

1

Submission by
YOUTH ADVOCACY CENTRE INC
to the
LEGAL AFFAIRS AND SAFETY COMMITTEE
of the
QUEENSLAND PARLIAMENT

Regarding the
YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2021

MARCH 2021



Young people today are unbearable, without moderation... Our world is reaching a critical stage. Children no longer listen to their parents. More and more children are committing crimes and if urgent steps are not taken, the end of the world as we know it, is fast approaching.

Hesiod, Greek poet, 8th Century BC.

News stories and young people have rarely made happy reading since the advent of print media ... mass media, from their inception, have been closely associated with mass anxiety about young people.

Sheila Brown, *Understanding Youth and Crime: Listening to Youth?*
(Oxford University Press, 2005),

When a flower doesn't bloom – you fix the environment in which it grows, not the flower.

Alexander Den Heijer

Introduction

The Youth Advocacy Centre Inc (YAC) is a well-respected specialist community legal and social welfare agency for children across Greater Brisbane 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) – children who are among the most marginalised and excluded by our community and often the most harshly judged.

YAC has operated a multidisciplinary model comprising lawyers and social welfare workers since its establishment in 1981. Children who become entrenched in the criminal justice system have significant social, welfare, environmental and/or relationship problems. This is both our daily experience and confirmed by research and data over many years. Failure to address these underlying issues will increase the risk of children returning to court.

A small study by Legal Aid NSW, which analysed the 50 most frequent users of its legal aid services between July 2005 and June 2010, found that 80% of high users of its services were children and young people who were under 19 years of age and had complex needs because of their environment and a range of welfare issues. It concluded that *it can be difficult to meet the needs of these clients through the traditional legal service delivery model where legal and non-legal services are not joined up*.

YAC appreciates the opportunity to provide comment in relation to the Bill, particularly as there was no proper consultation on the Bill. Stakeholders were advised of a meeting at short notice which simply advised the proposals which had already been decided upon.

This submission will cover four areas:

- A. Responding to unlawful use of motor vehicles by children
- B. Responding to the small group of recidivist child offenders
- C. Comments in relation to the Bill's provisions
- D. Human Rights concerns

The submission will indicate that the Bill is misconceived in relation to youth offenders and youth offending and will not achieve its stated aim of *responding to the characteristics of the offending behaviours of serious recidivist offenders*. It is therefore argued that the breaches of human rights of some of our most disadvantaged and vulnerable members of our community associated with the Bill are not justified because there is a more appropriate set of responses which would better achieve the stated aim.

A. Responding to unlawful use of motor vehicles by children

We take this opportunity to acknowledge the tragedy of the deaths in Alexandra Hills late last year and the pain and hurt to the families concerned.

It is important to seriously consider the issue of unlawful use of motor vehicles (UUMV) by children because of the risks of serious harm which can result – to the driver and others in the car as well as unwitting bystanders. There have been instances in recent times of children in the car being seriously injured or killed in these situations.

UUMV has increased over the 15 years to 2018-19 after a downturn. The decrease was likely due to the transition to electronic locking and other technological changes. The Queensland Sentencing Council (QSC) has noted that:

The rate of sentenced young offenders¹ – people aged between 10 and 17 years old – more than doubled in the 15-year time period, increasing from 103.7 young offenders per 100,000 sentenced in 2005–06 to 211.4 per 100,000 young offenders sentenced in 2018–19.

During this time period we also saw the rate of adult offenders sentenced for unlawful use of a motor vehicle increase, rising from 47.9 adult offenders per 100,000 sentenced in 2005–06 to 64.4 adults per 100,000 sentenced in 2018–19.²

However, this is still significantly below a peak of 582 offences per 100,000 (adult and young offenders combined) in 2000–01 with 297 offences per 100,000 in 2018–19³.

The QSC report noted the average age of UUMV offenders was 23 - which is considerably younger than the average age of offenders sentenced in Queensland across all offence types (31 years). The age of 17 was the most common age. Younger people are therefore more likely to be involved in UUMV. To properly address the risky behaviour associated with UUMV, we need to understand why this is the case so that appropriate strategies can be put in place to address it.

In general, it can be said that UUMV by children relates to recreational use - *non-utilitarian (fun), status seeking and challenge meeting* – and short-term transportation⁴.

Dawes⁵ undertook a two-year qualitative study in Queensland focused on the factors which motivated young people to steal cars for the express purpose of joyriding. While the study is around 20 years old, it is our view that the information elicited remains current. The project met with 30 young offenders aged 13-22 in detention who had a history of car theft offences which revealed:

- In almost all cases the young people in the study group came from low socio-economic backgrounds with parents or older siblings who were either unemployed or employed in low skilled occupations. Lacking role models as to the potential rewards of education, the majority were disengaged from education before the end of primary school.
- Young people, particularly those without financial resources, were more likely to congregate in public places and the street or other open spaces to meet friends or just pass the time.
(YAC notes that access to public space has been made increasingly difficult since the study with shopping malls replacing open streets with shop frontages; and move on powers making even being on the street problematic. Adults are suspicious of groups of young people who are “just hanging around”.)
- Lack of finances to be able to participate in pro social activities and inadequate public transport to go to where any activities might be happening, further marginalised and disempowered young people. These limited any opportunity for the risk taking which is part of adolescence and to learn how to make judgement, good choices and understand consequences in a controlled way.

(YAC notes the relative freedom of previous generations where children would go off to the park or the bush for the day with the instruction “make sure you are back before dark”. Many older adults will have memories of a range of activities they were involved in which would now, in our risk averse society, be regarded with significant concern – but were then part of growing up.)

¹ For UUMV as most serious offence

² Sentencing Spotlight on unlawful use of a motor vehicle” December 2020

³ Ibid

⁴ Campbell: The Offenders Perspective (quoting Mukherjee, D. (1987) *Car Theft, the size of the Problem: An Australian Overview*. Paper presented at Australian Institute Criminology in Conjunction with NRMA, Sydney).

⁵ Dawes G Ibid

- As a result, young people with time on their hands had few legitimate opportunities for excitement which match the experience of joyriding.
- The peer group was generally central to car theft and joyriding behaviour. A common interest and experience bound the group together. Status within the group was enhanced by ability to drive at high speeds, facilitating feelings of being powerful and invincible. Younger members of the group “learn the ropes” from the older members (who generally “age out” of the behaviour). Driving at high speeds in a stolen car may be interpreted as a form of defiance, particularly in situations involving a car chase [and, YAC notes, potentially adds to the excitement experienced and therefore the risk to themselves and others].
- The study group did not think about the inherent dangers of driving cars at high speeds while under the influence of drugs and alcohol [which would be consistent with the neuroscience about brain development at this point in their lives].
- Mass media and advertising “unabashedly celebrating danger, irresponsibility and excitement”⁶ in the context of cars and their use, played into the fantasies of young joyriders who used cars as a means of escape from the boredom and predictability of their everyday lives.

(YAC notes that twenty years on, social media and mobile phones which facilitate recording of joyriding escapades and engagement with a wider audience, have probably exacerbated this. Indeed, there are (generally of US origin) programs screening via Foxtel and similar which are simply video footage of people congregating for and driving in illegal street car-racing after dark; and even “Car crash TV” which is car after car crashing into other vehicles with an “amusing” commentary. This includes vehicles running red lights or trying to pass others inappropriately, and not driving to the road conditions. However – in none of these is there footage of anyone being hurt, certainly not killed.)

There also seems to be potential for some children to literally become addicted to joyriding. Kellett and Gross⁷ interviewed 54 male joyriders aged between 15 and 21 years, who were in custody in North Ireland and the English Midlands following convictions for car theft.

As with drug abuse, the main motivation for joyriding seemed to be mood-modification.....There was evidence of ‘tolerance’ as participants described stealing ever faster cars and seeking out more chases with the police....

Some participants had tried to stop but couldn’t. “I don’t know what it is, I’ve tried to stop, I just can’t do it, I’ve tried and tried but I just can’t do it, I don’t know why”, one 16-year-old said. Indeed, participants continued joyriding even in the face of overwhelming negative consequences: “like I put one of my mates in a coma before”, said one.

As previously noted, car theft reduced significantly with the advent of technologies which made breaking into a vehicle and being able to start the ignition more difficult. Ongoing developments, such as engine immobilisers, will continue to have a part to play in terms of situational crime prevention. However, this only reduces the opportunity, it does not of itself change behaviours. To achieve this,

⁶ Kellett, S., & Gross, H. (2006). Addicted to joyriding? An exploration of young offenders' accounts of their car crime. *Psychology, Crime & Law*, 12(1), 39–59. <https://doi.org/10.1080/10683160512331316343>

⁷ Campbell, B. (1993) Goliath: Britains Dangerous Places London: Methuen quoted in Dawes

consideration should be given to education programs around vehicles and driving; and increased access to local, youth friendly spaces, facilities and activities for children.

Some responses already exist. For those who have already committed UUMV offences, programs as a diversionary or sentencing measure are likely to be a more effective response. Such programs are already being delivered: for example, Logan Youth Justice Service Centre delivers the Motor Vehicle Offenders Program which we are advised includes the following:

Exploring Offending Temptation	Solving Problems
Dangers of Stealing Cars	Culture and Identity
Moral Reasoning	Self-Control
Community Interaction	Goal Setting
Victim Empathy	Relapse Prevention

QTOP (Queensland Traffic Offender Program) is an online education program and also widely available throughout Queensland but is cost prohibitive. Consideration ought to be given to whether this program can be adapted for children and costed appropriately.

The Roads Attitudes and Action Planning (RAAP) is an initiative delivered by operational firefighters from Queensland Fire and Emergency Service.

It is designed as a preventative strategy to provide information to young people about road safety so that they can make an informed decision to mitigate risks and consequences by planning ahead.⁸

RAAP is presented in the school environment by operational firefighters who have experience with the trauma involved with vehicle crashes and can talk directly to the impacts – on emergency service crews as well as those involved in the crash.

The presentation addresses the contributing factors putting young drivers at such a high risk including and not limited to:

- *Less developed visual and perceptual skills*
- *Inability to accurately identify and respond to risks and/or hazards when driving*
- *Overconfidence*
- *Inattention caused by inexperience coping with distractions while driving*
- *Tendency to drive at high-risk times (e.g. at night with a number of other young people in the car)*
- *Alcohol, illicit substances, prescription medication or a combination of these*
- *Deliberate risk taking (e.g. high speed driving and/or tailgating)*

The QUT Centre for Accident Research and Road Safety (CARRS-Q) is undertaking an evaluation of the program.

Commendable as these programs are, they will not reach the cohort of young people most likely to be involved in UUMV before they are so involved. These children, as we know, are often disengaged from school well before year 11. These types of programs must be more universally available with some also directed at the relevant cohort prior to involvement in the offending behaviour.

Communities can be supported to undertake such initiatives. For example, the QUT Faculties of Health and Law Indigenous Seed Funding Scheme (2020 - 2021) has provided a grant for a project:

[t]o explore residents' perspectives of injury risks in the Cherbourg community to identify appropriate solutions to address them. The goal is to demonstrate the potential of storytelling to

⁸ <https://www.qfes.qld.gov.au/community-safety/freeprograms/Pages/raap.aspx>

influence community safety and injury prevention policy and programming through local community leadership.

Youth from these communities will combine photography, video and narratives to capture their lived experience, in order to provide a platform for the community to identify and target selected injury issues. The project will support the community to work with their own information and programming and in exploring how effective mainstream prevention initiatives may be adapted to Indigenous perspectives and settings.

Projects which combine teaching children to drive, obtaining a driver licence and car maintenance (such as by rebuilding an old vehicle) also exist thus providing skills for future employment. They could also potentially include opportunities for activities which provide for some form of thrill seeking to satisfy this adolescent need in a controlled environment which does not put themselves or others at risk. This could involve local car clubs and even motor sport heroes. Further investigation should be undertaken of relevant programs in Queensland or other Australian jurisdictions⁹.

Another practical and relevant response would be the ability to require Facebook and similar social media platforms to remove posts of children (or adults) with stolen vehicles or driving stolen vehicles. Gaining attention and notoriety supports the behaviour and also a “competitive” environment. It is arguable that social media is aiding and abetting offending by allowing this material to remain uploaded. YAC, not infrequently, represents children charged as a party to an offence because they filmed the offence. It is alleged the action of the filming encourages the offence. The same argument must be relevant to social media sites which maintain inappropriate material online.

There are more useful and practical ways which should be investigated in terms of community safety in relation to UUMV rather than a knee-jerk change in legislation which does not provide any effective response to the matter of concern.

B. Responding to the small group of recidivist child offenders

For reasons which are unclear, the Government has sought to make a set of amendments to the bail provisions of the youth justice system which have no direct link to the incident which resulted in the recent tragedy.

In 2018, the Premier and then Minister for Child Safety, Youth and Women commissioned former Queensland Police Commissioner, Bob Atkinson, to review Queensland’s Youth Justice system and make any necessary recommendations. His report (the Atkinson Report) was well received by the Government and formed the basis of its Youth Justice Strategy 2019-23. While an important document, it reiterated much of what has been identified by research and evidence over a significant period of time and is the day-to-day experience of organisations such as YAC, in terms of what contributes to, and what is needed to address, youth offending.

The Premier and Minister stated the following in the Foreword of the Atkinson Report:

The Queensland Government is committed to taking a fair and balanced response to young people who offend. In line with the best available evidence we are holding young people accountable for their actions. Research and stakeholders tell us the best way of addressing youth offending is to prevent young people from engaging with the youth justice system in the first place.

Many of the young people in the youth justice system have complex needs. On average, every day there are 210 young people in youth detention centres and almost 1400 being supervised in the

⁹For example: <https://www.missionaustralia.com.au/news-blog/news-media/ground-breaking-social-enterprise-changing-lives>

community. One in four of these young people have no safe home to go to; 52% are disengaged from education, employment or training; 58% have a likely mental health or behavioural disorder; most of these young people reported using two or more substances and 51% have had contact with child protection.

If we don't address their needs, these young people are very likely to stay in the youth justice system.

We are already seeing success with programs such as Transition to Success (T2S) and restorative justice conferencing. We are working closely with the legal profession, police and courts to provide bail support to ensure young people meet their bail responsibilities. We know that place-based solutions are showing promising results, including initiatives such as Townsville Stronger Communities and Aurukun's four point plan.

Research also tells us what works: keeping young people in school; supporting parents; empowering Aboriginal and Torres Strait Islander families and communities; police diversion for low-risk young people; supportive transitions back into communities and rehabilitation programs that match the level of risk of reoffending.

Communities are part of the solution, supporting families who are supporting children.

The very small group of children who become ongoing offenders (the so-called "hardcore 10%") do not arrive out of nowhere. They are children who are living and growing up in our communities and as such we cannot simply "other" them. This is not a new group: they have been identified over a significant period of time. These children are "troubled before they are troublesome", and the evidence over many years is that they share a well-identified set of characteristics:

- **80%** have used at least one substance
- **39%** of young people in youth justice custody have used ice or other methamphetamines
- **63%** have experienced or been impacted by domestic and family violence
- **56%** have a mental health and/or behavioural disorder (diagnosed or suspected)
- **53%** are disengaged from education, training or employment
- **33%** have at least one parent who spent time in adult custody
- **21%** are in unstable and/or unsuitable accommodation **16%** have a disability (assessed or suspected) ¹⁰

While only around four per cent of children in care will be involved in offending, at least 70 per cent of children in the youth justice system are known to Child Safety Services.

Further, Aboriginal and/or Torres Strait Islander children are disproportionately represented throughout the youth justice system – as the Indigenous community is in relation to a range of other markers of health and wellbeing, hence the ongoing focus of "Closing the Gap". Over 70 per cent of children in detention in Queensland are Aboriginal and/or Torres Strait Islander¹¹. An Aboriginal and/or Torres Strait Islander child is 32 times more likely to be in detention than a non-Indigenous child.¹²

These statistics make it abundantly clear that the vast majority of repeat offenders cannot simply be "punished out of offending".

¹⁰ <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-annual-summary-stats-courts.pdf>

¹¹ <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-annual-summary-stats-detention.pdf>

¹² Australian Institute of Health and Welfare. 2018. *Youth Justice in Queensland 2017-18*, available online at: https://www.aihw.gov.au/getmedia/29525c16-7dbd-458f-8458-6baf491305ad/Factsheet-YJ_2017-18_Qld.pdf.aspx#:~:text=88%25%20were%20supervised%20in%20the,rest%20were%20serving%20a%20sentence.

YAC has therefore been generally supportive of the government's approach to addressing youth offending as articulated by former Police Commissioner Bob Atkinson in his *Report on Youth Justice* prepared for Minister Farmer. Based on this, the Palaszczuk Government developed the strategy which, in the same media statements which announced the proposed changes, says is producing good results. The Report provides for action around four "pillars":

- Intervene early
- Keep children out of court
- Keep children out of custody
- Reduce reoffending

The Atkinson Report noted:

It is estimated that over 90 per cent of children and young people in the youth justice system are survivors of complex and ongoing trauma. To respond accordingly, DJAG is moving towards adopting a trauma informed practice framework.¹³

And:

It is important therefore that child offenders are carefully assessed to determine the most appropriate response to their characteristics, offending histories and risks associated with potential further offending. Likewise, the responses must address these factors to ensure both the protection of the community and ensure children receive the support they need to participate positively in society.

The Bill fails to take this advice. If the government is committed to the justice targets for Closing the Gap for Aboriginal and/or Torres Strait Islander peoples, then it must take this advice more seriously.

The Premier was quoted as saying "It is clear to me and to the community that some young offenders simply don't care about the consequences". It is not necessarily that they do not care. Children do not understand consequences as adults do: it is part of the developmental process of the brain which does not end until around the age of 25 years. The adolescent brain is effectively programmed to take risks without thinking about the consequences. Many child offenders are simply not in a position to be able to make good choices:

"If I had just one person that loved or cared about me ... I think that would have reduced a lot of the crime."

Those are the blunt words of Georgia, a young, well-spoken woman who was just 12 years old when she first landed in youth detention on car-stealing charges.*

"Kids don't just wake up one day and decide they're going to go out and do crime and steal cars ... that comes from extensive trauma history," she said.

She remembered vowing to take a different path when she got outside, but said the reality was "hard when there's nowhere safe for you to go" and she would find herself back with the same crowd.¹⁴

Being more punitive will not change this. Mick Gooda, has noted that the proposed laws are "reactionary", "not based on evidence" and "you're not going to punish kids into doing the right thing".¹⁵

¹³ Queensland DJAG Youth Justice Reform Discussion Paper (2016)

¹⁴ <https://www.abc.net.au/news/2021-02-22/queensland-government-reforms-youth-repeat-offenders/13176562>

¹⁵ Stephanie Zilman, Former royal commissioner into youth justice slams Queensland's 'knee-jerk' measures as police welcome new powers, 10 February 2021, accessible: <https://www.abc.net.au/news/2021-02-10/qld-youth-crime-crackdown-taskforce-advocates/13137768>

Research commissioned by the Queensland Police Service to provide an analysis of trends in youth offending in Queensland 2008 – 2017¹⁶ noted:

- Queensland has had a reduction in the total number of youth offenders over this ten-year period in line with other jurisdictions and internationally
- It has also experienced an increase in repeat or chronic youth offenders found in other Australian and international jurisdictions
- The concentration of recorded offences adjusted to the youth population across QPS Districts suggests that these chronic offenders are likely to be situated in the regional and remote areas of Queensland, in particular in the Far North, South West, Mt Isa, Townsville and Capricornia Districts
- A reasonable proportion of this chronic offending group are likely to be Indigenous young people, as cohort studies have found that a higher proportion of those identified as Indigenous are likely to be classified as chronic offenders

The paper concludes and recommends:

Chronic offenders are likely to have been exposed to cumulative disadvantage and adverse life events, which are likely to be in part drivers for their high levels of offending behaviour. Culturally appropriate, tailored responses to these chronic offenders, of which a significant proportion are likely to be Indigenous and located in regional and remote areas, need to be developed.

Responses must consider the drivers of the offending behaviour, with cross-sector responses likely to be best placed to target issues such as lack of engagement in education, problematic living contexts and experiences of abuse or neglect, mental health, drug and alcohol abuse, and limited employment opportunities, all issues that may be present as driving factors in the chronic offending behaviours.

Concentration of police resources in these areas may be self-reinforcing for chronic offending behaviour, if they are oriented towards enforcement rather than prevention, diversion or cross-agency partnership responses. Traditional criminal justice system responses are not well positioned to address the drivers of this offending behaviour and may inadvertently have criminogenic effects through entrenching young offender identities and social networks. The effect of concentrations of police resources and the orientations of officers in these locations on chronic offender populations, particularly in regional and remote areas, are not well understood. This would be a valuable area for further research.

As well as police resources, it will also be important to examine changes in police practices that may be having unintended consequences. This report has shown there has been a decline in police use of cautions and other diversionary measures, and an increased tendency to use arrests and infringement notices for young people. Given that the research shows the criminogenic effects for young people of formal criminal justice processes, increased resort to arrest may be contributing to increased youth offending over the longer-term, especially for non-chronic offenders who would otherwise be expected to “age-out” of crime. This too merits further examination.¹⁷

Finally, YAC’s “Orange Paper” – *A Ten Point Plan for Investment to Address Youth Offending* is appended to this submission. We note the Government’s statement that it has invested some \$500M

¹⁶ McCarthy M (2019) Griffith Criminology Institute, Griffith University, *Trends in youth offending in Queensland, 2008-2017*

¹⁷ It is also important to remember that with respect to the number of offences with which people are charged – that is significantly influenced by police practice and therefore reports of increases in offending or a particular type of offence must be treated with caution. A focus on a particular type of crime, geographic location or similar will often account for changes in numbers of offences. Police have significant discretion in how they charge people and several charges are often possible from one event. It is up to police as to what they actually choose to do. There is also a tendency for police to charge at the most serious possible and it is therefore quite common for such charges to be reduced by the time they are finalised at court because the evidence does not support charging at the higher level.

in youth justice in recent years. A significant proportion of this sum relates to the building of the additional beds in Brisbane Youth Detention Centre and the new West Moreton Youth Detention Centre.

Again, it is YAC's contention that the Bill will not address the issues of concern – indeed, as we will now discuss, it has potential to do the opposite.

C. Comments in relation to the Bill's provisions

Police Powers and Responsibilities Act 2000 (PPRA)

We note that the amendments to the PPRA relate to “hooning” and increased police search capacity with respect to knives. The former relates to adult behaviours of those who legitimately own a car and have a licence but drive inappropriately and unsafely. This is not a matter YAC will comment on as it does not generally relate to our client group.

The problem of knife carrying is both child and young adult concern. YAC clients will often advise that they carry a knife because others are carrying knives and they fear for their safety. This, of course, becomes a self-perpetuating situation. It would almost never be the situation that children were carrying a knife for the explicit aim of injuring or killing another person.

However, simply enabling police to undertake searches will not prevent this. Children do not consider consequences in the same way as adults. They also have an unfounded sense of invincibility (“it won’t happen to me”). Particularly for children, consideration needs to be given to finding opportunities to discuss carrying and use of knives and how easy it is to seriously injure or kill someone.

We would encourage a multi-media campaign for all members of the community akin to the “One punch can kill” campaign.

It is also very easy to purchase a knife – local supermarkets have kitchen knives hanging in the kitchen equipment aisle. Consideration should be given to management at point of sale as has happened with spray paints.

Youth Justice Act 1992 (YJ Act)

YAC understands that the young person who is alleged to be responsible for the tragedy in Alexandra Hills was on bail at the time. It also our understanding that the young person was provided police bail for offences which it would be expected that anyone, adult or child, would usually be granted police and court bail. It is therefore unclear why the immediate reaction has been to amend the legislation with respect to bail for children which presumes that the current provisions are not adequate. To be clear: the amendments proposed would not have prevented the tragedy which occurred.

It is also important to remember that over 80% of those in Queensland’s Youth Detention Centres (YDCs) (total current built capacity of 282 – will be 306 later in 2021) are on remand – that is, they have been refused bail or have not made an application for bail. Only a relatively small number of those held in YDCs are therefore detained on sentence. The prosecution is able to oppose bail in court and can make application to the Supreme Court where bail is granted and the prosecution considers that decision is incorrect – and does so.

It is YAC's view that far from increasing community safety, the Bill could increase the risk of offending.¹⁸ Refusal of bail will mean being remanded in custody for a period of time. Detention has been found to be criminogenic.

*An analysis in February 2017 by Youth Justice found the most frequent reasons for bail refusal were associated with concerns regarding unacceptable risk of reoffending (29%) and an absence of suitable accommodation (7%). In 17% of cases, no bail application had been made by the child. For children, **even a short episode of remand has been associated with future remand episodes**¹⁹. [Our emphasis]*

And:

.... instead of being reformed, the experience of imprisonment can intensify one's commitment to a life of crime and increase criminal offending through the transfer of pro-criminal attitudes, values, skills, and roles. Australian policy papers often identify the criminogenic effect of prison as a major contributor to higher rates of recidivism, even though results in the international academic literature are mixed and not definitive (see, for example, Bayer et. al (2009) and Nagin et. al (2009)). Weatherburn (2014) demonstrates some criminogenic effect from prison in Australia.²⁰

1. Support of a parent or another person

Whilst we acknowledge it is highly desirable for a person able to support the child to comply with bail conditions, the example in the Explanatory Notes can best be described as naïve in terms of the available support of family and friends - as indicated by the previous discussion of the characteristics of the so-called "hardcore 10%" above.

Bail support programs and other youth services already work with our clients to ensure that they know and remember their court dates and bail conditions. We understand that a recent evaluation of the bail support programs around the State has shown the value of these programs which also seek to address the issues putting children at risk of offending. However, a proposal that either a family member, friend or worker would commit to advising the police of a breach of bail would have a significant risk of (further) break down in family relationships or a breach of trust in terms of a worker, both of which would result in a high risk of disengagement from family or any support services and future engagement with such services and therefore an increased risk of ongoing involvement with the youth justice system.

It is unclear how this would work where the State is responsible for the child in accordance with the *Child Protection Act 1999*. It is essential this be clarified, and that Child Safety be required to provide a framework to maximise support.

If a parent or another person is not prepared to indicate to the court their willingness to support a child, this may create or add to tensions in their relationship with the child if the child views this as some form of rejection. There should be a mechanism to review the resources and assistance that can be provided to families so they can better support the child.

It is unclear whether there is any consequence to a family member or worker if they do not comply with any undertaking given to the court, for example, contempt.

¹⁸ Australian Institute of Health and Welfare, Young people returning to sentenced youth justice supervision – annual reports.

¹⁹ Atkinson Report

²⁰ <https://qpc.blob.core.windows.net/wordpress/2020/01/FINAL-REPORT-Imprisonment-Volume-I-.pdf>

Under the current provisions, it is already possible for a magistrate or judge to seek information regarding a child's supports while on bail.

2. Show cause

YAC's view is that this amendment is not necessary and no justification is provided for it. The Queensland Parliament amended the YJ Act as recently as last December to require that the court or a police officer **must** keep a child in custody if *there is an unacceptable risk that the child will commit an offence that endangers the safety of the community or the safety or welfare of a person* which cannot be adequately mitigated by imposing appropriate conditions (s 48AAA). As such, there are no grounds, only a few months later and with no critique of the provision, to justify now inserting a requirement on the child to "show cause". An amendment which reverses the onus of proof is a serious step which is likely to have the greatest impact on the most disadvantaged and/or vulnerable children - those in care and Aboriginal and/or Torres Strait Islander children.

The *Bail Act 1980* specifically has excluded application of show cause to a child defendant (s16(5)). This is because there was a recognition that children should be treated differently to adults: they commit offences for different reasons and they are not able to control their lives and life situations to the same extent as adults. They often have to rely on adults who may not be best able to support them.

There is an increased likelihood that bail will be refused because if the police should decide that the child has passed the threshold and they release them on bail, the officer must record their reasons for so doing. This will be considered an additional administrative task ("more paperwork") which officers will consider burdensome. The situation should be reversed: if the child provides arguments as to bail, then the officers should have to record why they did not release the child. The result of this is potentially more children being held in police watchhouses – ironically, something the police were vocal in their opposition to when children were held in watchhouses due to the YDCs being at capacity in 2019.

The show cause requirement places no onus on Youth Justice to articulate interventions that have been provided, and the reasons they perceive them to be ineffective. There should also be a requirement that Youth Justice provide information on resources and programs available to assist the child should they remain in the community.

Given the reversal of the onus to grant bail to a presumption that bail not be granted for any child falling within circumstances prescribed in the proposed section 48AF, it could reasonably be estimated that the numbers of children denied watchhouse bail would at least double. This will significantly increase the time needed for bail applications in the Childrens Court, requiring further resources of magistrates, prosecutions, defence lawyers and Youth Justice staff. Resources must be allocated to ensure the court and practitioners are able to meet this significant increase in workload.

YAC is concerned that the breadth of offences contained in the definition "prescribed indictable offences" which trigger a show cause situation.

The amendment may also compromise the child's right to silence as it may inhibit their ability to show cause in a police bail situation.

3. Electronic monitoring (EM)

Acting Premier Steven Miles was quoted as saying:

...the Queensland Government would consider the use of devices on juveniles who were on bail, if research showed it was effective.

*We're happy to consider any proposal. All of these technologies are advancing and we can monitor their advances, and if and when they become useful, we'll consider them.*²¹

However, the Government has clearly proceeded without any such information.

The main justifications for EM identified are generally:

- a) Enhanced community safety
- b) Reduction in recidivism
- c) Reduced incarceration rates (and an associated reduction in costs)

However, EM should not be considered the panacea to detention. YAC argues that EM is no different to detention in terms of community safety. Both may incapacitate the offender for a period of time, the first by surveillance and the second by physical removal, but at some point the EM tracker must be removed or the person be released. If nothing has changed in the lives or personal circumstances of the child offender, they will return to the same situation and environment which will likely mean a risk that they will again be involved in offending behaviour. Any improvement in community safety or reduction in recidivism is likely to be short-lived.

It is also argued in some literature that EM is preferable to detention as it enables the child to remain better connected with family, friends and community and does not disrupt positive activities such as education. However, in YAC's experience, for a child who is repeatedly coming into contact with the criminal justice system, it may well be the family situation (domestic or family violence, child safety issues), or family members (mental health, substance use, parent in prison) which is a significant contributor to the offending behaviour. Similarly, if the child has formed anti-social peer friendships, then remaining connected to friends is not of itself going to assist. Many will be disengaged from schools - which have often suspended and exclude them and so they are not encouraged to be engaged with education.

It is a sad fact, which YAC staff know first-hand, that some children offend to return to detention because they know that they will get fed and have somewhere to sleep. Even if they do not like the regime, it is at least predictable and provides some certainty in their lives.

EM was discussed in the Atkinson Report. It did not, as has been reported, recommend that it be implemented. Rather, it recommended that the issue be further examined but was generally of the view that its use would be very limited. It did not envisage the use of electronic monitoring in the circumstances described in the Bill.

The Atkinson Report noted that Queensland Corrective Services was then using the devices to strictly monitor a group of 120 high risk sexual offenders and to ensure compliance of another group of 185 who were on parole. QPS has introduced it for adult bail. The Report also noted that extending the technology to children required caution. It would be the equivalent of detention in the community and would only be suitable for a small cohort with intensive case management in supported, stable accommodation as it would require a caregiver to ensure that batteries were charged and similar. YAC observes that if a child is in supported, stable accommodation, they are probably not someone for whom the device would be of benefit. The view that it be limited to 16 and 17-year-olds as having the maturity to ensure the functioning of the device again implies that these would be children for whom EM would not be necessary.

²¹ <https://www.abc.net.au/news/2021-02-03/queensland-youth-crime-gps-tracking-devices-steven-miles/13116102>

Internationally EM is used in a variety of ways and situations and with different cohorts, which makes gaining a good understanding of how it works and its impacts challenging.²² There is also limited information within that of EM in the youth/juvenile justice systems.

If the priority for an EM strategy is to contain individuals and ensure compliance with restrictions during the period of monitoring, then the findings suggest that for many people this is achieved through fear of punishment for non-compliance. for those individuals whose non-compliance does not follow a rational cost-benefit analysis (that is, it may be an impulsive act²³), a deterrence-based strategy may be less effective. The findings suggest that by including certain additional features and processes during the monitoring period, active compliance might be improved.

.....

Additionally, the findings indicate that having skills such as self- discipline, effective coping, and the ability to manage the risk of substance abuse, as well as having community ties and purposeful use of time, may enhance compliance with EM. As such, although not directly compared in this study, the findings suggest that EM as a standalone sanction, without other support or intervention, may not be sufficient. These features have also been identified in previous research as important contributors to longer-term rehabilitation and desistance...²⁴

YAC would note that research in relation to youth offending, however, identifies that *self- discipline, effective coping, and the ability to manage the risk of substance abuse, as well as having community ties and purposeful use of time* would all be protective factors for future offending for children and, as such, there would seem to be no good reason to impose EM if children were in this situation. The group which is not so fortunate is the group which needs services and supports to be able to change their behaviours:

The synthesis of participants' experiences suggests that the deterrent effect of punishment for non-compliance is unlikely to effectively address risk of reoffending or help people to desist from crime and live prosocial lives in the longer term (or even past the end of the monitoring period). Participants identify a range of additional support they believed to be necessary for longer-term benefits to be achieved, all of which are consistent with the wider evidence base of effective rehabilitation and supervision.²⁵

An earlier UK systematic review of the effectiveness of the electronic monitoring of offenders in several countries found that electronic monitoring had positive effects for certain types of offenders, such as sex offenders (but that this might be the result of therapeutic programs rather than EM), and at certain points in the criminal justice process, such as an alternative to prison. It recommended further research is needed to properly understand how, when and with whom EM is effective.²⁶

A US article which looked at EM in a youth context notes that the nature of adolescence, particularly when combined with other challenges which the group of recidivist child offenders face, means that the stated aims of EM are likely to be compromised.

²² Flora Fitzalan Howard *The Experience of Electronic Monitoring and the Implications for Effective Use* The Howard Journal Vol 59 No 1. March 2020 DOI: 10.1111/hojo.12351 ISSN 2059-1098, pp. 17–43

²³ NB: Most youth offending is opportunistic

²⁴ Ibid

²⁵ Ibid

²⁶ Jyoti Belur, Amy Thornton, Lisa Thomson, Matthew Manning, Aiden Sidebottom, Katie Bowers. 2017. *What Works Crime Reduction Systematic review Series – No 13 A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders*. UCL Department of Security and Crime Series, University of London. 2017, available online at https://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/Electronic_monitoring_SR.pdf

In theory, a youth's knowledge that they are being watched at all times deters them from making poor decisions about where they go and when. However, the difficulty youth have controlling their impulses and hypothesizing about future consequences means that they are not automatically deterred by sanctions....

Far from deterring youth from making poor decisions, electronic monitoring simply confirms what we already know about adolescent behavior: youth make impulsive, peer-driven decisions that are often not in their long-term best interest. Electronic monitoring does not, because it cannot, change these immutable characteristics of adolescents. Electronic monitoring, without more, does little other than expose youth to more punishment for typical adolescent behavior.²⁷

The Bill provides that before a court can impose a condition for EM on a grant of bail, it must order a suitability assessment report. This is likely to have an impact on the running of the court as the matter will have to be stood down while the report is provided. YAC's view is that the report must be provided that day, otherwise bail should be granted pending the report. It is not acceptable that a grant of bail be delayed beyond 24 hours in any event.

The suitability report will have to consider issues such as the impact on a child with mental health. Those with high anxiety of developmental disorders may find EM challenging.

YAC has concerns that the use of EM may also continue to criminalise a group which we should be doing everything possible to divert from the system. In addition to potential breach of conditions associated with the actual EM device in terms of keeping the equipment in good working order, which may be a challenge in itself, there is potential for children to be charged with additional offences such as wilful damage if they try to remove it – something which is highly likely any child will try.

The threshold for consideration of the use of EM in the Bill – being charged with a prescribed indictable offence while released pending resolution of only one indictable matter - is far too low, particularly in light of the research discussed above. Taking into account the large number of charges that are reduced on submission in the Childrens Court, there is a risk that children will be charged with a “prescribed indictable offence” even if there is insufficient evidence to support it, and so enliven the show cause provision. “Indictable offences” covers a range of lower-level offences which cannot justify being a catalyst for use of EM.

It is likely that if the child has only one previous indictable offence on their history, when being sentenced for a prescribed offence, they would be unlikely to receive a custodial sentence. As such, the imposition of EM as a bail condition could be quite disproportionate.

A further unintended outcome of EM is that it may encourage delays in resolution of indictable offences as resolution may trigger eligibility for a tracking devise. This will conflict with the principle of the YJ Act which encourages matters being dealt with as expeditiously as possible. However, legal representatives are compromised in relation to this if the alternative is detrimental to their clients.

The YJ Act currently provides for the anonymity of children engaged in the youth justice system. An EM device would undermine this important principle of youth justice because it would identify a child as someone in the system. The impact of this is likely to be either stigmatisation or a badge of honour – with the consequences which both of those entail, including the potential for ongoing offending as children live up to the label they have been given which they cannot either shed or which they feel supports their behaviour.

²⁷ Weisburd K, Monitoring the Youth: The Collision of Rights and Rehabilitation (2015) 101 Iowa L Rev 297

One area of concern is that of school. Principals have the power to suspend a child who has been charged with an offence – irrespective of whether it was committed on school premises, during school hours, in school uniform or not. If a principal becomes aware that a child has been charged with an offence because of the presence of an EM device, they may exercise this power when, in fact, if no-one had known, the child could have continued in school without any impact on the school at all. Should compliance with a school's uniform policy require the EM to be exhibited, this may be a significant deterrence to a child's attendance at school.

A child's ability to continue with school sport may be compromised by the need to wear the EM device because of risk of injury to other players. This could also have an impact on any attempt to engage a child in pro-social sports activities in the community.

Other concerns include EM being a potential barrier to accessing accommodation; creating or exacerbating tensions within families in terms of managing the device and therefore contribute to incidents of family violence; and being a barrier to potential employment and workplace training opportunities.

There is no provision in the amendment to provide that a child's compliance with an EM condition has any weight in sentencing which might be some impetus for a child to try to work with the imposition of EM.

4. Amendment of sentencing principles - circumstance of aggravation

Whilst YAC acknowledges that it is usual practice for a court to view commission of an offence while on bail for other matters, it is our view that it is not required to be incorporated into legislation. Again, this is already appropriately considered by magistrates and judges.

Additionally, while the new subsection 150(1)(f) reflects the current s9(1)(g) *Penalties and Sentences Act 1992* (PS Act), new subsection (1)(g) has no equivalent in the PS Act in relation to the sentencing of adults. It is inappropriate to sentence children more harshly than adults and therefore to consider circumstances of aggravation that are not prescribed when sentencing adults.

5. Amendment of Charter of youth justice principles

The original rationale for the youth justice principles was to have a statement which recognised the immaturity of children and their vulnerability in the criminal justice system.

The inclusion of current Principle 1 in the Charter post the original version of the Act has already undermined this and Clause 33 of the Bill continues this trend. There is no equivalent statement in the PS Act. We reiterate, it is inappropriate to treat children more harshly than adults.

Specific reference to "high risk recidivist offenders" is inappropriate in labelling a group without any definition of what this term actually means or who would be in this category. It does, however, serve to exacerbate community fears about children through such labelling. As noted previously, labels can be either stigmatising or a status symbol, both of which will be an impediment to addressing behaviours.

The constant focus on the demonising of children who offend compared with adults is without justification and irrational. It, in itself, is the clearest indication that children are scapegoated for political expediency and vested interests. This should be a matter of great shame to our community.

(Principle 1 is, in any event, poorly expressed in that it refers to protection from "**offences**" with the amendment then adding "in particular, recidivist high risk **offenders**".)

D. Human Rights issues

Human Rights legislation is of particular importance to those in our community who are disadvantaged and/or vulnerable. It is highly concerning that so soon after the government legislated for human rights, it is seeking to find reasons to breach the human rights of a group of people who should have been able to benefit from its protection.

While YAC was supportive of the *Human Rights Act 2019* (HR Act), our concern, and that of many others, was the limited ability to ensure that human rights were adequately respected by robust enforcement action. The robustness of the Statement of Compatibility requirement is tested by this Bill, not least due to the speed at which the Bill was introduced which has not allowed sufficient time for the human rights issues to be properly considered and issues of proportionality to be properly weighed. Neither the Statement nor the Explanatory Notes, in our view, adequately explain the need for the amendments to the YJ Act. There are far too many comments such as “any impact is considered warranted given the intent to promote compliance with bail conditions and community safety”. Simply making an assertion does not prove the veracity of the statement or provide an adequate explanation.

Aside from the failure to adequately explain breach of the identified human rights²⁸ YAC believes that the following are also relevant:

- s17(b) HR Act: Protection from treatment or punishment in a cruel, inhuman or degrading way - relevant to the proposed use of EM
- s32(3) HR Act: Children charged with a criminal offence have the right to a procedure that takes account of their age and the desirability of promoting their rehabilitation - relevant to the use of EM, the show cause requirement for bail

No consideration has been given to the most fundamental rights of children:

- to be heard on issues which affect them (ie, this Bill): speaking with children and young people who have experience of offending and the youth justice system could provide insights as to how better to understand what would support them in being able to change behaviours
- the best interests of children (in the youth justice system and external as a result of their involvement in it)

We note that Queensland’s Human Rights Commissioner has stated that the use of EM is not suitable for children.²⁹ YAC understands the Commission will be providing a submission to the Committee and anticipates that it will provide the relevant critique and commentary on the significant number of issues raised by the Bill and the Statement of Compatibility.

YAC, as a member of QCOSS, notes its support for the QCOSS submission to the Committee.

The greatest risk in this Bill is the potential for more children to be held on remand and, as a result, for children once again being held in watchhouses across the State. This will lead to ongoing and daily breaches of children’s human rights.

In conclusion

This Bill’s measures will:

- not address the issue of UUMV or the risk-taking behaviours underlying it
- not address the ongoing offending of the small number of repeat offenders

²⁸ Rights to: freedom of movement; peaceful assembly and freedom of association; privacy and reputation; protection of children’s best interests; cultural rights – generally and specifically for Aboriginal and/or Torres Strait Islander peoples.

²⁹ <https://www.abc.net.au/news/2021-02-05/youth-crime-justice-couple-killed-brisbane-gps-human-rights/13117336>

- as a result of the above, not address community safety concerns.

Therefore, the resulting breaches of human rights cannot be justified.

As asserted in this submission: the amendments do not relate specifically to the issue which led to their introduction and they are not a proportionate way to address community concerns. Making or amending laws is a highly visible but limited response to addressing what are often social welfare problems emanating from societal inequities.

The Bill is likely to result in greater incarceration of children which been proven not to be an effective mechanism for keeping community members safe.

In the end, we all have the same aim: to minimise youth offending and ensure all our children have the opportunity to be happy and healthy and grow up to become positive members of our society, thus resulting in a safer community. YAC's Orange Paper at Appendix A seeks to provide a more meaningful agenda. This will support community safety and ensure taxpayers' dollars will be spent in a positive and productive manner rather than on the significant and effectively negative costs of the criminal justice system. It means following the well-established and acknowledged evidence base.

Priority must be given to those disproportionately represented in the youth justice system and who will be disproportionately affected by this Bill: Aboriginal and/or Torres Strait Islander children and children in care, particularly those in out of home care. It means taking a more balanced, thoughtful and objective approach to that taken by the Bill.

Recommendation

YAC calls on the Committee:

1. not to approve the legislation; and
2. to refer back to the relevant Ministers and their Departments the responsibility of building on expenditure to date and enabling more, and supporting ongoing improvement of, early intervention, prevention and diversionary services and supports to the children and families of Queensland with a focus on those who are most at risk.

March 2021



YOUTH ADVOCACY CENTRE INC

ORANGE PAPER #2

A ten-point evidence-based plan
for investment to address
youth offending



EXECUTIVE SUMMARY

YAC's 10 point plan for investment is based on the need to do as much as possible to keep children out of, or prevent them coming back into, the youth justice system, addressing both the issue of effective and responsible use of taxpayer dollars and also that of community safety:

1. Support families early but also throughout adolescence
2. Address housing and homelessness issues for families and children and young people
3. Keep children and young people engaged in education: in particular, look for alternatives to suspension and exclusion
4. Increase provision of mental health services for children and young people with moderate to high mental health needs
5. Increase provision of detox and rehab facilities for children and young people
6. Enable access to mentors
7. Enable access to youth appropriate activities and space
8. Support local communities to develop responses to address local issues which are putting their young people at risk of breaking the law
9. Provide an intensive, individualised therapeutic response for those in detention
10. Give priority support to those most vulnerable: Aboriginal and/or Torres Strait Islander children and young people and children in the care of the State.

YAC seeks an all-party approach to youth offending and youth offenders which is evidence-based, balanced and provides consistent, long-term policy and practice for the benefit of the young people concerned and the community overall.



YOUTH ADVOCACY CENTRE INC

The issue

As we near another State election, it is important that both voters and those seeking election have a good understanding of the facts and evidence in relation to issues which are likely to be of interest to the community and may well have a bearing on how people vote.

It is the responsibility of those seeking election that they have policies which are grounded in fact and evidence, and that they can produce such information to support their preferred approach.

An area which is consistently a battleground in the war of words in any election, is that of youth offending. At a time when, more than ever, we need to spend the taxpayers' money as effectively as possible, responding to youth offending in a way which has a positive outcome for young people and the community must be a key driver.

The context

There is much mythology and misinformation about youth offending. To respond effectively, we need to understand "the problem".

- Children are not simply smaller versions of adults and the child and teen brain is not the same as the adult brain. The brain does not fully develop and mature before 25 years of age.
- Less than 1% of children aged 10-17 in Queensland had a proven court offence in 2018-19. Youth crime is not – and has not been – out of control, even allowing for "hotspots" where there are localised issues and responses may need to be more concentrated for a period.

Research shows that youth offending has fallen across most Australian jurisdictions in the past decade with a decrease of 36 per cent in the rate of young people proceeded against by police. This is consistent with other jurisdictions such as Canada, England and Wales, and the USA. There has been a corresponding decrease in the number of young people coming into youth justice systems – a decline of 22% over 10 yearsⁱ.

In line with this, Queensland has experienced a 30.8% drop in the number of 10 to 17-year-olds with a proven offence over the last ten yearsⁱⁱ and the Department of Youth Justice reports:

- in the year to 30 June 2020, a 23% drop in the number of 10 to 17-year-olds with a proven offence
- in the year to 30 June 2020, a 9% drop in the number of charges preferred against 10 to 17-year-olds
- a 17% decrease in the number of young people in detention over the last 12 months

Regional variances will apply, but the trend line existed prior to COVID-19.

- Crime is not confined to children. In both 2017-18 and 2018-19 unique adult offenders accounted for 89% of all unique offenders.ⁱⁱⁱ

The age distribution of unique offenders has shifted towards older age groups since 2009-10. In 2018-19 unique offender numbers had decreased in all age groups where the offender's age was under 30 years but increased in all age groups 30 years and over.^{iv}



- Some young people will come into conflict with the law simply as a result of being a teenager: a time of physical, emotional, brain and social development which leads to greater risk taking and less thought for the consequences. This group will generally have limited contact with the system and “age out” due to their ongoing connection with family, school, work etc which enables them to get back “on track”.

Evidence shows that a youth justice response is not the reason that children and young people who offend for the first time do not return to the youth justice system. Instead it is family and community supports and the child and young person’s natural and developing understanding and acceptance of their behaviour and personal responsibility that contributes to this change.^v

- The very small group of persistent offenders (0.09% of Queensland’s 10-17 year olds - who are responsible for around 45% of offences committed by young people) is not only dealing with the confusion of the normal maturing process but their lives are also characterised by a range of environmental and personal circumstances which put them at greater risk of going and staying “off track”. It is certainly the case that not everyone who has a challenging childhood will be an offender - but for persistent offenders, it is highly likely that they will have had a challenging childhood. For example, while only around 4% of children in care will offend, 83% of young offenders and their families were known to Queensland Child Safety Services in 2014.^{vi}

Young people who enter youth justice systems, especially those who serve some period in detention, frequently present with an array of vulnerabilities and complex needs. These vulnerabilities might be exacerbated by spending time in custody, especially in segregation and isolation. This is particularly the case for Aboriginal and Torres Strait Islander young people, who continue to be over-represented in youth justice systems across Australia.^{vii}

Complexity of young offenders in Queensland in 2018-19:

80%	have used at least one substance
39%	of young people in youth justice custody have used ice or other methamphetamines
63%	have experienced or been impacted by domestic and family violence
56%	have a mental health and/or behavioural disorder (diagnosed or suspected)
53%	are disengaged from education, training or employment
33%	have at least one parent who spent time in adult custody
21%	are in unstable and/or unsuitable accommodation
16%	have a disability (assessed or suspected) ^{viii}

- Simply imposing more and/or harsher punishment on this cohort will not prevent further offending and will have no impact on community safety.

Research into specific deterrence shows that imprisonment has, at best, no effect on the rate of reoffending and often results in a greater rate of recidivism. Possible explanations for this include that: prison is a learning environment for crime, prison reinforces criminal identity and may diminish or sever social ties that encourage lawful behaviour and imprisonment is not the appropriate response to many offenders who require treatment for the underlying causes of their criminality (such as drug, alcohol and mental health issues).^{ix}

[Reviews of youth detention centres in Australia] highlight the potentially criminogenic nature of youth justice detention centres which entrench young people further in disadvantage (Baldry et al. 2018; Cunneen, Goldson & Russell 2016), especially for those on remand (ie unsentenced).^x

[In 2018-19 84% of children in youth detention in Queensland were on remand.]

Detention is also costly - it costs around \$1500 per day per child held in detention.^{xi}



The response

There comes a point where we need to stop just pulling people out of the river.

We need to go upstream and find out why they're falling in.

Archbishop Desmond Tutu

Preventing or diverting persistent offenders requires a broad human services response: the Department of Youth Justice alone cannot deliver what is needed to get these children on track for positive and productive lives. If we turn the situation around and start from the perspective of child and family wellbeing and giving children and young people the best start in life, then the role of other human services becomes apparent. That is, we need to do as much as possible to keep children out of, or prevent them coming back into, the youth justice system. It is not about excusing bad behaviour: it is about doing what is most likely to result in the desired outcome of preventing (further) offending. This is why the Youth Advocacy Centre, a specialist youth legal and social welfare service, provides lawyers who understand the law and process as it applies to those aged 10-17 and can properly represent them, but also delivers family, homelessness, youth, bail and court support services. These services seek to address the reasons why young people are coming into (ongoing) contact with the criminal law and break that cycle.

- 1. Support for families:** this is not limited to the early years, although that is a critical time for positive development. Family-based interventions can assist with effective parenting skills and strategies to improve family relationships generally. Supporting parents who are themselves struggling through poverty, mental health issues or domestic and family violence is important in enabling them to support their children and young people. Parents may not be well equipped to help their children with their education for a variety of reasons. Parents may not have had good parenting models themselves.

The finding that family support improved children's social relationships and capacities for self-regulation (or the management of negative emotions) further strengthens the argument that family support should have a more central place in youth crime prevention. As Beelman and Lösel (2006) observe, a lack of social competencies is a common characteristic of aggressive and delinquent children and adolescents.

The finding that the strongest effects on child outcomes were achieved through lower levels of Pathways involvement suggests that prevention strategies based on family support need not be excessively prolonged or expensive...^{xii}

Witnessing or being a direct victim of family and domestic violence has a lasting impact on children. In 2016-17 26,706 Family and Domestic Violence Protection orders were made in Queensland with 13,518 defendants convicted of breaching an order.^{xiii}

- 2. Housing and accommodation:** action is needed urgently in relation to the critical shortage of housing and accommodation for young people and for families. Homelessness is both a cause and effect of offending behaviour but also contributes to breakdown in family relationships and greater risk of domestic and family violence or the inability to escape violence. It is a challenge to go to school, keep a job, parent your children well, etc if you do not have somewhere safe and stable to live.

Homeless young people typically come from disadvantaged and dysfunctional families, and maltreatment is often the impetus for a young person to leave home.



YOUTH ADVOCACY CENTRE INC

Young homeless people are often unable to support themselves, ineligible for benefits, and unlikely to find employment. Consequently, they may engage in survival behaviours—begging, theft, drug dealing and prostitution—to earn income for food and shelter....

Experiences of trauma—both prior to leaving home and a result of being homeless—lead to poor self-regulation and coping skills (exacerbated by substance abuse), placing the young person at high risk for serious illegal behaviour.^{xiv}

- 3. Education:** Every effort needs to be made to keep children in school or a form of education that is suitable to their needs and circumstances. Dis-engagement from education or training is also known to be a significant risk for involvement in the youth justice system (and, in due course, greater risk of unemployment and/or poverty, potentially continuing the cycle).

Evidence of an association between school suspension and a range of negative behavioural outcomes has grown during the past decade. As well as contributing to academic failure and dropout, school suspension is a key element of what is known as the 'school-to-prison' pipeline, which sees marginalised and excluded young people at an increased risk of juvenile and eventually, adult incarceration.^{xv}

In 2019, 1,500 prep students were suspended^{xvi} which should be a key and early signal that something is wrong, and interventions should be identified and offered for the benefit of the family and/or child. On average, more than 400 Queensland students were suspended or expelled each day last year.^{xvii} Schools and teachers should be provided with the necessary supports (such as a school-based social worker) and strategies to manage problem behaviours with alternative responses to suspension and exclusion, neither of which have been shown to be useful in this regard.

- 4. Mental health services:** more and greater supports are needed for children and young people in relation to their mental health. Mental health issues are often associated with traumatic experiences in earlier childhood which may or may not be ongoing and may also lead to the use of alcohol and other substances to self-medicate. It is YAC's experience that current services are also not willing or able to assist those with moderate to high needs in this regard.

There is significant crossover between young people who engage in, or who are at risk of, offending behaviour and young people with mental ill-health. Orygen's Policy Think Tank has highlighted the pressing need for preventive forensic, early intervention and community-based and residential mental health services for potential young offenders, as well as continued dedicated mental health care to rehabilitate young people in detention or on remand, in order to improve their life prospects as members of the community.^{xviii}

- 5. Detox and rehabilitation services:** there is very limited opportunity in Queensland for detox or alcohol and drug rehabilitation for children. Some young people turn to alcohol and other drugs as a means of escape from the issues in their lives – again, both a cause and effect of offending behaviour.

Young people who received an alcohol and other drug treatment service were 30 times as likely as the Australian population [of the same age] to be under youth justice supervision.

Young people who received an alcohol and other drug treatment service for volatile solvents or amphetamines were the most likely to also have youth justice supervision.^{xix}



- 6. Mentors/role models:** having someone in your life who you trust and who will support you in learning life skills and making choices has made the difference for many who have had childhood problems but been able to overcome them. This could be a teacher, a football coach, another member of their family. More formal mentoring programs have been found to be beneficial through engagement in developmentally appropriate activities that develop communication and relationship skills and support positive decision-making. Linking children and young people with older, possibly retired members of the community could support intergenerational understanding and be a positive for both mentor and mentee.

There has been a great deal of international research carried out on the benefits of mentoring to a young person. Research by Joseph P. Tierney and Jean Baldwin Grossman (Making a difference: an impact study of Big Brother/Big Sisters) and David L Dubois et al ('Effectiveness of mentoring programs for youth: A meta-analytical review', American Journal of Community Psychology), has shown that young mentees are:

- *Less likely to become involved in criminal activity,*
- *Less likely to become involved in drug taking and alcohol abuse and*
- *Less likely to leave school early*
- *More likely to have improved academic performance*
- *Have better relationships with their teachers and family compared to their peers who are not mentored^{xx}*

- 7. Access to activities and spaces in community:** for some children and young people, being able to engage in sports or other activities may be compromised by club fees or the cost of uniforms etc. Being engaged in positive activities not only gives young people something to do or strive for, but potentially provides opportunities for success they may not otherwise experience, giving a sense of self-worth and belonging in a positive environment. It can also provide mentoring and role modelling opportunities. Groups should be encouraged to make their activity accessible and support those who are unable to join because of disadvantage. There should also be places in communities where young people can just “hang out” and feel safe and welcome, particularly in the evening and on weekends.

- 8. Local responses to local problems:** the situations of different communities mean that levels of offending will vary across the State – as do issues of poverty, homelessness, child abuse and neglect, domestic and family violence etc.

Children are a product of their environment. While personal characteristics will come into play, children are not born wicked or evil. It is the adults in their lives and the broader community which provide the environment in which children grow and who make the choices and decisions which will impact on children and the direction their lives take. Each community will need to assess the challenges within it and identify where the risks might be and seek to work with government and non-government agencies to put the relevant resources and services in place to provide an environment where children can grow up in positive and healthy ways. There is still an opportunity to change behaviours and turn young lives around because of the very fact of their youth - and failure to take that opportunity will only be to the community's detriment.



9. Detention centres and therapeutic support: where detention is imposed as a last resort, we must negate the criminogenic impact of detention and use the time as an opportunity to engage and provide individualised intensive support and services to address the reasons which are bringing that particular child into contact with the justice system. A failure to do so not only does not address concerns about community safety – the child will be released back into the community at some point – but also means that significant monies have been spent to no effect. Carefully planned transition from detention is critical to positive re-engagement with community when the young person is released. This may include working with families prior to release so that they can contribute to a positive reintegration to the community. Preparation for transition out must begin on the day the young person goes into detention.

10. Prioritise those who are most at risk of engagement with the system: last, but most importantly, all of the above must be considered particularly in the context of those most vulnerable to engagement with the youth justice system.

- **Aboriginal and/or Torres Strait children** who are over-represented in the youth justice system. Compared to non-Indigenous young people, Aboriginal and Torres Strait Islander young people in Queensland in 2018-19 were:

- 9 x as likely to have a proven offence
- 17 x as likely to receive a supervised order
- 28 x as likely to be held in custody on an average day
- 27 x as likely to be on remand on an average day^{xxi}

The historical and ongoing effects of colonisation, broken connection to country and community, and the ensuing cycle of intergenerational trauma and exclusion from mainstream culture cannot be understated (Armytage & Ogloff 2017b: 174). The RCPDCNT [Royal Commission into the Protection and Detention of Children in the Northern Territory] emphasised how the 'destabilisation' and 'history of control' of Aboriginal communities has resulted in 'chronic disadvantage' relating to Aboriginal people's levels of physical and mental health, disability, employment, housing and education).^{xxii}

The concentration of Indigenous children is even greater when we look at those aged 12 years or younger. Nationally, some 76 per cent of children placed in detention and 74 per cent of children placed on community-based supervision in the 10-12 year-old age bracket (inclusive) were Indigenous children during the period 2015-16 (AIHW 2019: Tables S78b and S40b)^{xxiii}.

Responses must be informed and led by Aboriginal and/or Torres Strait Islander agencies and communities with access to appropriate supports and resources.

- **Children in the care of Child Safety:** The State has a direct responsibility for these children and there must be a greater focus on this cohort. As noted above, there is a strong link between involvement in youth justice and child safety issues. An AIHW report compared a total of 58,193 child protection and youth justice records between July 2014 and June 2018 across seven Australian jurisdictions [including Queensland] and found that young people who had contact with child protection services were nine times more likely than the general population to be under youth justice supervision (AIHW 2019a: 13).

The link between child maltreatment (abuse and neglect) and adolescent offending is well established While the message about intervening in the "early years" has quite rightly had considerable influence, adolescents are often neglected and seen as a low priority in terms of



child protection and the provision of mental health services. When children and adolescents move from being "troubled" to "troublesome" when they are in out-of-home care and commit offences, their needs are often neglected as they fall through the gap between the child protection and juvenile justice systems.^{xxiv}

In conclusion

Children and young people cannot vote but they are members of our community and, as such, those elected to Parliament have a responsibility to represent their needs and interests as well as those of the adult population. Arguably parliamentarians have a greater responsibility because of the limited voice available to children and young people and the limited control they have over their lives and life situations.

YAC seeks an all-party approach to youth offending and youth offenders which is evidence based, balanced and provides consistent, long-term policy and practice for the benefit of the young people concerned and the community overall.

End notes

- i Clancey, Wang and Lin Oct 2020 Trends and Issues No 605, Australian Institute of Criminology Youth justice in Australia: Themes from recent inquiries
- ii Queensland Government Statistician's Office Crime Report 2018-19
- iii Ibid
- iv Ibid
- v Queensland DJAG Youth Justice Reform Discussion Paper (2016)
- vi Atkinson B 2018 Report on Youth Justice
- vii Clancey, Wang and Lin Oct 2020
- viii <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/pocket-stats-18-19.pdf>
- ix Ritchie D 2011 Sentencing Advisory Council Victoria Sentencing Matters Does Imprisonment Deter? A Review of the Evidence
- x Clancey G, Wang S & Lin B 2020
- xi <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>
- xii Homel R et al. 2015. Preventing the mentor and youth engage in developmentally appropriate activities that enhance communication skills, develop relationship skills and support positive decision-making and criminal justice no. 481. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi481>
- xiii Ibid
- xiv Child maltreatment, homelessness and youth offending, 4 October 2017 <https://aifs.gov.au/cfca/2017/10/04/child-maltreatment-homelessness-and-youth-offending> Footnotes in article can be found on the website
- xv Hemphill SA, Broderick DJ, Heerde JA, Trends & Issues in crime and criminal justice, No 531 June 2017, Australian Institute of Criminology
- xvi Education Qld data
- xvii Ibid
- xviii <https://www.orygen.org.au/Policy/Policy-Areas/Youth-justice>
- xix <https://www.aihw.gov.au/reports/youth-justice/overlap-youth-justice-supervision-and-aodts/contents/summary>
- xx <https://aymn.org.au/mentors/what-is-mentoring/>
- xxi <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/pocket-stats-18-19.pdf>
- xxii RCPDCNT 2017b: 116 as reported in AIC paper cited at Footnote 1
- xxiii Cunneen C 2020 Arguments for raising the minimum age of criminal responsibility Footnotes in article can be found on the website
- xxiv <https://aifs.gov.au/publications/family-matters/issue-89/link-between-child-maltreatment-and-adolescent-offending>