

## Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

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**Submitted by:** Youth Advocacy Centre Inc  
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**Submission by  
YOUTH ADVOCACY CENTRE INC  
to the**

**in relation to the**

**Police Powers and Responsibilities and Other Legislation  
Amendment Bill (2023)**

**10 March 2023**



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The Youth Advocacy Centre Inc (YAC) is a specialist community legal and social welfare agency for young people who are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years old) and/or are homeless or at risk of homelessness (15-25 years old) – young people who are among the most marginalised and excluded by our community and often the most harshly judged. YAC's aim is to provide a safety net of legal and social welfare services and then seek to transition young people to more secure lives and opportunities, for their benefit and that of the community more broadly.

The Youth Advocacy Centre supports and endorses the Queensland Law Society's submissions dated 10 March 2023 to the committee in relation to the *Police Powers and Responsibilities and Other Legislation Amendment Bill (2023)* and provides the below additional submissions.

YAC supports the increase of proposed diversion options for drug matters. YAC is concerned that adults identified as "eligible" must receive the benefit of the proposed warning whereas there is merely a discretion to offer the warning to eligible young people under 18 (for the purpose of this submission, and consistent with the legislation, referred to as "children").

The proposed amendments to the Youth Justice Act ("YJA") add the consideration of a drug diversion warning to diversions that must be considered by police before commencing proceeding in court but do not mandate the application of this or any other diversion options for a child who is eligible for the warning or the drug diversion scheme. Proposed Section 378C(3) of the Police Powers and Responsibilities Act ("PPRA") contained in Section 22 of the Bill maintains a discretion to commence court proceedings against a child in circumstances where an adult must be provided a warning and not sent to court (proposed Section 378C(2) of the PPRA).

The Explanatory Notes to the Bill suggest the discretion in relation to children is to permit consideration of other diversions already contained in the YJA. YAC submits the Bill should mandate that a diversion option must be applied to a child when an adult must be diverted.

It is YAC's experience that courts often determine that diversion options contained in Sections 11(1)(a)-(c) of the YJA should have been applied by police rather commence court proceedings and dismiss charges under Section 21 and Section 24A of the YJA. At the time of dismissal the court usually applies or directs the appropriate diversion be effected by cautioning the child or referring the child to a restorative justice process. In contrast to these other diversionary options, a court has no capacity to dismiss a charge on the basis that a drug diversion or warning should have been offered. If court proceedings are commenced on a finding of guilt, the drug offence then forms part of the child's criminal history. The Bill therefore could place children eligible for the scheme at a significant disadvantage to adults who must receive a warning rather than proceed to court. The proposed provisions therefore contravene the fundamental principle that children in the criminal justice system should not be treated more harshly than adults.

YAC would seek that a provision be added to the Bill to mandate eligible children be diverted by a warning under proposed Section 378C of the PPRA or another diversion already provided for in the

YJA and that there be an ability for a court to dismiss a charge if the court determines the child should have been diverted under the drug diversion provisions.

Consistent with the recognised benefits of diverting children from court proceedings as reflected in the principles of the YJA, YAC supports that a discretion to divert a child should not be confined solely to circumstances that apply to an adult.

Please let us know if you have any questions regarding the above.

Katherine Hayes



CEO

Youth Advocacy Centre

