

Youth Justice and Other Legislation Amendment Bill 2014

Report No. 58

Legal Affairs and Community Safety Committee

March 2014

Legal Affairs and Community Safety Committee

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Abbreviations

Action Plan	Safer Streets Crime Action Plan – Youth Justice
ADCQ	Anti-Discrimination Commission Queensland
Attorney-General	The Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice
Bill	Youth Justice and Other Legislation Amendment Bill 2014
Blueprint	Blueprint for the Future of Youth Justice in Queensland
Committee	Legal Affairs and Community Safety Committee
Commission	The Commission for Children and Young People and Child Guardian
Criminal Law (Rehabilitation of Offenders) Act	<i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>
Department	Department of Justice and Attorney-General
Evidence Act	<i>Evidence Act 1977</i>
FLP	Fundamental Legislative Principles
LJI	Law and Justice Institute (Queensland)
LSA	<i>Legislative Standards Act 1992</i>
PACT	Protect All Children Today
QCCL	Queensland Council for Civil Liberties
QLS	Queensland Law Society
Uniting Church	The Uniting Church in Australia Queensland Synod
Youth Justice Act	<i>Youth Justice Act 1992</i>

Chair's foreword

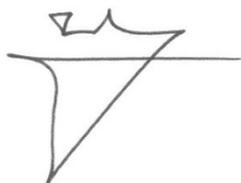
This Report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Youth Justice and Other Legislation Amendment Bill 2014.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions on this Bill and also those who were able to provide evidence at the public hearing. The Committee has received a multitude of information to assist with its inquiry and while all material has been considered it has simply not been possible, due to the time constraints, for all material to be referred to in this Report.

I also thank the Committee's Secretariat, and the Department of Justice and Attorney-General and the Parliamentary Library for their assistance.

I commend this Report to the House.



Ian Berry MP

Chair

Recommendations

Recommendation 1 **3**

The Committee recommends the Youth Justice and Other Legislation Amendment Bill 2014 be passed.

Point of Clarification **10**

The Committee requests the Attorney-General to detail in his response to this report – the diversionary programs and sentencing options available to offenders by Judicial Officers, government agencies, and other complementary organisations that may be relevant for first offenders or otherwise.

Recommendation 2 **33**

The Committee recommends the proposed amendments circulated by the Attorney-General and Minister for Justice to deal with recidivist vehicle offenders in Townville be included in the Bill and that amendments be made in the consideration in detail stage of the Bill's progression through the Legislative Assembly.

Matter for Consideration **37**

The Committee requests the Attorney-General and Minister for Justice note the proposal of the Chief Magistrate relating to bringing the appeal and review of magistrate's decisions in line with those of judges; and consider making appropriate amendments to the Youth Justice Act only, when the Bill progresses through the Legislative Assembly.

1. Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Queensland Police Service; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Youth Justice and Other Legislation Amendment Bill 2014 (Bill) was introduced into the House and referred to the Committee on 11 February 2014. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the Committee to report to the Legislative Assembly by 12 March 2014.

1.2 Inquiry process

On 13 February 2014, the Committee wrote to the Department of Justice and Attorney-General (the Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions by 26 February 2014.

The Committee received written advice from the Department on Tuesday, 18 February 2014 and received 24 submissions (see **Appendix A**).

A public hearing was held on 3 March 2014, where the Committee took evidence from a number of invited stakeholders (see **Appendix B**) followed by representatives of the Department. A copy of the transcript is of the hearing is available on the Committee webpage. <http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC>.

The Committee received a further written advice from the Department on 5 March 2014, which included a report on the issues raised in the submissions received and published by the Committee.

In his introductory speech, the Attorney-General flagged he would be making amendments to the Bill at the consideration in detail stage of the Bill's progress through the Parliament. The Department provided the further amendments to the Committee for consideration on 4 March 2014. The Committee sought comment from stakeholders and subscribers on the additional amendments by 6 March 2014.

The Committee received a further seven submissions on the additional amendments. (see

Appendix C)

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

1.3 Policy objectives of the Youth Justice and Other Legislation Amendment Bill 2014

The Bill has six main policy objectives to enhance Queensland's youth justice system as follows:

- Permit repeat offenders' identifying information to be published and open the Childrens Court for youth justice matters involving repeat offenders;
- Create a new offence where a child commits a further offence while on bail;
- Permit childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing a person for an adult offence;
- Provide for the automatic transfer from detention to adult corrective services facilities of 17 year olds who have six months or more left to serve in detention;
- Provide that, in sentencing any adult or child for an offence punishable by imprisonment, the court must not have regard to any principle, whether under statute or at law, that a sentence of imprisonment (in the case of an adult) or detention (in the case of a child) should only be imposed as a last resort; and
- Allow children who have absconded from Sentenced Youth Boot Camps to be arrested and brought before a court for resentencing without first being given a warning.²

The Bill also makes a technical amendment to the Youth Justice Act.

In implementing the policy objectives, the Bill amends the *Childrens Court Act 1992*, the *Penalties and Sentences Act 1992* and the Youth Justice Act for particular purposes, and makes minor and consequential amendments to the *Police Powers and Responsibilities Act 2000* and the *Victims of Crime Assistance Act 2009*.

1.4 Consultation on the Bill

As set out in the Explanatory Notes, the community was engaged in the review of the Youth Justice Act through the *Safer Streets Crime Action Plan – Youth Justice* (the Action Plan) discussion paper and survey, conducted in early 2013. At the time of writing, the results of consultation on the Action Plan have not been publicly released and were not available for consideration by the Committee.

However the Explanatory Notes state, of the 4,184 respondents to the survey:

- 65.9% believed that giving courts access to an adult offender's juvenile criminal history would be 'quite effective' or 'very effective';
- 66.3% agreed with making it an offence for a child to breach their bail conditions;
- 49.9% agreed with removing barriers to the naming and shaming of child offenders; and
- 47.8% agreed with removing detention as a last resort for young offenders.³

The Department's website further discloses: '*In terms of the crime prevention initiatives identified in the survey, providing education and employment (77.5%), providing better support to children experiencing violence and neglect (76.8%), and providing treatment to tackle drug addiction (73.7%) were seen as the most effective interventions*'.

² Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 1.

³ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 14.

The Explanatory Notes go on to state that key criminal justice experts, community agencies and the legal sector were invited to provide submissions on policy proposals with the following external stakeholders providing submissions:

- Queensland Law Society;
- Bar Association of Queensland;
- Legal Aid Queensland;
- Aboriginal and Torres Strait Islander Legal Services;
- The Chief Justice of Queensland;
- President of the Childrens Court;
- Chief Judge of the District Court;
- Chief Magistrate;
- University of Queensland;
- Griffith University;
- Queensland Council of Social Services; and
- Youth Advocacy Network Queensland.

Departmental officers also met with other interested parties to discuss their ideas and concerns.

1.5 Should the Bill be passed?

Standing Order 132(1) requires the Committee to recommend whether or not the Bill should be passed. The Committee provides it unwavering support to the policy objectives of the Bill.

Improving safety in Queensland's communities is of great importance and the Bill achieves this by seeking to reduce crime and the resulting damage on Queensland citizens.

The Committee notes the objections to the Bill by many stakeholders on the basis that the reforms being advanced focus on the deterrence of offenders and not on rehabilitation. The Committee confirms it also places great value on the rehabilitation of young people whose behaviour indicates a likelihood they may enter the criminal justice system and considers there is great value in supporting such people to make positive life decisions.

The Committee notes that many of the objections to the Bill relate to matters which will be dealt with in the upcoming *Blueprint for the Future of Youth Justice* (the Blueprint) which along with the Bill is intended to provide an action plan that will transform the youth justice system and break the cycle of offending.

After examination of the Bill, consideration of written and verbal submissions from stakeholders and further information provided by the Department, the Committee is satisfied the Bill should be passed.

Recommendation 1

The Committee recommends the Youth Justice and Other Legislation Amendment Bill 2014 be passed.

2. Examination of the Youth Justice and Other Legislation Amendment Bill 2014

2.1 Background to the Youth Justice reforms

As part of the Government's Six Month Action Plan (January to June 2013), the Government '*...delivered the first steps towards reforming the youth justice system with the introduction of the trial of youth boot camps...*'⁴ and the announcement of the review of the Youth Justice Act 1992 (the Youth Justice Act).

In implementing its election commitment to introduce a two year trial of youth boot camps, the Government decided to trial two different types: a Sentenced Youth Boot Camp and a voluntary Early Intervention Youth Boot Camp.

The Sentenced Youth Boot Camp allows the courts to sentence a young offender to a Boot Camp Order: '*This new sentencing option gives courts an option instead of sending the young person to detention.*'⁵ A voluntary Early Intervention Youth Boot Camp is intended to prevent young people from starting a criminal life: '*The young people referred to this boot camp are demonstrating behaviours that indicate they are on the path to becoming an offender.*'⁶

The Government implemented (and later expanded) the youth boot camp trial:

*The Early Intervention Youth Boot Camp program was initially established on the Gold Coast and has now been expanded to Fraser/Sunshine Coasts and Rockhampton. The Sentenced Youth Boot Camp program, which provides courts an additional sentencing option, was initially available to young offenders from the Cairns region and has now been expanded to include the Townsville region. The Government has also introduced a mandatory graffiti removal order requiring offenders to participate in graffiti removal and has increased the penalties for serious graffiti offences from five to seven years to better reflect the significant impact these offences have on community infrastructure and private property.*⁷

The Government also developed the Action Plan to seek community input into effective responses to youth crime:

*The Action Plan introduced a comprehensive and broad review of Queensland's youth justice system aimed at promoting the rehabilitation and accountability of young offenders while better protecting the community from recidivism.*⁸

The Action Plan presented a range of strategies to strengthen responses to youth crime, including: '*...expanding the boot camp program, reviewing the Youth Justice Act 1992, critically examining options around more effective sentencing, promoting early intervention and diversion from the justice system, responding to the causes of crime, managing demand for youth justice services, improving youth detention services and utilising effective non-government investment options*'.⁹

⁴ Department of Justice and the Attorney-General, *Safer Streets Crime Action Plan – Youth Justice*, 'Have Your Say' discussion paper, March 2013, page 3.

⁵ Department of Justice and the Attorney-General, *Safer Streets Crime Action Plan – Youth Justice*, 'Have Your Say' discussion paper, March 2013, page 6.

⁶ Department of Justice and the Attorney-General, *Safer Streets Crime Action Plan – Youth Justice*, 'Have Your Say' discussion paper, March 2013, page 6.

⁷ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 2.

⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 2.

⁹ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 2.

As part of the Action Plan, the Government released a discussion paper, which introduced ‘...a broad review of the youth justice system through 2013-14 which will culminate in the Government delivering a Blueprint for the Future of Youth Justice in Queensland’.

While the Blueprint is still under development, the Bill has been introduced as the next phase of the Government’s continuing commitment to deal with the widespread community concern about crime in Queensland.

2.2 Context for the Bill

The Bill must not be considered in isolation, but must be considered as one element of the Government’s ongoing commitment to tackle youth crime. As set out in the Explanatory Notes:

*The pattern of youth offending in Queensland is changing. While proportionally fewer young people are offending, those who are offending are doing so more often and are committing more serious offences. In 2012-13, for example, almost half of all offences were committed by approximately 10 percent of young offenders.*¹⁰

The reforms contained in the Bill are therefore aimed at better equipping the youth justice system to deter future offending, hold offenders accountable for their actions and respond appropriately to recidivist young offenders.¹¹

The theme of the Bill is clearly one of deterrence. Deterrence of those repeat offenders who continue in their course of criminal behaviour throughout the state. A strong course of action has been demanded by the community and this Bill delivers an appropriately strong response.

However the Bill must be considered together with the Government’s other initiatives which will be progressed under the Blueprint. Together with the Blueprint, the Bill will provide a comprehensive platform for addressing the prevalence and impact of youth offending in Queensland communities.

2.3 Publishing identifying information of repeat offenders and opening of the Childrens Court

The Bill amends part 9 of the Youth Justice Act to limit application of the existing prohibition on publishing identifying information about a child the subject of proceedings to ‘first-time offenders’ only. That is, the prohibition on publication is removed for repeat offenders.

To achieve this goal, the Bill inserts a new definition of ‘first-time offender’ as follows:

first-time offender means a child who at any time during a proceeding has not been found guilty of an offence.¹²

The effect is that a child who has a previous finding of guilt against them at a particular time, will be considered a repeat offender and subject to the provisions of the Bill.

The Bill retains the existing penalties which apply to a person who breaches the now limited non-publication provisions.

The Bill also amends the Youth Justice Act to enable matters relating to repeat offenders to be heard in open court. The Bill provides the court with a discretion to hold some or all of a proceeding in relation to a repeat offender in closed court, where the court considers it is in the interests of justice to do so.¹³

¹⁰ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 1.

¹¹ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 2.

¹² Clause 26 of the Bill.

¹³ Clause 31 of the Bill.

Issues raised in submissions

Submitters raised a number of issues in relation to publishing identifying information about repeat youth offenders, including issues relating to stigmatisation and labelling; the unintended impact the publication could have on third parties; the potential for increased recidivism and the impact the publication could have on the more disadvantaged youths in society.

International obligations

Of greatest concern however were the issues raised by submitters who considered the provisions in the Bill were inconsistent with Queensland and Australia's obligations under Article 40 of the United Nations *Convention on the Rights of the Child* (CROC) and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules).¹⁴

Relevant excerpts from those international agreements are set out below:

Article 40

1. Parties [to the agreement] recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, Parties shall, in particular, ensure that:
 - (b) *Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*
 - (vii) *To have his or her privacy fully respected at all stages of the proceedings.*

Beijing Rules:

8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

¹⁴ See for example: Anti Discrimination Commission Queensland, Submission No. 17; Amnesty International; Submission No. 19; Caxton Legal Service, Submission No. 15.

21. Records

21.1 *Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.*

21.2 *Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.*

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

Stigmatisation and labelling

Submitters also considered the publication of young offenders' personal details would stigmatise young offenders, making it more difficult for rehabilitation to effectively occur and making access to employment opportunities difficult for those who have been labelled a criminal.¹⁵

The concerns of submitters were based upon a lack of evidence from studies around the globe that 'naming and shaming' of youths, was an effective strategy to reduce crime.

On this point, the Queensland Law Society (QLS), Bar Association and the Queensland Council for Civil Liberties (QCCL) submitted that a similar proposal was rejected by the New South Wales Legislative Council Standing Committee on Law and Justice in 2008 which accepted that the stigmatisation coming from being named may lead to an increase in recidivism.¹⁶

The QCCL went on to state:

Rather than rehabilitating young offenders it is the QCCL's view that naming them would in fact serve to destroy their prospects of rehabilitation. This is particularly so when you consider the statistics quoted previously which demonstrate the vast majority of juvenile offenders only appear before the courts once. That small group of repeat offenders who appear to be the focus of the government's concern are not going to be deterred by the prospect of being named. In fact, as the New South Wales Committee found the likelihood is that they will be reinforced in their behaviour. Being named would become a badge of honour rather than a deterrent. The Committee went on at paragraph 3.117 of its report to say that it did not, "believe naming juvenile offenders will act as a significant deterrent to either the offender or other would be offenders."¹⁷

Griffith University submitted:

There is no research evidence from anywhere in the world that supports public identification and naming and shaming as a way to reduce youth offending. Permitting repeat offenders' identifying information to be published will serve to stigmatise young people, leading to increased risk of further offending and limiting their access to legitimate employment opportunities. If enacted, we hope courts will make publication prohibition orders as a matter of course giving due regard to the rehabilitation prospects and needs of the child.

¹⁵ See for example, ADCQ, Submission No. 17; and Amnesty International, Submission No. 19.

¹⁶ Queensland Council for Civil Liberties, Submission No. 8, page 2; Queensland Law Society, Submission No. 16, page 4; Bar Association of Queensland, Submission No. 22, page 2.

¹⁷ Queensland Council for Civil Liberties, Submission No. 8, page 3.

The Caxton Legal Centre considered there was inconsistency in the Attorney-General's Introductory Speech, when he stated the reforms are intended '*to get these young people to turn their lives around, get them an education and a job and out of a life of crime.*'¹⁸ Caxton Legal Centre considered that while these aspirations for youth were positive, as a statement asserting what these law reforms will do, they were contradictory to actual evidence and research.¹⁹

Unintended impact on third parties

A number of submissions highlighted potential issues with the publication provisions in that publication of youth offenders' details could lead to identification and stigmatisation of victims and offenders' friends, siblings and other family members.²⁰

In this regard, the QLS stated:

...this proposal could also significantly affect victims of crime, who may be more easily identified through naming offenders to a crime; and

...the families of these young people will also suffer as a result, as their communities may ostracise and blame them for the actions of their children.

Similarly, the Youth Advocacy Centre stated:

*Opening up the Childrens Court more generally may in fact result in other young people (friends or otherwise) sitting in court. This could have the unintended consequence that appearing in court may actually been seen positively, as a 'rite of passage,' or provide an 'audience' for some young people, undermining the stated aim of the policy.*²¹

Increased recidivism

Submitters also considered that the publication of personal details reforms might actually have the opposite effect than that was intended and increase recidivism by youth offenders.

The QLS did not consider that publicly naming children would be an effective deterrent for committing further crimes and again referred to the New South Wales Standing Committee on Law and Justice report which stated:

*Naming juvenile offenders would stigmatise them and have a negative impact on their rehabilitation, potentially leading to increased recidivism by strengthening a juvenile's bonds with criminal subcultures and their self-identity as a 'criminal' or 'deviant,' and undermining attempts to address the underlying causes of offending.*²²

The Bar Association of Queensland similarly submitted that research conducted by the Australian Institute of Criminology²³ (an initiative of the Australian Government) indicated that the characteristics of juvenile offending are different from those of adults in a variety of ways.²⁴

The Bar Association noted the observations in the paper that '*peer influences impact heavily on young people's risk-taking behaviour*' and that '*not only does sensation-seeking encourage attraction*

¹⁸ *Record of Proceedings (Hansard)* 11 Feb 2014, page 48.

¹⁹ Caxton Legal Centre, Submission No. 15, page 7.

²⁰ Protect All Children Today, Submission No. 4, page 1; Queensland Law Society, Submission No. 16, page 5.

²¹ Youth Advocacy Centre, Submission No. 24, page 4.

²² NSW Standing Committee on Law and Justice, *The prohibition on the publication of names of children involved in criminal proceedings*, 2008

²³ Australian Institute of Criminology, *Trends & Issues in Crime and Criminal Justice*, number 409, February 2011.

²⁴ Bar Association of Queensland, Submission No. 22, pages 2 & 3.

to exciting experiences but it leads adolescents to seek friends with similar interests who further encourage risk-taking behaviour.'

The Bar Association submitted it would be difficult to conceive of a situation where being publicly named during and following a criminal proceeding in the Childrens Court would actually deter a juvenile offender from committing further crimes. The Bar Association went on to say - it may well encourage further offending in circumstances where the offender is part of a peer group which views this type of delinquent behaviour as admirable or the resultant publicity as a 'badge of honour'.²⁵

Inequity and disadvantage

Submissions also highlighted that these reforms would likely impact those who were more disadvantaged than youths who have some means of financial support through their family or other means.

The Bar Association noted in relation to the reforms that the proposed amendment provided the court with the discretion to make an order at any time during a proceeding prohibiting publication of a repeat offender's identifying information where it considers this to be in the interests of justice. It was noted that this power may be exercised at the court's own discretion or on application by a specified party.

The Bar Association stated:

*It is clear, however, that this is not intended to be exercised in the majority of cases such that each time a disadvantaged youth is brought before the court, an application will be entertained. The likelihood is that those juveniles whose parents can afford to engage their own lawyer are likely to pursue such an order, but other disadvantaged juveniles will not.*²⁶

The Caxton Legal Centre submitted that naming and shaming laws also have the potential to increase stigma and prejudice suffered by communities that are already marginalised. Caxton Legal Centre considered that from research in the Northern Territory it was shown that naming and shaming laws had a disproportionate effect on Indigenous youth who while already over-represented in the juvenile justice system, were similarly over-represented in being singled out for public identification.²⁷

Committee Comment

The Committee has considered the issues raised in submissions however considers that (consistent with the Explanatory Notes) prohibiting publication of first-time offenders' identifying information affords young people whose behaviour is becoming serious enough to bring them into contact with the youth justice system, an opportunity to recognise the long term consequences of that behaviour and to engage with the rehabilitative programs available to them.

On this point, submissions appeared to lack general recognition of the work being undertaken in parallel to the Bill by the Department to advance the Blueprint. The Committee accepts that some of the diversionary programs and other sentencing options available to judicial officers have been overshadowed by the Bill. The Committee therefore considers it would be appropriate for the Attorney-General to clarify, for the benefit of all people and organisations who have an interest in the youth justice regime, just what other programs and options are available.

²⁵ Bar Association of Queensland, Submission No. 22, page 3.

²⁶ Bar Association of Queensland, Submission No. 22, page 4.

²⁷ Caxton Legal Centre, Submission No. 15, page 8.

Point of Clarification

The Committee requests the Attorney-General to detail in his response to this report – the diversionary programs and sentencing options available to offenders by Judicial Officers, government agencies, and other complementary organisations that may be relevant for first offenders or otherwise.

Despite this, the Committee considers that allowing publication in relation to *repeat* offenders will hold to account those children who fail to act on the opportunities available to them and who continue to pursue a course of criminal behaviour.

The Committee recognises that the measures being advanced under the Bill, may have a greater impact on repeat offenders who are from socioeconomically disadvantaged backgrounds and notes the response from the Department that addressing the causes of offending is not ignored by this Bill, but will be a key focus of the Blueprint. The Committee is satisfied with the Department's explanation:

The Blueprint will seek to build a collaborative effort across government and the non-government sector aimed at providing a coordinated response to the complex and interrelated factors which can put a young person at risk of entering or remaining in the youth justice system, including:

- *Access to education*
- *Access to training and employment opportunities*
- *A safe place to live*
- *Access to adequate health services, in particular mental health and substance misuse services*
- *Parental and community support.*

It is recognised that there is a strong link between child maltreatment and youth offending, with the trauma of abuse and neglect adversely impacts [sic] on development, education and mental health. For that reason, Blueprint reforms will be closely coordinated with child safety services and have a clear focus on parental accountability and support.²⁸

The Committee also notes the additional advice from the Department which states the chief executive of the department which administers the *Child Protection Act 1999* and the Commissioner for Children and Young People are given standing to make an application to close the court. This will allow agencies whose functions include protecting the interests of children to consider making applications on behalf of children who cannot or do not themselves make an application.²⁹

2.4 Creating a new offence where a child commits a further offence whilst on bail

The Bill inserts provisions into the Youth Justice Act which create a new offence for a child to commit a further offence while on bail. The Explanatory Notes state the intention behind this new penalty is to create a disincentive to children offending while on bail, rather than to substantially multiply the penalties to which these children are liable. It is understood however that where multiple offences arise out of a single series of criminal acts committed by a young person while on bail, an offender may only be liable to be found guilty of one breach of bail offence.³⁰

²⁸ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 3.

²⁹ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 4.

³⁰ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 4.

As summarised by the Bar Association of Queensland, the current situation when a youth commits an offence while on bail is as follows:

...the courts when sentencing any offender, already take into account whether the offender has committed offences whilst on bail and this is viewed generally as an aggravating feature of the offending and is thus reflected in the ultimate penalty imposed for the substantive offence.

Issues raised in submissions

This aspect of the Bill also received general criticism in submissions with a number of submitters questioning the need for the submission at all. Other issues raised on the new offence related to the effectiveness of the new offence in deterring youth offenders, the prospect of double punishment and that rather than create a new offence, other initiatives such as bail support programs would provide a better approach to preventing reoffending while on bail.

Necessity of the new offence

In relation to whether the new offence was in fact, necessary at all, the Bar Association of Queensland considered the offence would have little practical effect suggesting:

...should a new offence of this nature be created, it is unlikely that this will result in an additional punishment being imposed but rather it will be taken into account when determining the overall criminality of the juvenile's offending.

The Courts are properly equipped to deal with offending whilst on bail currently and the utility of such a new offence provision in the Youth Justice Act 1992 is likely to have no practical effect.³¹

The Youth Advocacy Centre provided a summary of how bail is granted in operation and highlighted that no similar provision applies to adults as that which is proposed in the Bill for youth offenders:

Bail is usually granted on the undertaking of a person to surrender to the court at a set time and date. Failure to attend court as required means bail has been breached. There is no offence currently at the adult or youth justice level for this. A warrant can be issued and the person forcibly returned to court. Where a person is found guilty of the subsequent offence, their breach of bail will be a matter the court will consider in sentencing.

When considering whether to grant bail, one criterion the police or court has to consider is the likelihood of the person further offending. They then have a broad discretion to impose conditions which they consider will reduce the risk of this happening. Non-compliance with any condition is a breach of bail condition which is an offence for an adult (s 29 Bail Act 1980 – not Penalties and Sentences Act 1992 as noted in the Explanatory Notes).

If a young person breaches their bail or a bail condition, the court can then revoke their bail and remand the young person in custody – which effectively acts as a punishment. It is a direct consequence of their actions. If it is alleged that a young person has committed a subsequent offence while on bail, the court will be advised that this is the case. This will be taken into account when the court decides whether it will grant bail in relation to the subsequent offence – even though at this point, it is still an alleged rather than an actual offence.³²

³¹ Bar Association of Queensland, Submission No. 22, pages 4 & 5.

³² Youth Advocacy Centre, Submission No. 24, page 8.

Similarly, Sisters Inside submitted:

*There is insufficient information around why young people breach bail to warrant such drastic amendments to the Youth Justice Act. Furthermore, there is nothing that defines how a new offence of breach of bail would affect a young person at sentencing. We submit these issues need to be fully investigated and detailed before any such amendments are introduced in Queensland.*³³

Double punishment

The Youth Advocacy Centre considered that the proposal for the new offence was somewhat different to that anticipated and considered the concept of an offence to commit another offence raises the question of double jeopardy.

Youth Advocacy Centre considered the proposed clause would impose an additional penalty on a child, which stemmed from the same conduct that has already been penalised following a finding of guilt for the 'subsequent offence' and recommended the new offence:

*...only apply the amendment where the subsequent offence is an indictable offence; and
...ensure that in sentencing a child on any subsequent offence committed while the child was on bail, the sentence for the commission of the subsequent offence must not take into account that it was committed while on bail if the child is also charged with the offence of committing an offence while on bail.*³⁴

The Department clarified the application of the new provision in its response to submissions stating:

*An offender will not be punished twice for an offence committed on bail. Rather, the orders made against an offender subject to the new provisions will be expected to reflect both the seriousness of the substantive offence and the circumstances in which it was committed.*³⁵

The Department also clarified that in relation to the Bail offence provisions it was not anticipated there would be any increase in the proportion of offenders being held in detention as this would be offset by reductions in the number of children entering and becoming entrenched in the youth justice system as a result of initiatives contained in the Blueprint.³⁶ This is relevant as there was much discussion at the Committee's public hearing on alternatives to bail for youth offenders. This is discussed next.

Effectiveness of the provision - other alternatives

Whether there are alternatives to the new offence of committing an offence while on bail was raised in a number of submissions and also discussed in detail at the public hearing.

The QLS submitted the most cost effective and targeted method to address breach of bail would be to increase the number of bail assistance support programs in Queensland, particularly for repeat offenders. The QLS considered these programs should be able to link in and assist a young person to comply with bail conditions, such as providing accommodation and support to remain engaged with education.³⁷

³³ Sisters Inside, Submission No. 11, page 7.

³⁴ Youth Advocacy Centre, Submission No. 24, page 9.

³⁵ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 6.

³⁶ Departmental response to submissions, 5 March 2014, page 6.

³⁷ Queensland Law Society, Submission No. 16, page 2.

At the public hearing, the Committee discussed alternative bail support programs with a number of witnesses, including the QLS, Rev Sanderson and the representatives from the Uniting Church delegation.³⁸ The concept of 'wrap-around services' was floated as a more appropriate way to approach the problem.

The Very Reverend Dr Catt from the Anglican Church of Southern Queensland Social Responsibilities Committee made the point at the hearing:

... it seems to us that, given the majority of respondents to the survey are saying or at least the data we have from the survey is saying, people are looking for mechanisms that are more to do with intervention and modifying behaviour through collaborative approaches. This legislation seems to have picked up on what we see as the punishment aspect. I have had conversations with people in the parliament who see that punishment needs to be part of the approach. It would seem to me that sometimes the desire to punish can overwhelm our desire, in the end, to create a safer community.³⁹

The QLS in its written submission suggested that the Committee might investigate whether the Government's objective may be achieved without creating a new offence. The QLS proposed:

For example, this could occur through a process whereby an entry is created on a person's criminal history where the court has made a finding that re-offending has occurred whilst on bail. The entry could potentially read 'breach of bail (by re-offending)-name/date of offence-breach proved.' In this way, breach of bail information is available to the judiciary but further offences are not created. This would also ensure that a young person is not subject to an additional penalty out of the same offending behaviour.⁴⁰

Committee Comment

The Committee acknowledges the concerns of submitters in relation to the creation of the new offence however considers that there is merit in the legislative proposal given it will sit alongside the matters being dealt with by the Blueprint. Together they will provide a balanced platform.

As highlighted by the Department's Assistant Director-General at the public hearing:

These measures are targeted quite clearly, as everyone has suggested, at repeat offenders (emphasis added). I would say to you though that all the practices and all the strategies within the blueprint are also designed for those people. Whilst young people might find their way charged with other offences because of bail problems, we would say to you that we would still try to support people through the blueprint, but ultimately this legislation empowers the blueprint because it deals with the hard end of offending in Queensland.⁴¹

To put the matter into greater context, it was of benefit to hear the Department's advice of how these amendments were formed:

...in part our consultation was with the judiciary who are frustrated by the fact that they imposed an order with some conditions—reporting and so forth—and the response by the young person to that was to go and steal another car. Some of those young people were supported by various organisations, but it did not stop their pattern of offending. The

³⁸ See *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 3 March 2014.

³⁹ See *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee at page 24.

⁴⁰ Queensland Law Society, Submission No. 16, page 2.

⁴¹ See *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee at page 41.

*frustration for the judiciary and, in some respects, for my organisation is that there was no way to deal with those young people previously. This legislation does provide some avenue for that.*⁴²

The Committee shares the frustration of the judiciary and considers that by including the new offence in the Bill, judicial officers will have a better capacity to understand the full nature of a recidivist offender's history as the subsequent offence will appear on the offender's record as just that, an additional offence. The records of repeat offenders will clearly show all their offences should they appear before a different judge at a later date.

The Committee considers that the offence is a sensible addition to the youth justice regime. In accordance with the proposals to be released in the Blueprint, there is a place for both the legislative amendments and the other bail support services to ensure that a range of youth offenders can be dealt with appropriately, as the case requires.

2.5 Permitting admissibility of childhood findings of guilt when sentencing an adult

The Bill amends the Youth Justice Act to allow findings of guilt against a youth offender - for which no conviction was recorded - to be admitted in a court sentencing that person for an offence that is later committed as an adult. Currently, the law allows for only childhood findings of guilt for which a conviction was recorded to be admissible when being sentenced as an adult. Unrecorded childhood findings of guilt cannot be admitted for any purpose.

The Youth Justice Act explicitly overrides the relevant provisions of the *Evidence Act 1977* or the *Criminal Law (Rehabilitation of Offenders) Act 1986* which would otherwise require that unrecorded childhood findings of guilt be admitted in the course of adult criminal or civil proceedings in certain circumstances.

The intention behind these amendments is to give courts which are sentencing adult offenders a more complete picture of these offenders' histories, enabling courts to frame more appropriate sentences which properly reflect the true status of the person being sentenced.

The effect of the amendment is limited to sentencing only. Unrecorded childhood findings of guilt will continue to be inadmissible for any other purpose, including those prescribed purposes for which equivalent adult convictions may be required to be disclosed under the Evidence Act or the Criminal Law (Rehabilitation of Offenders) Act.

Issues raised in submissions

The Bar Association of Queensland objected to this proposal in the strongest terms stating:

...this proposed amendment relates to prior juvenile offending of such a minor nature that the earlier sentencing court saw fit not [sic] a record of a conviction.

*For a subsequent court to be able to take it into account achieves nothing and undermines the rehabilitative potential of the first "no conviction recorded" order. The proposed amendment will advance the interests of justice not one jot.*⁴³

The Youth Advocacy Centre also submitted adult courts were already able to effectively deduce whether young adults have a criminal history of significance based on records available under the current laws.⁴⁴

⁴² See *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee at page 43.

⁴³ Bar Association of Queensland, Submission No. 22, page 5.

⁴⁴ Youth Advocacy Centre, Submission No. 24, page 8.

Youth Advocacy Centre stated when a young adult appears before the Court, the Magistrate or Judge will know, if the young person has even one conviction recorded, that there is likely to have been a significant offending history. If the offending is sufficiently serious or repeated, a conviction will be there.

Youth Advocacy Centre was not satisfied with the Explanatory Notes' statement that the only impact will be on court sentencing. It considered '*adult courts are open and any reference to previous offences as a child may be publicly reported.*' Youth Advocacy Centre continued its point: '*As such, the common practice of employers in conducting internet searches into information about potential employees may render this limitation ineffective. This could be particularly significant in smaller communities where relatively minor events may be covered by local news outlets.*'⁴⁵

The QLS similarly objected to the proposal, advocating for the status quo to be maintained.⁴⁶ The QLS sought clarification on the proposal as follows:

If the government proceeds with this proposal, we request clarification that these provisions will not operate retrospectively and apply to offences committed before the implementation of the Act.

*We note that this would be inappropriate and contravene fundamental legislative principles. On a practical basis, we note that many negotiations have taken place and pleas have been made on the understanding that a young person's criminal history will not be made available.*⁴⁷

The QLS considered that if the proposal was to proceed, the following three protections should be put in place:

- *Only the findings of guilt for the same offences (not similar) should be relevant;*
- *The scheme should be restricted to only the most serious of offences. A court could potentially access previous findings of guilt for the same offence, where the offence committed by the adult in question is a serious offence. We note that section 8, Youth Justice Act 1992 defines 'serious offence' as a life offence or one that would make an adult liable to 14 years imprisonment or more (subject to certain exemptions). Using this definition would be consistent; and*
- *A protection should be included to ensure that the time lapse of 5 years between committing an offence as a child and as an adult, is accounted for, in line with the Criminal Law (Rehabilitation of Offenders) Act 1986.*⁴⁸

In response to the Committee's questions at the public hearing, the Department confirmed:

the operation of these provisions would be retrospective – in that once the provisions have commenced they would apply in current time and that for example a 22 year old who might appear in an adult court after commencement, if they have a record as a child, that record will be available for the purpose of sentencing in the adult court; and

*while the record is made available to the judiciary for the purposes of sentencing only, if the sentencing occurs in open court, as is likely for an adult, it would effectively be publicly available.*⁴⁹

⁴⁵ Youth Advocacy Centre, Submission No. 24, page 8.

⁴⁶ Queensland Law Society, Submission No. 16, page 3.

⁴⁷ Queensland Law Society, Submission No. 16, page 3.

⁴⁸ Queensland Law Society, Submission No. 16, page 3.

⁴⁹ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, page 44.

Committee Comment

The Committee does not accept the objections to this proposal and considers that, in accordance with the information received from the Department in its initial briefing, that the policy proposal strikes an appropriate balance between the focus on the youth justice system on rehabilitation of offenders and recognising the purpose of sentencing as being able to appropriately punish offenders.⁵⁰

By providing the judiciary with appropriate information, those who are convicted will face more realistic sentences if they have not taken responsibility for their actions and continue their pattern of offending into their adult years.

As highlighted by the Department in its response to submissions, a court will still be able to have appropriate regard to the severity, frequency and any other mitigating factors associated with the offender's criminal history and will be able to give whatever weight it deems fit in determining its sentence, but importantly the court will be able to do so having the full information of the offender's history before it.

2.6 Transferring certain 17 year olds from detention to adult corrective services facilities

Part 8, division 2A of the Youth Justice Act provides for a court to order in certain circumstances that an offender be transferred to an adult correctional facility on turning 18 (or on turning 17 where they have previously been held in prison under a sentence or on remand).

The Bill replaces the existing division 2A in its entirety, providing:

- offenders sentenced to a period of detention must be automatically transferred to an adult correctional facility on turning 17 if, at that time, they have at least 6 months left to serve in detention;⁵¹
- if an offender is 17 at the time he or she is sentenced for an offence committed as a child (being a sentence to a period of detention of six months or more), that sentence will automatically be taken to be a sentence to a period of imprisonment to be served in a corrective services facility;⁵²
- for an automatic transfer, the remainder of the period which the offender must serve in detention will be taken, from the time of their transfer, to be a sentence for a term of imprisonment to which the *Corrective Services Act 2006* (CSA) applies;⁵³
- the offender will be required to be released on parole on the day they would have been required to be released from detention under a supervised release order had they remained in a youth detention facility, subject to the provisions of the CSA providing for the person's earlier release in exceptional circumstances or continued custody under another sentence of imprisonment;⁵⁴
- in relation to a child offender sentenced to serve a period of detention, the chief executive will be required to make a 'prison transfer direction' within 28 days of the offender being sentenced – the direction must state the transfer day, that the child is to be transferred to a

⁵⁰ Letter from the Department, dated 17 February 2014, page 5.

⁵¹ Clause 20 of Youth Justice and Other Legislation Amendment Bill 2014, proposed sections 276B and 276D.

⁵² Clause 20 of Youth Justice and Other Legislation Amendment Bill 2014, proposed sections 276B and 276D.

⁵³ Clause 20 of Youth Justice and Other Legislation Amendment Bill 2014, proposed section 276D.

⁵⁴ Clause 20 of Youth Justice and Other Legislation Amendment Bill 2014, proposed section 276D.

corrective services facility on the transfer day and that the unserved period of detention must be served as a period of imprisonment;⁵⁵ and

- according to the Explanatory Notes⁵⁶, automatic transfer will also apply to offenders serving a period of detention for whom no court ordered transfer date has been set under the existing transfer provisions, including offenders in detention who have either already turned 17 and have more than six months left to serve in detention or who will turn 17 and become eligible for transfer during the course of their detention.⁵⁷

The Explanatory Notes state the new Division 2A is intended to operate equitably and transparently, with all transfers occurring automatically under the same specified conditions in relation to all offenders. For this reason, new division 2A will expressly prohibit any merit-based review or appeal of the chief executive's decision to make a prison transfer direction.⁵⁸

New section 276E provides that Part 4 of the *Judicial Review Act 1991* does not apply to a decision of the chief executive to give a prison transfer direction and that (except in certain circumstances) the decision is final and conclusive, is unable to be challenged, reviewed or set aside and is not subject to any declaratory, injunctive or other order of a court or tribunal.⁵⁹

In his Introductory Speech, the Attorney-General stated the reasons for the proposed automatic transfer amendments as:

*In Queensland, we recognise that 17-year-olds have sufficient maturity to be held fully accountable for their actions. We also recognise that putting 17-year-olds in detention with younger offenders such as 13- and 14-year-olds is detrimental... By requiring that 17-year-olds and above who still have another six months to serve are transferred, we clearly target those repeat offenders and serious violent or sexual offenders whose offending has earned them lengthy custodial sentences. Further, as transfers will occur automatically and will not be discretionary, the merits of a decision to effect the transfer of a young person will not be subject to review or appeal.*⁶⁰

Issues raised in submissions

The vast majority of submissions received opposed the Bill's proposed automatic transfer amendments for a number of reasons.⁶¹ The Uniting Church noted Queensland's unique status as the sole Australian state to treat 17 year olds as adults in the criminal justice system. Despite this, it observed that this group were not treated as adults in other ways, for example, as possessing a right to register to vote.⁶²

The Uniting Church stated the '*...characteristics of juvenile offending are different from adult offending in several ways and for a variety of reasons, including the immaturity of the brain and the*

⁵⁵ Clause 20 of Youth Justice and Other Legislation Amendment Bill 2014, proposed section 276C. Page 6 of the *Explanatory Notes* provide further detail on the making of a prison transfer direction: '*The direction must be given to the offender and to the chief executive of the department in which the CSA is administered immediately on being made. In the case of an eligible offender who is already 17 at the time of sentence, transfer will be effected under the terms of the statute rather than by administrative direction*'.

⁵⁶ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 6.

⁵⁷ Page 6 of the *Explanatory Notes* states that: 'The chief executive must give these offenders notice of their transfer date as soon as practicable after the legislation's commencement'.

⁵⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 6.

⁵⁹ Clause 20 of the Bill.

⁶⁰ *Record of Proceedings (Hansard)*, 11 February 2014, page 47.

⁶¹ See for example: Protect All Children Today, Submission No. 4, pages 2-3, Sisters Inside, Submission No. 11, pages 8-9, and Anti-Discrimination Commission Queensland, Submission No. 17, pages 12-14

⁶² The Uniting Church in Australia Queensland Synod, Submission 7, page 4.

*prevalence of risk-taking behaviours, disability and mental illness...'*⁶³ It described the practice of incarcerating seventeen year olds in adult prisons as *'...a breach of our international obligations under the United Nations Convention on the Rights of the Child'*.⁶⁴

Similar to the commentary above in relation to the publication of information provisions, submitters also raised Queensland's international obligations under the various international treaties in relation to this aspect of the Bill.

Maturity and Development

In his submission to the Committee, Mr Peter Taylor argued that 17 year olds are *'still children'* who, despite possessing a capacity to *'act tough'* and commit adult crimes, are *'...still able to be turned onto the 'right' path'*.⁶⁵ Mr Taylor opposed the Bill's proposed automatic transfer amendments, arguing that mixing 17 year olds with adults will *'terrorise'* the former group and turn them into *'...calloused [sic] adults incapable of anything except sharing their sense of injustice, misery and brutality'*.⁶⁶

Monique Bond expressed similar sentiments, observing: *'Most of the countries that Australia shares values with have 18 years as the age of adulthood that includes when people should go to adult jails'*.⁶⁷ She considered that the Government had been supplied with considerable evidence over the past decade proving that *'...it is wrong to put 17 year olds in adult jails'*.⁶⁸

Similarly, The Uniting Church noted Queensland's unique status as the sole Australian state to treat 17 year olds as adults in the criminal justice system. Despite this, it observed that this group were not treated as adults in other ways, for example, as possessing a right to register to vote.⁶⁹

The Uniting Church stated that the *'...characteristics of juvenile offending are different from adult offending in several ways and for a variety of reasons, including the immaturity of the brain and the prevalence of risk-taking behaviours, disability and mental illness...'*⁷⁰ It described the practice of incarcerating seventeen year olds in adult prisons as *'...a breach of our international obligations under the United Nations Convention on the Rights of the Child'*.⁷¹

Protect All Children Today (PACT) submitted the point at which a young person becomes an adult varies greatly - it is not the case that each young person is of adult mind and cognition from the age of 17:

*The Queensland Criminal Justice System recognises that 17 year olds are of sufficient maturity to be held fully accountable for their actions. However, this is contrary to research undertaken by many youth development experts.*⁷²

PACT identified factors that should be taken into account when considering this issue.⁷³ Given the significant development and growth which occurs between the ages of 15 and 18, the *'...age of the youth when committing the offence...'* was one factor. Another being: *'The positive steps taken by a youth offender to rehabilitate whilst in detention...'*

⁶³ The Uniting Church in Australia Queensland Synod, Submission 7, page 4.

⁶⁴ The Uniting Church in Australia Queensland Synod, Submission 7, page 4.

⁶⁵ Peter Taylor, Submission No. 2, page 2.

⁶⁶ Peter Taylor, Submission No. 2, page 2.

⁶⁷ Monique Bond, Submission No. 3, page 2.

⁶⁸ Monique Bond, Submission No. 3, page 2.

⁶⁹ The Uniting Church in Australia Queensland Synod, Submission No. 7, page 4.

⁷⁰ The Uniting Church in Australia Queensland Synod, Submission No. 7, page 4.

⁷¹ The Uniting Church in Australia Queensland Synod, Submission No. 7, page 4.

⁷² Protect All Children Today Incorporated, Submission No. 4, page 3.

⁷³ Protect All Children Today Incorporated, Submission No. 4, page 3.

Lack of safeguards and need for discretion

Submitters also criticised the automated nature of the Bill's offender transfer provisions. In this regard PACT stated:

With transfers to occur automatically, the people in possession of the facts (such as Detention Officials), are removed from the decision making process.

Automatically transferring a child to an adult facility without appropriate transition measures and in the absence of any consideration of the individual's needs and level of functioning will expose young offenders to unnecessary stressors.⁷⁴

PACT also submitted that the amendments would result in increased incarceration costs, which it expected were '*...likely to lead to less money being available for victim services and preventative and rehabilitation programs*'.⁷⁵

On the basis that an object of the proposed amendments is to reduce overcrowding in youth detention centres, the QCCL argued that it would be better to focus efforts on reducing '*...the very high number of people in detention on remand than transferring children into adult prisons to improve their education in the world of crime*'.⁷⁶ The QCCL quoted statistics presented in the Action Plan that, on average, 70% of young people in detention are on remand, waiting to be sentenced by a court.⁷⁷ According to the Action Plan, '*over the past year*' Queensland's two youth detention centres '*...have been full on a regular basis...*' and '*...only approximately 10% ever receive a sentence of detention*'.⁷⁸ The Action Plan concluded that: '*This places significant pressure on the youth justice system, and is a great burden in terms of resources*'.⁷⁹

Sisters Inside also opposed the proposed amendments, arguing that a sentence received as a young person should not follow a young person into adulthood: '*If a sentencing Magistrate or Judge finds that the most appropriate penalty for an offence committed by a young person is a period of detention then that young person ought to be subject to a period of detention and not imprisonment*'.⁸⁰ Sisters Inside foreshadowed '*devastating*' potential consequences to the proposed amendments, arguing that transferring children to adult prisons will:

...undo any progress made in detention such as programs and education that are focused on rehabilitation. It will also inevitably introduce and expose young people to people and situations they identify with, potentially increasing the risk of reoffending with a new cohort of people'.⁸¹

The Commission for Children and Young People and Child Guardian (Commission) supported the use of youth detention centres, identifying them as '*...highly structured environments where young people have access to crime prevention programs, general schooling and training throughout the day*'.⁸² In expressing concern that rehabilitative gains made by 17 year olds would be jeopardised by

⁷⁴ Protect All Children Today Incorporated, Submission No. 4, page 3.

⁷⁵ Protect All Children Today Incorporated, Submission No. 4, page 3.

⁷⁶ Queensland Council for Civil Liberties, Submission No. 8, pages 4-5.

⁷⁷ Queensland Council for Civil Liberties, Submission No. 8, page 4.

⁷⁸ Department of Justice and the Attorney-General, *Safer Streets Crime Action Plan – Youth Justice, 'Have Your Say'* discussion paper, March 2013, page 10.

⁷⁹ Department of Justice and the Attorney-General, *Safer Streets Crime Action Plan – Youth Justice, 'Have Your Say'* discussion paper, March 2013, page 10.

⁸⁰ Sisters Inside Incorporated, Submission No. 11, pages 8-9.

⁸¹ Sisters Inside Incorporated, Submission No. 11, page 8.

⁸² The Commission for Children and Young People and Child Guardian, Submission No. 12, page 2.

automatic transfer to adult correctional facilities, the Commission advocated a mandatory planned approach for 17 year olds who meet the criteria for automatic transfer:

The Commission recommends that the legislation includes a requirement that Corrective Services develop a transitional case management plan prior to the automatic transfer of a 17 year old to an adult correctional facility. This will ensure that young people transferring to an adult correctional facility have been fully prepared for what to expect in an adult prison and can build on educational, therapeutic and rehabilitative programs commenced while in youth detention.

Pre-transitional planning should also determine the appropriate level of security in the new facility to avoid the young person being automatically placed in a maximum security unit, as is the usual practice for new prisoners.⁸³

The issue of the removal of judicial review of chief executive decisions, was also raised by Sisters Inside, QCCL and the QLS. The QLS stated:

As a matter of principle it is concerning for any decision-maker to be provided with an unreviewable discretion as this can promote poor internal processes, poor decision-making practices and also may lead to inappropriate conduct of officials. Ideally, both internal and external review of the decision through the courts should be available.⁸⁴

At the public hearing, the Department responded to the above concerns with the Assistant Director-General explaining the proposed process of transition of offenders between youth detention centres and adult correctional facilities:

What will happen in the future is that there will be a very clear transition plan. Prior to their removal from detention to a Queensland correctional facility, there will be discussions with the correctional facility and the detention centre about the young person, how they are doing, what sort of issues they might have, how they might be managed, whether they are violent, whether they need some sort of support mechanisms. That discussion, that interplay between corrections and youth justice, will result in a very defined plan for the transfer of that individual from a detention centre to an adult facility.⁸⁵

The Department responded to submitters' concerns that transferring 17 year olds to adult prisons would place young offenders at risk of harm and would impede rehabilitation, as follows:

Queensland Corrective Services (QCS) already has significant experience in the management of 17 year olds who are convicted as adults and sentenced to a term of imprisonment. Further, the department is closely engaged with QCS to ensure rigorous practices are in place to appropriately manage the transfer of young offenders affected by the new provisions.

Where possible, this will involve the accommodation of young male offenders in the Youthful Offenders Unit at the Brisbane Correctional Centre. Arrangements also exist for the Commission for Children and Young People and Child Guardian's Community Visitor Program, which provides advocacy and increased supports for 17 year old offenders, to operate in adult prisons across the state.

The measure will only result in a very small and manageable number of young offenders being transferred to adult correctional facilities. Had the measure applied over the last five

⁸³ The Commission for Children and Young People and Child Guardian, Submission No.12, page 3.

⁸⁴ Queensland Law Society, Submission No. 16, page 6.

⁸⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 3 March 2014, page 44.

*years since 2008-09, for example, it would have affected fewer than seven offenders per year.*⁸⁶

Access to services and security

A number of submitters raised concerns that offenders transferred to adult correctional facilities will not be able to access the same level of services, treatment programs and supports, either during their time in custody or following release.⁸⁷ In response, the Department stated: *'Appropriate transition programs will also [be] managed by the youth detention centre from which the young offender is being transferred to ensure transfers occur smoothly and effectively and that continuity is maximised in the delivery of services to affected young people.'*⁸⁸

The Department also responded to submitters' concerns⁸⁹ that offenders transferred to adult correctional facilities should transfer at the same security level. The Department confirmed: *'The department is closely engaged with Queensland Corrective Services (QCS) to ensure rigorous practices are in place to appropriately manage the entry of young offenders into adult correctional facilities.'*

Committee Comment

The Committee supports the automatic transfer provisions included in the Bill.

While acknowledging submissions referred to the very complex processes involved with brain development and human maturation, the Committee believes that a division between child and adult must be identified in order to facilitate a functional and effective justice system. In this regard, the Committee supports the status quo in Queensland, being that 17-year-olds are recognised as possessing sufficient maturity to be held fully accountable for their actions.

The Committee agrees it is detrimental to place 17-year-olds in detention with younger offenders, such as 13- and 14-year-olds, and views the Bill as a mechanism to avoid such instances. As explained by the Department in its initial briefing, the automatic transfer will enhance the safety and good order of youth detention centres by removing that cohort of offenders whose age and advanced stage of development make them unsuitable to remain in the same facility as younger, more vulnerable offenders.⁹⁰

Further, it is the Committee's view that the Bill targets those repeat offenders and serious violent or sexual offenders whose offending has earned them lengthy custodial sentences. In practice, the measures contained in the Bill will result in only a small and manageable number of young offenders being transferred to adult correctional facilities. As stated by the Department in its response to submissions, these measures are targeted at a limited cohort and:

*... will only affect a small proportion of the offenders currently held in youth detention. As noted above, had the measure applied over the five years since 2008-09, it would have affected fewer than seven offenders per year.*⁹¹

The Committee acknowledges Queensland Corrective Services' significant expertise in the management of 17 year olds who are convicted as adults and sentenced to a term of imprisonment and is satisfied the Department is closely engaged with the Queensland Corrective Service to ensure

⁸⁶ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, pages 7-8.

⁸⁷ See for example: Sisters Inside, Submission No 11; The Commission for Children and Young People and Child Guardian, Submission No. 12; Queensland Law Society, Submission No. 16; Griffith University, Submission No 18; and Youth Advocacy Centre, Submission No. 24.

⁸⁸ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, pages 8-9.

⁸⁹ See Submission No.s: 12 and 16.

⁹⁰ Letter from the Department of Justice and Attorney-General, 18 February 2014, Attachment, page 12.

⁹¹ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 8.

rigorous practices are in place to appropriately manage the transfer of young offenders affected by the new provisions.

The Committee is satisfied that automatic transfer will enhance the safety and good order of youth detention centres.

2.7 Disregarding certain statutory and legal principles when sentencing offenders to imprisonment or detention

The Explanatory Notes identify an existing sentencing principle, that ‘...*prison or detention should only be imposed when there is no other less onerous sanction appropriate in all of the circumstances of the offence and the offender from both the youth and adult justice systems*’.⁹² This overarching common law sentencing principle is legislatively enshrined under the *Penalties and Sentences Act 1992* for offenders 17 years and over and under the *Youth Justice Act* for offenders aged 16 years and under.⁹³

In his Introductory Speech, the Attorney-General explained the Bill’s exclusion of this sentencing principle:

*This bill expressly excludes this sentencing principle, both at common law and under statute. Effectively, this removes the need for a court to consider that a sentence of imprisonment for adults or detention for young people should only be imposed as a last resort and where no other sentence is appropriate. This will give courts the flexibility to craft sentences which better reflect the severity of the crime being punished, communicate the community’s denunciation of offending, deter future offending and appropriately protect the community from offending.*⁹⁴

In addition to omitting the sentencing principle through technical amendments to the *Youth Justice Act*⁹⁵, the Bill inserts an express provision ‘...*ousting any other Act or law to the extent that a court, in sentencing a child for an offence, must not have regard to any principle that detention should only be imposed as a last resort*’.⁹⁶ This is said to ensure that, following the removal of the principle from the *Youth Justice Act*, the corresponding common law principle is not revived by the courts in sentencing child offenders.⁹⁷

According to the Explanatory Notes, following the removal of the sentencing principle, ‘...*the [Childrens] Court will continue to be required to have regard to other existing statutory principles—such as proportionality between the offence and the sentence imposed, the nature of the offence and the child’s criminal history and the importance of holding the child accountable for their actions—in framing an appropriate sentence in relation to an offence*’.⁹⁸ In that regard: ‘*The amendment does not remove all safeguards from the YJ [Youth Justice] Act intended to protect the interests and promote the rehabilitation of young offenders*’.⁹⁹

⁹² *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 5.

⁹³ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 5.

⁹⁴ *Record of Proceedings (Hansard)*, 11 February 2014, page 47.

⁹⁵ According to page 5 of the *Explanatory Notes* the Bill omits the principle that detention should be imposed only as a last resort and for the shortest appropriate period from the sentencing principles in section 150 of the *Youth Justice Act 1992* and from the charter of youth justice principles in schedule 1 of the Act; and omits section 208, which permits a court to impose a detention order on a child only if satisfied that no other sentence is appropriate in the circumstances.

⁹⁶ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 5.

⁹⁷ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 5.

⁹⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 5.

⁹⁹ Letter from the Department of Justice and Attorney-General, 18 February 2014, Attachment, page 7.

In explaining the objectives of the proposed amendment, the Department anticipated that removal of the sentencing principle may free up the sentencing process, resulting in children spending less time in custody on remand awaiting sentencing:

...the amendments relieve some of the current constraints which limit courts' capacity to dispose of matters quickly.

Any consequent reduction in the number of children on remand is a desirable outcome in and of itself. An unacceptable 78% of the children currently in detention centres are being held on remand. A key goal of the current reform process, and a particular focus of the measures contained in the forthcoming Blueprint, is to significantly reduce this rate of remand.

Any reduction in the time offenders spend on remand would also strengthen the effectiveness of punishment under the YJ Act. A critical consideration in the effectiveness of punishment imposed on young offenders is immediacy – the greater the immediacy between the act being punished and the punishment itself, the greater the child's understanding that the punishment is a direct consequence of their actions. By reducing the potentially lengthy period of remand which could otherwise separate the offence from the detention order imposed in relation to it, the amendments will strengthen this causal connection between offence and punishment and will therefore enhance the capacity of a detention order to contribute to improvements in a young offender's behaviour.¹⁰⁰

In order for the changes to apply to offenders 17 years and over, the Bill omits the sentencing principle from section 9 of the *Penalties and Sentences Act 1992* and inserts an express provision similar to that inserted in the Youth Justice Act. The Department advised these amendments will:

...ensure that children are not exposed to more severe punishment as a result of the omission of the principle of detention as a last resort and to maintain consistency between the adults' and children's sentencing regimes...

While not increasing the range of sentencing options available to courts in sentencing offenders aged 17 years and over, these amendments, by making imprisonment a more realistic sentencing option for all offences, will rebalance the emphasis of sentencing more towards deterrence and community protection.¹⁰¹

Issues raised in submissions

Similar to the policy initiatives discussed above, the removal of the sentencing principle received a large amount of criticism in submissions.¹⁰² Below, the Committee discusses the issues raised.

Various issues

In its submission, the Law and Justice Institute (Queensland), (LJI), argued that removing the sentencing principle is '*...inconsistent with Australia's obligations at international law...*' and may result in '*...quicker resort to detention on sentence and remand...*'¹⁰³ It stated that the latter would: '*be contrary to the objective of protecting the community, as it would further entrench young offenders in the criminal justice system; impede rehabilitation; increase the risk of recidivism both as a young person and as an adult; and add to an already overburdened and costly juvenile detention*

¹⁰⁰ Letter from the Department of Justice and Attorney-General, 18 February 2014, Attachment, page 7.

¹⁰¹ Letter from the Department of Justice and Attorney-General, 18 February 2014, Attachment, page 8.

¹⁰² 19 of the 24 submissions received were critical of this policy initiative.

¹⁰³ Law and Justice Institute (Queensland), Submission No. 20, page 4.

system'.¹⁰⁴ LJ observed that the sentencing principle is enshrined in the CROC and exists in every other jurisdiction in Australia.¹⁰⁵

The Anti-Discrimination Commission Queensland stated research consistently shows detention is the least effective option to reduce re-offending, and studies indicate youth detention is an effective pathway to adult offending:

*The Australian Institute of Criminology says it is widely recognised that responses such as incarceration foster further criminality. Canadian studies referred to by the Institute found that juvenile detention exerts the strongest criminogenic effect, and the researchers recommend early prevention strategies, the reduction of judicial stigma and the limitation of interventions that concentrate juvenile offenders together.*¹⁰⁶

In its submission, Griffith University concluded there is no evidence to support the removal of these fundamental principles: *'If removed, it may lead to an increased use of detention, increased reoffending, and increased costs for the Queensland community'*.¹⁰⁷

Further matters raised in submissions included:

- there was an absence of evidence that current sentencing practices are too lenient or inflexible or that removing the principle will promote rehabilitation and reduce recidivism;¹⁰⁸ and
- that removing the principle will result in greater rates of custody, entrenching young offenders in the criminal justice system, impeding rehabilitation and disrupting the process whereby most children 'grow out' of offending as they mature.¹⁰⁹

In response to these concerns, the Department stated the amendment does not mean that court sentencing practices will no longer have regard to the interests and rehabilitation of young offenders: *'A court sentencing a young offender must still have regard to the remaining sentencing principles in the Youth Justice Act 1992 which aim to ensure the court takes into account the potential impact of any sentence on the offender, their maturity and accountability and their capacity for rehabilitation'*.¹¹⁰ The Department considered: *'Balancing these complex factors will continue to be a matter for the courts on a case-by-case basis'*.¹¹¹

Judicial discretion

In response to submitters' concerns that removing the sentencing principle reduces the sentencing options available to courts,¹¹² the Department stated:

It is anticipated that removal of the principle may free up the sentencing process, resulting in children spending less time in custody on remand awaiting sentencing. By giving courts greater flexibility to craft sentences which reflect the offender's particular circumstances and removing the existing requirement that courts consider a range of matters and alternative sentencing options before they can consider a detention order, the amendments

¹⁰⁴ Law and Justice Institute (Queensland), Submission No. 20, page 4.

¹⁰⁵ Law and Justice Institute (Queensland), Submission No. 20, page 4.

¹⁰⁶ Anti-Discrimination Commission Queensland, Submission No. 17, page 8.

¹⁰⁷ Griffith University, Submission No. 18, page 5.

¹⁰⁸ See Submissions No.s: 20 and 24.

¹⁰⁹ See for example: Griffith University, Submission No. 18, pages 4-5; Law and Justice Institute (Queensland), Submission No. 20, pages 4-7; and Comparative Youth Penalty Project, Submission No. 21, pages 6-7

¹¹⁰ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, pages 10-11.

¹¹¹ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 11.

¹¹² See Queensland Law Society, Submission No. 16; and Rev Dr W Sanderson, Submission No. 23.

may relieve some of the current constraints which limit courts' capacity to dispose of matters quickly.

In 2012-13, 78% of the children in Queensland detention centres were held on remand. Together with the remand reduction measures to be contained in the Blueprint, obviating this limitation on the court's capacity will contribute the [sic] reducing this unacceptably high rate.¹¹³

Current application of the principles

The Bar Association argued the sentencing principle does not currently cause courts to disregard detention or imprisonment where warranted, but encourages courts to consider other options more suited to promoting rehabilitation where appropriate.¹¹⁴ In response, the Department stated:

Courts will still have regard to the prescribed range of mitigating and aggravating factors in framing sentences which appropriately balance the various purposes of sentencing. Factors to which the court will continue to have regard include the wellbeing and rehabilitation of the offender, the seriousness of their offending, community protection, the offender's level of maturity and accountability for their actions and the interests of victims and others affected by the offending.

How these complex factors are appropriately balanced will continue to be a matter for the courts on a case-by-case basis.¹¹⁵

Committee Comment

The Committee supports the Bill's proposed exclusion of the sentencing principle, both at common law and under statute. In the Committee's view, the exclusion will provide courts with the flexibility to craft sentences which better reflect the severity of the crime being punished, communicate the community's denunciation of offending, deter future offending and appropriately protect the community from offending.

The Committee notes that a court sentencing a young offender must still have regard to the remaining sentencing principles in the Youth Justice Act and is comforted with its understanding that courts will continue to balance these complex factors on a case-by-case basis.

The Committee acknowledges concerns expressed by submitters at the number of child offenders in the criminal justice system who are in custody on remand. The Committee is pleased the Department anticipates removal of the sentencing principle may free up the sentencing process, resulting in children spending less time in custody on remand awaiting sentencing.

The Committee anticipates the Blueprint, which is expected to include remand reduction measures which will work in concert with the Bill's proposed amendments.

2.8 Arresting and resentencing certain children without giving a warning

The Bill also makes a minor adjustment to the Sentenced Youth Boot Camp program to better protect the program's efficacy and integrity. As explained by the Attorney-General in his Introductory Speech, *'The bill provides for a warrant to be issued for the arrest of a child who has absconded from a boot camp centre and enables an absconder to be brought back before the Childrens Court for resentencing immediately without first being given a warning'*.¹¹⁶

¹¹³ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, pages 11-12.

¹¹⁴ Submission No. 22.

¹¹⁵ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 12.

¹¹⁶ *Record of Proceedings (Hansard)*, 11 February 2014, page 47.

The existing provisions of the Youth Justice Act prescribe a formal process to be undertaken where a child is believed to have breached a 'community based order':

Unless the child cannot reasonably be located, the chief executive under section 237 must currently warn the child of the consequences of further contravention before taking breach action. If the child continues to contravene the order, the chief executive may apply to a Childrens Court magistrate for the order to be varied, extended or discharged and the child resentenced. If the chief executive reasonably believes the child would not comply with a summons to appear before the magistrate, a justice may issue a warrant for the child's arrest under section 238.¹¹⁷

The Explanatory Notes explain the nature of a 'boot camp order' and the reasons why the Bill introduces amendments to the current law:

A boot camp order is an alternative sentencing option which is only available where a young offender is otherwise liable to a period of detention, and represents a final opportunity for that young person to avoid serving a period of detention. Accordingly, it is inappropriate that a young offender in breach of a boot camp order be permitted to continue at large or be entitled to a warning before they can be brought before a court to be resentenced.¹¹⁸

Issues raised in submissions

Capacity to understand

In its submission, PACT argued that children and young people are '*...not cognitively equipped to foresee the consequences of their actions and need to receive warning about the implications of breaching a boot camp order, in order for it to act as a deterrent*'.¹¹⁹ It argued that the proposed amendment will '*...increase the court caseloads, resulting in further delays for victims*'.¹²⁰

Suggested limitation

The Youth Advocacy Centre highlighted the use of different terminology in the Explanatory Notes and the Bill. The Explanatory Notes refer to a child offender who has '*absconded*' from a Sentenced Youth Boot Camp. Youth Advocacy Centre submitted the term '*abscond*' incorporates an '*intention not to return*'.¹²¹ Clause 14 of the Bill refers to circumstances where the chief executive is not required to warn the child of the consequences of further contravention before taking breach action, including where the chief executive reasonably believes the child has contravened the order by '*...leaving the boot camp centre... without the chief executive's written consent*'.¹²² Youth Advocacy Centre argued that clause 14 of the Bill should reflect the Explanatory Notes' use of the term '*absconding*', rather than using the words '*leaving the boot camp centre without... written... permission*': '*The latter could turn out to be a technical breach rather than "absconding" (that is, having an intention not to return) or indeed for a reason which may be considered to be understandable, such as the child being bullied by others and not getting support or being too scared to say anything*'.¹²³

The Department responded as follows:

¹¹⁷ Letter from the Department of Justice and Attorney-General, 18 February 2014, Attachment, page 9.

¹¹⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 7.

¹¹⁹ Protect All Children Today, Submission No.4, page 3.

¹²⁰ Protect All Children Today, Submission No.4, page 3.

¹²¹ Youth Advocacy Centre, Submission No. 24, page 13.

¹²² Clause 14 of the Bill omits and replaces existing section 237(3).

¹²³ Youth Advocacy Centre, Submission No. 24, page 13.

Before it makes a boot camp order, the court must be satisfied the details of the boot camp program have been explained to the child in a way, and to a level of detail, which is appropriate to that child. Further, as soon as possible after a child arrives at a boot camp centre, the centre provider must explain the camp rules and the child's rights and responsibilities to the child in a way, and to a level of detail, appropriate to that child.

Boot camp centre operators are also required to employ a range of non-legislative measures to ensure children subject to a boot camp order comply with their obligations under the terms of the order.¹²⁴

Committee Comment

The Committee supports the Sentenced Youth Boot Camp model, agreeing that it provides an opportunity for young offenders to be diverted from detention and to participate in a holistic, integrated program that instils discipline and respect, addresses the causes of crime, provides a direct consequence for offending, increases supervision and facilitates reintegration to the community.

In that context, the Committee supports the Bill's proposed amendments, which provide for arrest of absconders and their resentencing without warning. The Committee acknowledges that a boot camp order is an alternative sentencing option which is only available where a young offender is otherwise liable to a period of detention. Given the order's status as '*a final opportunity*', the Committee believes that an offender in breach of a boot camp order should be located and retrieved. Such an offender should not be entitled to a warning before being compelled to appear at court to be resentenced.

In the Committee's view, the Bill's amendments are facilitative – they allow authorities to respond rapidly and appropriately where a child offender has absconded from a Sentenced Youth Boot Camp. The Committee is satisfied with the safeguards identified by the Department that ensure children subject to a boot camp order are:

- appropriately educated on the details of the boot camp program, the camp rules and the child's rights and responsibilities; and
- the recipients of a range of non-legislative measures employed by boot camp centre operators to ensure children comply with their obligations under the terms of the order.

2.9 Making a technical amendment to the Act

The Explanatory Notes explain the technical aspects of the amendment in the Bill as:

The Bill makes a technical amendment to the Youth Justice Act 1992 to remove an ambiguity in relation to the Childrens Court's powers under part 7, division 12 on finding that a child offender has breached a community based order. Sections 245, 246 and 246A provide for the court to take a range of actions, including extending the period of the order or discharging the order and resentencing the child for the original offence.

Where court action against the child in relation to the breach has been commenced during the period of the order, these provisions permit the court to take any of these actions even though the period of the order has expired in the interim. To make abundantly clear that the court may act in this way, these provisions each contain a subsection providing that an

¹²⁴ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, pages 12-13.

*order which has expired is taken to continue in force until court proceedings in relation to the breach have been heard and decided.*¹²⁵

According to the Explanatory Notes, the Childrens Court has raised some doubt about a statutory provision which provides an order is taken to continue in force and what effect it may have, suggesting this may administratively extend the period of the order's full effect beyond its court-ordered or statutory expiration date.

The Explanatory Notes provide:

*To remove this doubt and to clarify that a child the subject of an expired order is not subject to ongoing compliance with the order's requirements beyond the date fixed by the court or by the legislation for its expiration, the ambiguous subsections will be removed from each of these provisions. This will ensure the provisions operate as intended and will provide fairness to child offenders by clarifying that community based orders may only be extended or adjusted by court order.*¹²⁶

Issues raised in submissions

The proposed technical amendments stimulated little response from submitters.

In its submission, PACT supported the steps taken to remove ambiguity in relation to community based orders.¹²⁷

With respect to proposed clause 18 of the Bill,¹²⁸ the QLS argued: '*This provision seeks to remove the court's power in relation to the breach of a boot camp order. We consider that this provision should be maintained, and allow the continuation of a boot camp order until a proceeding is heard and decided by a court.*'¹²⁹ The Department disagreed with the QLS and stated '*The technical amendment does not affect the court's powers in relation to breach of a boot camp order.*'¹³⁰

Committee Comment

The Committee supports the technical amendments made in the Bill. The Committee values consistency and, therefore, agrees it is appropriate to amend the Youth Justice Act to ensure it aligns with the treatment of orders made by a magistrate on a finding of guilt. It considers it appropriate that the punishment of children is, at times, subject to consistent oversight by the High Court.

Additionally, the Committee believes that legislative mechanisms should be unambiguous in their intent and effect. Therefore, the Committee supports the amendment to the Youth Justice Act to clarify that community based orders, which have been breached but which expired before the offender is returned to court, can only be amended or adjusted by the court.

2.10 Mandatory sentencing regime for young recidivist motor vehicle offenders

Although not part of the of the Bill, as flagged in the Attorney-General's Introductory Speech this suite of reforms aimed at repeat offenders is to include amendments to target the disproportionate rates of vehicle related crime caused by young offenders in Townsville.

¹²⁵ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 7; see clauses 16-18 of the Bill.

¹²⁶ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, pages 7-8.

¹²⁷ Protect All Children Today Incorporated, Submission No.4, page 3.

¹²⁸ Clause 18 of the Bill proposes to amend section 246A of the Youth Justice Act (Court's power on breach of boot camp order) by omitting subsection 8.

¹²⁹ Queensland Law Society, Submission No. 16, page 4.

¹³⁰ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 13.

The Attorney-General stated:

I foreshadow to the House that it is intended to move amendments during the consideration in detail stage of the bill that will hold these young offenders accountable and redirect them from further offending. This will be achieved through an amendment to the Youth Justice Act that will ensure that recidivist motor vehicle offenders who have been found guilty of two or more motor vehicle offences in the previous 12 months will be sent to the sentenced youth boot camp on a finding of guilt for a further unlawful use of a motor vehicle. For the next few weeks we want to engage with the Townsville community, recognising they have a serious problem of vehicular thefts, to come up with a proposal during the committee process. We will be writing to the committee about a proposal which essentially is that if there is a recidivist motor vehicle offender in the Townsville area they will have a mandatory sentence imposed and that will be a boot camp order. It is to get these young people to turn their lives around, get them an education and a job and out of a life of crime.¹³¹

The draft provisions were provided to the Committee on Tuesday, 4 March 2014 for consideration in this Report. No accompanying Explanatory Notes were provided. The Committee sought comments from stakeholders on the proposals and in the limited time available received seven submissions.

Issues raised in Submissions

None of the seven submissions received supported the proposals. Various issues were raised in relation to the mandatory boot camp orders which are outlined below.

Mandatory Nature of the sentenced boot camp

In addition to opposing the nature of mandatory sentencing in general, submitters considered mandatory sentenced youth boot camps would be problematic.

The Bar Association of Queensland submitted:

The Association is concerned with the mandatory nature of boot camp (vehicle offences) orders whereby the court is required to impose an order regardless of the circumstances of the offence or the offender.

It has long been observed by the courts, including the High Court in the recent case of Barbaro v The Queen; Zirilli v The Queen [2014] HCA 2, that the sentencing judge must arrive at an appropriate sentence by balancing many different and conflicting features of each particular case. The sentencing judge must take into account all of the circumstances of the offence and the offender in the determination of the appropriate sentence.

Such considerations may be the offender's criminal history, age, cooperation with the authorities, totality of the sentence, parity with sentences imposed upon other co-offenders and the overall effect of the sentence such that it may not be a crushing sentence.

We can foresee a myriad of circumstances where for example an offender's home life or school life could be the subject of substantial upheaval mandated by the legislation.

Mandatory sentencing can have the effect, on individual offenders, of harming the offender in his or her special circumstances which will not be in the public interest particularly in relation to juveniles.¹³²

¹³¹ Hansard (Record of Proceedings), 11 Feb 2014, page 48.

¹³² Bar Association of Queensland, Supplementary Submission 3, page 1.

Similarly, the LJI stated:

*Mandatory sentencing is a controversial issue involving the intrusion by the legislature into the judicial arm of government. The Institute notes that in introducing this Bill to the house the Attorney-General expressed that courts should have the flexibility to craft appropriate sentences. The Institute submits that introducing mandatory sentencing regimes, in any form, is an attack on judicial independence and necessarily limits the ability of the courts to craft flexible sentences, and to ensure that each sentence is decided on a case-by-case basis, taking into account all the relevant factors.*¹³³

In relation to the use of mandatory sentencing for sentenced youth boot camps, the LJI considered the removal of the requirement to obtain the consent of the child would be problematic:

*What is missing in these requirements, contrary to the existing SYBC orders, is the requirement for the child's consent. This aspect of consent is vital to the success of the therapeutic elements of the boot camp program. Without such therapeutic interventions the boot camp experience would be ineffective, and without willing participation in the therapeutic part of the program lasting reform will be unlikely.*¹³⁴

The Commission shared those concerns:

...the Commission is concerned by the lack of a requirement for the child's consent.

*The effectiveness of boot camps may be compromised by a child who is unwilling to fully participate in the program or take part in the activities. A resistant child is likely to be a disruptive influence on other participants and there is a heightened risk that the child will abscond, which may pose serious safety issues in the more remote locations used for the boot camps. The current boot camp model also includes activities for the family to address problems within the family, reinforce the rehabilitative effects of the program and support the child after they return. This requirement means that family members must also consent to participation before a child is considered to be eligible for a sentenced boot camp order.*¹³⁵

Lack of evidence and evaluation

The Anglican Church of Australia considered it was difficult to make a meaningful contribution to the public policy debate on the further use of boot camps when little information has been released to the public on the operation of boot camps to date within Queensland.¹³⁶

This aspect was also raised by the Youth Advocacy Centre:

There is a lack of conclusive evidence, both nationally and internationally, indicating that boot camps are effective in reducing recidivism. The suggested purpose of sentencing young people to mandatory boot camp orders is to reduce recidivism and prevent further contact with the criminal justice system.

.... In summary, both local and international research has overwhelmingly concluded that military style boot camps and wilderness camps prove ineffective in inducing long term behavioural change and reducing recidivism. This lack of conclusive research regarding the effectiveness of youth boot camps is compounded by the lack of evaluative research carried

¹³³ Law and Justice Institute (Queensland), Supplementary Submission 2, page 2.

¹³⁴ Law and Justice Institute (Queensland), Supplementary Submission 2, page 3.

¹³⁵ Commission for Children and Young People and Child Guardian, Supplementary Submission 1.

¹³⁶ Anglican Church of Australia, Supplementary Submission 6, page 1.

*out on the boot camp programs that are currently being trialled in Queensland to establish whether they have been effective.*¹³⁷

Finally, the LJL submitted:

As mentioned at the public hearing of the Youth Justice and Other Legislation Amendment Bill, the Institute regards it as problematic that an order to attend to a SYBC is being mandated when there appears to have been no evaluation of the SYBC to determine its efficacy and no release of relevant information for consideration by the community. We note that the first SYBC was decommissioned.

*We understand that the new boot camp was established at Lincoln Springs and only received its first cohort of young offenders early this year. Even if there has been an evaluation it would no doubt be inconclusive given the short period of time within which this Boot Camp has been operational. As such, the Institute does not support the introduction of this costly order (even in a discretionary form) without evidence of its success, especially in light of available international research and evaluative studies which strongly suggest that correctional boots camps are ineffective in reducing recidivism.*¹³⁸

Sentencing on the basis of geographical location

The Anglican Church of Australia queried the resource and intensity and long term efficacy of requiring State wide legislation and mandated boot camps to deal with a regional matter involving a relatively small and know cohort of offenders. The Anglican Church questioned that if a trend emerges for other types of offence, in the same or different location, would the response from the Government be to keep instituting new amendments to capture every cohort in every location?¹³⁹

The LJL also raised issues with the disparity of dealing with offenders in different locations by differing means, based solely on where they usually reside:

*This will mean that only children who ordinarily reside in Townsville will fall within this order's ambit. This situation is inappropriate. That persons, by virtue purely of their residence, will be treated differently from others in terms of punishment is discriminatory and offends the principle of equality before the law. The Institute recognizes the specific problem of recidivist motor vehicle offenders in that area. However, the Institute suggests instead that the problem in Townsville be addressed through other means. For example, '[s]ituational crime prevention techniques have been found to reduce targeted crime problems in specific locations. Several forms of community crime prevention are also promising, including mentoring, Vocational Education and Training, community economic development and recreational programs.*¹⁴⁰

The Youth Advocacy Centre also considered the proposed amendments would create inconsistent sentencing outcomes:

As the proposed amendments to the Bill indicate that only young people who reside in the prescribed area will be subject to the mandatory order this may result in young people who do not live in the prescribed area being sentenced to a period of detention for the same offence. This not only creates inconsistent sentencing outcomes across the State, but could potentially increase the number of

¹³⁷ Youth Advocacy Centre, Supplementary Submission 4, page 2.

¹³⁸ Law and Justice Institute, Supplementary Submission 2, pages 2 & 3.

¹³⁹ Anglican Church of Australia, Supplementary Submission 6, page 1.

¹⁴⁰ Law and Justice Institute (Queensland), Supplementary Submission 2, pages 3 & 4.

*young people who become entrenched in the criminal justice system due to the proven criminogenic effect of juvenile detention.*¹⁴¹

Retrospective nature of the amendments

The QLS raised concerns with the retrospective nature of the amendments highlighting the operation of proposed clause 24 in the draft circulated by the Attorney-General:

Clause 24 proposes insertion of a new section 367 in order to deal with the application of provisions about boot camp (vehicle offences) orders. This provision states:

- (1) A court may make a boot camp (vehicle offences) order for a recidivist vehicle offender found guilty of a vehicle offence after the commencement.*
- (2) Subsection (1) applies even if 1 or both of the following happened before the commencement -*
 - (a) the commission of the vehicle offence;*
 - (b) the start of the proceeding for the offence.*
- (3) In this section- vehicle offence see section 206A(3).*

*In relation to proposed section 367(2), we note that this provision relates to offences committed before the commencement of the amendments. In line with our stance against retrospective application of legislation, the Society does not support this provision. We note that retrospective provisions run contrary to section 4(3)(g) of the Legislative Standards Act 1992, which requires that legislation, 'not adversely affect rights and liberties, or impose obligations, retrospectively'. If the government is minded to proceed, we suggest that boot camp (vehicle offences) orders only be made available for recidivist vehicle offences that were committed after the commencement of the amendments.*¹⁴²

Committee Comment

The Committee notes the concerns of stakeholders however considers the amendments have the potential to make a real difference in dealing with the increase in youth crime, particularly in the area of motor vehicle offences.

The amendments are widely drawn but will, by regulation, be targeted at the Townsville area. As noted by the Attorney-General in his Introductory Speech, this area (Townsville) is currently experiencing very significant rates of repeat unlawful use of motor vehicle offences by children and the Committee agrees that a significant response, such as that contained in the amendments, is required.

The figures provided by the Department in its initial brief to the Committee are shocking:

*In 2012-13, nearly 90 recidivist offenders were found guilty of committing more than two [unlawful use of motor vehicle] offences in Townsville alone. It is clear that detention alone is not effective in reducing recidivism amongst this group of offenders in Townsville. Of the 129 children found guilty of committing an [unlawful use of motor vehicle] offence in Townsville in 2012-13, more than 64% have served at least one period in detention under sentence or on remand, with an average period in detention of 145 days per child.*¹⁴³

¹⁴¹ Youth Advocacy Centre, Supplementary Submission 4, page 4.

¹⁴² Queensland Law Society, Supplementary Submission 5, page 5.

¹⁴³ Letter from the Department, dated 17 February 2014, Attachment.

The Committee agrees more needs to be done to protect the Townsville community by breaking the cycle of repeat offending by children in that area and that these additional amendments to the Bill will go some way to achieving that goal. The Committee accepts the additional amendments will not prevent the court from imposing additional, more severe sentences where warranted by the child's behaviour. However, the amendments will ensure that, as part of their sentence, these recidivist offenders are removed from the environments in which they are repeatedly offending and engaged in an intensive and tailored program designed to target the causes of each individual's offending.

Recommendation 2

The Committee recommends the proposed amendments circulated by the Attorney-General and Minister for Justice to deal with recidivist vehicle offenders in Townsville be included in the Bill and that amendments be made in the consideration in detail stage of the Bill's progression through the Legislative Assembly.

2.11 Impact on Indigenous Youth

A number of submissions identified the amendments in the Bill will have a significant impact on the Indigenous Youth across the State.

Overrepresentation of Indigenous children and general issues

In his submission, Mr Peter Taylor observed there was '*...enormous evidence of basic inequality and disadvantage...*' among members of the Indigenous juvenile community. In his view, the Bill would compound this problem: '*It will create more criminals who are not merely thoughtless of others, but also violently resentful of society, and will further disrupt and alienate the very people in desperate need of assistance, the Indigenous population whose just grievances, and the injustices they have received from successive state governments, have never been addressed*'.¹⁴⁴

Mr Taylor suggested - the proper treatment of Indigenous children is to place them in: '*...a secure, organised, safe environment, teaching them social skills, reading and writing, preparing them for a trade, then finding employment for them when they are released...meantime treating them with gentle firmness, kindness, consideration, thoughtfulness and even love, using positive reinforcement—never cruelty, threats, punishment*'.¹⁴⁵

Monique Bond's submission focussed on the '*disproportionate*' impact that the Bill will have on Indigenous Queenslanders. It included the following statistics:

- the proportion of Indigenous young people in Queensland, that is those who are under 18 years old, is approximately 6% but they comprise nearly 60% of the youth detention population;
- young Indigenous people in Queensland are 4.5 times more likely to have contact with the criminal justice system than non-Indigenous minors and are over 30 times more likely to be in detention than non-Indigenous youths; and
- Police in Queensland are 5 times more likely to prosecute Indigenous youths for an offence than non-Indigenous youths.¹⁴⁶

The Uniting Church submitted that the overrepresentation of young Indigenous people '*...is likely to be symptomatic of the chronic social and economic disadvantage experienced by many Indigenous young people, including family and community violence, child abuse and neglect, inadequate housing,*

¹⁴⁴ Peter Taylor, Submission No. 2, page 2.

¹⁴⁵ Peter Taylor, Submission No. 2, page 1.

¹⁴⁶ Monique Bond, Submission No. 3, page 1.

poor health and low educational achievement'.¹⁴⁷ It argued that efforts to reduce this overrepresentation must address the underlying reasons for Indigenous offending and noted, with concern, '*...that there is a shortage of quality legal representation in regional and remote communities and a lack of appropriate bail support, diversionary and rehabilitation programs*'.¹⁴⁸

Similarly, in its submission, Amnesty International suggested:

*In addition to state-wide programs, the Queensland government must also implement, in consultation with Aboriginal and Torres Strait Islander peoples, culturally appropriate initiatives aimed at reducing Indigenous youth incarceration rates. Amnesty International is among the many organisations concerned about the hugely disproportionate rate at which Aboriginal and Torres Strait Islander young people are incarcerated – in Queensland and elsewhere in Australia.*¹⁴⁹

The Youth Advocacy Centre, another submitter who commented on the overrepresentation of Aboriginal and Torres Strait Islander young people in the youth justice system,¹⁵⁰ quoted:

*Indigenous people are over-represented in prisons, and are likely to come into contact with the criminal justice system at younger ages than non-Indigenous people. Once Indigenous offenders come into contact with the criminal justice system, they are more likely than non-Indigenous offenders to have repeat contact with it. Therefore, it is important that Indigenous people who have had contact with the criminal justice system have the opportunity to integrate back into the community and lead positive and productive lives. Reducing reoffending may also help break the intergenerational offending cycle.*¹⁵¹

The Youth Advocacy Centre concluded that Aboriginal and Torres Strait Islanders will be disproportionately affected by these amendments if passed: '*More of them are likely to find themselves in detention, thus undermining the Closing the Gap agenda to which all Australian Governments have committed*'.¹⁵²

In response to concerns expressed by various submitters on the overrepresentation of Indigenous children in the youth justice system,¹⁵³ the Department stated: '*...the Blueprint will include a range of measures aimed at addressing the overrepresentation of Indigenous people in the youth justice system*'.¹⁵⁴

Offence committed on bail

With respect to the Bill's proposed additional offence for committing a further crime while on bail, Monique Bond argued that young Indigenous people on bail often found it difficult to secure a stable place in which to reside:

As so many of the young people who are charged by police are Indigenous they are very likely to have a pattern of life which includes being exposed to significant trauma, being sexually and physically abused, being traumatised on multiple occasions, living in families

¹⁴⁷ The Uniting Church in Australia Queensland Synod, Submission 7, page 3.

¹⁴⁸ The Uniting Church in Australia Queensland Synod, Submission 7, page 3.

¹⁴⁹ Amnesty International, Submission No. 19, page 6.

¹⁵⁰ Youth Advocacy Centre, Submission No. 24, page 3.

¹⁵¹ Overcoming Indigenous Disadvantage Key Indicators 2011 Report Steering Committee for the Review of Government Service Provision.

¹⁵² Youth Advocacy Centre, Submission No. 24, page 4.

¹⁵³ See Peter R Taylor, Submission No. 3; Monique Bond, Submission No. 3; Greg Manning, Submission No. 9; Caxton Legal Centre, Submission No 15.

¹⁵⁴ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 15.

which suffer poverty, to have childhood issues - and with this pattern of experiences often resulting in mental health issues.

So for these young people it is usually difficult for them to find suitable, stable places where they can live whilst on Bail. If they are homeless or are in unsupportive accommodation, they will find it very difficult for many varied reasons to keep the terms of their bail. For example, having to find food for their young siblings when their parents are incapacitated for some reason, being out to fetch help for a friend over-dosing or having mental health problems, not having money for transport to court¹⁵⁵

As a solution to this problem, Monique Bond suggested the use of 'bail accommodation places', stating that the Youth Advocacy Centre has shown such places to be '...very successful...' and to have '...resulted in considerable savings to the taxpayer'.¹⁵⁶

In response to the concerns of the Commission and the Comparative Youth Penalty Project, that the new bail offence will impact most significantly on young Indigenous people, who are overrepresented among children in detention on remand,¹⁵⁷ the Department stated:

The Blueprint will include a range of measures aimed at addressing the overrepresentation of Indigenous people in the youth justice system, including:

- *Responding better to the complex and deep-rooted issues which bring Indigenous young people into contact with the youth justice system, including by empowering Indigenous communities to support young people at risk of offending*
- *Using innovative ways to ensure that young Indigenous offenders are able to be properly supported by their parents, families, carers and communities*
- *Implementing service delivery models to change entrenched criminal behaviour in Indigenous and remote communities that reflect the unique and complex needs of these communities.¹⁵⁸*

Detention/imprisonment as a sentence of last resort

With respect to the Bill's proposed removal of the sentencing principle, Monique Bond identified that one of the key recommendations of The Royal Commission on Aboriginal Deaths in Custody was that '...arresting Indigenous people should always be a last resort'.¹⁵⁹ She commented:

There is no doubt that some of the young people are challenging to interact with. However, there are usually other options, than arresting them, for a police officer in his/her interaction with young people and there is a real responsibility on the Police Commissioner and his officers to have all officers trained on how to interact with mentally ill people, traumatised people and people suffering from low cognitive abilities.¹⁶⁰

In its submission, Amnesty International observed that '...the 1991 Royal Commission into Aboriginal Custody recommended that arrest and imprisonment should be a last resort for Indigenous youth'.¹⁶¹

In commenting on the proposal to remove the sentencing principle, Caxton Legal Centre claimed:

¹⁵⁵ Monique Bond, Submission No. 3, page 1.

¹⁵⁶ Monique Bond, Submission No. 3, page 2.

¹⁵⁷ See The Commission for Children and Young People and Child Guardian, Submission No 12; and Comparative Youth Penalty Project, Submission No. 21.

¹⁵⁸ Letter from the Department of Justice and Attorney-General, 5 March 2014, Attachment, page 7.

¹⁵⁹ Monique Bond, Submission No. 3, page 2.

¹⁶⁰ Monique Bond, Submission No. 3, page 2.

¹⁶¹ Amnesty International, Submission No. 19, page 6.

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd and the Human Rights Law Centre have noted that the proposed amendments are likely to impact disproportionately on Indigenous children, and are therefore also in contravention of Article 2(1) of the CRC and Articles 2(1)(c) and 5(a) on the Convention on the Elimination of Racial Discrimination (CERD)...

If Australia were to ignore the recommendations of the United Nations Human Rights Committee or its international law obligations, its standing in the international community would suffer.¹⁶²

Rehabilitation

Australians for Native Title and Reconciliation Queensland suggested the use of a boot camp system is more likely to increase the criminalisation of young offenders.¹⁶³ Similarly, it did not support detention. Rather, it favoured early intervention and prevention strategies such as:

- supporting struggling families;
- providing parents with support and parenting programs from the early years into adolescence;
- supporting the development of good oral language and social skills; and
- responding more appropriately where young people are the victims of abuse and neglect.¹⁶⁴

Committee Comment

The Committee acknowledges the overrepresentation of young Indigenous people in the criminal justice system and the concerns and suggestions presented by submitters.

The Committee anticipates the impending release of the Government's Blueprint and looks forward to the range of measures aimed at addressing the overrepresentation of Indigenous people in the youth justice system which are to be included in that document.

The Committee notes the comments of the Department at the public hearing responding to the overrepresentation of Indigenous youths in the criminal justice system:

I would like the committee to particularly note in terms of Indigenous people that we have a strong focus on dealing with some really more, what I see, outcome focused strategies, particularly in remote communities. Without being able to table the blueprint at this time, I can only tell you that many of the elements that have been raised during the submissions are dealt with within that document.¹⁶⁵

The Committee strongly endorses such outcome focussed strategies and looks forward to seeing positive results from the Department working closely with remote communities to ensure these important issues are dealt with appropriately, taking into account the cultural sensitivities, as required.

2.12 Other issues raised during the inquiry

During its inquiry, the Committee received correspondence from the Chief Magistrate, Hon Tim Carmody QC, in which His Honour sought support for legislative amendments to both the Youth

¹⁶² Caxton Legal Centre Incorporated, Submission No.15, page 4.

¹⁶³ Australians for Native Title and Reconciliation Queensland, Submission No. 10, page 1.

¹⁶⁴ Australians for Native Title and Reconciliation Queensland, Submission No. 10, page 1.

¹⁶⁵ *Transcript of Proceedings (Hansard)*, Public Hearing, Legal Affairs and Community Safety Committee, 3 March 2014, page 39.

Justice Act and the *Justices Act 1886*, the effect of which would bring the appeal and review of Magistrates' decisions in line with those of Judges.

His Honour considered that review or appeal from a Magistrate's decision should be on an error of law; or case stated - basis only and that review or appeal should not result in a rehearing of a matter.

To give effect to the amendments sought by the Chief Magistrate, sections 118 - 126 of the Youth Justice Act would require review as those sections set out the procedure for reviews of sentences by a Childrens Court Judge. Part 9 of the *Justices Act 1886*, sets out the procedure for appeals to a District Court Judge.

His Honour stated that the key drivers to his proposal were the desirability for appeals/reviews of Magistrates' decisions to be consistent with those in the higher courts; and the anticipated savings of time and costs with reviews. His Honour recognised that a review of the Statute Book should be undertaken to identify provisions in Acts that currently have the effect of a review/appeal from a Magistrate resulting in a re-hearing of a matter.

Committee Comment

The Committee sees merit in the proposal from the Chief Magistrate and considers there would be value in the Acts being amended for the reasons outlined in His Honour's letter. That is, to allow an appeal only on a point of law and achieve consistency with other appeals heard in the courts.

It is important for an offender to have certainty as to sentence as soon as is reasonably practicable to the commencement of the sentence and not be subject to a prolonged procedure brought about by the appeal process.

Secondly, the Committee agrees there would be better use of court resources under the proposal with cost associated with appeals reduced. There is little sense for a judicial officer to hear all the evidence, find a decision on that evidence and for there to be a possible challenge on the evidence of the credibility of a witness or witnesses.

That being said, the Committee notes these amendments are in essence, beyond the scope of the Youth Justice reforms being advanced under the Bill; and have not been the subject of any public consultation. Further, due to the limited time available for the Committee to consider the important policy issues contained in the Bill, let alone any further issues, it has not had sufficient time to consider the proposal more fully.

The Committee considers at this time, the Attorney-General may think about bringing forward further amendments to the Youth Justice Act only, when the Bill has its second reading and notes that such amendments may require the leave of the House as they appear outside the long title of the Bill.

The Committee considers that any further amendments to the *Justices Act 1886* and other relevant Acts should be progressed at a later time once a complete review of the Statute Book has been undertaken.

Matter for Consideration

The Committee requests the Attorney-General and Minister for Justice note the proposal of the Chief Magistrate relating to bringing the appeal and review of Magistrates' decisions in line with those of Judges; and consider making appropriate amendments to the Youth Justice Act only, when the Bill progresses through the Legislative Assembly.

3. Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states ‘fundamental legislative principles’ are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The Committee has examined the application of the fundamental legislative principles to the Bill and brings the following significant matters to the attention of the House for consideration.

3.1 Rights and liberties of individuals

Rights and Liberties - Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

Two major issues of fundamental legislative principle have been identified with respect to the rights and liberties of individuals:

1. Clause 8 – which amends section 148 of the *Youth Justice Act 1992* to remove the current prohibition on admitting evidence of unrecorded childhood findings of guilt for the purposes of sentencing adult offenders; and
2. Clause 21 – which inserts the new section 299A into the *Youth Justice Act 1992* regarding the publication of identifying information about repeat offenders the subject of proceedings before the Childrens Court.

The Explanatory Notes acknowledge the former Scrutiny of Legislation Committee (Scrutiny Committee) considered whether legislation had sufficient regard for the rights and liberties of individuals depends in part on whether the legislation expands the scope of matters included in an offender’s criminal history, as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.¹⁶⁶

Fairness and reasonableness

The Scrutiny Committee considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals, and the Office of the Queensland Parliamentary Counsel (OQPC) Notebook provides the abrogation of established statute law rights and liberties must be justified.¹⁶⁷

The OQPC Notebook states:

*The Criminal Law (Rehabilitation of Offenders) Act 1986 provides for a long established scheme enabling a person convicted of an offence to rehabilitate himself or herself. If the person remains conviction-free for a prescribed period, disclosure of the conviction is not permitted. It also declares a person’s criminal history to consist only of recorded convictions of offences. Any provision eroding the scheme requires strong justification.*¹⁶⁸

¹⁶⁶ Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, page 11.

¹⁶⁷ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 106.

¹⁶⁸ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 106.

Privacy and confidentiality

The right to privacy, the disclosure of private or confidential information, and privacy confidentiality issues has been identified by the Scrutiny Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties. The policy of the *Criminal Law (Rehabilitation of Offenders) Act 1986* is to protect the privacy of the individual.¹⁶⁹

Committee Comment

The Scrutiny Committee recognised the need to balance any right that may exist against competing interests, and in the context of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, has specifically provided that the erosion of the policy of protecting the privacy of the individual needs to be justified. Further, in relation to criminal law generally, the Scrutiny Committee commented the primary issue is whether the law maintains a reasonable balance between the rights of wrongdoers and the community generally.¹⁷⁰

Justification for these provisions has been provided in the Explanatory Notes which accompanied the Bill. In relation to removing the current prohibition on admitting evidence of unrecorded childhood findings of guilt for the purposes of sentencing adult offenders, the Explanatory Notes state:

*The admissibility of childhood findings of guilt for which no conviction is recorded will now mean that the offending history of a child is able to be considered by a court in sentencing a person for an adult offence in the same way as an unrecorded adult conviction is able to be considered. Providing courts a more accurate picture of these offender's offending trajectories will allow them to frame more appropriate sentences, better holding offenders to account for their behaviour.*¹⁷¹

In relation to the publication of identifying information about repeat offenders the subject of proceedings before the Childrens Court, the Explanatory Notes state:

Publication of repeat offenders' identifying information will be permitted at any time during proceedings after commencement of the legislation, including proceedings started before commencement. This means a child who is immune from having their identifying information published on the opening of a proceeding against them may, as a result of the intervening commencement of the legislation, lose this immunity in the course of the proceeding.

*This removal of immunity previously enjoyed by children the subject of proceedings started prior to commencement of the legislation is justified on the grounds that it minimises any potential disruption to the courts from having to treat contemporaneous proceedings differently and promotes equity and fairness to offenders.*¹⁷²

Administrative power - Section 4(3)(a) Legislative Standards Act 1992

Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Clause 20, proposed section 276C – *chief executive must make prison transfer direction*: provides for the transfer of a young offender from a youth detention centre to an adult correctional facility on the written direction of the chief executive.

¹⁶⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 114.

¹⁷⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 138, citing Alert Digest 2002/6, page 28, para. 9.

¹⁷¹ Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, page 12.

¹⁷² Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, page 11.

Further, proposed section 276E – *application of* Judicial Review Act 1991: provides the chief executive’s decision will not be subject to review or appeal, except to the extent it is affected by jurisdictional error.

Potential FLP issue

This amendment affects the rights and liberties of a youth offender and makes them subject to administrative power. The Explanatory Notes state:

This does not infringe the FLP that administrative power should be subject to appropriate review as:

- *the Bill clearly defines and limits the power by prescribing the factual circumstances in which it must be exercised and its precise effect, with no real discretion afforded to the chief executive; and*
- *where the chief executive’s administrative power is exceeded in the making of a direction, the exercise of that power is subject to the court’s review jurisdiction under part 5 of the Judicial Review Act 1991.*¹⁷³

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states, ‘*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*’¹⁷⁴

The Scrutiny Committee was opposed to clauses removing the right of review, and took particular care to ensure the principle that there should be a review or appeal against the exercise of administrative power. Where ordinary rights of review were removed, thereby preventing individuals from having access to the courts or a comparable tribunal, the Scrutiny Committee took particular care in assessing whether sufficient regard had been afforded to individual rights, noting that such a removal of rights may be justified by the overriding significance of the objectives of the legislation.¹⁷⁵

The Scrutiny Committee has, in particular circumstances, found provisions removing review under the *Judicial Review Act 1991* unobjectionable if it considers that an adequate alternative review mechanism is provided.¹⁷⁶

Committee Comment

The Committee considers sufficient regard has been had to the rights and liberties of youth offenders in line with the overriding objectives of the legislation. The Committee notes that the Bill clearly defines and limits the administrative power, the application of which provides the chief executive with no real discretion, and that part 5 of the *Judicial Review Act 1991* applies where the chief executive’s power is exceeded.

¹⁷³ Youth Justice and Other Legislation Amendment Bill 2014, Explanatory Notes, page 9.

¹⁷⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 18.

¹⁷⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 19.

¹⁷⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 19, citing Alert Digest 2004/8, page 8, paras 21-24; Alert Digest 2003/6, page 6, paras 46-48.

Rights and liberties – Section 4(3)(g) *Legislative Standards Act 1992*

Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?

Clause 24 provides that provisions of the Bill dealing with the following matters will operate retrospectively:

- Admission of childhood findings of guilt;
- Findings of guilt while on bail;
- Removal of the principle of detention as a last resort;
- Publication of identifying information; and
- Automatic transfer to corrective services facility.

Potential FLP issuesAdmission of childhood guilt

New section 359, which applies new subsection 148(3) provides that evidence of unrecorded childhood findings of guilt will be admissible in sentencing a person for an offence committed as an adult – to any proceeding against an adult, including where the offence to which the proceeding relates was committed or the proceeding started before commencement.

Finding of guilt while on bail

A child found guilty of an offence while on bail will be guilty of an offence of breaching bail (the second offence). Whilst the second offence must be committed after commencement, the earlier offence (the first offence), which lead to bail, may have been committed prior to commencement.

The Explanatory Notes provide that applying the offence uniformly to all subsequent offences committed following commencement provides fairness and equity to offenders and simplifies application of the legislation. All offenders who commit a subsequent offence after the same point in time will be subject to the same penalties, regardless of when the earlier offence was committed and bail granted because commission of the second offence must follow commencement, meaning that affected offenders will only be exposed to additional punishment for wrongful acts committed after the new offence is in force.

Removal of detention as a last resort

New section 360 ousts the principle of detention as a sentence of last resort to every child found guilty of an offence after commencement, including where the offence was committed or the proceeding started before commencement. The Explanatory Notes confirm it is only where the finding of guilt against a child is made after commencement of the legislation that that child will be sentenced under the amended *Youth Justice Act 1992*.¹⁷⁷

The Explanatory Notes state:

*Any child who pleads guilty prior to commencement and whose plea is accepted by the court must be sentenced according to the Youth Justice Act 1992 as it applied at the time of the plea. The child's rights and liberties (in this case, the right to plead guilty to an offence and to be sentenced according to the then applicable sentencing regime) are determined by the law in force at the time of their seeking to exercise them, rather than retrospectively.*¹⁷⁸

The Committee notes however that a child who pleads not guilty prior to commencement, and whose proceedings are heard after commencement, will be deprived of the liberty of the sentencing

¹⁷⁷ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 10.

¹⁷⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 11.

principle that existed at the time the alleged offence was committed. This may place additional pressure on a youth offender to enter a guilty plea.

Similarly, the Committee notes the removal of the principle of detention as a sentence of last resort will also apply to the *Penalties and Sentences Act 1992*, meaning that any person convicted after commencement, including where the offence was committed or the proceeding started prior to commencement, will not benefit from the sentencing principle.¹⁷⁹

Whether legislation has sufficient regard to the rights and liberties of individuals may also involve common law and international law considerations.

The Explanatory Notes state:

*It is a principle of the common law that a sentence of imprisonment should only be imposed when no other sentence is appropriate and that, where imprisonment is warranted, the shortest possible sentence should be imposed.*¹⁸⁰

Removing this principle is justified on the basis that it otherwise unduly inhibits courts in making sentencing orders which appropriately reflect the severity of offending, hold offenders properly to account for their offending behaviour and reflect the community's denunciation of serious offending. Its removal is intended to empower courts to use sentencing more effectively for the purposes of punishing, denouncing and deterring offending and protecting the community.

*Courts will still be required to have regard to a range of prescribed mitigating and aggravating factors ... in framing sentences which appropriately balance the various purposes of sentencing. How these complex factors are appropriately balanced will continue to be a matter for the courts on a case-by-case basis.*¹⁸¹

The Bill also amends the *Penalties and Sentences Act 1992*, to omit the sentencing as a last resort principle, which represents a fundamental shift to the current purposes of sentencing in Queensland for offenders aged 17 years and over, and will accordingly impact on the rights and liberties of individuals in this context. The Explanatory Notes establish that the amendment is justified as 'it ensures the punishment fits the severity of the crime and communicates the wrongfulness of the offending, and is intended to better promote the community's safety and its protection from criminal behaviour...'.¹⁸²

Publication of identifying information

New section 361, replaces section 301 with section 299A dealing with the publication of information about children involving proceedings that started before commencement.

The Explanatory Notes state:

Publication of repeat offenders' identifying information will be permitted at any time during proceedings after commencement of the legislation, including proceedings stated before commencement. This means a child who is immune from having their identifying information published on the opening of a proceeding against them, may as a result of the intervening commencement of the legislation, lose this immunity in the course of the proceeding.

¹⁷⁹ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 11.

¹⁸⁰ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 12; citing *R v James* (1985) 14 A Crim R 364; *R v O'Connor* [1987] VR 496.

¹⁸¹ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 12.

¹⁸² Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 13.

*The removal of immunity previously enjoyed by children the subject of proceedings started prior to commencement of the legislation is justified on the grounds that it minimises any potential disruption to the courts from having to treat contemporaneous proceedings differently and promotes equity and fairness to offenders.*¹⁸³

The Committee considers, in applying the effect of new sections 245, 246 and 246A to all proceedings in relations to breaches of community based orders, removal of the rights and liberties of youth offenders is justified by avoiding potential disruption to the courts, as provided in the Explanatory Notes.

Privacy implications

The Explanatory Notes acknowledge Rules 8.1 and 8.2 of The Beijing Rules provide that a young offender's privacy should be respected and their identifying information withheld from publication.¹⁸⁴ Further the Explanatory Notes also refer to Article 40.2(b)(vii) of the *Convention on the Rights of the Child* (CRC) which similarly provides that every child accused of committing an offence should have their privacy fully respected.¹⁸⁵ The Explanatory Notes state:

The amendments to open the Childrens Court when hearing matters in relation to repeat offenders and to permit publication of repeat offenders' identifying information are arguably inconsistent with ... provisions of the Beijing Rules and the CRC. However, this inconsistency must be balanced against the need to hold repeat offenders properly to account for their actions and the long term benefit to society and to individual offenders themselves for having in place real deterrents which discourage young offenders from persisting in a course of criminal behaviour.

...

*By operating only in relation to repeat offenders, the new provisions to open the court give first-time offenders an opportunity to avoid the consequences attached to further offending.*¹⁸⁶

Amendments to the *Youth Justice Act 1992*, to permit the publication of identifying information will also only operate in relation to repeat offenders. As a counterbalance to these provisions the amendments allow courts to be closed and publication of repeat offender's identifying information prohibited.

The Explanatory Notes state:

*These amendments are accordingly justified on the basis that they strike an appropriate balance between protecting children appearing before the youth justice system while holding young offenders – and particularly repeat offenders – more properly to account.*¹⁸⁷

Automatic transfer to corrective services facility

The Explanatory Notes state:

Replacement division 2A provides that all offenders sentenced to a period of detention must automatically be transferred to an adult correctional facility on turning on turning 17 if, at that time, they have at least 6 months left to serve in detention. If an offender is already 17 at the time of sentence to a period of detention of six months or more, that sentence will

¹⁸³ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 11.

¹⁸⁴ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 13.

¹⁸⁵ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 13.

¹⁸⁶ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 13.

¹⁸⁷ Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2014, page 14.

automatically be taken to be a sentence to a period of imprisonment to be served in a correctional services facility.

The statutory requirement of automatic transfer under new division 2A will also apply to offenders already serving a period of detention for whom no court-ordered transfer date has been set under the existing transfer provisions. This includes offenders in detention who have either already turned 17 and have no more than six months left to serve in detention or who will turn 17 and become eligible for transfer during the course of their detention.

New division 2A is intended to operate equitably and transparently, with all transfers occurring automatically under the same specified conditions in relation to all offenders. For this reason, new division 2A will expressly prohibit any merit-based review or appeal of the chief executive's decision to make a prison transfer direction.¹⁸⁸

The Explanatory Notes acknowledge that the automatic transfer of 17 year olds from youth detention to adult correctional facilities appears to infringe rule 26.3 of the Beijing Rules, which provides that juveniles in correctional institutions should be detained in separate institutions from adults or in separate parts of institutions also holding adults.¹⁸⁹

Currently the Queensland criminal justice system treats 17 year olds as adults. The Explanatory Notes provide that *"the transfer of 17 year olds from youth detention centres to adult correctional facilities is justified as it treats all 17 year olds serving custodial sentences equally, regardless of whether they were originally convicted and sentenced as juveniles or as adults"*.¹⁹⁰

Committee Comment

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The above provisions adversely affect the rights and liberties of youth offenders, and impose obligations retrospectively. The Committee is satisfied however that strong arguments exist to justify the adverse effect these retrospective obligations will impose.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

¹⁸⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 6.

¹⁸⁹ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 14.

¹⁹⁰ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, page 14.

Appendix A – List of Submissions

Sub #	Submitter
001	Anne Lanham
002	Peter R Taylor
003	Monique Bond
004	Protect All Children Today
005	Queensland Association of Independent Legal Services Inc
006	Office of the Information Commissioner
007	The Uniting Church in Australia Queensland Synod
008	Queensland Council for Civil Liberties
009	Greg Manning
010	ANTaR
011	Sisters Inside Inc
012	The Commission for Children and Young People and Child Guardian
013	Bond University, Gold Coast
014	Anglican Church Southern Queensland
015	Caxton Legal Centre
016	Queensland Law Society
017	Anti- Discrimination Commission Queensland
018	Griffith University
019	Amnesty International
020	Law and Justice Institute (Queensland) Inc
021	Comparative Youth Penalty Project
022	Bar Association of Queensland
023	Rev Dr W Sanderson
024	Youth Advocacy Centre Inc
025	Crime and Justice Research Centre, Faculty of Law, QUT

Appendix B – List of witnesses at Public Hearing

<p>Queensland Law Society</p> <ul style="list-style-type: none"> • Mr Damian Bartholomew, Deputy Chair, Children’s Law Committee • Mr Ian Brown, President • Mr Matthew Dunn, Principal Solicitor
<p>Amnesty International Australia</p> <ul style="list-style-type: none"> • Ms Louise Allen, Government Relations Manager
<p>Law and Justice Institute of Queensland</p> <ul style="list-style-type: none"> • Assistant Professor Jodie O’Leary, Co-Chair • Ms Jann Taylor, Co-Chair
<p>Anglican Church of Southern Queensland Social Responsibilities Committee</p> <ul style="list-style-type: none"> • Very Rev. Dr Peter Catt, Chair
<p>Rev. Dr Wayne Sanderson</p>
<p>Uniting Church in Australia, Queensland Synod</p> <ul style="list-style-type: none"> • Reverend Kaye Ronalds, Moderator <p>Queensland Churches Together</p> <ul style="list-style-type: none"> • Reverend Canon Richard Tutin, General Secretary <p>Salvation Army, South East Queensland</p> <ul style="list-style-type: none"> • Major Bruce Robinson, Divisional Chaplaincy Coordinator <p>Churches Together Indigenous People’s Partnership</p> <ul style="list-style-type: none"> • Ms Brooke Prentis
<p>Department of Justice and Attorney-General</p> <ul style="list-style-type: none"> • Mr Sean Harvey, Acting Assistant Director General • Mr Damian Azzopardi, Project Manager • Ms Nicole Downing, Manager • Ms Carolyn McAnally, Principal Legal Officer • Mr Ryan Robertson, Principal Policy Officer

Appendix C – List of Additional Submissions

Sub #	Submitter
001	The Commission for Children and Young People and Child Guardian
002	Law and Justice Institute (Queensland) Inc
003	Bar Association of Queensland
004	Youth Advocacy Centre Inc
005	Queensland Law Society
006	Anglican Church of Australia – Diocese of Brisbane
007	Griffith University
008	Rev Dr W Sanderson

Dissenting Reports



Peter Wellington MP

Member for Nicklin

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E-mail nicklin@parliament.qld.gov.au



10 March 2014

Ian Berry MP, Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

A handwritten signature in cursive script, appearing to read "Ian".

Dear Mr Berry

Re: Youth Justice and Other Legislation Amendment Bill 2014.

I write to confirm my advice that I do not support the Committee's recommendation that the Bill be passed.

I will set out my opposition to the Bill during the second reading debate of the Bill.

Yours sincerely

A large, stylized handwritten signature in black ink, appearing to read "Peter Wellington".

Peter Wellington MP
Member for Nicklin

BILL BYRNE MP

SHADOW MINISTER FOR POLICE, EMERGENCY AND CORRECTIVE SERVICES, PUBLIC WORKS AND NATIONAL PARKS

MEMBER FOR ROCKHAMPTON

PO Box 15057, City East QLD 4002

reception@opposition.qld.gov.au (07) 3838 6767



10 March 2014

Mr Ian Berry MP
Member for Ipswich
Chairperson
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Dissenting Report – Youth Justice and Other Legislation Amendment Bill 2014

I write to lodge a dissenting report with respect to the Youth Justice and Other Legislation Amendment Bill 2014. I will briefly detail some of the Opposition's concerns with respect to the proposed legislation. The areas of concern listed below are not exhaustive and the Opposition will detail additional concerns during the parliamentary debate on the Bill.

Removal of detention as a last resort

The Bill proposes to overturn the well-established common law and statutory principle that youth offenders should be sentenced to detention only as a last resort. This change would increase the number of young people in detention. In evidence provided to the Carmody Inquiry in August 2012 by Mr Steve Armitage who was the then Assistant Director General of Youth Justice in the Department, he stated that,

'Research suggests that periods of incarceration, while providing the most serious consequence for behaviour and protecting the community from further offending for that period of time, have little effect on young people's future offending behaviour'

Since detention has not been demonstrated to be effective in preventing re-offending and is expensive to run, the removal of the principle of detention as a last resort would not seem to be of any significant benefit to the community, either in terms of cost effectiveness or achieving the desired outcome of reducing youth offending.

In evidence given to the Legal Affairs and Community Safety Committee at the public hearing the Department of Justice and Attorney General was unable to point to any evidence whatsoever that this change would help reduce the frequency or severity of youth offending.

Creation of a breach of bail offence

Labor opposed the creation of a similar breach of bail offence for adult offenders when the Newman Government amended the *Bail Act 1980*. Similarly we oppose the creation of such an offence for youth offenders. In submissions made to the committee the problems with the creation of such an offence have been outlined well. It is questionable whether such an offence is necessary and whether it would have any practical effect.

It was noted by some submitters, including the Uniting Church, that some bail conditions are particularly onerous for young people and can 'set them up to fail'. For example, requiring a vulnerable young person not to associate with any of their friends or support networks, or not to go to a certain place without providing any other holistic community support can invite the breach of bail conditions.

In evidence given to the Legal Affairs and Community Safety Committee at the public hearing the Department of Justice and Attorney General was unable to point to any evidence whatsoever that this change would help reduce the frequency or severity of youth offending.

'Naming and shaming' of youth offenders

The consensus view of the public submissions was that this proposal would simply stigmatize youth offenders and would not have the desired effect. In fact many submitters pointed to extensive evidence that such a proposal would increase youth offending. Given that provisions already exist for the naming of offenders guilty of serious offences where it is in the interests of justice, the Opposition considers that the proposed change is both unnecessary and unwarranted.

In evidence given to the Legal Affairs and Community Safety Committee at the public hearing the Department of Justice and Attorney General was unable to point to any evidence whatsoever that this change would help reduce the frequency or severity of youth offending.

Making juvenile criminal histories available in adult courts where no conviction is recorded

Various submitters criticized this proposal as being unworkable and counter-productive. In their submission the Bar Association noted,

'... that this proposed amendment relates to prior juvenile offending of such a minor nature that the earlier sentencing court saw fit not a record of a conviction.

For a subsequent court to be able to take it into account achieves nothing and undermines the rehabilitative potential of the first "no conviction recorded" order. The proposed amendment will advance the interests of justice not one jot.'

In evidence given to the Legal Affairs and Community Safety Committee at the public hearing the Department of Justice and Attorney General was unable to point to any evidence whatsoever that this change would help reduce the frequency or severity of youth offending.

Mandatory sentencing for youth motor vehicle offenders

The Committee was provided with amendments to the Bill that will be moved by the Attorney General that would require a young person in the Townsville area who has been found guilty of two or more motor vehicle offences in the previous 12 months to be sent to the sentenced youth boot camp on a finding of guilt for a further unlawful use of a motor vehicle offence.

At the Legal Affairs and Community Safety Committee's public hearing the Law and Justice Institute of Queensland expressed their opposition to the proposal on the grounds that mandatory sentencing is ineffective and the Government's sentenced youth boot camps have not been evaluated to determine whether they are effective.

Labor is on the record as opposing mandatory sentencing and does not believe that it delivers fair or just outcomes. Additionally, Labor does not endorse the principle that offenders should be punished differently because they live in a particular area.

Conclusion

Given that the Department has been unable to demonstrate any evidential basis to underpin or justify any of the proposed amendments and particularly when substantial amounts of peer reviewed evidence from Australian and international jurisdictions was presented to the committee that demonstrated the proposed changes would be counterproductive, the Opposition does not support the proposed legislation.

It is evident that the proposed legislation is a purely political exercise rather than a considered piece of public policy designed to address a serious issue of concern to all Queenslanders.

In the face of overwhelming evidence that the proposed changes will not work, the Committee has relied on the Government's unreleased and unseen *Blueprint for the Future of Youth Justice* to ameliorate the regressive and counterproductive nature of the proposed legislative changes. Given the Government's deplorable record to date on youth justice, the Opposition is not willing to take on trust that the Government's *Blueprint* will comprehensively address or counter the issues that currently exist in youth justice, let alone those that will be created or exacerbated by these proposed changes.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Bill Byrne', with a long horizontal line extending to the right.

Bill Byrne
Member for Rockhampton