**Submission by**

**YOUTH ADVOCACY CENTRE INC**

**to the**

**Education, Tourism, Innovation and Small Business Committee**

**In relation to the**

***Youth Justice and Other Legislation (Inclusion of 17 year old Persons) Amendment Bill 2016***

**OCTOBER 2016**

The Youth Advocacy Centre Inc (YAC) is a well-respected legal and social welfare agency for 10-18 year olds who are involved in, or at risk of involvement in, the youth justice and/or child protection systems and/or are homeless or at risk of homelessness – young people who are among the most marginalised and excluded by society and often the most harshly judged. This is particularly unfair given that these young people are usually "troubled" - victims of their environmental, family or personal circumstances - and those that become "troublesome" often do so as a result of these factors. YAC's aim is to provide a safety net of legal and social welfare services and then seek to transition young people to more secure lives and opportunities – for their benefit and that of the community more broadly.

YAC was extremely pleased to hear the announcement by the Premier and Attorney-General that the day had finally arrived when the commitment to have the youth justice system cover 17 year olds was to be actioned. This has been under discussion for nearly 30 years and we congratulate Premier Palaszczuk and Attorney-General D'Ath on being the ones to move from discussion to action.

## A longstanding issue

Working with adolescents can be challenging because our society continues to be very conflicted about how it views its young people – which seems to depend on whether the young person is perceived to be 'victim' or 'villain'. On the one hand, young people are considered "wholly vulnerable and incompetent children in need of paternalistic strategies to guide their conduct"[1] *(so the law prevents young people under 18 from buying alcohol or tobacco products for example and they cannot vote)* but at other times they are regarded as "fully calculating and sometimes sociopathic mini-adults deserving society's harshest punishments"[2] *(so the law enables 10 year olds to be prosecuted for breaking the law).*

This conflicted view of young people has been exacerbated in Queensland by continuing to treat 17 year olds as adults for the purpose of the criminal law, which includes 17 year olds being held in adult prisons. The calls for this to be addressed go back nearly 30 years.[3]

**1988 The Commission of Review into Corrective Services in Queensland (the "Kennedy Review")**
In February 1988, the Queensland Government commissioned Mr Jim Kennedy (later Dr Kennedy AO CBE (C)), a prominent businessman, to review corrective services in Queensland. His report noted:

> "Queensland is one of only two states in the Commonwealth that has legislation that nominated 17 years as the age at which a person is treated as an adult in criminal proceedings. All other States use 18 years as the age of majority in criminal matters.
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> "It is a matter of common sense that the system [in place in 1988] segregate persons under the age of eighteen while these people continue to be imprisoned. This is only a short term solution. In my view people under 18 just should not be in adult prisons. They are children in law, children in terms of rights and responsibilities. In other States they are in law required to go into juvenile institutions. This should be the case in Queensland. They just should not come into the prison system. To stop the entry of these young people into prison requires a redefinition of "child" in Queensland legislation. Amending the appropriate legislation would remove this small vulnerable group of people from the prison environment."

**1990 The United Nations (UN) Convention of the Rights of the Child (CROC)**
The UN Convention on the Rights of the Child was ratified by Australia on 17 December 1990 and came into force on 16 January 1991. Ratification was preceded by a detailed process of consultation with State and Territory governments and had the unanimous agreement of all Australian governments.

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[1] Kim Taylor-Thompson, States of Mind/States of Development, 14 STAN. L. & POL'Y REV. 143, 146 (2003)
[2] Ibid
[3] The information on the various inquiries, submissions, recommendations and legislative provisions is taken from a Background Paper to which YAC contributed and which was published most recently in a YANQ package of information to raise awareness of the '17 year old issue' in 2012.

> Article 1:
> "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier."

The age of majority in Australia is 18. The rights articulated in CROC are expected to apply to all children, including 17 year old children.

**1992 Queensland's *Juvenile Justice Act 1992***

The Queensland *Juvenile Justice Act 1992* (later re-named the *Youth Justice Act 1992*) (the Act) replaced the long outdated *Children Services Act 1965* which also designated 17 year olds as adults for the purposes of criminal behaviour. The Act specifically provided for the inclusion of 17 year olds in the juvenile justice system under s.6[4]. The Hon Ann Warner, the Minister responsible for the legislation, said in the course of Parliamentary debate on the Bill:

> "It is the intention of this Government, as it was of the previous Government, to deal with 17-year old children within the juvenile, rather than the adult system, as per the Kennedy Report into prisons. This is consistent with the age of majority and avoids such children being exposed to the effects of adults in prisons, thereby increasing their chances of remaining in the system and becoming recidivists. This change will occur at an appropriate time in the future."

**1995 – 97 Australia's First Report under CROC and the Non-Government Organisations' (NGO) Parallel Report**

Australia's First Report under CROC was prepared by the Commonwealth Attorney-General's Department in 1995 and considered by the United Nations Committee on the Rights of the Child (the UN Committee) in September 1997, together with the Non-Government Organisations' (NGO) Report. The NGO Report noted in response to Australia's First Report, the anomaly that "in some jurisdictions 16, 17 and 18 year old offenders are classed as adults".

The UN Committee stated in its Report:

> 21. The situation in relation to the juvenile justice system and the treatment of children deprived of their liberty is of concern to the Committee, particularly in the light of the principles and provisions of the Convention and the other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
>
> 22. The Committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system [⋯.]

**1997 Australian Law Reform Commission (ALRC): *Seen and heard: priority for children in the legal process***

The ALRC's seminal report considered the upper age for juvenile justice systems, as part of its wide-reaching Inquiry, stating:

> "In the Northern Territory, Victoria, Tasmania and Queensland, children are dealt with in the adult criminal system once they turn 17. In all other States, in the ACT and under federal criminal law all children are juveniles for the purposes of the criminal law, that is, until they turn 18. The Inquiry considers that there should be national consistency on when a young person is dealt with in the juvenile justice or adult criminal system. An Australian child of a particular age should not be able to be tried as a juvenile in one jurisdiction and as an adult in another.[⋯] Children should not be treated as adults by the criminal justice system. The age of majority for the purposes of the criminal law should be 18, the age at which a child becomes an adult under general Australian law and under CROC."

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[4] **Child's age regulation**
6.(1) The Governor in Council may, by regulation, fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years.

> **Recommendation 196**. The age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions.
> **Implementation**. All States and Territories that have not already done so should legislate to this effect.

**1998 Tasmania's** *Youth Justice Act 1997*
The *Youth Justice Act 1997* came into effect in January 1998 and re-defined a child in Tasmania as a person over the age of 10 (up from 7) and under the age of 18 (up from 17). The UN Committee and the ALRC's *Seen and Heard* report had raised concerns about the original ages and the Tasmanian legislation was in response to those concerns.

**1998 Evaluation of the Queensland *Juvenile Justice Act 1992***
The Evaluation considered the issue of raising the age for dealing with children in the juvenile justice system to include 17 year olds. It stated:

> "There is, however, a significant body of opinion to the effect that the age of child regulation should be in accordance with the [then] Public Sector Management Commission recommendations and UN Conventions. This would mean an increase in the age definition of "adult" for criminal justice purposes to 18 years.
>
> The implications of the inclusion of 17 year olds into the Children's Court system would have substantial resource implications for the [then] DFYCC which administer[ed] childhood orders and for the [then] Queensland Corrective Services Commission which [then] administer[ed] childhood detention orders. It would ensure that 17 year olds would be sentenced to detention rather than imprisonment in the adult prisons. Significantly, it would introduce a desirable measure of consistency across State legislation [⋯]"

**2000 Northern Territory's *Sentencing of Juveniles (Miscellaneous Provisions) Act 2000***
On 10 April 2000, Prime Minister, John Howard, and Chief Minister of the Northern Territory, Denis Burke, issued a joint statement regarding efforts to divert juveniles from the criminal justice system. A central element of the Northern Territory reforms was to include 17 year olds in the juvenile justice system. The *Sentencing of Juveniles (Miscellaneous Provisions) Act 2000* gave effect to the reforms.

**2002 *Juvenile Justice Amendment Act (Qld) 2002***
Significant amendments to the Act were passed in 2002. Prior to the drafting and passage of the legislation the Government undertook what was described as a 'targeted' consultation process with the Queensland youth sector. A significant portion of the submissions provided to Government expressed support for the expansion of the Act to cover 17 year olds.

**2003 Youth Justice Conference, Brisbane**
Following a detailed consideration of a range of issues related to the treatment of 17 year olds in the criminal justice system, the following recommendation was made by the conference:

> "The *Juvenile Justice Act 1992* should be amended to increase the age of a child to 18 years so that it is consistent with other Australian states and in line with Australia's International Treaty obligations."

The Minister responsible for administration of the juvenile justice system, the Hon Judy Spence, agreed to consider all of the recommendations of the Conference.

**2003 Annual Report of the President, Children's Court of Queensland 2002-03**
The President of the Childrens Court of Queensland of the day, Judge O'Brien, observed in this report:

> "In February of this year Legal Aid Queensland hosted a Youth Justice Conference in Brisbane. The conference brought together a large number of individuals and organisations involved in various ways with youth justice throughout the State. One of the recommendations to emerge from the conference was that the Juvenile Justice Act be amended such that the age of a child for the purposes of the Act should be increased to 18 years. Section 6 of the Act does contain provision for the age of 18 to be fixed by regulation but this provision has never been utilised.

> "In Queensland, young people are not lawfully permitted to vote or to drink alcohol until they reach the age of 18, yet, at the age of 17, their offending exposes them to the full sanction of the adult criminal laws. There are I believe real concerns involved with the potential incarceration of 17 year olds with more seasoned and mature adult offenders. The United Nations Convention on the Rights of the Child considers a person as a child until he/she reaches the age of 18 and other Australian States have adopted a similar approach. The recommendation deserves careful consideration."

**2004 Victoria's *Children and Young Persons (Age Jurisdiction) Act 2004***

In May 2004 the Victorian Attorney General, Rob Hulls, announced that Victoria would:

> "Implement the commitment to increase the age limit of the Children's Court from 17 years to 18 years so that young people are not caught up in the adult criminal system."

Since the Victorian Parliament passed the relevant legislation in November 2004, Queensland has been left as the only Australian jurisdiction which treats 17 years olds as adults.

**2005 Australia's Joint Second and Third Reports under CROC and the Parallel NGO Report**

The UN Committee again made specific comment on the Queensland situation:

> "Furthermore, the Committee is concerned that: ⋯ (c) in Queensland, persons of 17 in conflict with the law may be tried as adults in particular cases" (See, pp 14, Administration of Justice, 73 (c)).
>
> "The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice."

**2006 Anti-Discrimination Commission Queensland**

The Commission's report, *Women in Prison*, highlighted the issues involved in housing 17 year olds in adult prisons and made two recommendations:

> Recommendation 48:
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> The Queensland Government immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years.
>
> Recommendation 49:
> It is not in the best interest of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection unit of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.

**2010 Commission for Children and Young People and Child Guardian**

In November 2010 the Commission released its policy position on 17 year old children in adult prisons and called upon the Queensland Government to make:

- a time specific commitment by 1st March 2011 to transfer 17 year olds from adult prisons to youth detention; and
- the necessary legislative amendments to ensure that all young people under the age of 18 years fall within the jurisdiction of the Youth Justice Act 1992 and have access to the Charter of Youth justice Principles.

**2012 Australia's Fourth Report under CROC and the Parallel NGO Report**

The UN Committee continued its call on Queensland to raise the minimum age of criminal responsibility to an internationally acceptable level.

> "The Committee regrets that despite its earlier recommendations, the juvenile justice system of the State party still requires substantial reforms for it to conform to international standards ... The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39 ... the Committee reiterates its previous recommendations to consider raising the minimum age of criminal responsibility to an internationally acceptable level."

**2011 – 2016 Annual Reports of the President, Children's Court of Queensland**

His Honour, Judge Shanahan, has made reference to "Seventeen year olds" in each of his annual reports since becoming President and his ongoing concern that it has not been addressed.

In his first report he noted that in both the Tenth and Twelfth Annual Reports of the Childrens Court of Queensland, the then President, Judge O'Brien, recommended that the age of a child for the purposes of the Act should be increased to eighteen. Judge Shanahan also noted:

> "In R v Loveridge [2011] QCA 32 the Court of Appeal considered an application for leave to appeal against a sentence of three years imprisonment with parole fixed after eight months, imposed on a seventeen year old who pleaded guilty to an offence of armed robbery. By a majority, the Court of Appeal refused the application. In her dissenting judgement McMurdo P had this to say, This appeal highlights the difficulty facing Queensland judges when sentencing 17 year olds for serious criminal offences. …. At 17, under the United Nations Convention on the Rights of the Child ("the Convention") he is a child. Australia signed the Convention on 22 August 1990 and ratified it on 17 December 1990. Under the Convention, the best interests of the child must be a primary consideration in all actions taken concerning the child, including when dealing with a child for criminal offences. Further, every child deprived of liberty is to be separated from adults unless it is considered in the child's best interests not to do so. These principles are given effect in general terms in the Youth Justice Act 1992 (Qld), but they apply only to the sentencing of a "child" as defined in that Act, that is, "a person who has not turned 17 years". This definition of "child" contrasts with that under most other Queensland legislation where a child is "an individual who is under 18".
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> His Honour finished by saying:
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> "The comments made by the President of the Court of Appeal have substantial force. In terms of consistency with other Australian jurisdictions, compliance with international obligations and the negative impacts of requiring a seventeen year old to be held in an adult prison, I urge that the original commitment detailed during the introduction of the Act in 1992 be given effect."

**2016 Example of treatment of 17 year olds in adult prison**

On 30 August 2016, material was published in relation to the treatment of Jarrod Clayton[5]: the video showed a 17 year old boy wandering aimlessly around a tiny prison cell, occasionally shouting under the door, and then – whilst he was totally compliant and clearly endangering no-one – being forced into a spit hood, as well as handcuffs and a body brace. He had no previous history and was on remand. Being considered "*lippy*", he was confined to his cell for 22 hours a day for many weeks. The incident on the video occurred on his very first night in prison.

The story attracted significant media attention with the Queensland Bar Association and the Queensland Law Society issuing press releases, expressing dismay at the boy's treatment and urging prompt reform. Amnesty International coincidentally was launching a report at the Parliament House Annexe, *Heads held high: Keeping Queensland kids out of detention*, which raised concerns about young people in detention in Queensland, particularly Aboriginal and Torres Strait Islander young people who are highly over-represented, and also raising the 17 year old issue which also impacts disproportionately on Indigenous children.

[5] This was the result of action by the Youth Advocacy Centre and the Prisoner's Legal Service with the permission of Jarrod and his mother.

Letters to the editor, talkback radio, and the tone of all the media coverage, indicated that the public fully understood the need for the proposed reform and there was strong support for it. The Courier Mail published an editorial which adopted and presented in strident terms the arguments that YAC has agitated for over so many years: *Welfare of state's juvenile inmates matters more than Government image;* and a lengthy article from a psychologist explaining the counterproductive nature of the treatment meted out to the young man in question.

**Support for the inclusion of 17 year olds in the youth justice system**

The Youth Advocacy Centre congratulates Premier Palaszczuk and Attorney-General D'Ath on taking the historic step of finally addressing this longstanding issue although it does seem extraordinary in light of all of the above and the constant lobbying by the youth and legal sectors, it has taken nearly 30 years to reach this point. The arguments in support have remained consistent over time.

- **Breach of Australia's international obligations**

As noted above, this has been the subject of ongoing comment and criticism by the UN Committee. With the resources available to it, Australia should be setting best practice standards and leading by example in relation to human rights and the States and Territories have a role to play in this by ensuring that their actions are compliant.

- **Alignment of the age of adulthood**

The civil law takes the view that people under the age of 18 do not have full capacity; therefore, laws regulate young people's participation in a variety of activities. A person must be 18 before they can -

- serve on a jury
- vote
- marry
- get a passport without parental consent
- contract for goods and services except for necessities
- make or witness a Will:
- gamble
- get a tattoo
- purchase alcohol
- purchase tobacco products
- sue or be sued in their own right.

This leads to a range of inconsistencies and incongruities: for example, if a 17 year old is prosecuted for trying to buy alcohol because they are under age (under 18), they will be dealt with by the adult criminal justice system.

It is difficult to ask young people to respect and follow the law when it is not consistent in how it deals with them.

- **Alignment of Child Safety and Juvenile Justice Systems**

Orders under the *Child Protection Act 2000* can cover a child up to the age of 18: that is, to the age when legally they do not require a guardian because they are considered to be fully competent at law. This means that a 17 year old can be in the care of the State because they are a minor with no adult who is willing or able to protect them from harm, but be processed by the adult criminal justice system if alleged to have broken the law, with the possibility of being placed in an adult prison.

Indeed, the following indicate that young people's experience in care may put them at risk of greater involvement in the criminal justice system and if this happens at 17, then the system that was supposed to protect the young person is facilitating their progression to the adult criminal system:

- placement in out of home care doubles the risk of post placement offending[6] particularly if this occurs during adolescence and involves a group home[7]
- multiple placements or placement instability together with changes of school, particularly if that involves exclusion, are linked to an increased risk of difficult behaviour and later offending[8]
- for females, any placement, irrespective of instability, increased their risk of offending[9].

In Queensland, as in some other jurisdictions, young people in care may be at greater risk of criminalisation for wilful damage and assault as a result of charges being brought by those caring for young people in situations which would usually be dealt with within the family. YAC solicitors represent children in this situation regularly. This is further exacerbated if they have turned 17.

- **Consistent treatment of peers in Queensland**

Seventeen year old Grade 12 students in Queensland who are alleged to have broken the law are put into the adult criminal justice system, while their 16 year old classmates are dealt with as children. The effect of this is that two classmates, one 16 and the other 17, involved in the same offending behaviour – and could even be co-offenders - will be treated differently, despite their circumstances being equivalent in every other respect. The seventeen year old will not be afforded any of the protections that their 16 year olds peer has such as the attendance of a support person at the interview and any examinations or taking of prints, for example. The 16 year old might be cautioned by police or referred to a restorative conference and diverted from the criminal justice system, whereas the 17 year old student will not have this opportunity.

Young people are often unaware of this situation – as are their parents. The YAC website has an information video about the 17 year old issue on its website and a mother appears on it. She expresses her surprise and concern that although the legal guardian of her son, she was not provided with any information about what was happening to him when picked up by the police.

- **Consistent treatment of peers across Australia**

Queensland is the only jurisdiction in Australia that continues to treat 17 year olds as adults. The criminal justice system has an important role in our society, and as such, there should be consistency across the country. Basic principles such as the age at which people can be held criminally responsible for their actions and when they are to be treated as adults, should be uniform across all jurisdictions. It is not acceptable that how a child is treated in the criminal justice process depends on where they live in Australia, generally something the child has no control over, and which effectively leads to a form of territorial justice.

It cannot make sense that a 17 year old can be charged, tried and possibly detained as an adult in Coolangatta in Queensland while their mate literally across the road but who is technically in Tweed Heads in New South Wales is dealt with as a juvenile. The 17 year olds from Victoria and New South Wales coming to Queensland for "schoolies" celebrations will not be aware that if they should get into trouble, they will be treated as adults.

It is noted that the age of criminal responsibility is uniform across the jurisdictions at 10 years of age and all apply the rule that the prosecution must be able to show that 10, 11, 12 and 13 year olds knew what they were doing was wrong (noting that this is a low threshold) as well as proving the actual offence.

- **Risks of placement in adult prison**

Adult prison is not a place where any parent would want to see their 17 year old. There are strong indications that juveniles in adult jails and prisons are at a greater personal risk than their counterparts in juvenile detention facilities, not least because of their youth and immaturity.

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[6]Australian Institute of Family Studies:; Family Matters 2011, No 89; Cashmore J *The link between child maltreatment and adolescent offending: Systems neglect of adolescents* noting studies by Ryan & Testa, 2005; Stewart et al., 2002

[7] Ibid: studies by Ryan, Hernandez, & Herz, 2007

[8] Ibid: from work by Widon 1992

[9] Ibid: from work by Widon 1992

A limited amount of research is available about the experiences of Queensland youth in adult prisons: however, it has been reported that young prisoners have had extremely traumatic prison experiences.

Additionally, the recent video of a 17 year old in Queensland's Brisbane Correctional Centre, which met with condemnation across the media and the community, confirms how inadequate and inappropriate the prison system is in working with children.

- **There is community support for the change**

The recent media reporting of the issue following the publication of Jarrod Clayton's story indicates that the community understands why 17 year olds should not be in the adult justice system, particularly not at risk of being held in adult prisons.

**The usual responses**

There have been four common arguments put up as to why 17 year olds should not be included in the youth justice system which are considered below.

- **"Nothing happens to them – it's a slap on the wrist"**

Virtually all actions which are a criminal offence apply irrespective of age once the minimum age of criminal responsibility (10 years) is reached. The youth justice system essentially follows the adult criminal justice system in terms of processes and outcomes. It makes a small number of important accommodations in recognition that a child is a developing individual – in particular an adult must be present at a police interview and there are youth specific detention centres - but the sentence types for young offenders are very similar to those imposed on adults: it is generally the length of the term which is different:

| **Child**[10] | **Adult**[11] |
|---|---|
| Reprimand | Absolute or Conditional Discharge |
| Good Behaviour Bond | Recognisances |
| Fine | Fine |
| Probation Order | Probation Order |
| Community Service Order | Community Service Order |
| Conditional Release Order | Suspended Sentence |
| Intensive Supervision Order | Intensive Correction |
| Detention | Imprisonment |
| Detention up to life – will most likely be transferred to adult jail | Imprisonment - indefinite |

Generally, a Magistrate can sentence a child to up to 1 year in detention and a Judge up to 5 years. However, for offences for which an adult can be imprisoned for 14 years or more, children can also be detained for significant periods of time, for example:

| | **Child** | **Adult** |
|---|---|---|
| Robbery in company with violence | 10 years *or*<br>Life* if:<br>there was violence against a person *and*<br>Court considers particularly heinous | Life |
| Arson | | |
| Grievous bodily harm | 7 years | 14 years |
| Receiving stolen goods | | |

*Life in Queensland means the whole of one's life

[10] *Youth Justice Act 1992*

[11] *Penalties and Sentences Act 1992*

Thus a 17 year old who commits a serious crime and is given a lengthy custodial sentence will find themselves in the adult prison system after they turn 18.

- **"You can't put 17 year olds in the same facility as 10 and 11 year olds"**

The argument ignores the risks associated with 17 year olds being placed in an environment with significantly more and significantly older men - which experience indicates is much harder to manage as noted previously.

Importantly, it begs the question as to why we are putting 10 and 11 year olds (and YAC would argue, 12 and 13 year olds) into detention in the first place. If children of this age have a sufficient history of behavioural problems or are alleged to have done something so serious as to warrant immediate custody – the question must be asked: what has been happening in these children's lives and families for this to occur? Something other than a legal response must be necessary.

The UN Committee has advised that the minimum age of criminal responsibility should be 12 and has raised this with Australia in its reports too. YAC's view is also that no-one under 14 should be kept in custody.

In any event, if all the other jurisdictions in Australia have found appropriate ways to a manage facilities with a range of ages, then that surely cannot be beyond the ability of Queensland. There are already 17 year olds in youth detention and so this is not situation for those running detention centres. Mr Lynch, Director Youth Justice Policy, Research and Partnerships in the Department of Justice and Attorney-General advised the Committee at the Public Briefing on 21 September 2016:

> "A degree of separation already takes place, obviously, in youth detention centres. Ten-year-olds are not routinely mixing with 17-year-olds in a way that presents risks. One of the strategies that we need to look at is whether in fact there are ways in which we can manage the numbers of 10- to 13-year-olds. Are there options for them outside of being in detention? One of the first priorities of the remand reduction strategy is to look at 10- to 13-year-olds who are remanded in custody. Are there alternatives? Are there community based, supervised residential centres, for example, that would be better placed to look after those 10- to 13-year-olds? Those are all the sorts of options that are on the table, because we are very mindful of the risks that I think you are alluding to in terms of mixing 17-year-olds with 10-year-olds.
>
> We are saying that, within the detention centre itself, there are clear strategies in place to minimise any risk and minimise degrees of contact that might be unhelpful. In addition, we are looking at options for alternative placements rather than in a detention centre. If a 10-year-old is going to be remanded over the weekend, is a detention centre the best place to remand them?"

- **"If they commit adult crimes, they should be treated as adults"**

There is, of course, no such thing as an "adult crime". As noted earlier, the Criminal Code applies to everyone 10 years and over. Children who commit more serious types of crime are still children developmentally. It cannot seriously be suggested that a 14 year old is as culpable as a 40 year old who commits the same offence. "*The 'teen' brain is not the same as the 'adult' brain" and ……..the mature prefrontal functions.. do not yet exist."*[12] Adolescents have developing cognitive capacities. In early adolescence, those parts of the brain that deal with reward processing are more easily aroused but those that deal with harm avoidance and self- regulation are still comparatively immature[3] and therefore judgement making and impulse control, is still evolving[13] .

Approximately 70% of young people in the youth justice system are known to the child protection system and young people entrenched in the justice system and those who are at high risk of becoming entrenched have often experienced:

- child abuse and neglect
- exposure to domestic or family violence

[12] From a presentation by Professor Elisabeth Hoehn at the Balanced Youth Justice Forum, Brisbane, 29 May 2013
[13] Ibid

- severe and long-term family dysfunction in their childhood years
- homelessness.

We know from neuro-scientific research that how young people grow and develop is linked to the environment that they are in, the type of parenting they receive and language ability. In summary:

- The human brain is undeveloped at birth – human interactions grow brain connections.
- The developing brain is directly influenced by early environmental enrichment and social experiences (positive or negative) and the type of experiences an infant has is crucial.
- The brain of the young person (adolescent) is remodelling (growing new connections and pruning out others) from the 'child' brain and transforming into the 'adult brain' – a process that takes until at least 24 years of age in healthy development.
- Remodelling of the young person's brain should develop the functions for a successful adult life which would include learning self-regulation (such as in pausing before acting) and developing empathy and morality (a concern for others/the greater good) and not simply acting on automatic fight/flight responses which are part of the "reptilian" part of the human brain.
- The re-modelling process will only happen positively if the young person has had appropriate experiences in the early years and then in adolescence so the brain develops in a "healthy" way.[14]

Children do need to learn the acceptable norms of behaviour, but there can be reasons for their behaviour which indicate that some action other than punishment is required for them to understand the impact of their actions and to prevent their future offending. Children have little control over the most basic aspects of their lives and a wide variety of decisions are made by the adults around them so it can be difficult for children to change themselves if their environment does not support this. If children grow up in situations where poor behaviours and inappropriate activities are modelled it is difficult to see how the greater responsibility does not rest with the adults around them. The State itself has to take some responsibility where the offender is a child in care.

- **"It's too expensive to change it now"**

There will clearly be costs involved in changing the situation (although presumably this was the same for Tasmania in 1998, the NT in 2000 and Victoria in 2004): however, these costs need to be balanced against the financial costs of ongoing involvement with the criminal justice system and the personal costs to victims of crime. Where a young person is sentenced to incarceration, the youth detention centres provide opportunities to attend therapeutic programs and participate in education which are not available in prison and therefore there is more likelihood that young people can be diverted. That is not to say that this is operating to its greatest potential at the moment, but monies invested appropriately here could save the significant cost of keeping an adult in prison for years into the future.

Further, there is evidence to suggest that those going to prison are more likely to offend than those kept in the youth justice system with the costs that accompany that.

**Implementation**

As Mr Lynch also advised the Committee at the public briefing, the transitioning of 17 year olds from the adult to the youth justice systems is where the complexity will arise. YAC notes the Department's explanation as to how this is to occur for (1) those who are 17 and proceedings are already in progress when the change of age takes effect and (2) those who are 17 and on a sentence order at that point in time. The approach proposed in the Bill seems a reasonable and practical way to proceed. YAC welcomes the Government's commitment to work with stakeholders on the detail that will be involved with this.

[14] Ibid

## Additional matters

### The importance of education

We note that the Education, Tourism, Innovation and Small Business Committee has been given responsibility for reviewing the Bill. We take this opportunity to draw to the Committee's attention the critical link between education and young people's risk of offending.

The link is clearly established:

> Schools play an essential part in educating, socializing, and otherwise preparing children for their roles as adults in an ever-changing world. Students' commitment to school and learning is known to contribute to their academic success and to operate as protective factors against many problem behaviors.[15]

Authors in this area indicate that one of the biggest challenges faced by young people trying to re-integrate back into their community is the social stigma attached to the fact that they had served time in detention.[16] This stigma creates negative social interactions especially surrounding their treatment by police. This argument is supported by participants in Dawes's study (2011) who indicated that although many of them wished to continue with their education after their release from detention, often they were denied re-admittance due to their criminal reputation.[17]

The Courier Mail in October 2014 reported:

> STUDENT suspensions in state schools skyrocketed in the first semester of this year, after new laws aimed at supercharging principals' powers were introduced.
>
> The number of suspensions jumped by more than 3000 in the first semester of 2014 compared with the first semester of 2013, with the number of Prep suspensions alone almost doubling.

A paper was developed by the Department of Education, Training and Employment's Data Analytics Committee to provide information on trends and issues in School Disciplinary Absences (SDAs) in Queensland state schools. It observed:

- Scholars have pointed to an increase in school suspensions as a disciplinary practice in many countries over a long period (e.g. Collin and Law, 2001; Fabelo et al, 2011).
- 'School suspensions are not always reserved for the worst behaviours, but often used for non-violent or non-threatening conduct such as truancy, talking back to teachers, uniform violations or being late for school' (Hemphill and Hargreaves, 2010, p 5).

If this is happening in Queensland, teachers need to be provided with appropriate training, skills, resources and response options to address behavioural problems which treat suspension and exclusion as a last resort - in the same way that detention is a last resort in the criminal justice system - as the result otherwise is a potential to exacerbate rather than resolve problem behaviours.

It is highly disturbing to see prep-aged children being suspended and excluded and this must be seen as a very large, very red flag indicating family or parenting issues or the need for the child to be assessed to find a reason for their behaviours so that appropriate responses can be put in place as soon as possible.

A case study illustrates how things could be different.

A cost benefit analysis was undertaken of an early intervention program in the lives of young people through the Chicago Child-Parent Centres. The Centres were located in Chicago public schools in the

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[15] **Education and Delinquency: Summary of a Workshop** http://www.nap.edu/catalog/9972.html Joan McCord, Cathy Spatz Widom, Melissa I. Bamba, and Nancy A. Crowell Editors, Panel on Juvenile Crime: Prevention, Treatment, and Control, Committee on Law and Justice and Board on Children, Youth, and Families, National Research Council

[16] Walsh, Tamara, 2006. "Is Corrections Correcting?: An Examination of Prisoner Rehabilitation Policy and Practice in Queensland." The Australian and New Zealand Journal of Criminology 39(1):109-133, 113. Accessed August 13, 2014. http://search.informit.com.au.ezp01.library.qut.edu.au/documentSummary;res=IELAPA;issn=0004-8658;py=2006;vol=39;iss=1;spage=109; Dawes, Glen D. 2011. "The challenges of reintegrating Indigenous youth after their release from detention." Journal of Youth Studies 14(6): 693-707, 699. Accessed August 21, 2014. http://dx.doi.org/10.1080/13676261.2011.580338

[17] Dawes, Glen D. 2011. "The challenges of reintegrating Indigenous youth after their release from detention." Journal of Youth Studies 14(6): 693-707, 699. Accessed August 21, 2014. http://dx.doi.org/10.1080/13676261.2011.580338.

poorest neighbourhoods and provided educational and family support to children aged three to nine. The aim was to promote educational achievement, school retention and low levels of delinquency. The program had three stages of intervention: preschool age, school age and extended intervention, and as a result the program dealt with children up until they attained the age of 21.[18]

The analysis compared groups of children who had intervention from a Centre and were of preschool age between 1983 and 1986 and those who did not, with a fifteen year follow up. Intervention lasted for varying periods depending on what age the child was when first coming into contact with the program, and whether they fell into the extensive intervention category. The result was that those who participated in the program had a higher rate of school retention and a lower rate of youth arrest, in comparison to those children who did not have any early intervention. It was concluded that for every dollar spent on preschool age children participating in the Centre, society received a benefit of $7.14.[19]

**Finally - what other reforms are required?**

**First**: the age of criminal responsibility should be raised to 12 years of age, as a minimum, in line with the recommendation of the UN Committee on the Rights of the Child and YAC would advocate that due to the known criminogenic impacts of incarceration, children under 14 should not be placed into detention.

**Second**: a bi-partisan supported, evidence based approach to youth offending, with particular emphasis on prevention, early intervention, diversion and therapeutic responses, in order to get children on the right track and provide their families with the resources and capabilities to support this. We need to avoid the "back and forth" changes in policy which further contribute to the system failing children and the community. In particular, consideration should be given to implementing a "justice reinvestment" model, putting monies into the "front end" to prevent problems rather than at the "back end" when the damage has been done. The community of Bourke in New South Wales is currently implementing a program along these lines. It is early days but there is already evidence of impact.

**Third**: focus is given to particularly vulnerable young people: Aboriginal and Torres Strait Islander children to address their ongoing overrepresentation at every level of the system; and young people in care, especially those in out of home care, who are being criminalised for behaviours which families would normally address themselves.

**Fourth**: an evidence-based response to addressing the offending of 18-24 year olds, particularly alternatives to prison and greater access to therapeutic and reintegration programs and education if they are imprisoned. This is supported by the significant neuro-scientific evidence on brain development and how this is relevant to offending behaviour – be it the general risk taking of adolescence or the damage incurred through issues such as abuse and neglect – and that the brain does not finish developing until a person is around 24 year of age,

These responses do not constitute a "soft on crime" approach: they seek to utilise public monies to best effect for the benefit of the community and community safety as well as the children and young people themselves. YAC strongly urges all sides of politics to work together on this.

**October 2016**

[18] Ibid.
[19] Ibid.