

## Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

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The Secretary  
Youth Justice Reform Select Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Youthjustice@parliament.qld.gov.au

Dear Madam

### **Inquiry into Youth Justice Reform**

Kindly accept this submission in relation to the above Inquiry.

#### **1. Patterns of offending**

In recent years in the Western World there has been a reduction in the number of young offenders accompanied by an increase the number of offences - reflecting the fact that a small group of offenders is committing an increased number of offences<sup>1</sup>

The same trend has been seen in Queensland:

The analysis in this report finds that there has been an overall reduction in the number of young offenders in Queensland, and this is likely driven by broader social changes which have reduced exposure to risk factors for offending for more recent generations of young people, with similar trends in reductions in youth offending found internationally and in other Australian jurisdictions. Concurrently, there has been a recent increase in the volume of offending incidents, and this appears to be partly driven by a relatively small group of chronic offenders, who have increased in volume and as a proportion of the offending population and the total youth population. The relative size of the chronic youth offending population in Queensland and the number offending incidents being generated by this group, locate chronic youth offending as a more pressing concern in Queensland<sup>2</sup>.

The same report makes the following statement:

Reasons for an increased concentration of repeat offending amongst adult or youth offenders haven't been explored extensively in the literature to date. However, a recent Swedish study (Nilsson, Estrada & Backman, 2017) articulated a number of reasons why offending might be becoming increasingly concentrated amongst the more socio-economically disadvantaged, while the rest of the population displays lower levels of offending behaviour, with three potential drivers proffered for this concentration. First, increased inequalities that have been evident in the distribution of economic resources in recent times, are suggested to be a general factor which may result in increasingly

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<sup>1</sup> Dr Molly McCarthy *Trends in Youth Offending in Queensland 2008-2017* page 74 (prepared for the Queensland Police Service) [https://www.griffith.edu.au/data/assets/pdf\\_file/0026/1091069/Final-report-Youth-Offending-Trends-2008-to-2017.pdf](https://www.griffith.edu.au/data/assets/pdf_file/0026/1091069/Final-report-Youth-Offending-Trends-2008-to-2017.pdf)

<sup>2</sup> *ibid* page 4



polarised quality of life and opportunities for those from more disadvantaged areas compared to those from more advantaged areas, creating more motivation for offending for those with less resources. Second, the deterring effect of securitisation on property crime is argued to be reduced in more socio-economically disadvantaged areas, where potential victims have fewer resources with which to acquire enhanced security for their property, and thus the opportunities for property crime in these areas have remained higher than in more advantaged areas. They add that the concentration of people at high-risk of offending in these areas may also facilitate learning and transmission of offending behaviour. Third, they suggest that tough on crime policies have tended to be directed towards less affluent members of society, with a resulting concentration of policing resources on more socio-economically disadvantaged areas leading to self-fuelling cycle of surveillance, detection, charges and sanctions for the people living in these areas<sup>3</sup>.

## 2. Prison and Detention

It is clear that detention and prison are not effective responses for these offenders

The adage that prisons and youth detention are the Universities of crime is no less true for it having been around for so long.

In this regard a report of an interview with former Northern Territory Police Commissioner and AFP Commissioner Mick Palmer<sup>4</sup> is worth quoting at some length

He said youths committing crimes is a “symptom of deeper underlying causes” such as disadvantaged backgrounds, dysfunctional home lives, or the infliction of a learning or mental disability.

Mr Palmer also formed his view because he strongly believes “prisons simply don't work”.

“In my experience, all that ever does is pretty well ensure they're going to come back into prison again and probably commit more severe crimes,” he said.

“They learn a lot of bad habits in prison, and I think there were just smarter ways to do business”

The Australian Institute of Health and Welfare reports that the evidence supports the proposition that young people in the 10-14 age group involved in the criminal justice system are, “at risk of becoming chronic, long-term offenders, through exposure to harmful environments and the isolation from family and support networks”<sup>5</sup>.

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<sup>3</sup> ibid page 74

<sup>4</sup> James Hall “New bill in Queensland parliament to lift the age of criminal responsibility” 15 September 2021 <https://www.news.com.au/national/queensland/politics/new-bill-in-queensland-parliament-to-lift-the-age-of-criminal-responsibility/news-story/9145c178148fc6516a29f4e0fefe4ff9>

<sup>5</sup> Young people aged 10 – 14 in the youth justice system 2011 – 2012, AIHW, Canberra, p. vi. Available at: <http://www.aihw.gov.au/publication-detail/?id=60129543944>

### 3. The Correct Approach

Our society must move from a punitive approach to young offenders to one having the following characteristics:

- It addresses the underlying causes of their offending, and the needs of those around them
- Accepts that the majority of child offending is a consequence of the failings of the institutions intended to support the child
- Invests heavily in early intervention to prevent offending before it starts
- Addresses the appalling over representation of indigenous people in the legal system

As Dr McCarthy says<sup>6</sup>

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<sup>7</sup>.

On 27 March 2003 the highly regarded criminologist Dr Don Weatherburn gave a speech entitled, "Turning boys into fine men: The role of economic and social policy". It is a document worth quoting at some length:

"A lot of crime committed by boys is transient and opportunistic. They arrive in adolescence drowning in testosterone, desperate for excitement and lacking the self-restraint that would later come with adulthood. Being caught by their parents, or the school or the police is usually enough to stop the vast majority of them from further offending...Most young boys who find themselves in trouble with the law then are only transiently involved in crime. They commit a few offences; usually of a non-violent kind, and then stop offending by the time they are in their late teens or early twenties.

Sadly, for a small but influential majority of boys this isn't true...they get into trouble at a rate that sometimes beggars comprehension. Almost half of all juvenile court appearances come from the 15% of boys who have more than two court appearances<sup>8</sup>.

Most persistent offenders acquire a criminal record, so one option is to increase the rate at which we imprison recidivist juvenile offenders. Even the most optimistic research to date suggests that incapacitation is not a very cost-effective way of

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<sup>6</sup> op cit page 4.

<sup>7</sup> op cit page 4

<sup>8</sup> This means of course that the phenomenon of a small group of offenders committing a disproportionate number of offences is hardly new.

reducing juvenile crime. The money we spend incarcerating juvenile offenders would, in many circumstances, be better spent treating or trying to rehabilitate them. There is good evidence that treatment for drug dependence is an effective way of reducing re-offending. There is also good evidence, despite earlier suggestions to the contrary, that it is possible to rehabilitate re-offenders using methods such as conferencing, cognitive behavioural therapy or training in basic life skills.

These options though have their limitations...it would clearly be better if we could reduce the rate at which young people become persistent offenders, rather than increase the rate at which we catch them, put them behind bars or put them in treatment.

Early intervention programs offer us one avenue for achieving this, but it's doubtful whether early intervention on its own would ever be enough to deal with the parenting problems that lie behind juvenile crime...this leaves us with just one option: doing more to ameliorate the conditions that foster inadequate parenting in the first place.

We need to reduce long term unemployment, encourage more flexible working arrangements for parents, and ensure that poorer families either get access to quality child care or adequate income support if they elect to stay home during the first year or so of a child's life. We also need to slow down the spatial concentration of poverty and revitalise neighbourhoods where disadvantage and crime have become deeply entrenched.

How might we do this? Well, by dispersing public housing...by making a special effort to improve school performance in crime prone neighbourhoods we can reduce the risk or period of unemployment. By investing in targeted labour market programs we can help break the nexus between chronic unemployment and crime in areas of high unemployment. By strengthening local schools and sporting clubs we can combat the influence of delinquent peers and provide some of the supervision that parents may fail or find themselves unable to provide."

#### **4. Age of criminal responsibility**

In our submission there is one legislative measure that could be taken to remove children from the criminal justice system to a system that focuses on addressing their disadvantages and needs - increasing the minimum age of criminal responsibility (MACR) to 14.

Currently the *Criminal Code* provides, relevantly in section 29 that:

1. A person under the age of 10 years is not criminally responsible for any act or omission.
2. A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.

Under Subsection 2 the prosecution can lead evidence to prove that a child under 14 years did have the requisite capacity to know what they did was wrong and are, therefore, criminally responsible.

Former Queensland Police Commissioner Bob Atkinson in his *Report on Youth Justice*<sup>9</sup> said of this section:

We were told that the presumption of *doli incapax* is rarely a barrier to prosecution. In Queensland, the threshold to rebut the presumption of *doli incapax* is perceived by some stakeholders to be too low, with the result that many children who do not have the level of cognitive functioning required to be criminally responsible are receiving criminal outcomes and becoming embedded in the criminal justice system

Speaking of this principle the Australian Law Reform Commission has said

it is often difficult to determine whether a child knew that the relevant act was wrong unless he or she states this during police interview or in court. Therefore, to rebut the presumption, the prosecution has sometimes been permitted to lead highly prejudicial evidence that would ordinarily be inadmissible. In these circumstances, the principle may not protect children but be to their disadvantage<sup>10</sup>.

As former Commissioner Atkinson noted in his report<sup>11</sup>:

- The United Nations Convention on the Rights of the Child, supplemented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), states that a MACR below 12 years is not internationally acceptable
- A study of 90 countries found the median MACR to be 14 years and that 68% of countries had a MACR of 12 years.

Whilst former Commissioner Atkinson only recommended raising the MACR to 12 he put the argument for it in these terms<sup>12</sup>

children below the age of 14 have rarely developed the social, emotional and intellectual maturity necessary to determine criminal responsibility. Studies in this area widely recognise the strong correlation between early involvement in the youth justice system and chronic offending in adulthood, the trajectory through the criminal justice system often being more rapid the earlier a young person is involved with the system. Whilst causation remains difficult to establish, it is suggested that a more child and family centred approach to offending at this age can help ameliorate the circumstances that led to the offending at a young age.

On this basis the case for 14 is the same as the case for 12. In our submission that is the policy this Committee should recommend the government adopts.

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<sup>9</sup> Prepared for the Minister for Child Safety, Youth and Women and Minister for Prevention of Domestic and Family Violence 8 June 2018 Page 105

<sup>10</sup> *Seen and Heard: priority for children in the legal process* (ALRC Report 84) para 18.19

<sup>11</sup> op cit page 104

<sup>12</sup> op cit page 106

We trust this is of assistance to you in your deliberations.

Yours Faithfully



Michael Cope  
President  
For and on behalf of the  
Queensland Council for Civil Liberties  
8 January 2024