

The Commission for Children and Young People and Child Guardian

promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18

Advice to: The Legal Affairs, Police, Corrective Services and Emergency Services Committee

Topic: Law Reform Amendment Bill 2011

Date due: 20 January 2012

Thank you for providing the Commission for Children and Young People and Child Guardian (the Commission) with the opportunity to provide feedback on the Law Reform Amendment Bill 2011 (the Bill) which proposes to introduce a minimum standard non-parole period (SNPP) scheme in Queensland.

The Commission has focused its feedback on issues regarding children and young people, and makes the following comments and recommendations with respect to the proposed scheme to be introduced in Queensland:

Summary of the Commission's recommendations:

The Commission:

1. recommends that young offenders under 18 years of age should be excluded from any SNPP scheme introduced in Queensland
2. recommends that offenders, particularly young offenders, should be afforded the most effective and appropriate rehabilitation opportunities to produce more enduring reductions in recidivism and that adequate funding should be committed to enable this to occur, and
3. supports the Sentencing Advisory Council's recommendation that the SNPP scheme be monitored and evaluated regularly to assess its impacts on the operation of the criminal justice system, including an examination and report on outcomes for vulnerable groups of offenders, which the Commission proposes should include young offenders.

It is noted that the SNPP scheme proposed in the Bill is generally based on the Sentencing Advisory Council's recommended approach in its *Minimum standard non-parole period final report*, with the exception of its application to 17 year olds. The SNPP as proposed in the Bill will apply to 17 year old offenders. Consistent with the Commission's previous feedback to the Sentencing Advisory Council (the Council) on the potential introduction of a SNPP scheme in Queensland, as well as with the Council's final recommendation on this issue, the Commission recommends that the SNPP scheme should apply only to offenders who are 18 years or over at the time of committing the relevant offence.

The Commission considers that all young people under the age of 18 years should be dealt with in accordance with the *Youth Justice Act 1992* and its Charter of Youth Justice Principles, which promote their rights, safety, physical and mental wellbeing, and responsible and socially acceptable development, while also including principles of accountability and responsibility. Children and young people should also be dealt with in accordance with their rights and Australia's obligations under the *United Nations Convention on the Rights of the Child*. The Commission notes that adult correctional facilities do not allow young people appropriate access to rehabilitation programs and diversionary pathways that would be available to them under the *Youth Justice Act 1992*,

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which may provide them an opportunity for a more constructive future¹. The provision of a wider range of intervention and rehabilitation opportunities to these young people in the youth justice system may reduce the likelihood of future contact with the police and justice systems and promote greater protection for the community, as well as acting as a deterrent to other offenders to reduce the risk of future harm.

The Commission therefore acknowledges and supports the Council's view that a SNPP scheme should recognise the different position of young people who, for most purposes, are not recognised as adults until they reach 18 years of age. The Commission also recommends that young offenders under the age of 18 years should be excluded from any SNPP scheme introduced in Queensland in an effort to avoid further compounding the disadvantage experienced by this group due to the limited rehabilitation opportunities available in adult correctional facilities.

However, it is noted that in the introductory remarks for the Bill, the Honourable Paul Lucas acknowledged the divergent views on this issue but also stated that if 17 year olds were to be excluded from a SNPP scheme that this would create three different sentencing regimes and this legislation is not the appropriate forum to resolve that issue.

Consequently, in the event that such a scheme is introduced in Queensland and is applied to 17 year old offenders, the Commission considers that the focus should be directed towards the provision of appropriate services and rehabilitation programs for offenders, particularly, but not exclusively, young offenders under 18 years of age, to provide these young offenders with the best possible chance of rehabilitation in order to produce more enduring reductions in recidivism. Providing the most effective and appropriate interventions and rehabilitation options for young offenders may promote the integration of young people back into the community as responsible and participating members of society, as well as providing safeguards to protect individuals, their families, and the wider community. The application of a minimum SNPP scheme to young offenders may not provide the best opportunity to achieve this objective and may potentially lead to other unintended consequences as has occurred in other jurisdictions².

It is noted that rehabilitation options have not been addressed in the introduction of the Bill. The Commission supports and emphasises the Council's recommendation in its final report that, if the new SNPP scheme results in significant numbers of offenders serving longer periods of incarceration, there will also need to be a corresponding increase in the availability of programs to address offending behaviour and increase rehabilitation prospects to support reduced rates of re-offending and improve community safety. This will require an adequate level of investment in rehabilitation services, both institution-based and community-based, given indications that community-based treatment programs produce more long-term reductions in recidivism than institution-based

¹ See the Commission's Policy Position Paper *Removing 17 year olds from adult prisons and including them in the youth justice system* released in November 2010 at <http://www.ccypcg.qld.gov.au/about/news/2010/november/policy-position-paper.html>.

² For example, the New South Wales experience has been that their SNPP scheme resulted in increased sentences for sexual offences and an increase in offenders pleading guilty overall for offences included in the scheme: see Poletti, P.; and Donnelly, H. 2010. *The impact of the standard non-parole period sentencing scheme on sentencing patterns in NSW*. Judicial Commission of NSW.

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treatment alone³. The Commission considers it critical that a commitment is made to such an investment before any SNPP scheme is introduced in Queensland.

In addition, the Commission supports the Council's recommendation that the new SNPP scheme should be monitored and evaluated regularly to assess its impacts on the operation of the criminal justice system, including an assessment of any changes that can be attributed to the scheme's introduction and an examination and report on outcomes for particular vulnerable groups of offenders, such as Aboriginal and Torres Strait Islander offenders and those with an intellectual impairment or mental illness. In the event that the SNPP scheme proposed in the Bill is implemented in its current form (that is, applicable to 17 year old offenders), the Commission considers it crucial that the effects of implementing the scheme in relation to 17 year old offenders also be specifically monitored to ascertain the efficacy of the scheme in relation to this vulnerable group.

Please do not hesitate to contact [REDACTED], A/Senior Policy Officer, Strategic Policy and Research, ph: [REDACTED] e-mail: [REDACTED] should any aspects of this advice require clarification.

³ Altschuler, D. M.; Armstrong, T. L. and MacKenzie, D. L. 1999. *Reintegration, Supervised Release, and Intensive Aftercare*. Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, pp 3-4.