

Queensland Family and Child Commission Submission

To: Legal Affairs and Community Safety Committee

Date:

Topic: Youth Justice and Other Legislation Amendment Bill 2015

Submission summary:

This submission aims to provide the Legal and Community Affairs Committee with information and advice to inform the Youth Justice and Other Legislation Amendment Bill 2015.

Submission recommendations:

The Queensland Family and Child Commission:

- supports the policy objective to remove boot camp (vehicle offences) orders and boot camp orders from the range of sentencing options
- supports the policy objective to remove breach of bail as an offence
- supports the policy objective to reinstate the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period
- supports the policy objective to reinstate the jurisdiction of the Childrens Court in reviewing sentences and the expansion of this jurisdiction to include Magistrates' decisions on breaches of community based orders
- recommends a comprehensive review of the *Youth Justice Act 1992* and the youth justice policy settings in Queensland be undertaken
- recommends the Queensland Government adopt a holistic approach for legislative and policy change in relation to the youth justice system
- recommends the Queensland Government remove 17 year olds from the adult criminal justice system and transition them into the youth justice system, and
- recommends a regulation be made to fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years, in accordance with section 6(1) of the *Youth Justice Act 1992*.

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The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Legal Affairs and Community Safety Committee's inquiry into the Youth Justice and Other Legislation Amendment Bill 2015 (the Bill).

The QFCC was established on 1 July 2014 to ensure all Queensland children and young people are cared for, protected, safe and able to reach their full potential. Functions of the QFCC include, though are not exclusively limited to, the following:

- promoting and advocating the safety and wellbeing of children and young people, particularly those in need of protection or in the youth justice system
- providing leadership and expert advice to relevant agencies in relation to laws, policies, practices and services
- promoting and advocating the shared responsibility of families and communities to ensure the protection and care for children and young people
- developing and coordinating a multidisciplinary research program to inform policies and practices, in consultation with stakeholders and relevant agencies.

The QFCC supports proposals which are evidence based, are in the best interests of children and young people and accord with our international obligations on the *Convention on the Rights of the Child*. While young people should be held accountable for their actions, the QFCC is of the view that rehabilitative and restorative measures are more beneficial for young offenders rather than unnecessarily punitive measures. The United Nations Committee on the Rights of the Child supports rehabilitation and restorative objectives for protecting a child's best interests, rather than repression or retribution.¹

The QFCC acknowledges that there are specific challenges in responding to youth offending. Young offenders are a particularly vulnerable cohort and require a different response to that of adult offenders.² It is important to keep youth offending in perspective as most young people do not have formal contact with the justice system, most young offenders 'grow out' of crime' and generally commit certain types of crime such as shoplifting and graffiti, rather than more serious offences, such as sexual offences.³ The Children's Court reported that for 2014-15, *ten percent of juvenile offenders were responsible for 45% of all proven offences*, demonstrating that in the youth justice system a small number of offenders are responsible for multiple offences.⁴

While the QFCC is largely supportive of the policy objectives of the Bill, the QFCC has reservations about restoring amendments to pre-2014. Further comments and recommendations are provided below.

¹ UN Committee on the Rights of the Child (2013) *General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, CRC /C/GC/14, p 8.

² Richards, K. (2011) *What makes juvenile offenders different from adult offenders?*, Trends & issues in crime and criminal justice No.409, Australian Institute of Criminology, Canberra.

³ Richards, K. (2011) *What makes juvenile offenders different from adult offenders?*, Trends & issues in crime and criminal justice No.409, Australian Institute of Criminology, Canberra.

⁴ Children's Court of Queensland (2014) *Annual Report 2014-15*, p 4.

Removal of boot camp (vehicle offences) orders and boot camp orders

Recommendation

The QFCC supports the policy objective to remove boot camp (vehicle offences) orders and boot camp orders from the range of sentencing options.

The Explanatory Notes state the reason for the removal of the youth boot camp program is due to findings from an independent evaluation of the program trial.⁵ The QFCC notes that the *Final Report for the evaluation of Queensland's Youth Boot Camps* commented that the program “was not supported by a strong set of research or consultation.”⁶

A number of stakeholders at the time of the introduction of the amendments for the youth boot camp trial indicated the lack of research for such a program.⁷ As already mentioned in this submission, the QFCC supports evidence-based proposals. Accordingly, the QFCC supports the removal of boot camp (vehicle offences) orders and boot camp orders from the range of sentencing options given the limited evidence available to support these initiatives.

Removal of breach of bail as an offence for children

Recommendation

The QFCC supports the policy objective to remove breach of bail as an offence.

Stakeholder submissions to the Legal Affairs and Community Safety Committee at the time did not support the introduction of breach of bail being an offence if the child commits a further offence while on bail for various reasons, including that:

- there was lack of evidence to support this offence would reduce offending.⁸
- there may be an increase in the number of young people on remand and in detention as a result of the offence^{9 10}

⁵Explanatory Notes, Youth Justice and Other Legislation Bill 2015 (Qld), p 2.

⁶KPMG (July 2015) *Final Report for the Evaluation of Queensland's Youth Boot Camps*, p 8.

⁷Aboriginal and Torres Strait Islander Legal Service (2012) *Submission to the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2012/YouthJustice/submissions/005-ATSILS.pdf>.

⁸Griffith University (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/018.pdf>

⁹Griffith University (2014) Griffith University (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/018.pdf>

¹⁰Queensland Law Society (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/016.pdf>

- it would create two charges from a single offence and there is the potential for the child to be subject to an additional penalty related to the same offence, and^{11 12}
- it is punitive and unnecessary as the commission of a new offence on a bail could already be considered in relation to whether or not to grant bail.^{13 14}

The QFCC is of the view that subjecting a child to a charge of breaching bail if a child commits a further offence while on bail is unnecessarily punitive. The QFCC supports the removal of this offence.

Reinstating the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period

Recommendation

The QFCC supports the policy objective to reinstate the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period.

The removal in 2014 of the principle that detention be used only as a last resort and for the shortest appropriate period was inconsistent with the *Convention on the Rights of the Child*. Article 37 of the *Convention on the Rights of the Child* requires detention to only be used “as a measure of last resort and for the shortest appropriate period of time”¹⁵. The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* also requires imprisonment to be used as a last resort.¹⁶ The QFCC supports reinstating the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period.

¹¹Comparative Youth Penalty Project (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/021.pdf>

¹²Queensland Law Society (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/016.pdf>

¹³Law & Justice Institute (QLD) Inc (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/027.pdf>

¹⁴Comparative Youth Penalty Project (2014) *Submission to the Youth Justice and Other Legislation Amendment Bill 2014* (online), available: <http://www.parliament.qld.gov.au/documents/committees/LACSC/2014/YouthJustice2014/submissions/021.pdf>

¹⁵Committee on the Rights of the Child (1989) *Convention on the Rights of The Child*, United Nations, p 10.

¹⁶United Nations General Assembly (1990) *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, United Nations, A/RES/45/113.

Reinstating the sentence review jurisdiction and expanding this jurisdiction to include Magistrate's decisions in relation to breaches of community based orders.

Recommendation

The QFCC supports the policy objective to reinstate the jurisdiction of the Childrens Court in reviewing sentences and the expansion of this jurisdiction to include Magistrates' decisions on breaches of community based orders.

In 2014 the sentence review jurisdiction of the Childrens Court was repealed by the *Youth Justice and Other Legislation Amendment Act 2014*. The justification for this removal came from the then Chief Magistrate, Hon Tim Carmody QC, who advocated that appeals to sentences should only be made on error of law pursuant to s 222 of the *Justices Act 1889* and should not involve rehearing the case. This, it was argued, represented the best way to maintain consistency in appeals processes with higher courts and generate time and cost savings in reviews.¹⁷

The QFCC notes the points raised by the President of the Children's Court against such a repeal of sentence review jurisdiction:

- rehearing matters on the merits of the case allowed the reviewing court to appropriately take into consideration a juvenile's changed circumstances, particularly where such circumstances can change rapidly
- the workload of the Childrens Court for sentence review is small and reductions in this workload represented insignificant savings
- appeals to Childrens Court sentencing under the section 222 of the *Justices Act 1889* will not be undertaken to appeal inappropriate sentences due to the complicated administrative process, and
- it was inappropriate to introduce the amendment at this stage without proper consultation.¹⁸

The QFCC notes the report released by the Legal Affairs and Community Safety Committee conceded removing sentence reviews was "beyond the scope" of the Bill and "had not been subject to any public consultation".¹⁹ QFCC supports the reinstatement of the jurisdiction of the Childrens Court in reviewing sentences and the expansion of this jurisdiction to include Magistrates decisions on breaches of community based orders.

¹⁷ Legal Affairs and Community Safety Committee (2014) *Report No. 58: Youth Justice and Other Legislation Amendment Bill 2014*, p 37

¹⁸ Childrens Court of Queensland (2014) *Annual Report 2013-14*, p 8.

¹⁹ Legal Affairs and Community Safety Committee (2014) *Report No. 58: Youth Justice and Other Legislation Amendment Bill 2014*, p 37

A comprehensive review of the YJ Act

Recommendation

The QFCC recommends:

- a comprehensive review of the *Youth Justice Act 1992* and the youth justice policy settings in Queensland be undertaken
- the Queensland Government adopt a holistic approach for legislative and policy change in relation to the youth justice system
- the Queensland Government remove 17 year olds from the adult criminal justice system and transition them into the youth justice system, and
- a regulation be made to fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years, in accordance with section 6(1) of the *Youth Justice Act 1992*.

The QFCC notes the proposed amendments to the YJ Act are being made to repeal amendments made by the former Government.²⁰ The QFCC is supportive of the Queensland Government promptly pursuing necessary legislative amendments which improve the youth justice system for young people. However, it is not clear why a staged approach is occurring to progress proposed amendments to the YJ Act and youth justice policy. For example, as well as the Bill, amendments are proposed to the YJ Act in the Criminal Law (Domestic Violence) Amendment Bill (No.2) 2015 and the Attorney-General and Minister for Justice mentioned in the first reading to the Bill that there will be further amendments in early 2016 and that a youth justice policy will be presented for public consultation this year.²¹

In future, it is the QFCC's preference for a holistic approach to amending the YJ Act to allow for stakeholders and the Parliament to consider the amendments and the practical and policy implications in full. It is the QFCC's view that the policy settings should be solidly established through extensive stakeholder consultation before progressing legislative amendments.

For example, the QFCC acknowledges the change to amend the *Penalties and Sentences Act 1992* to include the principle of imprisonment as a last resort would extend to 17 year olds in the adult criminal justice system. However, Queensland remains the only jurisdiction in Australia to include 17 year olds in the adult criminal justice system. This is in contravention of the *Convention on the Rights of the Child*, specifically:

- the best interests of the child be a primary consideration in all actions concerning children
- a child deprived of their liberty shall be treated in a manner which takes into account the needs of their age, and
- they shall be separated from adults unless it is in their best interests not to do so.²²

²⁰ Explanatory Notes, Youth Justice and Other Legislation Bill 2015 (Qld), p 1.

²¹ Queensland, Parliamentary Debates, Legislative Assembly, 1 December 2015, p 2972 (Yvette D'Ath, Attorney General and Minister for Justice and Minister for Training and Skills)

²² Committee on the Rights of the Child (1989) *Convention on the Rights of The Child*, United Nations.

Indeed the United Nations Committee on the Rights of the Child have repeatedly called for the removal of 17 year olds from the adult criminal justice system in Queensland.^{23 24}. Accordingly, the QFCC would like 17 year olds removed from the adult criminal justice system and transitioned to the youth justice system.

The QFCC notes section 6(1) of the *Youth Justice Act 1992* enables the Governor in Council to make a regulation to *fix a day after which a person will be a child for the purposes of this Act if the person has not turned 18 years*, however to date this has not been done.²⁵ QFCC would like to see this enacted as soon as possible.

The QFCC would support the Queensland Government to undertake a comprehensive review of the YJ Act and the youth justice policy settings being undertaken in the future. The QFCC would like to assist the Queensland Government with developing the terms of reference and building the evidence-base for the review.

²³ Committee on the Rights of the Child (2012) *Consideration of Reports Submitted by State Parties under Article 44 of the Convention – Concluding Observations: Australia*, UN Doc CRC/AUS/CO/4

²⁴ Committee on the Rights of the Child (2005) *Consideration of Reports Submitted by State Parties under Article 44 of the Convention – Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268

²⁵ *Youth Justice Act 1992* (Qld) s6.