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# **The Youth Justice and Other Legislation Amendment Bill, 2016**

**A Submission to the Legal Affairs and Community Safety Committee  
Parliament of Queensland**

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**Australians for Native Title and Reconciliation Inc (Queensland)**

**Dr Wayne Sanderson (Vice President)**

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## INTRODUCTION

ANTaR is a national scale body which draws its members from the general community. It conducts education, research, community development and advocacy projects with the central objective of fostering authentic reconciliation between First Australians and Settler Australians. The mission of ANTaR Queensland at this time is to generate a moral and legal recognition of, and respect for, the distinctive status of Aboriginal and Torres Strait Islander peoples as the First Peoples; to agree to work for the protection of the First People's rights, including their relationships to land, the right to self determination and the maintenance and growth of their unique cultures.

The writer serves currently as vice-president with the management committee of ANTaR Qld . He is a retired minister of the Uniting Church in Australia and a semi-retired clinical psychologist. He served in these two fields concurrently for 37 years in three states and on exchange with the United Methodist Church in the Detroit and Seattle areas, USA. More than half of his service has been in regional Queensland and Metro Brisbane. His developmental work with marginalized community groups (mainly Aboriginal families) has been at the core of service delivery, clinical practice, applied research and policy advocacy in his executive leadership and teaching roles.

## PREAMBLE

The bill in question is welcomed by ANTaR Qld for the same reason that the 2014 amendments to the Youth Justice Act were strenuously opposed – and the Youth Justice Amendment Bill of 2015 was strongly supported. Essentially, our considered stance is that the bill in question is a substantial step in the direction of *restorative justice*. This in turn paves the way for a larger shift in the Youth Justice system of Queensland – *Justice Reinvestment*. ANTaR Qld now offers comment on the significance of the legislative measures currently proposed – as well as some further potential measures which would further develop the beneficial potential of the measures now proposed – for offenders, victims and those close to them.

As indicated by many relevant submissions on the earlier Youth Justice legislation (2014 and 2015), it is summarized here that ANTaR Qld upholds the imperatives of:

- Government and community partnership
- The primacy of prevention
- The necessity of early, insightful intervention
- Diversionary resources and pathways that are relevant and productive
- Rehabilitation which is concrete, individualized and developmental

## THE LEGISLATION UNDER REVIEW

The key objectives of this bill are appreciated positively and supported by ANTaR Qld.

Following are some comments on the implications of each provision:

1. Close the Childrens Magistrates Court when hearing all Youth Justice matters under the Childrens Court Act 1992 and provide for victims or their representatives to be present in closed court.

It appears that this measure intends to avoid the undue and potentially prurient, intrusive or counter-productive scrutiny of Childrens Court matters by the general public, while ensuring that any victim directly relevant to the matter is able to be present in ways that are likely to be cathartic or re-assuring, not left to speculation or happenstance. These measures are appreciated and will be effective when both defendant and victim have the constructive presence of persons able to give them personal, social and (where appropriate), cultural support. It is critical that officers of the court are realistically resourced to give real effect to such measures. Specifically, where Murri Elders are called upon to give such support, they need to be paid a fair and realistic fee for their services, rather than an offensively low fixed fee, long overdue for review.

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

This is commended as a sign of wise intention – and a recognition that the emotional and intellectual maturity of offenders is no fixed and predictable matter; that levels of maturity, insight and judgment are not uniform at each stage of adolescence and young adulthood. These matters are addressed helpfully in the Balanced Justice fact sheets, found at [www.balancedjustice.org](http://www.balancedjustice.org) Also implied here is the question of the lower age limit for criminal culpability. Should it be 10? Should it be older? Our Queensland system seems to have barely scratched the surface of this question. Substantial research and proven practice experience is available to us from other systems.

3. Reinstate a court-referred Youth Justice Conferencing program. Expect it to allow for increased flexibility in the delivery of restorative justice interventions as part of police-referred and court-referred conferencing.

The earlier YJ Conferencing program gave creditable performance in its first 2 years of operation. High levels of offender and victim satisfaction together with very low levels of re-offending were evidenced in the reports of Judge Shanahan, President of the Childrens Court. An opportunity to re-build such a system, with the benefit of earlier experience and

ongoing independent evaluation will be highly productive as a positive diversionary measure.

4. A consequential amendment to the Corrective Services Act 2006 to provide statutory recognition to provide that a parole order issued in relation to a prisoner in adult corrections who was sentenced under the Youth Justice Act 1992 is a parole order for the purposes of the Corrective Services Act 2006.

It is understood that this measure gives appropriate legislative basis to ensure the legal and effective continuity of offender management when a young offender transitions to the adult criminal justice and requires effective parole management.

## **THE UNFINISHED BUSINESS – CHALLENGES AND OPPORTUNITIES**

ANTaR Qld recommends strongly that the government moves steadily but decisively into a measured, evidence-based transition towards a thoroughgoing Justice Reinvestment model for our Youth Justice system. Our rationale for this is summarized at [www.antarqld.org.au](http://www.antarqld.org.au) under the tab *Justice Reinvestment – Let's re-think imprisonment?* Further, we draw the government's attention to the heavy over-representation of the following cohorts of young people who become young offenders; in particular the unacceptable over-representation of these cohorts among those detained for more serious crimes:

- Aboriginal children
- Children who have intellectual disability and /or foetal alcohol spectrum disorder
- Children whose lives have been largely or totally lived in out-of-home care

What are the early measures to be taken – in order to disrupt criminogenic influences and prevent or minimize the exposure of young people at risk of offending to harmful or dangerous social environments? Current engagement with police, teachers and youth workers – as well as those who research in health, education, human services and law enforcement convinces us that the following indicative list is a useful guide to a stronger YJ system:

+ Review the health screening system applicable to young offenders when convicted. Ensure that it has a state of the art mental health and FASD component and that it reaches all relevant young people. Substantial recent progress has been made in the FASD screening sphere by leading paediatricians in Queensland and elsewhere.

+ Cease the prevailing practice of detention in Brisbane or Townsville of young offenders who are remanded in custody from Children's Courts statewide. Devise a pilot project which works with contracted NFP bodies of proven capacity – to establish bail accommodation (secure and supportive) services in *hot spot* regional cities.

+ Review the effectiveness of those *joined up* alternative education services for young people who have dropped out of main stream education – integrated closely with Community Justice Groups, PCYC, Traditional Owners and others who can offer relevant and productive mentoring for individual offenders (more like 6 years than 6 months). Tap the recent outcomes of the large scale on line *Youth Future Survey* carried out by the Department of Communities and the PCYC – as well as the initiatives of DJAG and Education Queensland in their *Transition to Success Program* for young people who have fallen out of mainstream education and training. Devise hub programs with suitable region to region variations – to offer the developmental supports needed by young offenders. Start with pilot projects (rigorously evaluated). Invest strongly in success!

## **CONCLUSION**

Advice given previously to another inquiry relevant to the Youth Justice system remains pertinent. It is re-capped here. The Youth Justice system of Queensland has every chance of moving progressively into a far more effective realm if it embraces the primacy of prevention, early intervention, diversion and rehabilitation – above that of punishment which benefits no-one. It is timely for the Attorney General to conduct a substantial stakeholders conference – to which a wide range of contributors (from inside and outside the government) would be invited. Many of our colleagues from directly relevant spheres have much to offer to such a challenge.