

Submission by
YOUTH ADVOCACY CENTRE INC
to the
Legal Affairs and Community Safety Committee
In relation to the
Youth Justice and Other Legislation Amendment Bill 2016



MAY 2016

The Youth Advocacy Centre Inc (YAC) is a legal and social welfare agency for young people aged 10 to 18 years of age who are involved in, or at risk of involvement in, the youth justice and/or child protection systems and/or are homeless or at risk of homelessness. We been operating for nearly 35 years.

As noted in our submission in relation to the *Youth Justice and Other Legislation Amendment Bill 2015*, YAC was always of the view that the amendments to the *Youth Justice Act 1992* (the Act) in 2012 and 2014 were not evidence-based and the amendments were likely to produce results in direct contradiction to their stated intent.

The Committee holds YAC's submissions in relation to the 2012 and 2014 amendments and we encourage the Committee to review these as part of this submission. However, as the Explanatory Notes to the *Youth Justice and Other Legislation Amendment Bill 2016* (2016 Bill) indicate:

The 2014 amendments were viewed as unduly punitive and inappropriate by the majority of stakeholders. The Legal Affairs and Community Safety Committee (LACSC) consulted widely on the 2014 amendments during its examination of the 2014 Bill. The measures implemented were not supported by any of the submitters to the Parliamentary inquiry, including the Queensland Law Society (the QLS), Bar Association of Queensland, Anti-Discrimination Commission Queensland, Queensland Council for Civil Liberties, leading church and research organisations and Amnesty International. Stakeholders, instead, urged implementation of measures to divert children and address the causes of offending.

YAC's views were therefore well aligned with a range of stakeholders whose submissions were based on latest research and evidence. YAC therefore supports the 2016 Bill overall.

In addressing youth offending, we need to be cognisant that there are two types of young offenders:

1. Those young people involved in risk-taking behaviours and poor/impulsive decision making as part of the normal process of adolescent development and who will "grow out" of offending as a result of family and community supports and the child and young person's natural and developing understanding and acceptance of their behaviour and personal responsibility.
2. The small group of recidivist young offenders – the 10% of offenders who commit nearly 50% of the offences committed by young people - who share a set of characteristics with most experiencing family, mental health, drug and alcohol issues, and disengagement from education. The data indicate that 70% of young people involved in the youth justice system are known to the child safety system. We understand Youth Justice Services is moving to a trauma informed service delivery model in light of the challenges in these young people's lives.

As the most disadvantaged of the disadvantaged, Aboriginal and Torres Strait Islander children are over-represented in the youth justice system.

These understandings of "who" young offenders are must underpin all aspects of the youth justice system and its component processes, including the need for restorative and therapeutic interventions, to effectively respond to youth offending. The 2012 and 2014 amendments failed to comprehend this.

Closure of the court

YAC is supportive of the general closure of the Childrens Court and the provision to allow the victim to be present subject to the court being able to exclude the victim if, in the court's opinion, the person's presence would be prejudicial to the interests of the child. YAC believes that this balances the ability of the victim to know what is happening in relation to the case but it acknowledges there may be occasions where, until certain facts are ascertained or matters resolved, it could be prejudicial to the defendant for the victim to attend at particular points in the process.

However, YAC notes that there is a problem where the victim or witness may also be considered to be the support person for a child. This happens not uncommonly when the police advise parents to charge their children for behaviour which parents should be managing, but particularly where children on care and protection orders are living in out-of-home care and are charged with offences which, again, should be managed outside of the criminal justice system – which is not, and should not be regarded as, a behaviour management tool. This usually relates to allegations of minor damage or assault but in more recent times also includes children under 16 being prosecuted for possession and/or making and/or distributing child exploitation material because they have taken a picture of *themselves* and sent it to a boyfriend/girlfriend of similar age.

In these situations, the parents or carers who call the police may be the alleged victim or a witness – for example, because they saw or found the image on a phone (in a recent case, this was the grandmother who was a trusted adult until she reportedly found the image, called statutory services for advice and was advised to call the police – the child was 12 years old). In these situations, the requirement for a support person must ensure that it is someone the child has, or continues to have, trust in for this role to be meaningful.

Dismissal of charge if should have been referred to restorative justice process

YAC welcomes the proposed new s24A which enables a Childrens Court to dismiss a charge if the offence should have been referred to restorative justice process. This would mirror section 21 of the Act which enables a Childrens Court to dismiss a charge if a caution should have been administered or no action taken, and rectifies a longstanding and obvious gap in the legislation.

Youth justice conference/restorative justice process

It was always unclear why court ordered youth justice conferencing was revoked in 2012 when the following information remained on the website of the Department of Justice and Attorney General even as the Bill to abolish court referred conferences was in Parliament:

The purpose of the conference is to:

- provide a safe, supportive environment to talk about what happened and to work out what the young person should do to put things right
- hold the young person accountable for their actions
- find ways to help repair the damage or harm that has been caused to the victim of the offence
- involve the victim, the young person's family and the young person themselves in making decisions about what should happen to repair the harm that has been caused.

Accountability

To ensure that the young person is held accountable for their offending behaviour. This gives them the opportunity to:

- accept responsibility (admit the offence/s)
- understand the consequences (hear the harm caused)
- make amends (apology, restitution, or other action).

Reparation

To provide an opportunity for both the victim and young person to determine a mutually acceptable response to repairing the material, psychological and social damage caused by the crime.

Reintegration

To strengthen the social and personal connections the young person has with their family or community of care and with the wider community, and to provide an opportunity for healing and reintegration for the victim.

Reduce recidivism

To reduce re-offending through an approach incorporating principles of accountability, restitution, and reintegration.

Family responsibility

To enable the family of the young person to participate in the process of deciding an appropriate response to offending behaviour and supporting them in the implementation of that response.

Victim participation

To provide the victim of criminal offences with an opportunity to be part of the process of dealing with those offences.

Community involvement

To encourage greater community participation in providing support for young people and victims of crime.

Diversion

To divert young people from further involvement in the criminal justice system.

Cultural appropriateness

To provide a process for dealing with offending behaviour that is appropriate to the young person's age, maturity, and cultural background.

YAC welcomes the reintroduction court ordered conferencing. The conference may well be a useful way to assist young people's development where their life experience to date has not been one which enables them to be empathetic or otherwise understand the consequences of their behaviour. However, YAC believes there should be an opportunity for casework staff to provide or arrange for therapeutic supports at this point which the young person identifies would assist them in preventing re-offending. Punishment alone will not work – indeed, the research and evidence shows that too authoritarian response to children's behaviour is as problematic in its outcomes as providing no framework for behaviour. Court ordered conferencing therefore needs a case management approach.

For those young people who are becoming recidivist offenders, as we know, their profile is such that they need some assistance to effect changes in their lives and life circumstances and potentially their parents too (this thinking underpins the multidisciplinary service model which YAC provides). Reintegration and diversion should incorporate such responses, with the agreement of the young person, and they need access (financially and practically) to the relevant services for this to happen. This may mean that adults need to take some responsibility in taking action, not only the young person. Importantly, however, a young person must not be able to be breached for not attending therapeutic services which are offered.

A new feature introduced by the 2016 Bill is the ability to refer to an alternative diversion program if a conference is unable to be convened. YAC welcomes this as ensuring that some children do not miss an opportunity provided to others for circumstances beyond their control. However, the provision in the Bill is less than adequate. Proposed new section 38 provides that "an alternative diversion program is a program, agreed to by the chief executive and the child..." and "The program must be in writing and be signed by the child." No processes are detailed as to how agreement should be reached and no provision is made for the attendance of a support person and/or a legal representative to address the clear imbalance of power where a departmental officer is "negotiating" with a child. This should be compared to the detailed requirements in relation to a conference. There is a significant risk that the departmental officer who will be tasked with making the agreement (as it will be delegated by the Chief Executive to someone in a casework role in Youth Justice Services) will effectively have a quasi-judicial role without appropriate processes and safeguards being in place. These must be part of the legislation and not simply a matter of policy and procedure.

YAC submits that, if a conference cannot happen, then a conference convenor should act as a facilitator in relation to the development of an alternative diversion program and the child should be assisted to obtain legal advice prior to signing if a legal representative does not attend the discussion. There should be a requirement for the attendance of a support person during the negotiation in any event for the agreement to be effective.

It is also important that there is some monitoring of such agreements and comparison with conference outcomes to ensure consistency between the two.

Transfer of children to adult prison

YAC welcomes the raising of the age in relation to the automatic transfer of a person to adult prison. It confirms the appropriateness of 17 year olds being dealt with in the youth justice rather than the adult criminal justice system and YAC takes this opportunity again to call for the raising of the age generally for entry to the adult system to 18. Queensland is the only Australian jurisdiction which maintains this position in contradiction with Australia's human rights obligations.

However, it is disappointing that any privileges and similar which a detainee may have acquired through good behaviour and hard work, are not carried over to the prison system. No satisfactory explanation has ever been given for this and one wonders why a detainee would have any interest in trying to do the right thing if any rights they have earned are effectively arbitrarily removed. This would seem to undermine the purpose of imposing the sentence.

Call for a bi-partisan, evidence-based approach to youth justice

YAC would like to see a bi-partisan, evidence-based approach to youth justice. There is a great deal of research and evidence in relation to young offenders, youth offending and "what works" in preventing and responding to both. One thing is clear – a judgmental and punitive approach will not achieve a change in behaviour in the long term and children and young people are better able to take their lives in a different direction given appropriate support and encouragement.

A situation where youth justice policy "chops and changes" in order to assuage popular/populist opinion rather than all sides of politics properly understanding the evidence base, and assisting to educate the broader community in relation to this, does a great disservice to the Queensland community, including its young people.

YAC calls on all members of the LACS Committee to commit to a bipartisan, evidence-based approach, now and for the future, for the benefit of all Queenslanders, and thereby more effectively supporting increased community safety.

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