, the reintroduction of detention as a last resort is strongly supported. The report recognises the economic and social cost of imprisonment detailing the cost to the justice system at over \$14 billion, with the cost of detaining a juvenile offender in custody being in excess of \$600 per day, in contrast to the cost of a community order which ranges between \$17 and \$77, depending on the jurisdiction. The Australian Youth Affairs Coalition (AYAC) has also described the impact of incarceration of young people stating that it leads to a decrease in wellbeing, disengages the young person from education and involvement with the labour force, disrupts positive relationships and socially excludes the person; all of which are known drivers of offending or recidivism. In addition, there is an increased economic burden on health and welfare services.

However, it is noted that the principle of 'detention as a last resort' does not extend across all offence categories. The College suggests that when sentencing a young person, this principle should be applied on all occasions. The additional factors listed in the legislation to be taken into consideration when sentencing a young person would ensure a young person that poses a significant risk to the community receives a detention order irrespective of the principle of detention as a last resort. Given this, it is suggested that the responsibility to provide community safety can still be met.

It is noted that the incarceration of young people places an increased demand on detention and correctional centre psychologists and counsellors who are significantly under-resourced. Due to the pay parity with other sectors such as health being non-existent, this workforce faces high turnover rates and is often staffed by new graduates with limited experience and inadequate access to sufficient onsite supervision. Further funding cuts have seen the removal of youth counsellor positions from adult correctional centres that detain young people. If the government is to continue with policies and legislation that result in increasing numbers of young people being detained, including young people being incarcerated in adult facilities, there is a responsibility to improve the

access to appropriately trained practitioners. This should include those with advanced training and experience in forensic and child and youth psychology, with appropriate remuneration.

The College understands that the proposed amendments to the Youth Justice Act and Penalties and Sentencing Act are driven by Government commitment to ensure legislation: reflects international evidence, is supported by a strong evidence base, is effective, and is aligned with other Australian jurisdictions. Given this, there is concern these principles have not been applied in full. Specifically, it is disappointing to see that the proposed amendments to the Act have not taken into consideration the issue of 17 year olds being detained in adult custodial facilities. The College would like to take this opportunity to outline key factors that are evidence-based and informed by human rights principles that would support the legislation being amended so that the definition of a child is consistent across all systems of government, and that until a young person is 18 years of age they are dealt with by the justice system as a child.

- Queensland is the only Australian jurisdiction to treat 17 year olds as adults in the justice system.
- The Kennedy Report (1988) into Queensland Corrective Services recommended that
- 17 year old children should be dealt with within the juvenile, rather than the adult system.
- The management of 17 year olds in the adult system is in direct contravention of the United Nations Convention on the Rights of the Child including,
 - “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” – Article 1
 - “...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” – Article 3
 - “..... The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest period of time.” Article 37 (b)
 - “..... In particular every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so.” – Article 37 (c)
- The age of majority, for all other legislation in Queensland and Australia is 18 years of age. This age of majority recognises the developmental and psychological difference between children and adults. As such, children under the age of 18 years cannot vote, buy alcohol and tobacco, or get married. It stands to reason, therefore, that a child under the age of 18 years should be managed by the justice system as a child and not an adult.
- Evidence indicates that children exposed to adult prisons are at **increased** risk of remaining in the system and reoffending.
- The increased risk of recidivism as a result of severe punishments for early criminal behaviour has significant long-term effects on the community including an increased social and economic burden.
- Current gaps in legislation result in the more vulnerable 17 year olds, including those with no parent or guardian and/or with severe mental illness or cognitive impairment impacting their ability to consent, falling between the service gaps of the Department of Child Safety and the Public Guardian.
- Crucially, 17 year olds in adult custody are not afforded treatment as outlined in the Youth Justice Act and its Charter of Youth Justice Principles, such as accessing developmentally

appropriate interventions and support services, including education and access to diversionary options. Nor are they afforded equal protection of their rights as a child, including the police requirement to notify parents of their arrest, having their parent or guardian present during an interview, and being subjected to less restrictive search and seizure police powers.

The authors of this submission are hopeful the recent announcement that the Queensland Government is considering introducing a Human Rights Act for Queensland, and that "The protection of human rights is central to the Palaszczuk Government's values" (Minister for Justice Yvette D'Ath press release 3/12/15), will translate into a commitment to these values by aligning youth justice legislation with human rights conventions and providing equal protection of all children.

The College thanks the Committee for the opportunity to provide this submission.