

**SUBMISSION from the QUEENSLAND GREENS on the
YOUTH JUSTICE AMENDMENT BILL**

EXECUTIVE SUMMARY

The Queensland Greens welcome the intent of the *Youth Justice (Boot Camp Orders) Amendment Act 2013* (Qld) and *Youth Justice Amendment Act 2014* (Qld) amendments to the *Youth Justice Act 1992* (Qld) to repeal harmful and ineffective measures put in place by the previous government. We recognise and broadly support the seven policy objectives addressed by the Bill.

We also submit three additional policy issues related to the existing law on this area which we believe the Committee should take into consideration in its deliberations, namely:

- a) the need to act immediately to end the detention of 17 year old children in adult prison facilities in Queensland;
- b) the need for a comprehensive plan of action to address the scandalously high imprisonment rates of Aboriginal and Torres Strait Islander people, and Aboriginal and Torres Strait Islander youth in particular; and
- c) the opportunities and benefits that an approach such as justice reinvestment may provide as part of a strategy to address these excessively high imprisonment rates.

ISSUES ARISING FROM THE POLICY OBJECTIVES

Objective 1: Removing Boot Camp Orders

1. The Queensland Greens agree with the proposed removal of Boot Camp Orders, accurately described as ‘unduly punitive and inappropriate’ (Page 2, Explanatory Notes) in the Explanatory Notes to the Bill.
2. This measure ‘reflects international evidence that increasing the severity of punishment is ineffective in reducing recidivism, particularly by children and young people’ (Page 1, Explanatory Notes).
3. As noted on Page 2 of the Explanatory Notes for the legislation, independent evaluation of the Boot Camp program revealed that ‘the trial was ineffective in its goal of reducing recidivism and consequently that it did not reflect value for money.’
4. The Greens supports the approach represented by the Amendment that directs youth justice away from a penalising and reactionary focus towards diversionary and proactive measures that address the causes of youth offending.

Objective 2: Prohibiting Publication of Information Identifying a Child

5. The Greens support this change. We do not believe there is any evidence that enabling identifying information of a child assists in reducing crime, whilst it is clear that the publication of such information can be detrimental to a child. Publication of such information should only be ruled permissible by a court in rare circumstances which a major, violent crime and where there is also a clear public interest in doing so.
6. Identification of offenders can also increase the chances of victims being identified and can also lead to unfair and negative impacts on family members.

Objective 3: Removing Breach of Bail as an Offence

7. The Queensland Greens support the removal of the offence for breach of bail by youth. We agree with the view expressed on Page 4 of the Explanatory Notes to the Bill that such an offence is “unnecessarily punitive and contrary to existing sentencing principles.”

Objective 4: Inadmissibility of No Conviction Offences

8. The Greens strongly support this change. There are many strong, evidence-based reasons why children should be treated differently to adults by the criminal justice system. If a judge has seen fit not to record a conviction against a young person, it should be in the knowledge that this will ensure this offence is not able to be admitted in evidence against them in any future proceedings.

Objective 5: Detention As a Last Resort and Shortest Appropriate Length

9. As cited in the Explanatory Notes to the Bill, ‘A longstanding sentencing principle at common law is that prison, due to the severity of the sanction, should only be imposed when there is no other less onerous sanction appropriate having taken into consideration all of the circumstances of the offending conduct and the need to protect the public.’
10. The Queensland Greens support the reinstatement of the common law principle of detention as a last resort. This principle is of fundamental importance. It will save public funds by reducing unnecessary imprisonment and ensure that other options with a greater chance of preventing recidivism are able to be pursued wherever appropriate.
11. It is also beneficial to have Queensland’s approach in this area be once again consistent with all other Australian jurisdictions. The Greens believe the same principle of inter-jurisdictional consistency should be applied to the treatment of 17 year olds in our criminal justice system, and thus urge that amendments be made to this legislation to

ensure that 17 year olds are treated as children for the purposes of sentencing and detention, as applies in all other states in Australia.

Objective 6: Reinstating the Children's Court of Queensland (CCQ) Sentence Review Jurisdiction

12. The Greens support the intent of this change, as the Children's Court is a specialist body which is well suited to making assessment and decisions in this area.

Objective 7: Principle of Continued Community Contact

13. Similar to Objective 5, a sentence involving imprisonment should be as a last resort. Enabling an offender to maintain some contact with the community where possible reduces the chances of an offender being unable to reconnect with society and thus reduces the prospects of recidivism and the social and economic costs that come with it.
14. The Greens emphasise our view that our criminal justice system should be treating 17 year olds as children when it comes to all matters of imprisonment and sentencing. We believe the legislation should be amended to reflect this.

ADDITIONAL POLICY AND LAW REFORM ISSUES

Detention of Children in Adult Prisons

15. The Queensland Greens remain concerned with the detention of 17 year old children as adult offenders pursuant to the *Youth Justice Act 1992* (Qld) Schedule 4 definition of a child as "a person who has not yet turned 17 years." This is an area not dealt with under the proposed amendments that the Queensland Greens submit is equally significant, relevant and in need of corrective legislative action to the other identified issues by the amendment. Key stakeholders have universally and consistently expressed concern with the exclusion of 17 year olds from the definition of a child for the purposes of the Act, citing a number of international, national and state legal and policy issues.
16. Significantly, the Anti-Discrimination Commission Queensland's Youth Justice Inquiry of 2014 Recommendation 3(b) called for the removal of 17 year old children from adult detention. This Recommendation sits amongst a sea of other notable criticism of this provision from various organisations, including the Queensland Law Society, the Bar Association of Queensland, and Amnesty International.
17. The Queensland Greens also note the significant work of Queensland academic Terry Hutchinson in juvenile justice, having particular regard to "When is a Child not a Child?" (2006) *Criminal Law Journal* 30(2), 92-99, wherein she captures the ineffectiveness of

the measure from a policy perspective as “one of the main findings that have emerged from previous research into the offending trajectories of juvenile offenders is that assignment of severe punishments for early criminal behaviour can result in greater recidivism.”

18. The current definition under Schedule 4 is contrary to international law standards enshrined by Article 1 of the United Nations *Convention on the Rights of the Child*, that “a child means every human being below the age of eighteen years.” This Convention is ratified in Australian law at the Commonwealth level through the *Australian Human Rights Commission Act 1986* (Cth), with the text of the Convention contained in Schedule 3. Likewise, the *Family Law Act 1975* (Cth) incorporates the *Child Protection Convention* in Schedule 1, which provides in Article 2 that “the Convention applies to children from the moment of their birth until they reach the age of 18.”
19. The Queensland Greens submit that the Queensland definition of a child under the *Youth Justice Act 1992* (Qld) should accord with international law benchmarks and, constitutionally, Commonwealth measures, which both state a threshold of 18 years for a person to qualify as an adult offender.
20. The Queensland Greens support the Australian Law Reform Commission *Seen and Heard: Priority for Children in the Legal Process* 1997 (Report 84) finding that “the age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions.” National harmonisation on this matter would be complete with the simple amendment to the definition of “child” in Schedule 4 of the *Youth Justice Act 1992* (Qld) to read “18” instead of “17” years.
21. The Queensland Greens are concerned that the current definition remains starkly inconsistent with the approach of every other Australian state, which, bar Queensland, universally hold 18 years as the standard for the attainment of the age of adulthood.
22. The Queensland Greens also note that such amendment would provide internal consistency to Queensland state law as the majority of Queensland legislation utilizing the term “child” provides a definition that reflects the recommended age of 18 years standard. Such legislation includes: *Child Protection Act 1999* (Qld) s 8 “a child is an individual under 18 years of age;” *Criminal Code Act 1899* (Qld) s 323B(3) “In this section- child means a person under 18 years;” *Tobacco and Other Smoking Products Act 1998* (Qld) Schedule “child means an individual who is under 18.”
23. Whilst having multiple definitions of a single term across different legislation may be necessary in other instances, in the context of the *Youth Justice Act 1992* (Qld) it produces an arbitrary and harsh result in condemning people properly characterised as “children”, in other areas of Queensland law and the public imagination, as “adults” to justify their detention in adult prisons. As the research cited by the government in the Explanatory Notes to the *Youth Justice Amendment Bill 2015* (Qld) demonstrates and

recognises, detention oriented approaches towards youth justice are “punitive” and, consequently, ineffective.

24. The Queensland Greens submit that this amending Bill represents a timely and appropriate opportunity for the reconsideration of the *Youth Justice Act 1992* (Qld) Schedule 4 definition of a child. The Queensland Greens urge the amendment of the Schedule 4 definition to read a child is “a person who has not yet turned 18 years old.” Such amendment would meet all three levels of stakeholder legal and policy concern: strengthening child protection in Queensland, harmonising the definition of adulthood with all other Australian state's approach, and meeting the government’s international human rights obligations under the United Nations *Convention on the Rights of the Child* as ratified by the *Australian Human Rights Commission Act 1986* (Cth) Schedule 3. Whilst we recognise that the government has indicated its intent to pursue its election commitment in this regard pending more consultation, the Greens believe there is no reason not to act now on this matter.

Addressing Excessive Imprisonment Rates for Aboriginal and Torres Strait Islander Youth

25. A 2015 report on youth justice in Australia by the Australian Institute of Health and Welfare found that Aboriginal and Torres Strait Islander youths were 23.5 times more likely to be imprisoned than non-Indigenous youths. This level of over-representation is scandalous, and there is little sign of any improvement.
26. The Greens believe that the legislation currently before the Committee has the potential to make some small improvements in this area. Whilst the range of measures that will needed to be deployed to achieve significant improvement in this area go beyond the scope of the current inquiry this Committee is conducting - and indeed beyond simply legislative solutions - the Greens believe that every piece of legislation in this area should be considered in terms of any ways it may be able to help improve this unacceptable situation.
27. One extra measure which could be adopted promptly in Queensland is to introduce a custody notification service, which is currently used in New South Wales. This would entail a legal requirement for police to contact the Aboriginal Legal Service or similar body whenever they have taken an Aboriginal or Torres Strait Islander person into custody. This approach, derived from a recommendation of the Royal Commission into Aboriginal Deaths in Custody, not only reduces the risk of self- and other harm in detention, but increases the prospects of a just and fair process occurring.

Justice Reinvestment Opportunities

28. In terms of more comprehensive, longer-term actions to reduce imprisonment rates, the Greens urge the Committee and the Queensland government to commit to trialling a justice reinvestment approach. Justice reinvestment has been recommended by groups such as Amnesty International and ANTaR as an effective, community based and driven approach which can help address some of the factors that lead to high levels of imprisonment. Whilst it requires an extra investment support and assist communities where young people have a high likelihood of imprisonment, in the medium to long term it will save public funds by substantially reducing crime and imprisonment and the high cost to the public purse that results from this.
29. Justice reinvestment is currently being trialled with the support of the New South Wales government in the town of Bourke. As a key part of justice reinvestment is enabling the community - including Aboriginal and Torres Strait Islander organisations, police and government departments - to work together to identify issues specifically relevant to the local area, it will mean each locality may vary in what activities, programs and actions they believe will provide the best chances of reducing imprisonment and crime rates.
30. The Greens note the Queensland government's stated commitment to develop a comprehensive youth justice policy over the course of 2016. We urge that justice reinvestment be included as a key part of that approach, with particular focus on reducing imprisonment rates for Aboriginal and Torres Strait Islander youth.

CONCLUSION

- The Queensland Greens affirm our support for the aims and objective of the legislation before the Committee and encourage the Committee to support it.
- We also urge the Committee to take the opportunity to (a) recommend further amendments to ensure that 17 year olds are consistently recognised and treated as children across all aspects of our criminal justice system, including detention and sentencing, and (b) encourage more concerted action aimed at reducing the unacceptably high and disproportionate rates of imprisonment of Aboriginal and Torres Strait Islander youth.

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