



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

The Research Director

Legal Affairs and Community Safety Committee

Parliament House

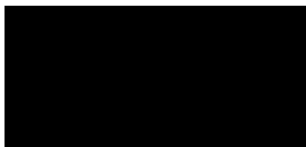
Brisbane QLD 4000

5 May 2016

Dear Committee,

Please accept Queensland Advocacy Incorporated's submission on the proposed Youth Justice and Other Legislation Amendment Bill 2016 ('the Bill') amending the *Youth Justices Act 1992* (Qld) and the *Children's Court Act 1992* (Qld).

Yours sincerely,



Michelle O'Flynn,

Director

About QAI

Queensland Advocacy Incorporated (QAI) is an independent community-based advocacy organisation. Since 1987 QAI has campaigned for the rights of vulnerable people with disability in Queensland. We believe that human beings are equally important, unique and of intrinsic value.

Historically, people with disability have been devalued and marginalised in what Newell and Goggin have called a 'social apartheid'.¹ Those systemic failings continue when governments persist in providing finance and infrastructure support for group homes and other forms of congregate care; when our guardianship and administration systems use substitute decision-making while disregarding the views and decisions of vulnerable people with disability and those of their supporters; when our clinicians perform chemical castration without consent; the criminalisation of the sexual expression of people with cognitive disabilities; and when we continue to imprison people with intellectual disability at five times the rate of the general population. As an organisation we seek to bring about a common vision where all human beings are equally valued.

Support for the Bill

QAI supports the broad objectives of both the Bill and the earlier Youth Justice and Other Legislation Amendment Bill 2015. The provisions of the Bill overturn 2014 amendments that were neither evidence-based nor supported by the majority of submissions to the previous consultation. Any successful sentencing option must be based in empirical research and data. It is imperative that young people who have committed offences be given an opportunity to return to their families and communities without carrying the stigma associated with naming in court proceedings and adult detention.

In this submission

We make some brief comments in relation to the Bill's major provisions, followed by some more general comments on the critical importance of exploring diversionary alternatives to incarceration, particularly given the overrepresentation of young people with cognitive disabilities in the criminal justice system.

- *Close the Children's Magistrates Court when hearing all youth justice matters under the Children's Court Act 1992 (the CC Act) and provide for victims or their representatives to be present in closed court.*

Closed proceedings maintain the anonymity of suspects and victims alike. 'Naming and shaming' simply reinforces the pathway into the criminal justice system and reinforces an offender's criminal identity. Some young recidivist offenders may not think twice about committing offences for no other reason than seeing their names 'up in lights' on the front

¹ G Goggin and CJS Newell, 2003. *Disability in Australia: Exposing a Social Apartheid*. Australia: University of New South Wales (UNSW) Press.

pages of various newspapers. In effect, the proposed laws could stimulate defiant mindsets to actively increase their offending behaviour.

- *Increase the age at which children and young people subject to periods of detention under the Youth Justice Act 1992 (the YJ Act) are to be transferred to adult corrections from 17 to 18 and empower a court on application, to delay a young person's transfer for up to six months.*

Early incarceration ensures that young people become accustomed to prison culture and low social expectations. Incarceration, especially for young people, has been found to compound anti-social behaviour through secondary labelling and the association with more serious, potential future offenders.²

- *Reinstate a court-referred youth justice conferencing program and expand the program to allow for increased flexibility in the delivery of restorative justice interventions as part of police-referred and court-referred conferencing.*

It is essential that we explore alternative pathways of 'therapeutic jurisprudence', and QAI supports youth justice conferencing as an effective diversionary tool and an appropriate mechanism to address young people's accountability for offending behaviour.

Restorative justice measures such as youth justice conferencing have numerous benefits: it addresses victims' needs, includes communities in the criminal justice process, and fosters trust in criminal justice processes. These are all vital aims of the criminal justice system. In particular, the evidence that victims prefer restorative justice to traditional criminal justice measures is unequivocal.³

Conferencing provides an opportunity for the young person to admit the offence and accept responsibility for their offending behaviour, to understand in a tangible way the effects of their actions on others, to repair some of the harm caused by their offending behaviour, and to feel proud of their efforts to put things right. It also provides an opportunity for the young person's family and community to be heard and to be involved in decision-making about the offending behaviour.

Conferencing provides an opportunity for the victim to participate in the process of working out how the young person should make up for causing the harm and damage, and to negotiate an agreement to repair the harm through an apology, by replacing or paying for the damage, or by performing voluntary work for the victim or wider community. It gives the victim an opportunity to tell their story directly to the person who caused them harm, and to seek answers to the questions that they may have about the crime and why they were the subject of the offence.

Youth justice conferencing helps to strengthen and empower families through their involvement in the decision-making about a young person's offending behaviour. The

² U Gatti R Tremblay R, & F Vitaro. 2009. 'Iatrogenic effect of Juvenile Justice.' *The Journal of Child Psychology and Psychiatry* 50(8): 991-998.

³ L Sherman & H Strang. 'Restorative justice as a psychological treatment: Healing victims, reintegrating offenders.' In G Towl & D Crighton (eds), *Forensic Psychology*. West Sussex: BPS Blackwell.

conferencing process allows families to take an active role in deciding an appropriate response to offending behaviour and support them to implement that response, to support a young person's compliance with an agreement, which serves to encourage the development of positive relationships within the family, to find out how the young person is feeling about issues associated with the young person's offending behaviour, and to gain greater insight into the impact of the young person's behaviour.

People with Disability in the Criminal Justice System

The changes proposed in both pieces of legislation particularly will benefit the disproportionate number of young people with disabilities in the criminal justice system. There is no published research that identifies precise numbers of young offenders with disabilities in Queensland, but evidence from other jurisdictions together with studies of adult prisoners in Queensland leaves no doubt that young people with intellectual impairments and other disabilities will be affected disproportionately by this legislation.

“Young people with cognitive impairments and/or mental illness are at least six times more likely to be in prison than young people without a disability.”

Research conducted in New South Wales by Baldry and others, for example, established that young people with mental health disorders and/or cognitive impairments are at least six times more likely to be placed in prison than young people without disability in the general population.⁴ The rate of incarceration of young people with cognitive impairments is even higher than it is for adults with cognitive impairments. Here in Queensland, approximately one in fifty adults has an intellectual disability. Among Queensland prisoners this proportion rises to one in ten. Another three in ten prisoners have some degree of intellectual impairment.⁵

Into the Criminal Justice System

The pathway of people with disabilities into the criminal justice system often begins with their experiences at school. It is not uncommon for the behaviour of students with disabilities to be misunderstood as wilful misbehaviour rather than linked to their disability.

It is uncontroversial, however, that misbehaviour is often related to underlying disability, to behavioural disorders such as Attention Deficit Hyperactivity Disorder (ADHD), to brain disorders such as Asperger's Syndrome and even to brain damage.⁶

⁴ Eileen Baldry, Ruth McCausland, Anna Cohen & Sarah Johnson. 2013. People with mental health disorders and cognitive impairment in the criminal justice system - cost-benefit analysis of early support and diversion. UNSW and Price Waterhouse Coopers.

⁵ Queensland Department of Corrective Services. 2002. *Intellectual Disability Survey*; F Parton, A Day & J White. 2005. 'An Empirical Study on the Relationship Between Intellectual Ability and an Understanding of the Legal Process in Male Remand Prisoners', paper presented to Disability and the Criminal Justice System: Achievements and Challenges, Rydges Hotel, Melbourne; B Hockings et al. 2002. *Queensland Women Prisoners Health Survey*. Department of Corrective Services.

⁶ Elizabeth Dickson. 2008. 'The inclusion and exclusion of students with disability related problem behaviour: the contrasting approaches of Australia and the United States of America'. *Australia & New Zealand Journal of Law & Education*. 13(2): 49-63, 49.

At least one commentator has speculated that spikes in rates of suspension and exclusion may be at least in part attributable to a perceived increase in opportunities to exclude, lawfully, students with disability-related problem behaviour from mainstream schools.⁷ Often abetted by their own school boards, some principals take the view that it is cheaper and quicker to exclude a disruptive student and relocate them to a 'special needs' facility than it is to mitigate the challenges of a disruptive and uncooperative student through resourcing and support.

In addition to your consideration of the provisions of the current Bill we invite Committee members to consider and to challenge the provision of the *Education Act (General Provisions) Act 2006* (Qld) ('*Education Act*') that allows school principals to suspend students who have been charged with an offence⁸ - no matter whether the charge has anything to do with the school or whether it happened inside or outside of school hours or even whether or not it happened in Queensland.

The *Education Act* allows a school principal to defer decision about the suspension until a court deals with the relevant charge weeks or months later. Beyond a certain point, long term suspension and expulsion may threaten the student's right to a free and appropriate public education. It is a provision that both disregards the presumption of innocence and denies many students, including those with disabilities, access to schooling at a time when it may be a critical stabilising factor. Left to their own devices, there is a risk that suspended students will feel more alienated from school and their community, and more prone to the activities that (allegedly) led to their suspension in the first place. Furthermore, it is highly likely that regardless of guilt or innocence the student's reputation at school will be forever tarnished and will no doubt follow with the student throughout their educational experience.

Diversion and Rehabilitation over Retribution

The primary reason for taking a less punitive and more rehabilitative approach to young offenders is that this approach works best, if success is measured according to the reduction in recidivism, the degree of integration and inclusion of these young offenders into their communities and positive outcomes in employment, health, and other social measures over the person's lifespan. Diversion is also a more effective method of reducing reoffending.⁹

Diversionary practices, in particular warnings, cautions and conferencing, have been partially responsible for a sharp decrease in the number of young people in custody since the 1980s. The rate of juvenile detention has declined from a total of 1 352 young people in custody in 1981 to 605 in 2005 (a 55% decline). The rate for Indigenous young people has also decreased since 1994 with a 25% reduction.¹⁰

The need for diversion programs was recognised after research indicated that reoffending was more likely to occur if a young person received a punitive response to a first offence.

⁷ *Ibid*, 49.

⁸ Section 282 *Education (General Provisions) Act 2006* (Qld).

⁹ K Carrington & M Pereira. 2009. *Offending Youth: Sex, Youth and Justice*. Federation Press: Sydney.

C. Cunneen. 2008. 'Changing the Neo-Colonial Impacts of Juvenile Justice' in *Current Issues In Criminal Justice*, 20 (1)43-58; Cunneen, C., and White, R., (2011) *Juvenile Justice: Youth and Crime in Australia*, 3rd ed., Oxford University Press: Melbourne.

¹⁰ Australian Human Rights Commission. 2008. *Preventing Crime and Promoting Rights for indigenous Young People with Cognitive Disabilities and Mental Health Issues*, p 29.

Youth justice conferencing is an effective diversionary tool and an appropriate mechanism to address young people's accountability for offending behaviour.

Cost Comparison

Relative cost to government is also a measure of success, and recent evidence from research by the University of New South Wales shows that every government and charitable dollar spent in early intervention will save government two or more dollars that would otherwise have been spent on incarceration and other criminal justice options.¹¹ These figures are not speculative; they are hard data gleaned from longitudinal research with thousands of young people.

The University of New South Wales Dataset Study is the most comprehensive and long-ranging study of relative outcomes in the lives of people with cognitive disabilities ever undertaken in Australia, and, probably, in the world. The researchers gathered data from both criminal justice agencies, including Corrective Services, Police, Juvenile Justice, Courts and Legal Aid) and from human service agencies (including Housing, Ageing Disability and Home Care, Community Services, Justice Health and NSW Health). The Dataset Study has compared the costs to government of various life-paths of hundreds of people with cognitive impairments.

People with intellectual disability and personality disorders have high levels of institutional contact, particularly with police, from a young age. The UNSW research sets out the projected costs of support and intervention based on the life paths of a number of real people. The institutional costs associated with 'Casey's' life-course,¹² for example, are \$5.515 million by the time she reaches 20 years of age. This includes 356 police incidents, 604 days in custody and 270 days in hospital.

By way of comparison the study also projects Casey's institutional costs were she to have had early intervention, including appropriate disability and accommodation support. The cumulative savings of appropriate support and intervention would manifest for Casey at the age of 16 years.

Appropriate support for Casey up to the age of 16 years would cost considerably *more* than the costs of health, police and custodial interventions to that age, but from 16 years onwards the early intervention reaps benefits, and by the time Casey is 27 years the savings from early intervention accumulate to more than \$6 million. Government saves \$2.40 for every \$1.00 spent in early intervention.

Conclusion

¹¹ Eileen Baldry, Ruth McCausland, Anna Cohen & Sarah Johnson. 2013. *People with mental health disorders and cognitive impairment in the criminal justice system - cost-benefit analysis of early support and diversion*. UNSW and Price Waterhouse Coopers.

¹² Eileen Baldry, Ruth McCausland, Anna Cohen & Sarah Johnson. 2013. *People with mental health disorders and cognitive impairment in the criminal justice system - cost-benefit analysis of early support and diversion*. UNSW and Price Waterhouse Coopers, page 2.

The majority of young offenders are people involved in risk-taking behaviours and poor or impulsive decision-making as part of the normal process of adolescent development, and who will grow-out of offending as a result of proper community and family supports, and the young person's own natural and developing understanding of their behaviour and personal responsibility. The other smaller group of young offenders who commit the largest proportion of offences are young people who have long experience of mental health and drug and alcohol issues, and many of whom have some degree of intellectual impairment. It is our responsibility to do everything that we can to give the first group a second chance, and to provide the second group with the supports they need to live fulfilled and happy lives.

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