



Youth Justice and Other Legislation Amendment Bill 2015

**Report No. 22, 55th Parliament
Legal Affairs and Community Safety Committee
March 2016**

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Legal Affairs and Community Safety Committee

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Contents

Abbreviations	iv
Chair’s foreword	v
1. Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Youth Justice and Other Legislation Amendment Bill 2015	2
1.4 Policy background	2
<i>Boot camps – the 2012 Bill</i>	2
<i>Rights and protections for children in the youth justice system – the 2014 Bill</i>	3
<i>Staged amendments to Youth Justice Act</i>	3
<i>Development of a Youth Justice Policy</i>	3
1.5 Government consultation on the Youth Justice and Other Legislation Amendment Bill 2015	4
1.6 Stakeholder support for the objectives of the Bill	4
1.7 Outcome of committee considerations	4
2. Examination of the Bill	5
2.1 Principle that detention of a child is a last resort	5
<i>Detention rates</i>	5
<i>Current principles in Youth Justice Act</i>	5
<i>Amendments to Youth Justice Act</i>	5
<i>Amendments to Penalties and Sentences Act</i>	6
<i>Issues raised by stakeholders</i>	6
2.2 Removal of the offence of breach of bail for children	8
2.3 Reinstatement of review of sentences by Childrens Court judge	9
2.4 Childhood finding of guilt not admissible in sentencing for adult offence	10
2.5 Reinstate prohibition on publication of Identifying information about a child	11
<i>Current Act and amendments</i>	11
<i>Stakeholder views</i>	11
2.6 Removal of boot camp orders and boot camp (vehicle offences) orders as sentencing option	12
<i>Policy rationale</i>	12
<i>Boot camp and boot camp (vehicle offences) orders</i>	13
<i>Boot camp centre administration</i>	13
<i>Stakeholders views</i>	13
<i>Repeat offenders</i>	14
<i>Transitional arrangements for boot camp orders</i>	15
2.7 Children in former boot camp centres	15
2.8 Amendment of other Acts	15
3. Compliance with the <i>Legislative Standards Act 1992</i>	17
3.1 Fundamental legislative principles	17
<i>Retrospective provisions in the Bill</i>	17
<i>Administrative powers</i>	18
3.2 Explanatory notes	18

4. Related youth policy issues	19
4.1 Introduction	19
4.2 Aboriginal and Torres Strait Islander youth in detention	19
4.3 Prevention, rehabilitation and recidivism	19
<i>Prevention and early intervention</i>	<i>19</i>
<i>Youth conferencing</i>	<i>20</i>
4.4 Seventeen year olds in the adult criminal justice system	21
4.5 Health screening	21
Appendix A – List of Submissions	23
Appendix B – Witnesses at the public hearings	24
NON-GOVERNMENT MEMBERS STATEMENT OF RESERVATION	29

Abbreviations

2012 Bill	Youth Justice (Boot Camp Orders) and Other Legislation Bill 2012
2014 Bill	Youth Justice and Other Legislation Amendment Bill 2014
Beijing Rules	United Nations, Standard Minimum Rules for the Administration of Juvenile Justice 1985
the Act	Youth Justice Act 1992
Attorney-General	The Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills
Bill	Youth Justice and Other Legislation Amendment Bill 2015
department	Department of Justice and Attorney-General
FLP	fundamental legislative principle
UN Convention	United Nations, Convention on the Rights of the Child

Chair's foreword

This Report details the examination by the Legal Affairs and Community Safety Committee of the Youth Justice and Other Legislation Amendment Bill 2015.

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 in accordance with section 4 of the Legislative Standards Act 1991.

The current Bill is one part of the current government's plans for reform of the youth justice system. Section 4 of this report summarises some of the views put forward by stakeholders about youth justice policy issues that are outside the scope of the current Bill.

The committee was not able to reach agreement on whether to recommend the Bill be passed.

On behalf of the committee, I thank those who lodged written submissions on this Bill and participated in the committee's hearings. I also thank the department for the support it has provided the committee during this inquiry.

I would also like to thank the Parliamentary Library for research services provided, and Committee Office staff for the support they have provided us.

I commend this report to the House.

A handwritten signature in blue ink that reads "Mark Furner".

Mark Furner MP

Chair

1. Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 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:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

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
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

On 1 December 2015, the Hon Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for Training and Skills (the Attorney-General), introduced the Youth Justice and Other Legislation Amendment Bill 2015 (the Bill) into the House. In accordance with Standing Order 131 of the Standing Rules and Orders of the Legislative Assembly, the Bill was referred to the committee for detailed consideration. By motion of the Legislative Assembly, the committee was required to report to the Parliament by 1 March 2016.

The committee requested a written briefing on the Bill from the department, which was provided on 12 January 2016.²

The committee invited written submissions from the public, and from identified stakeholders, to be received by 4.00 pm on 22 January 2016. The committee received 24 submissions (see Appendix A for a list of submitters).³

The committee invited witnesses to give evidence and respond to questions on the Bill at public hearings on the following dates and at the following locations:

- 22 January 2016 - Townsville
- 17 February 2016 – Brisbane.

See Appendix B for a list of the witnesses at the public hearings held as part of the Inquiry process.

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

² View at: <http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/11-YouthJusticeAOLAB15>

³ View Submissions: <http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries>

1.3 Policy objectives of the Youth Justice and Other Legislation Amendment Bill 2015

The objectives of the Bill are to:

- remove boot camp orders and boot camp (vehicle offences) orders from the sentencing options for children
- prohibit the publication of identifying information about a child dealt with under the *Youth Justice Act 1992* (the Act)
- remove breach of bail as an offence for children
- make childhood findings of guilt for which no conviction was recorded inadmissible in court when sentencing a person for an adult offence
- reinstate the principle that detention should be imposed only as a last resort and for the shortest appropriate time when sentencing a child
- reinstate the sentence review jurisdiction of the Childrens Court of Queensland, and expand Magistrates' decisions in relation to breaches of community based orders, and
- reinstate in the *Penalties and Sentences Act 1992* the principle that imprisonment is a sentence of last resort.⁴

The two main outcomes of the Bill, if passed, will be:

- legislative arrangements for the management of boot camps and for boot camps as a sentencing option, introduced by the Youth Justice (Boot Camp Orders) and Other Legislation Bill 2012 (the 2012 Bill) will be removed from the Act
- various rights and protections of children dealt with under the Act which were removed by the Youth Justice and Other Legislation Amendment Bill 2014 (the 2014 Bill) will be reinstated.

1.4 Policy background

Boot camps – the 2012 Bill

The 2012 Bill created boot camp orders and boot camp (vehicle offences) orders as sentencing options, and provided for the management of boot camps. The 2012 Bill followed the announcement by the former government of a two year trial of two models of boot camps. One model, a Sentenced Boot Camp, required amendments to the Act to provide for boot camp orders by a court as an alternative to a detention order. The former Legal and Community Safety Committee reported on the 2012 Bill in November 2012.⁵

The Youth Boot Camp pilot program commenced in February 2013 and ran until October 2015. Four youth boot camps were operating at the time of an independent evaluation in 2015. The boot camps were on the Gold Coast, the Fraser/Sunshine Coast, Rockhampton and in Lincoln Springs, covering Cairns and Townsville. The Lincoln Springs boot camp replaced an earlier residential boot camp at Kuranda which closed after an adverse incident.⁶

After the independent evaluation, the current Government announced in August 2015 that the boot camp program trial would cease at its planned conclusion in October 2015.⁷

⁴ Youth Justice and Other Legislation Amendment Bill 2015, *Explanatory Notes*, p 1

⁵ View at: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2012/YouthJustice/121122-rpt-18.pdf>

⁶ KPMG, *Final Report for the evaluation of Queensland's Youth Boot Camps*, July 2015, p 4

⁷ *Explanatory Notes*, p 2

Rights and protections for children in the youth justice system – the 2014 Bill

Amendments in the 2014 Bill included: enabling repeat offenders' identifying information to be published and for Childrens Court proceedings to be open for repeat offenders. The 2014 Bill created a new offence where a child commits a further offence while on bail, and permitted childhood findings of guilt where no conviction was recorded to be admissible during sentencing a person for an adult offence.

The principle that detention in custody, whether on arrest or sentence, should be used only as a last resort was removed from the Youth Justice Act in 2014.

The 2014 amendments also provided for the automatic transfer to adult corrective services facilities of 17 year olds who have six months or more to serve in detention, and provided for children who absconded from a Sentenced Youth Boot Camp to be arrested and brought before a court for resentencing without first receiving a warning.⁸ In addition, sentence reviews were removed from the Act in the course of the reforms.⁹

Staged amendments to Youth Justice Act

Introducing the Bill, the Attorney-General described it as the first stage of amendments to the Act to repeal amendments made by the former government. The Attorney-General said that a second stage of amendments required further consultation on enhancements and implementation, and would be brought to the Legislative Assembly in early 2016. Those further amendments relate to: open proceedings of the Childrens Court; automatic transfer to adult correctional facilities of 17 year olds with at least six months left to serve in detention; and reinstatement of court referred youth justice conferencing.¹⁰

The department advised the committee that the Bill and the next stage of legislative amendments emphasise an early intervention and rehabilitation approach to reducing youth offending.

Development of a Youth Justice Policy

The department advised that a cross-government youth justice policy would be developed in 2016.

The policy will focus on evidence based coordinated and intensive approaches to reduce offending behaviours of children and young people.

To reduce the risk of offending behaviour, the policy will include a direct focus on improving children and young people's engagement in school, training and work and support access to mental health, drug, alcohol and family support. At the core of the policy is the evidence-based assertion that children and young people's involvement in the youth justice system, especially detention, is the least desirable and effective approach to stopping childhood offending and does not lead to long term and sustainable improvements in community safety. Entrenchment of children and young people in the criminal justice system has the reverse effect of making communities even more unsafe.¹¹

A number of submitters noted that the Bill did not include amendments on a range of other youth justice matters. Other submitters advocated for further reform, for collaborative policy development, a restorative justice approach, and other changes including the reinstatement of youth conferencing.

The committee notes that the Attorney-General and Minister for Justice and the department have outlined plans for further legislative amendments and the development of a youth justice policy in

⁸ *Explanatory Notes*, Youth Justice and Other Legislation Amendment Bill 2014, p 1.

⁹ *Explanatory Notes*, p 2

¹⁰ *Transcript of Proceedings*, Explanatory Speech, 1 December 2015, p 2971

¹¹ Correspondence, Department of Justice and Attorney-General, 8 January 2016

2016. The committee anticipates that some of the issues raised by stakeholders that are outside the scope of the committee's inquiry into this Bill may be addressed in the next Bill, or in the proposed youth justice policy.

To assist in that further policy and legislative development, some of the evidence provided to the committee about youth justice issues that are outside the scope of the Bill is summarised in chapter 4 of this report.

1.5 Government consultation on the Youth Justice and Other Legislation Amendment Bill 2015

The Explanatory Notes state that the Bill reflects community and stakeholder feedback received in response to the former government's *Safer Streets Crime Action Plan – Youth Justice* publically released survey, and evidence to the former Legal and Community Safety Committee about the 2014 reforms.¹²

1.6 Stakeholder support for the objectives of the Bill

Eighteen of the 24 submitters indicated that they support the objectives and policy intent of the Bill. Some submissions raised specific concerns with the Bill, which are discussed in chapter 2 of this report.

The Explanatory Notes state that when the (former) Legal and Community Safety Committee examined the 2014 Bill, the measures implemented were not supported by any of the submitters to the Parliamentary committee's inquiry.¹³

1.7 Outcome of committee considerations

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

In this instance, the committee was not able to reach a majority decision on a motion to recommend that the Bill be passed and therefore in accordance with section 91C(7) of the *Parliament of Queensland Act 2001*, the question on the motion failed.

¹² *Explanatory Notes*, p 5

¹³ *Explanatory Notes*, p 2. The former committee's report can be found at <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/rpt-12Mar2014.pdf>

2. Examination of the Bill

2.1 Principle that detention of a child is a last resort

Detention rates

In most states and territories, the rate of youth detention decreased between 2011 and 2015, however detention in Queensland and Northern Territory increased. In Queensland 168 young people were in detention in 2015, an increase over the 130 young people in detention in 2011. The majority of young people in detention were unsentenced, meaning they were either remanded in custody by a court until their next appearance, or were in police-referred detention awaiting their first court appearance. Only 27 of the 168 young people in detention in Queensland in the June quarter of 2015 had been sentenced.¹⁴

The Queensland Family and Child Commission drew the committee's attention to the small proportion of young people who have been found guilty of an offence. During 2014-15 less than one per cent of young people aged 10 to 16 years in Queensland had one or more offences proven.¹⁵

Current principles in Youth Justice Act

Section 150 of the Act sets out sentencing principles for children; they include a range of matters including the youth justice principles and special considerations. The principle that detention should be a last resort was removed from the Act in the 2014 amendments.

The charter of nineteen youth justice principles in Schedule 1 of the Act underlie the operation of the Act. The principles include, for example, that: the community should be protected from offences; the youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing; and that a child being dealt with under the Act should have procedures and other matters explained to them in a way the child understands.¹⁶

Amendments to Youth Justice Act

Clause 16 amends section 150 (Sentencing principles) to add to the matters to which a court must have regard the principle that detention should be imposed only as a last resort and for the shortest appropriate period. The amended sentencing principles apply whether the offence or conviction occurred before or after commencement of the amendments.¹⁷

Clause 56 amends Schedule 1 of the Act to reinsert the principle that:

A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

Reflecting the reinstatement of the principle, clause 26 inserts proposed section 208 in Part 7 (Sentencing) of the Act to provide that a court may make a detention order against a child only if the court is satisfied that no other sentence is appropriate in the circumstances. The court may make a detention order only after considering all other available sentences and taking into account the desirability of not holding a child in detention. An identical section 208 was omitted from the Act by the 2014 Bill.

¹⁴ Australian Institute of Health & Welfare, *Youth detention population in Australia 2015*, Bulletin 131, December 2015, p 15

¹⁵ Hansard transcript, Public hearing, Brisbane, 17 February, p 7

¹⁶ *Youth Justice Act 1992*, section 3 and Schedule 1

¹⁷ Proposed section 384, inserted by clause 55

Amendments to Penalties and Sentences Act

The *Penalties and Sentences Act 1992* sets out the powers of courts to sentence offenders and provides a framework for sentencing of offenders aged 17 and over. Amendments in 2014 removed from section 9 of the Act the sentencing principles that imprisonment should be imposed only as a last resort.

Clause 61 amends section 9 of the Penalties and Sentences Act to reinstate the sentencing principles that imprisonment should only be imposed as a last resort and a sentence that allows the offender to stay in the community is preferable. Those principles will not apply to offences involving violence against a person, child sexual abuse and child exploitation material.

Schedule 1 of the Bill also inserts a note in section 365(3) of the *Penalties and Sentences Act 2000*¹⁸ about the principle that a child should be detained in custody for an offence only as a last resort. Police will be required to consider the principle when dealing with children arrested and charged with offences.

Issues raised by stakeholders

Ten submissions specifically supported reinstatement of the principle that detention of a child should be a last resort and for the least time that is justified in the circumstances. Another five submissions supported the policy objectives of the Bill as a whole. Some of the arguments in support of reinstating the sentencing principle are below.

*One submitter who did not support reinstatement of the principle of detention as a last resort suggested that detention is the only option if a child refuses to comply with other court orders. Mr Williams said: This [the principle of detention as a last resort] will only make life more difficult for everyone. At this time our Magistrates already will only impose a detention order on a child as a last resort. If a child stubbornly refuses to comply with any court order while awaiting trial, there is no alternative than to incarcerate them to protect the community.*¹⁹

Another submitter suggested that young Indigenous offenders need to have contact with elders in Indigenous programs.²⁰

Obligations under International conventions

There was strong stakeholder support for reinstatement of the principle on the basis that the legislation will be better aligned with those international obligations.²¹ The principle that detention should only be imposed as a last resort is a long standing common law principle and is recognised in all other Australian states.²²

The UN Convention states:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

¹⁸ Subsection 365(3) of the *Penalties and Sentences Act 2000* enables a police officer to arrest a child without warrant, subject to section 13 of the *Youth Justice Act 1992*, if the police officer reasonably suspects the child has committed or is committing an offence.

¹⁹ Submission 2, p 2.

²⁰ Submission 14

²¹ See for example, Submissions 4, 5, 16, 17, 18, 19, 20, and 25

²² Submissions 20 and 25

Sentencing is ineffective as a deterrent

The committee was advised that sentencing for the purpose of deterrence is not effective or appropriate for young people. Professor O'Leary advised that:

*Neuroscientific evidence indicates that young people's brains are still in development, with the result that young people do not consider the consequences of their actions in the same way as adults do. As such, the sentencing purpose of specific deterrence is particularly inappropriate for young people and youth justice systems should aim to avoid stigmatising young people as offenders, to allow them to potentially age out of offending behaviour.*²³

In response to the committee's question, Professor O'Leary expanded on this point:

*.. although they might have a general comprehension of something being wrong and a general comprehension of [what] the consequences of particular actions are, it has been described as having an unskilled driver behind the wheel ... they are not able to respond in the appropriate way, and that is because of these particular developmental issues.*²⁴

In contrast, Councillor Eddiehausen said:

*I have dealt with them for years. They know exactly what they are doing. They are not dumb. A lot of them have no respect in relation to indigenous kids ... they have absolutely no respect for the majority of their elders. They need to be dealt with significantly. I always equate it to a light and moths. If you turn that light off, the moths go home. They do not do the crime. You need to make sure the victims are involved in the process, but these kids need to be dealt with harshly.*²⁵

A further exchange entailed:

Mrs SMITH: ... The witness from Queensland Youth Services indicated that 17-year-olds sometimes do not know the consequences of their actions and cannot understand responsibility. Would you have any comment to make on that, given your experience, both in your role as councillor –

Councillor Eddiehausen: They know from the time that they are – I would even suggest – probably 14, 15 or 16. They know exactly what they are doing. I have spoken at length to them. They know what they are doing.

Mrs SMITH: Do you think there is a reasonable view that if they keep offending and the law is not tough on them they will just continue on with that?

*Councillor Eddiehausen: Of course they will. They will only become poor role models – the majority being young males – for these young people. These young people want to get involved if you take the recidivists out of the equation.*²⁶

Detention and re-offending

The QAILS submitted that detention is an environment that fosters criminality and 'provides offenders with a better ability to create criminal networks and to learn better offending strategies; something young offenders should not be exposed to where possible.'²⁷ Research cited by submitters suggests

²³ Hansard transcript, Public hearing, Brisbane, 17 February, pp 1 - 2

²⁴ Hansard transcript, Public hearing, Brisbane, 17 February, p 6

²⁵ Hansard transcript, Public hearing, Townsville, 22 January, p 19

²⁶ Hansard transcript, Public hearing, Townsville, 22 January 2016, p 20

²⁷ Submission 19, p 2

that detention of young people is the least effective option to reduce re-offending²⁸ and is a strong predictor of re-offending.²⁹

Dr Richards summarised the position as: 'In other words, youth detention firstly does not deter offending and secondly creates a cycle in which young people go on to offend more'.³⁰ Uncle Smallwood concurred, describing youth detention as 'only a stepping stone to jail'.³¹

Uncle Smallwood emphasised that he considered his work in taking Indigenous youth on country was a better way to address the issue of recidivism than youth detention.

*These children have to be taught the law of the land and the sea. Until they do that, they will not have respect within themselves...I have that many branches hanging off my men's group as in hunters, trackers, bushwalkers, painters, artists, didgeridoo players and dancers. The men who come to my men's group have that much knowledge and wisdom from their own life experiences that they say to me every day, 'We were young once. Why can't we help these young people?'*³²

2.2 Removal of the offence of breach of bail for children

The 2014 Bill inserted provisions which created a new deemed offence of breaching bail if a child was found guilty of another offence committed while on bail for the original offence.

Clause 8 of the Bill omits sections 59AA to 59B of the Act. The Explanatory Notes state that the effect of the amendment is that '*a finding of guilt for a further offence committed while on bail is no longer itself an offence for a child.*'³³

If the Bill is passed, a child who was charged with the offence of breach of bail under repealed section 59A before the amendments commence and the charge has not been finally dealt with, the child cannot be prosecuted for, convicted of or punished for the offence.³⁴

The majority of submitters supported the amendment to remove the offence.³⁵ The Youth Advocacy Centre said:

*The creation of an offence to commit an offence whilst on bail was ill-conceived and found by Richards DCJ to be contrary to s 16 of the Queensland Criminal Code which supports another long-established legal protection, the concept of double jeopardy, which holds that a person should not be punished twice for the same offence. (R v S; R v L [2015] Q ChC 3).*³⁶

Two submitters argued against removing the deemed offence of breaching bail by offending because they believe there should be consequences for young offenders who breach bail. Mr Williams questioned '*[W]hat is the point of a court making a decision to release a young offender on bail if there*

²⁸ ADCQ, Submission 5, cites the Australian Institute of Criminology report *Recidivism in Australia: findings and future research*, 2007, <http://perthexchange.com.au/photos/gan829368-0-o-%7B06BA8B79-E747-413E-A263-72FA37E42F6F%7Drpp80%20copy.pdf>

²⁹ Submission 4

³⁰ Hansard transcript, Public hearing, Brisbane, 17 February 2016, p 7.

³¹ Hansard transcript, Public hearing, Brisbane, 17 February 2016, p 15.

³² Hansard transcript, Public hearing, Brisbane, 17 February 2016, p 15.

³³ *Explanatory Notes*, p 6

³⁴ Proposed section 381, inserted by clause 55

³⁵ See for example, Submissions 1, 4, 13, 17, 19, 20, 23, 25

³⁶ Submission 23,

*are no consequences when they breach the order? This only serves to teach them they can do what they like with impunity and further erodes any respect they have for the court system.*³⁷

Uncle Smallwood's submission indicated that breaching bail should be an offence:

*They are committing crimes like an adult and if they breach their bail they should be sentenced like an adult.*³⁸

The department advised that the fact that an offence was committed while the young person was on bail could be taken into account by the courts in sentencing, and by the police and courts in deciding future bail applications.³⁹

2.3 Reinstatement of review of sentences by Childrens Court judge

Clause 14 inserts proposed sections 118 to 126 into the Act. The proposed new sections are similar to former sections 118 to 126, with some minor drafting changes. Those sections were omitted during consideration of the 2014 Bill, when an amendment to omit those sections was introduced and passed.⁴⁰

The department advised that the amendments in the Bill will mean that:

*..children sentenced by a Childrens Court Magistrate will have access to a quick, cost effective means of reviewing sentencing decisions, including sentencing decisions in relation to contraventions of community based orders and supervised release orders. This will contribute to a consistent approach to the sentencing of young people ...*⁴¹

The amendments provide that a Childrens Court Judge, on application, may review a sentence order made by a Childrens Court magistrate. An application for review may be made by the child, the chief executive acting in the child's interests, or the complainant or arresting officer for the charge and must be made within 28 days or a later period allowed by the Childrens Court Judge.

A sentence review is by way of rehearing on the merits, and the judge may have regard to the record of the proceeding before the Childrens Court magistrate and any further submissions and evidence. On review, the Children's Court judge may confirm or vary a sentence order, or substitute it with another order.⁴² A sentence review may occur whether the sentence order was made before or after commencement of the amendments in the Bill.⁴³

The reinstatement of the sentence review jurisdiction was supported by the majority of submissions.⁴⁴ For example, the Queensland Association of Independent Legal Services welcomed the amendment *'as it provides an efficient way of dealing with inappropriate sentences imposed on juveniles and quick correction of errors made by sentencing magistrates, rather than a cumbersome and formalistic appeal under s 222 of the Justices Act 1886.*⁴⁵ The process for section 222 appeals is cumbersome, and since the 2014 amendments has led to a reduction in appeals. There were only nine section 222 appeals in 2014-15, compared to 73 and 53 appeals during 2011-12 and 2012-13 respectively.⁴⁶

³⁷ Submissions 2 and 14.

³⁸ Submission 14, p 1.

³⁹ Correspondence, Department of Justice and Attorney-General, 5 February 2016, p 4

⁴⁰ Youth Justice and Other Legislation Amendment Bill 2014, *Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Jarrod Bleijie MP*, p 3

⁴¹ Correspondence, Department of Justice and Attorney-General, 8 January 2016, p 5

⁴² Clause 14

⁴³ Proposed section 383, inserted by clause 55

⁴⁴ See for example, submissions 3, 4, 17, 19, 20 and 23

⁴⁵ Submission 19

⁴⁶ Hansard transcript, Public hearing, Brisbane, 17 February, p 2

Legal Aid Queensland's submission questioned whether the drafting effectively included review of breaches of community based orders.⁴⁷ The department advised that clause 40(5) of the Bill deems a decision or order by a magistrate on finding that a young person has contravened a community based order to be a sentence order that can be reviewed under the reinstated sentence review provisions.⁴⁸ This ensures that a breach of a community based order can be reviewed by a Childrens Court Judge.

Another submission said the amendment needed clarification as 'it should not be used as a rubber stamp by a Childrens Court Judge to arbitrarily quash the determinations of lower courts'.⁴⁹

2.4 Childhood finding of guilt not admissible in sentencing for adult offence

Clause 15 amends section 148 of the Act so that a court sentencing an adult cannot have regard to a finding of guilt for an offence committed as a child where a conviction is not recorded. The amendment continues a court's capacity when sentencing to receive information about any other sentence to which the adult is subject if that is necessary to mitigate the effect of the court's sentence.

Proposed section 382 (inserted by clause 55) provides that the amendment to section 148 applies to the sentencing of an adult, whether the relevant offence happened before or after commencement of the amendments in the Bill.

In the main submitters supported this amendment.⁵⁰ Submissions from PACT and O'Connor, Patterson Smith lawyers argued that the cognitive or mental development of a child may not enable them to foresee the consequences of criminal offences. The offences committed by a child who is still developing mentally, and may not have sufficient insight or maturity to make good decisions should not be held against them later in life.⁵¹ At the Townsville public hearing, Professor Glenn Dawes supported that view saying:

When you ask anyone 'Who is a young person?' the definition will differ from person to person. But certainly it is around the maturation levels of young people, and that is why we have laws in this state that young people cannot be tried under the age of 10, for example. So I think there is a certain cognitive aspect around understanding and knowing the full consequences of their actions.⁵²

Two submissions suggested that admissions of guilt should be admissible when sentencing a person for an offence committed as an adult.⁵³ Mr Williams said that:

a young person whose relatively minor conviction was not recorded ... perhaps should not have to suffer for previous indiscretion. However, those with juvenile criminal histories of five to six pages and continually reoffend up until they are seventeen, should not be afforded the unfair advantage of being given a clean sheet just because of a birthday.'⁵⁴

⁴⁷ Submissions 2 and 3

⁴⁸ Correspondence, Department of Justice and Attorney-General, 5 February 2016, p 7

⁴⁹ Submission 2

⁵⁰ See for example Submissions by PACT, Crime and Justice Research Centre, Law and Justice Institute, Queensland Greens, and O'Connor Patterson Smith

⁵¹ Submissions 1 and 25

⁵² Hansard transcript, Townsville hearing, p 2

⁵³ Submissions 2 and 14

⁵⁴ Submission 2

2.5 Reinstate prohibition on publication of Identifying information about a child

Current Act and amendments

The 2014 Bill enabled a court, in specified circumstances, to allow publication of identifying information about a child who was a first-time offender. Clause 32 of the Bill amends section 234 to the effect that a judge when sentencing may order publication of identifying information about the child. The court may do so only in relation to a life offence that involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence, if the court considers it would be in the interests of justice, having regard to the need to protect the community and the safety or wellbeing of a person (other than the child).

Current section 301 of the Act makes it an offence for a person to publish identifying information about a first-time offender. Clause 52 amends section 301 to prohibit publication of identifying information about a child, reinstating the situation that applied before the 2014 Bill.

The amended provisions apply after commencement, whether or not the identifying information was the subject of a court order under repealed section 299A.⁵⁵

Stakeholder views

Many submitters supported this amendment.⁵⁶ For example the Crime and Justice Research Centre advised that there is no evidence that ‘naming and shaming’ reduces the likelihood of re-offending, and is likely to have an adverse impact on families that are already struggling.⁵⁷ PACT noted that release of identifying information about a child could also identify witnesses and victims, and could have a negative effect on family members of the accused child.⁵⁸

The Law and Justice Institute highlighted concerns in applying the current provision. Firstly, while the Childrens Court and the Childrens Court of Queensland often prohibit publication of identifying information, in regional courts the outcome has had ‘*disproportionate effects on child defendants.*’ Practices vary widely and child defendants in small communities are more likely to receive adverse media attention than children in larger centres.⁵⁹

A second concern with the application of the current provision relates to children who are also subject to an order under the *Child Protection Act 1999* because publication of identifying information for such children constitutes an offence. The Law and Justice Institute submitted that a significant proportion of child defendants are also subject to child protection orders and ‘*application of the provision has proven to be problematical and unjust.*’⁶⁰

Uncle Smallwood told the committee that he did not support ‘naming and shaming’ young people so their families are shamed, and he understood why ‘naming and shaming’ was inappropriate. However he emphasised that the young Aboriginal people he works with ‘*have no shame or respect for anybody when they are committing their crimes.*’ He did however indicate that he would like neighbours of juvenile offenders to know that their neighbours have committed offences.⁶¹

He also advocated for court proceedings to be open:

⁵⁵ Proposed section 385, inserted by clause 55

⁵⁶ See for example, Submissions 1, 4, 5, 11, 13, 19, 20 and 25

⁵⁷ Submission 4

⁵⁸ Submission 1

⁵⁹ Submission 13

⁶⁰ Submission 13

⁶¹ Hansard transcript, Public hearing, Brisbane, 17 February, p 15

The parents should be made to be in court at the time with their children and listen to the prosecutors. I am shocked at the charges in court. Outside the kids say no I just slapped the person across the face – the real charges are being kicked in the guts etc. – you only find out the truth in the courts. It should be an open court. The crimes these kids are committing today the public should know about.⁶²

Ms Parkinson also advocated for courts to be open so that the community knows what happens to offenders who appear before the court.⁶³

It was suggested that the current provision about publication of identifying information used court time with little deterrent effect and that it impedes rehabilitation:

Overwhelmingly, the available feedback⁶⁴ suggests that valuable court time is being utilised in dealing with these applications (and those relating to applications to close Courts), that it has little to no deterrent effect (10% of child offenders commit 45% of proven offences) and that publication of identifying particulars is often prohibited on the basis that is an impediment to rehabilitation and thus contrary to the interests of justice and the community.⁶⁵

Finally, the Law and Justice Institute advised that magistrates had concerns about resourcing of the courts due to the extra work that they have faced in dealing with applications to prohibit publication of identifying information about young people.⁶⁶

Opposing the amendment, two submissions supported ‘naming and shaming’ young people. One argued that naming of offenders afforded the community the opportunity to protect itself. Another submitter suggested that after ‘naming and shaming’ of offenders, parents could begin examining their role as a parent.⁶⁷ Mr Williams was of the view that:

Offenders repeatedly committing crimes should be named in order that the community is afforded the opportunity to protect itself. What is the justification for repealing this Section of the Act? Is there concern that the offender may be traumatized by having their name released to the public? I don't think so. A youth who plans to break into a dwelling while armed with a weapon and uses that weapon upon the owner should be named. Once again, the public has a right to know. While Childrens' Court may be an open court for recidivist offenders, to my knowledge it has only occurred in exceptional cases, and then only by the most courageous Magistrate. I disagree with the amendment.⁶⁸

2.6 Removal of boot camp orders and boot camp (vehicle offences) orders as sentencing option

Policy rationale

The explanatory notes stated that an independent evaluation of the trial youth boot camp program ‘showed that the trial was ineffective in its goal of reducing recidivism and consequently that it did not reflect value for money ...’⁶⁹. The department advised that the rate of recidivism among boot camp participants was similar to young people who had other interventions. The evaluation found that 63.5

⁶² Submission 14

⁶³ Hansard transcript, Townsville hearing, p 14

⁶⁴ Feedback from consultation by the Law and Justice Institute with Magistrates and specialist youth legal practitioners in Brisbane and regional areas; see Submission 13, p 1

⁶⁵ Submission 13, p 2

⁶⁶ Hansard transcript, Public hearing, Brisbane, 17 February, p 2

⁶⁷ Submissions 2 and 14

⁶⁸ Submission 2

⁶⁹ Explanatory Notes, p 2

per cent of those sentenced to a boot camp order reoffended, compared to 65 per cent of the comparison cohort.⁷⁰

The committee notes the evidence of various witnesses indicating that it would have been preferable for an outcomes based review of the youth boot camp trial to have been completed.⁷¹

Boot camp and boot camp (vehicle offences) orders

Clauses 18 to 24 would amend the Act to remove a boot camp order and a boot camp (vehicle) order from the sentencing options available if a child is found guilty of an offence. The amendments remove references to a boot camp order and a boot camp (vehicle) order from sections 175, 176 and 180 of the Act, and omit other provisions relating to orders.

Clause 31 omits sections 226A to 226D, removing the capacity of a court to immediately release a child into a boot camp program under an order, and also omits sections which provide for the establishment of a boot camp program by the chief executive. The Bill also omits relevant definitions and references to boot camps, and omits Schedule 5 which lists the offences which made a child ineligible for a boot camp order.⁷²

Boot camp centre administration

Part 8A (Boot camp centre administration) of the Act is omitted by clause 49 as it is no longer required because the boot camp program has been discontinued. The sections of the Act to be omitted deal with the administration of boot camps, for example: approval to provide a boot camp centre; services that must be provided; information that must be given to a child, and an obligation to report harm to a child.

Stakeholders views

Only one submitter argued against the removal of boot camp orders as a sentencing option, noting that there was a success rate of 36.48 per cent in dealing with recidivist offenders. This was seen as a remarkable achievement because children only attended the camps for one month.⁷³ Another submitter supported the abolition of boot camps, but instead suggested specially designed programs for Indigenous young offenders run by elders.⁷⁴ In response to a request from the committee for details about a back to country type program, the committee heard in Townsville that:

*I am of Indigenous descent myself, so I am Aboriginal. It would have to follow cultural protocols, but I see it as a great opportunity specifically for our remote Aboriginal communities like Palm Island where they still have their elders. What would be involved is really sharing their cultural knowledge. Aboriginal culture is really about connection to land, understanding the spirituality and understanding the law.*⁷⁵

Professor Glenn Dawes, at the Townsville public hearing, said that there had been an issue in terms of supporting people to reintegrate back into their communities:

We do something within the boot camp...but then again people are not helped with their reintegration back into society and following up what they did. They often go back into

⁷⁰ Correspondence, Department of Justice and Attorney-General, 5 February 2016

⁷¹ For example, Hansard transcript, Townsville hearing, Ms Lang, p 9

⁷² Clauses 57 to 59

⁷³ Submission 1

⁷⁴ Submission 14

⁷⁵ Hansard transcript, Townsville hearing, p 10.

*the same ways, associate with criminal peers and go back into home environments which are often quite dysfunctional and basically go back into a life of crime.*⁷⁶

Several submitters indicated that they would have preferred to see a full, outcomes-based review conducted into the boot camp trial. This is not possible because the trial was not completed. Ms Bannerman from Townsville said the community has *'yet to see the courts use these reforms to their full and proper potential so that they are actually given a chance to work'*. Ms Parkinson, who gave evidence with Ms Bannerman expressed a similar view as they supported early intervention. Ms Lang from Townsville also indicated that she would have liked to see a full review of the program.⁷⁷

Other stakeholders supported the removal of boot camp orders for reasons that included:

- despite a large body of international research on boot camps, there is no evidence that correctional-style boot camps are effective in reducing youth offending or recidivism, or that those established reduced offending or detention⁷⁸
- the high cost of boot camps that operated between 2013 and 2015⁷⁹
- research evidence indicates that increasing the severity of punishment is not effective in reducing the risk of re-offending⁸⁰
- at a practical level, mandatory sentencing to boot camp led to anomalies. For example in numerous cases a Magistrate was required to sentence a juvenile offender to a boot camp order when the offender had a previous boot camp order that had not been complied with, or where the juvenile was still subject to a boot camp order. In addition, some juveniles who were repeat offenders were deemed unsuitable for boot camp on the recommendation of boot camp coordinators. Therefore the juveniles at whom the legislation was targeted were not subjected to boot camp orders.⁸¹

Repeat offenders

The committee had noted that ten per cent of juvenile offenders were responsible for 45 per cent of proven offences.⁸²

In response to a committee question about how the Bill will address those repeat offenders, the Law Society considered that the Bill will refocus the energies of the youth justice system back to other areas such as rehabilitation.⁸³

Professor O'Leary suggested that the amendments in the Bill would be only one part of an effective response to deterring young people from crime. She suggested that avoiding stigmatising and institutionalising young offenders is one aspect, and other 'front end' approaches are needed with young offenders.⁸⁴

In reply to a question from the committee, Ms Parkinson said that

... in a Channel 7 interview some years ago [the] reporter asked the young criminal at the courthouse, 'How do we stop this? What do we have to do to stop you from going out

⁷⁶ Hansard transcript, Townsville hearing, p 2

⁷⁷ Hansard transcript, Townsville hearing, p 12

⁷⁸ Submissions 4, 15, 17, 19, 20, 23

⁷⁹ Submission 4

⁸⁰ Submission 19, 26

⁸¹ Submission 25, pp 1 - 2

⁸² Submission 17

⁸³ Hansard transcript, Public hearing, Brisbane, 17 February, p 4

⁸⁴ Hansard transcript, Public hearing, Brisbane, 17 February, p 4

there and stealing another car?’ His exact words were, ‘No more bail. Send them to jail.’ That was out of the mouth of a 16-year-old offender.⁸⁵

Multiple factors contribute to youth re-offending. Some of the reasons that a small group of young people is responsible for a significant proportion of youth offences include their experiences in the child safety system, increased drug use and resultant aggressive behaviour, and lack of connection to culture and country and positive male role models.⁸⁶

Transitional arrangements for boot camp orders

The Bill specifies transitional arrangements where there is an existing boot camp order or boot camp (vehicle offence) order once the amendments come into effect.⁸⁷ The Bill is proposed to commence on a date to be proclaimed (except for amendments to other Acts which commence on assent).⁸⁸

Boot camp orders will continue to have effect as if amendments to the Act had not been made.⁸⁹ After the amendments commence a court cannot make a boot camp order, irrespective of whether the offence or conviction for the offence occurred before or after commencement of the amendments.⁹⁰

If a boot camp (vehicle offences) order is breached, a court will have the power to revoke the order and resentence the child for the original offence. If the court imposes a community based order, the court must have regard to the time the boot camp (vehicle offences) order was complied with.⁹¹

On breach of a boot camp order, new section 377 specifies that a court may order the child to serve the sentence of detention for which the original order was made, or make a conditional release order. The court must have regard to the period the child has complied with the boot camp order.

A boot camp (vehicle offences) order may be varied or discharged on application of the chief executive or the child. A court may sentence the child to detention or make a conditional release order.

The retrospective nature of some of the transitional arrangements are discussed in chapter 3 of this report in relation to the fundamental legislative principles.

2.7 Children in former boot camp centres

Clause 54 inserts new section 305A and 305B. Proposed section 305A creates an ongoing obligation for former boot camp centre employees, unless they have a reasonable excuse, to report suspected harm to a child while participating in the residential phase of a former boot camp program.

Proposed new section 305B enables a child or parent of a child who participated in a boot camp program to complain about a matter that affects the child. The Bill does not specify how complaints will be dealt with and requires the chief executive to issue instructions about how a complaint may be made and dealt with. A complaint may be made to a child advocacy officer, defined in the Act as a person appointed to that role under the *Public Guardian Act 2014*.

2.8 Amendment of other Acts

Clauses 67 and 68 of the Bill amend the *Public Guardian Act 2014* by omitting references to a boot camp centre as a ‘visitable site’ for the public guardian.

⁸⁵ Hansard transcript, Townsville hearing, p 16

⁸⁶ Hansard transcript, Public hearing, Brisbane, 17 February, pp 4-5.

⁸⁷ Clause 55.

⁸⁸ Clause 2.

⁸⁹ Proposed sections 370 and 371, inserted by clause 55.

⁹⁰ Proposed section 380.

⁹¹ Proposed section 376.

Schedule 1 of the Bill makes a minor amendment to the *Victims of Crime Assistance Act 2009*, as a consequence of the renumbering of a section of the *Penalties and Sentences Act 1992*.

3. Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) 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.

On the whole, the amendments in the Bill are generally consistent with FLPs, however the committee notes the following potential breaches of the FLPs.

Retrospective provisions in the Bill

Section 4(3)(g) of the LSA provides that legislation should not adversely effects rights and liberties or impose obligations retrospectively.

The following transitional provisions inserted by clause 55 of the Bill apply retrospectively:

- if a boot camp order is alleged to have been contravened before or after the amendments commence, the Bill enables a boot camp order to be dealt with as if it was a community based order (new section 372)
- a finding of guilt with no conviction recorded may not be considered by a court in sentencing a person for an adult offence, whether the adult offence occurred before or after commencement (new section 382)
- the reinstated sentence review jurisdiction of a Childrens Court judge applies whether the sentence order was made before or after reinstatement of the sentence review jurisdiction (new section 383)
- the amended sentencing principles, which reinstate the principle that detention should be imposed only as a last resort and for the shortest appropriate time, apply to sentencing a child after the amendments commence, irrespective of whether the offence or conviction was before or after commencement (new section 384)
- if a court has made an order to publish identifying information about a child under the Act, the question of whether to allow publication is to be resolved in accordance with the amended sections 234 and 301 of the Act (new section 385)

The department highlighted in the explanatory notes that the removal of the court’s power to make boot camp orders and boot camp (vehicle) orders will have some limited retrospective effect, and stated that this was justified as their omission does not affect rights and liberties.⁹²

Clause 65 amends the *Penalties and Sentences Act 1992* to provide that the amended sentencing principles apply to sentencing an offender after the amendments commence, whether the offence or conviction occurred before or after commencement. This has some degree of retrospective operation.

⁹² Explanatory notes, p 3

Administrative powers

In accordance with section 4(3)(a) of the LSA, rights, obligations and liberties of individuals that are dependent on administrative (rather than legislative) power, may be a breach of FLPs if the administrative power is not sufficiently defined and subject to appropriate review.

Clause 54 inserts new section 305B which enables a child who participated in a boot camp program or their parent to complain about a matter that affects the child. The chief executive must issue written instructions on how a complaint may be made and dealt with. The chief executive is not obliged to deal with a complaint that he or she reasonably believes to be trivial or made only to cause annoyance.

Depending on the seriousness of the administrative decision and the consequences that follow, legislation should generally provide criteria for making of an administrative decision⁹³ such as the way a complaint may be made and the criteria for deciding that a complaint is trivial.

3.2 Explanatory notes

Explanatory Notes were tabled with the introduction of the Bill as required by section 22 of the LSA. The Explanatory Notes comply with the technical requirements of section 23 of the LSA and provide a reasonable level of information about the Bill.

⁹³ Office of the Queensland Parliamentary Counsel, *The OQPBC Notebook*, para 3:10

4. Related youth policy issues

4.1 Introduction

As noted in chapter one of this report, the Government is developing a youth justice policy, and the Attorney-General has foreshadowed that further amendments to the Act will be introduced into the Legislative Assembly this year. The committee understands that a discussion paper has been issued to stakeholders about youth justice policy, including 17 year olds in the adult criminal justice system.⁹⁴

This chapter highlights some of the youth justice policy issues raised by stakeholders that are outside the scope of the Bill. The committee considers that the information may be of assistance in informing policy development.

4.2 Aboriginal and Torres Strait Islander youth in detention

Aboriginal and Torres Strait Islander young people are over-represented in youth detention. Sixty four per cent of children and young people in a detention centre on an average day in 2014–15 were Aboriginal and Torres Strait Islander. Nationally, the rate of detention of Indigenous young people was lower at 54 per cent in the June quarter of 2015 were Indigenous. The Crime and Justice Research Centre suggested that detention on this scale can only lead to further marginalization of Indigenous youth in direct contravention of the federal government's Closing the Gap policy.

A cross-agency youth justice policy is being developed, and the department advised that addressing issues such as over-representation will require implementation of the policy as a collaborative effort by multiple agencies and organisations.⁹⁵

Uncle Alfred Smallwood outlined the voluntary mentoring of young offenders that he does in Townsville, with an emphasis on teaching the young people respect. He also runs a men's group in Townsville and said that the men who participate have much knowledge and wisdom from their life experiences who want to help. They have become protectors, providers and role models in their family. However Uncle Smallwood said the men are prevented as they do not have a Blue Card.⁹⁶

Ms Lang urged consideration of programs that are culturally inclusive, and suggested that back to country activities that observe cultural protocols could be discussed with elders in various communities. She noted that New Zealand's diversionary activities work closely with their Maori elders, and have times when young people can go through their own cultural laws in their own punishment systems.⁹⁷

4.3 Prevention, rehabilitation and recidivism

Prevention and early intervention

A number of stakeholders highlighted the importance of measures to prevent young people from becoming involved in the justice system. Stakeholders supported a whole of government approach to prevention, which might involve input from health, alcohol and drug rehabilitation, education, family support, parenting programs, child safety and other agencies.

⁹⁴ Hansard transcript, Public hearing, Brisbane, 17 February, p 4

⁹⁵ Department of Justice and Attorney-General, Correspondence, 5 February 2016

⁹⁶ Hansard transcript, Public hearing, Brisbane, 17 February, p 15

⁹⁷ Hansard transcript, Public hearing, Townsville, 22 January, p 6

The Queensland Family and Child Commission advised that a lot of research and evidence supports early intervention and prevention, but that a lot of work is needed to identify how offending can be prevented.⁹⁸

One stakeholder with considerable experience in policing and working with young people suggested that a stronger approach was needed with youth offenders, particularly those who re-offend, and government funding should be targeted '*towards programs assisting youth teetering on the brink of disengaging from school or falling in with criminal groups*'. Councillor Eddiehausen urged the government to support several existing community based projects which assist at-risk young people.⁹⁹

Youth conferencing

Youth conferencing, which was removed from the Act, was a way that victims of crime could participate in the consequences of offending. Its effectiveness was raised at the committee's Townsville and Brisbane public hearings.

Councillor Eddiehausen told the committee that youth conferencing was 'a waste of time' that achieved something 'on the odd occasion', and that the recidivist offenders he was working with thought conferencing '*was a bit of a joke really. Mind you, that could have been bravado ... but I can only take them at their word*'.¹⁰⁰

Professor Dawes appeared before the committee as an advocate of youth justice conferencing, but conceded under questioning that the policy would not actually reduce the rate of recidivism.

MR KRAUSE: There seems to be an impression in the community, I think borne out by statistics – I do not have them to hand – that recidivism and youth crime continued to grow during the time of youth sentencing, so what makes you think that it being reinstated now will actually decrease recidivism?

*Prof. Dawes: Well it is not going to decrease. You have a tertiary group of people who continue to do crime and will lead to prison. There is no doubt about that. You cannot turn some of these young people around. They are on a line. They are either going to give it up or something is going to happen to them, or there is something that is going to turn them off crime. Otherwise they are going to continue into the system. The adult system has a fair proportion of former juvenile offenders. What we need to do now, in my opinion, is look at the next generation coming through, around prevention and intervention. One of the things to stop the next wave of recidivism is to actually put in place these sorts of programs and initiatives such as conferencing, which is an excellent example.*¹⁰¹

Prior to removal of youth conferences from the Act in 2012, a participant satisfaction rating of 98 per cent was achieved.¹⁰² Dr Richards advised that the research is clear that victims are satisfied with youth justice conferencing, as they get to have their say, and to meet the young offender.¹⁰³

Mr Law from Legal Aid Queensland advised that the Act referred to making a child responsible for their offending:

...and there is no more powerful tough-on-crime measure than making a child sit opposite their victim and apologise. I have been to hundreds of conferences and they can be very powerful ways for a child to make amends to the community in general. There are some

⁹⁸ Hansard transcript, Public hearing, Brisbane, 17 February, p 9

⁹⁹ Hansard transcript, Public hearing, Townsville, 22 January, p 22

¹⁰⁰ Hansard transcript, Public hearing, Townsville, 22 January, p 21

¹⁰¹ Hansard transcript, Public hearing, Townsville, 22 January, p 5

¹⁰² Submission 13, p 3

¹⁰³ Hansard transcript, Public hearing, Brisbane, 17 February, p 10

*children who do have a poor attitude. There [are] always going to be those children, it is just part of nature.*¹⁰⁴

The Queensland Law Society agreed and advised the committee that youth conferencing ‘is often a very beneficial thing for the victim as well to be able to meet the offender and develop a bit of a broader understanding about some of the reasons why that young person has committed that offence’.¹⁰⁵

The Attorney-General informed the House in her introductory speech that further amendments to the Act, to be introduced in 2016, would include reinstatement of court referred youth justice conferencing.

4.4 Seventeen year olds in the adult criminal justice system

Eleven submissions expressed concern that Queensland remains the only Australian jurisdiction which treats 17 year olds as adults in the criminal justice system, and sentences them to adult prisons.¹⁰⁶ This policy contravenes the *Convention on the Rights of the Child*, and exposes young people to adult offenders. One submission cited the report of the UN Committee on the Rights of the Child, which continued to call on Queensland to ‘bring the system of juvenile justice fully in line with the Convention, ... (and) reiterates its previous recommendations to consider raising the minimum age of criminal responsibility to an internationally acceptable level.’¹⁰⁷

Witnesses who were asked if there was further evidence needed about the benefits of removing 17 year olds from adult incarceration indicated they did not believe more evidence was required.¹⁰⁸

Advice from the department was that the government has committed to moving away over time from treating 17 year olds as adults for the purposes of the criminal justice system. An initial proposed step is to increase to 18 the age at which young people subject to lengthy periods of youth detention are to be transferred from detention to adult correctional facilities.¹⁰⁹

4.5 Health screening

A number of submitters and witnesses highlighted the disadvantages that many young people in the criminal justice system face. Many of the young people are Indigenous, are from dysfunctional families or dysfunctional communities, have health problems, mental health issues, foetal alcohol spectrum disorder, drug and alcohol issues or are wards of the state. Young people who are in out-of-home care are overrepresented in the youth justice system, as are Indigenous young people.¹¹⁰

A submission from the Russell Family Fetal Alcohol Disorders Association described foetal alcohol spectrum disorder. The range of issues common to the disorder include problems with attention, behaviour, memory, language and communication, sensory integration, emotional regulation, suggestibility and poor cause and effect reasoning. Secondary conditions include mental health problems, drug and alcohol addiction and engagement with the criminal justice system. The submission recommends that children in the youth justice system should be screened for foetal alcohol spectrum disorder.¹¹¹

Rev Dr Wayne Sanderson advised the Brisbane hearing:

¹⁰⁴ Hansard transcript, Public hearing, Brisbane, 17 February, p 5

¹⁰⁵ Hansard transcript, Public hearing, Brisbane, 17 February, p 6

¹⁰⁶ Submissions 4, 5, 12, 13, 15, 16, 17, 18, 19, 20, 24

¹⁰⁷ Cited in Submission 24, p 4

¹⁰⁸ Hansard transcript, Public hearing, Brisbane, 17 February, p 6

¹⁰⁹ Department of Justice and Attorney-General, Correspondence dated 5 February 2016, p 8

¹¹⁰ For example, Hansard transcript, Public hearing, Brisbane, 17 February, p 8

¹¹¹ Submission 21

There are two or three really important current aspects of the foetal alcohol spectrum disorder prevalence incidence in the community. The difficult point about this is that its prevalence is increasing. It is primarily because of alcohol consumption certainly by a mother of a child during and before pregnancy, and fathers too. There is a particular input there which we would understand readily. We are not just talking about Indigenous people, Aboriginal people. We are talking about the bottom 20 per cent of income earners in our society and the prevalence of the overuse or the inappropriate use of alcohol in that group.

Of the Indigenous young people who come through the youth justice system, it is an anecdotal observation at this stage from youth justice here, people working in detention centres there, police officers all over the place, lawyers of various kinds, schoolteachers in country towns and so on that there is this increase in prevalence.¹¹²

Other submitters also argued for comprehensive health screening of young offenders, particularly for foetal alcohol spectrum disorder.¹¹³

The department advised the committee that addressing foetal alcohol spectrum disorder and other issues will require implementation of policy by multiple government agencies. It advised that work is underway in the department to improve the support and management of young people with complex needs. Expert training is being delivered to departmental service centre and detention centre staff to improve understanding of the implications of conditions such as foetal alcohol spectrum disorder.¹¹⁴

¹¹² Hansard transcript, Brisbane public hearing, p 11

¹¹³ See for example, Submissions 13, 22

¹¹⁴ Department of Justice and Attorney-General, Correspondence dated 5 February 2016, pp 12-13

Appendix A – List of Submissions

- 001 PACT (Protect All Children Today)
- 002 Jeffrey Williams
- 003 Legal Aid Queensland
- 004 Crime and Justice Research Centre, Faculty of Law, QUT
- 005 Anti-Discrimination Commission Queensland
- 006 *number not allocated to a submission*
- 007 *number not allocated to a submission*
- 008 Queensland Synod, The Uniting Church in Australia
- 009 Aboriginal and Torres Strait Islander Legal Service (Qld)
- 010 Anglican Church, Southern Queensland
- 011 Queensland Law Society
- 012 Youth Affairs Network
- 013 Law & Justice Institute (Qld) Inc
- 014 Joanne Keune
- 015 Australian Psychological Society, Queensland Section, College of Forensic Psychologists
- 016 Human Rights Law Centre
- 017 Queensland Family and Child Commission
- 018 Unicef Australia
- 019 Queensland Association of Independent Legal Services
- 020 Queensland Greens
- 021 Russell Family Fetal Alcohol Disorders Association
- 022 Rev Dr Wayne Sanderson
- 023 Youth Advocacy Centre
- 024 Australians for Native Title and Reconciliation
- 025 O'Connor Patterson Smith, Lawyers
- 026 PeakCare Queensland Inc

Appendix B – Witnesses at the public hearings

Townsville, 22 January 2016

Associate Professor Glenn Dawes, James Cook University

Ms Wendy Lang, Queensland Youth Services Inc.

Ms Tracy Bannerman and Ms Torhild Parkinson, Townsville Crime Alerts and Discussion Group

Councillor Gary Eddiehausen, Health and Safe City Committee, Townsville City Council

Brisbane, 17 February 2016

Mr Damian Bartholomew, Queensland Law Society

Mr Jonathan Ward, Queensland Law Society

Mr David Law, Legal Aid Queensland

Professor Jodie O’Leary, Law and Justice Institute

Ms Cheryl Vardon, Principal Commissioner, Queensland Family and Child Commission

Ms Andrea Lauchs, Assistant Commissioner, Queensland Family and Child Commission

Dr Kelly Richards, Crime and Justice Research Centre, Queensland University of Technology

Rev. Dr Wayne Sanderson

Uncle Alfred Smallwood

Ms Gail Mabo

NON-GOVERNMENT MEMBERS STATEMENT OF RESERVATION

The non-government members of the Committee are concerned that the measures being put forward in this Bill are simply undoing what has been implemented by previous government and do not address the fundamental and ongoing issues in youth justice in Queensland.

In the Children's Court 2014/15 Annual Report, President Michael Shanahan notes that:

"The trend line in relation to the ten year comparison of the number of juvenile defendants disposed of in all Queensland Courts shows a slight increase, although in 2014/15. There was a 8.7% decrease from the previous year. The trend line in relation to the ten year comparison of the number of charges against juvenile defendants continues to rise, although in 2014/15 there was a 4.9% decrease from the previous year."

The non-government members of the Committee contend that based on this evidence alone, the measures put in place in 2014 by the former LNP Government should be given a further chance to work and not changed until a proper review is undertaken. No such review has been undertaken. Furthermore, in evidence presented to the Committee in the Townsville public hearing on 22 January 2016, Ms Tracey Bannerman from the Townsville Crime Alerts and Discussions Group stated that:

"On 1 December 2015 the Palaszczuk government released a statement announcing youth justice reforms. This government deemed these reforms did not work. How can the current government say something does not work if it has not been utilised properly? The government have been in power for 12 months now and during that time they have repeatedly said they would get tough on crime. In those 12 months they have not introduced any new policies or reforms in regard to combating juvenile crime. Instead, they have been busy trying to quash the previous government's reforms which were put in place by the LNP government because the public had had enough. The public were sick of hearing about crimes happening and having little to no feedback if the offenders were caught. We have yet to see the courts use these reforms to their full and proper potential so that they are actually given a chance to work. Townsville fought hard for these reforms to be put in place because the residents felt that something needed to be done about the level of crime that their city was experiencing. People were frustrated by the lack of action against juveniles repeatedly committing crimes and hearing about them getting off with a slap on the wrist. Juveniles were using the court system like a revolving door."

The non-government members of the Committee note the evidence of various submitters indicating it would have been preferable for an outcomes based review of the sentenced youth boot camp initiative to have been completed as there was support for early intervention options such as these as alternative measures in the youth justice system. There appears to be very little confidence among those who are victims or youth crime or police that the government's approach to undo all changes to the youth justice system put in place by the former government will actually reduce the rate of recidivism among youth offenders. Further, it is noted that despite KPMG recommending that the early intervention youth boot camp based at the Gold Coast remain open as it was showing positive signs of success in steering youth away from the youth justice system, this recommendation made by KPMG was ignored by the government.

Cr Gary Eddiehausen from the Townsville City Council also provided the following evidence at the Townsville public hearing:

"Townsville is one of a number of regional cities in Queensland where juvenile crime is a significant issue and of real concern to many law-abiding residents. Such levels of crime have occurred in our city at a high level, and this has been the case for some years now. Our city's residents are sick to death of juvenile offenders, especially recidivist offenders, seemingly in a cycle of detention, immediate release and then a continuation of their activities and possibly back into custody again. They have little or no respect, as I said before. If these type of offenders, especially serious offenders, choose to continue with their life of crime, that is their personal choice."

The non-government members of the Committee raised the level of concern by civic and community leaders in Townsville as a broader reflection of this issue in regional Queensland. The testimony of these two witnesses indicate the level of frustration that the community of Townsville have towards public policy for addressing youth crime in their city and particularly recidivist behaviour. This evidence further supports the argument that the 2014 youth justice amendments should be given a chance to work until a proper review is undertaken. The plan the government seems to have for youth justice in Queensland is undoing policies initiated by the previous government.

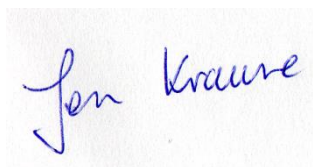
In the 2014/15 Annual Report, President Shanahan further notes that:

"In 2014/15, ten percent of juvenile offenders were responsible for 45% of all proven offences. These figures demonstrate the comments I have made in previous Annual Reports that there are a number of persistent offenders who commit multiple offences. It is this identifiable group to which attention must be given in attempts to rehabilitate if a significant decrease in offending by them as juveniles and, later, as adults is to be achieved."

The non-government members of the Committee have concerns that there are no issues in the Bill which address the specific issue of recidivist youth offenders in Queensland.

There is also no evidence to suggest that the policies being enacted in this Bill will reduce the over-representation of Indigenous juvenile offenders in our youth detention centres. In fact, there is no reference to this issue in the explanatory notes or the Minister's explanatory speech at all.

In the 2014/15 Annual Report, President Shanahan noted that young Indigenous people accounted for 43% of all young people with a charge disposed of in a Queensland court and that this has been trending upward in the last five years. Further, 64% of the average daily number of juveniles in detention were Indigenous.



Jon Krause
Member for Beaudesert



Tanya Smith
Member for Mount Ommaney



Verity Barton
Member for Broadwater