Submission by

YOUTH ADVOCACY CENTRE INC

to the

LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

in relation to the

Youth Justice and Other Legislation Amendment Bill 2014

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INTRODUCTION

The Youth Advocacy Centre Inc (YAC) welcomes the development of the Blueprint for Youth Justice flagged in the Explanatory Notes to the Bill to *guide long term, evidence based reform* and is keen to be a partner agency providing integrated service delivery to address the causes of youth offending. Over its 30 year existence YAC has operated a multidisciplinary model of lawyers and social welfare workers working to assist young people with their legal matters but also trying to address the social welfare issues which generally are the reason for their conflict with the law.

It would have been useful if the *Youth Justice Act 1992* could have been a component of the Blueprint, providing a logical continuum and a comprehensive and response to youth offending. A result of the legislative reforms being more treated in isolation is that are not likely to be useful in addressing youth offending, particularly that of repeat offenders.

YAC, along with a number of other organisations, provided a submission in response to the Government's Discussion Paper: *Safer Streets Crime Action Plan – Youth Justice* (the Discussion Paper) as well as responding to a departmental request to address the specific policy options under consideration.

This submission incorporates the research and evidence in relation to youth offending previously provided to the Government in response to the Review and Discussion Paper for the Committee's consideration. We also attach:

1. Youth offending in context
2. Youth Justice Pocket Stats 2012-13
3. Youth offenders by region

In summary, we note that:

- young people are more likely to be **victims** of an offence than older people (see Attachment 1). The Commission for Children and Young People and Child Guardian reported that 8,598 offences were committed against 0–17 year olds in Queensland in 2011-12, the majority of which were assaults (51.0%) and sexual offences (32.3%)[1]. Police data provided to YAC indicate that, for prosecutions for offences against the person in 2011-12 where the victims were aged 0-17 years, 79% of victims were aged 10-16 and 59% 13-16 years.
- there is no youth crime wave in Queensland which requires urgent action: we draw the Committee's attention to Attachment 1 which indicates that there were some 3,542 distinct young offenders found guilty of offences in 2012/13, a decrease of 9% over the last three years and representing only 0.9% of all 10-16 year olds in the State[2] (see Attachments 2 and 3). The Explanatory Notes to the Bill concede that proportionally the number of 10-16 year old offenders is decreasing.
- it should be noted that over 14% of young people were found not guilty or had their court matters dismissed in 2012-13.
- the number of offences is not in itself an accurate measure of offending as charging is subject to policy and practice of the police system/station/officer and often a number of related offences are brought for the same event. An increase in the number of offences is not in itself indicative of an increase in offending behaviour.
- police cautioning has declined which may also have an impact on court appearances: again, this may be a matter of change of police practice rather than a change in the nature of offending.
- young people tend to commit property rather than personal crimes: their offending is not generally at the more serious end of the offence continuum, tending to be:

[1] Snapshot 2013

[2] Note: the figures quoted in the Childrens Court Annual Report arguably reflect the number of **appearances** before the court in a year, not individuals: the Government Statistician advises these figures are based on ABS counting rules and if the same young person appears again on a different day either as a result of their case being adjourned or for new matters, that is another count (but is only one offender). The Annual Report figures therefore will tend to overstate the number of distinct offenders – although even on these figures, the numbers are small. See Attachment 3 for a region by region breakdown.

- attention-seeking, public and gregarious;
- episodic, unplanned and opportunistic[3]

- it is correct that, as in many other parts of Australia and the world, there is an increase in violence-related offences by young women and it is important we better understand this trend in order to be able to respond to it appropriately.
- it is correct that some specific areas/communities are experiencing particular issues: however, this means that a solution tailored to these places and issues should be crafted, not developing legislation which affects the entire community.
- it is also correct that a small group (10% of young offenders – approximately 354 distinct young people) is responsible for over half of offences committed by young people. The Attorney has noted that "30% of those in detention are repeat offenders"**.** (It is also the case that 70% of those in detention are **on remand**.) Importantly, the Government's own Discussion Paper stated:

  *With approximately **70% of young people in the youth justice system known to the child protection system**, improving responses to child protection should assist in diverting young people from the justice system.*

  and

  Young people entrenched in the justice system and those who are at high risk of becoming entrenched often have a range of things happening in their lives that influence their criminal behaviour.

  These young people have often experienced:

  - *child abuse and neglect;*
  - *exposure to domestic or family violence;*
  - *severe and long-term family dysfunction in their childhood years; and*
  - *homelessness.*

  These experiences often lead to:

  - *drug and alcohol misuse;*
  - *poor mental and physical health;*
  - *inter-generational poverty and unemployment; and*
  - *low levels of education.*

  All the evidence shows that when a young person experiences these things without receiving any help, committing crimes is often the next step in life. [Our emphasis]

  The proposed legislative seem to be quite contrary to this analysis. The responses put forward in relation to this cohort of young people in the legislative amendments are punitive –the Explanatory Notes makes this clear in reference to amendments being for the purpose of *punishing* and *denouncing*. This is despite the evidence indicating that rehabilitative and therapeutic approaches would achieve better outcomes for the young person and the community and avoid further involvement in the criminal justice system which is, of itself, criminogenic.

- Aboriginal and Torres Strait Islander young people are already well overrepresented in the youth justice system. With respect to repeat offending: *Indigenous people are over-represented in prisons, and are likely to come into contact with the criminal justice system at younger ages than non-Indigenous people. Once Indigenous offenders come into contact with the criminal justice system, they are more likely than non-Indigenous offenders to have repeat contact with it. Therefore, it is important that Indigenous people who have had contact with the criminal justice system have the*

[3] Cunneen C & White R 2007. Juvenile justice: Youth and crime in Australia, 3rd ed. South Melbourne: Oxford University Press

opportunity to integrate back into the community and lead positive and productive lives. Reducing reoffending may also help break the intergenerational offending cycle.[4]

Aboriginal and Torres Strait Islanders will be disproportionately affected by these amendments if passed. More of them are likely to find themselves in detention, thus undermining the Closing the Gap agenda to which all Australian Governments have committed.

The Explanatory Notes indicate that the proposed amendments will have a deterrent effect on young people. This takes no account strong neuro-scientific evidence as to child and youth development. Young people, by virtue of their developmental stage, are generally not able to foresee consequences which may happen months or years in the future. Thus the possible impacts of 'naming and shaming,' for example, are unlikely to affect their behaviour. "*The 'teen' brain is not the same as the 'adult' brain*" yet the amendments continue "*to appeal to the mature prefrontal functions that do not yet exist*"[5] by assuming that young people, particularly those who are repeat offenders, have the maturity and capability to make this rational decision. This is even less likely for those whose brain development has been hampered by the circumstances or context of their lives to date over which they have had no control.

From a criminological perspective, the threat of punishment is not a deterrent; rather, it is the likelihood of being apprehended which has an impact on people's behaviour. The removal of detention as a last resort and creating additional offences are not of themselves likely to change behaviour.

YAC is concerned that we have not been able to view amendments we understand are to be moved in committee in relation to mandatory referral to boot camp for offenders who have previous offences for car theft in Townsville. This would be a substantive amendment to the Bill which has the potential to raise a number of issues and we would seek time for stakeholders to be able to review and comment on this material also before the Bill is finally voted on.

SPECIFIC ISSUES

1. NAMING AND SHAMING OF YOUTH OFFENDERS

Policy issues

The research and evidence indicate strategies to 'name and shame' will only undermine efforts to reduce youth offending. The existing protections in the *Youth Justice Act 1992* provide an appropriate balance of holding offenders to account for their actions, while protecting vulnerable young people and encouraging rehabilitation.

The closed court and prohibition on identification of young people appearing in court are important differences to the adult court in many jurisdictions.

Open v closed court

It is noted that the more serious offences alleged to have been committed by young people are already heard in open court in the District or Supreme Courts or the Childrens Court of Queensland. Hence, a distinction already exists whereby those in this situation are not (even before any finding of guilt) protected from public view. It is argued that there is no evidence of a need to change this situation.

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

The information provided to a court is often sensitive and relates not only to the young person but to their parents and families. The legislation provides that parents may be directed to attend court when their child's matter is being heard and Magistrates are generally keen to ensure that they are present. Parents are less

[4] Overcoming Indigenous Disadvantage Key Indicators 2011 REPORT Steering Committee for the Review of Government Service Provision.
[5] From a presentation by Professor Elisabeth Hoehn at the Balanced Youth Justice Forum, Brisbane, 29 May 2013

likely to participate or participate fully if there are a number of strangers in attendance. In regional areas and smaller communities, this issue is likely to be more acute, with neighbours and other parents from the young person's school and similar present.

Publication

Most young people who come into contact with the police before the age of 18 will not go on to be 'career criminals'. A significant proportion of those brought to court will appear only **once or twice**. As such, there can be no sensible reason to name these offenders and risk the outcomes associated with labelling.

The small cohort of repeat offenders is characterised by low socioeconomic status, low educational attainment, significant physical and mental health needs, substance abuse and a history of childhood abuse and neglect. It is particularly unclear how naming those young offenders will be of any benefit to the young person, the community or community safety.

The likely detrimental outcomes arising from any disclosure of young offender's identities have been summarised as including:

- a misuse of the concept of shaming (originally based in restorative justice and reintegrative processes away from the court);
- the potential for vigilante action;
- a false sense of community protection; and
- the possibility of interfering with any rehabilitative efforts.[6]

Recent research has centred on the more positive forms of shaming, which are believed to be a part of restorative justice practices, such as "youth accountability conferences. These programs utilise the positive, transformative power of shaming, while avoiding the negative effects of public stigmatisation".[7] Unfortunately, the Queensland courts' ability to utilise such a process as a sentencing option was removed last year when the youth justice conferencing provisions of the *Youth Justice Act 1992* were repealed.

In its submission to the NSW Legislative Council Standing Committee on Law and Justice (the NSW Committee) *Inquiry into the prohibition on the publication of names of children involved in criminal proceedings* (2007) the Federation of Parents and Citizens Associations of New South Wales (the Federation) noted that:

> Adding public naming of young offenders does not enhance the level of justice, it only increases the punishment. Public naming of minors unreasonably hinders the rehabilitation process and violates international standards of civil rights protection for children.

The Federation also observed that following the practice of the Northern Territory (the only jurisdiction in Australia where the naming of child offenders is permitted) would not be successful in deterring youth crime in NSW:

> [It] allows the media to publish recklessly and by the time matters reach the courtroom, guilt has already been assigned by the general public. Once labelled, children are stuck with that image for life.

The Federation also expressed concern for the siblings of young offenders and their victims because releasing the identity of the offender can often lead to assuming 'guilt by association'. It made reference to a case in the Northern Territory when a 13-year-old boy was arrested for shoplifting. A picture of the young boy and his sister was published on the front page of their local newspaper. Three years after that photo was published, she still encountered people who asked, "Oh, aren't you that girl that got caught shoplifting that was in the paper?"[8]

[6] Chappell D and Lincoln R. (2007) "Abandoning identity protection for juvenile offenders" Current Issues in Criminal Justice, 18 (3), 481-487
[7] Ibid
[8] Naming and Shaming Juvenile Offenders." The Law Report. 3 October 2006.

The NSW Committee's report stated:

> High profile crimes involving juveniles, such as the recent attack on a Sydney school, often lead to a call for the 'naming and shaming' of offenders. Whatever short-term purpose such a response might serve, it is ultimately shortsighted since it is likely to stigmatise the offender and impact negatively on their rehabilitation, increasing the likelihood of reoffending.
>
> Juvenile offenders can be punished and encouraged to take responsibility for their actions without being publicly named. Judicial sentences for juveniles can and do reflect community outrage, denouncement of the crime and acknowledgement of the harm caused to victims…..
>
> …… the weight of evidence presented to the Committee clearly indicates support for the current prohibition, and in fact warrants its extension to cover the period prior to the official commencement of criminal proceedings and the inclusion of any child with a reasonable likelihood of becoming involved in criminal proceedings.

From a criminological perspective a professor asks:

> But where is the evidence to suggest that the public identification of juveniles who are involved in criminal proceedings will have a positive effect on their subsequent behaviour? Where is the evidence that such naming will be of benefit to communities or even to victims of crime?
>
> The short answer: there is precious little.
>
> While apparently politically appealing, cries to openly name and shame are ill-informed.[9]

Research conducted in relation to the Northern Territory naming and shaming regime presents anecdotal evidence that 'naming and shaming' can have the opposite effect with child offenders, with children acting as though they need to live up to their tarnished reputations. Children and young people are unlikely to understand the consequences that may result from being publicly named for criminal offending.[10] Russell Goldflam from the Criminal Lawyers Association of the Northern Territory agreed with these findings, observing that some children may even welcome the publicity as a 'badge of honour' and value the immediate gratification of belonging to an 'outside group', cementing the anti-social behaviour rather than helping the child move away from it.[11]

Professors Lincoln and Chappell also found that:

- naming is detrimental to the young person as it may result in harassment and/or disruption to their educational prospects;
- for many being named simply brought greater police attention not only to themselves but to their families and communities as well;
- Indigenous youth were of particular concern – so grossly over-represented in the juvenile justice system and also in those singled out for public identification; and
- there was evidence that the naming of these young people meant that sporting scholarships were jeopardised, employment prospects were diminished, and even the capacity for their families to obtain housing was badly affected.

Therefore publicly identifying a child offender has the potential to jeopardise the rehabilitation of that child. It may give them a bad name which they cannot rid themselves of – irrespective of whether they are trying to 'turn over a new leaf' – so that people exclude them and make assumptions about how they will behave in the future. This can affect, for example, their job prospects and ability to positively engage with their community generally. Inability to get a job or otherwise be involved in positive activities is a risk factor for

[9] Robyn Lincoln, Assistant Professor, Criminology 22 August 2012 The Conversation: *Naming and shaming young offenders: reactionary politicians are missing the point*

[10] Chappell D and Lincoln R, *Naming and Shaming of Indigenous Youth in the Justice System: An Exploratory Study of the Impact in the Northern Territory : Project Report* (21 May 2012)

[11] Robyn Lincoln, Assistant Professor, Criminology 22 August 2012 The Conversation: *Naming and shaming young offenders: reactionary politicians are missing the point*

further offending, which does not make the community safer or reduce crime. Consequently, it is widely recognised that young people who offend should not be stigmatised and labelled by publicly naming them.

Research has shown significant detrimental effects resulting from young people being labelled as 'delinquent' or 'criminal'. These detrimental effects can continue far beyond the time when the information about the young person is first published, particularly in a world where it can be published online.

It has been argued that:

> naming and shaming through the media is a form of disciplinary punishment, social surveillance and control which may be experienced more sharply in regional Australia given that historically public shaming has been most potent in smaller communities. We raise the question does this form of media power offend the principle of equality, as media coverage of criminal matters is highly uneven and accords more closely with news values and media production requirements than considerations of justice or sentencing principles.[12]

From 2003, local authorities and police in the United Kingdome were able to 'name and shame' children who have been placed on an 'anti-social behaviour order' (ASB Order). As a result, personal details of young offenders, such as their portraits, names and the requirements of their ASB Order have been published.

In July 2010, new Home Secretary Theresa May announced her intention to reform ASB Orders as they have been found to be ineffective in addressing the behaviour complained of, rather contributing to the criminalising of young people. Ms May said *punishments should be "rehabilitative and restorative", rather than "criminalising"*. A BBC commentator noted that:

> … local officials said Asbos [ASB Orders]were not a magic bullet for complex social issues such as two or more generations of angry young men neither in work nor education.
>
> To make matters worse, some teenagers wore the Asbo as a badge of honour - while others complained they had been criminalised for being no more than immature and thoughtless[13].

It is likely that the young person's family may be more affected from a 'shame' perspective by open courts and identification of their children, particularly in smaller communities. This may be particularly true for younger siblings to whom labelling is transferred on the basis of the behaviour of their brother or sister. An example of the impact on families was given in 2013 reporting by the Courier Mail that the Department of Housing was trying to evict a mother from her public housing home after her son was charged with a series of neighbourhood burglaries. The department was seeking an eviction order against the mother, who has lived in the same southside Brisbane house for 18 years, because of complaints about her 14 year old son's "objectionable behaviour".[14] Naming and shaming has the potential for more of this type of action with all that will entail in terms of impact on the family.

International obligations to protect the interests of children

The United Nations *Convention on the Rights of the Child* (the UNCRC) and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules) refer specifically to a young person's right to privacy at all stages of juvenile justice proceedings. Rule 8.1 of the Beijing Rules notes that this is "in order to avoid harm being caused to her or him by undue publicity or by the process of labelling".

The UNCRC was ratified by Australia in December 1990: consequently, any federal, State or Territory legislation, policy or practice that is inconsistent with the UNCRC places Australia in breach of its international obligations and could have consequences at the international level. In addition, the Beijing Rules represent internationally accepted minimum standards, and although these are not necessarily binding on Australia in international law, failure by Australia to adhere to these rules may result in international scrutiny.

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[12] Hess K and Waller L, School of Communication & Creative Arts, Deakin University *Naming and shaming: Media justice for summary offenders in a regional community?*

[13] Dominic Casciani BBC News home affairs correspondent http://www.bbc.co.uk/news/uk-10784060

[14] Kay Dibben, The Courier-Mail 28 March 2013 *Department of Housing seeks to evict mum following teen son's string of neighbourhood burglaries*

Issues specific to proposed amendment

There could be a significant impact on the efficient running of the court as a result of the need to differentiate between first-time and 'repeat offenders'. The court will have to be aware of this situation and either have to try to organise its list accordingly (probably not realistic) or will have to manage this throughout the court session.

It is also unclear how these provisions will impact on young people in care who cannot be identified under the *Child Protection Act 1999*. As noted previously,"70 per cent of young people in the youth justice system are known to the child protection system". A number of young people in care are charged with offences which most families would deal with themselves – minor wilful damage, for example – meaning that the police and the law are inappropriately being used as a behaviour management mechanism. Becoming a 'repeat offender' in these circumstances is a very real risk and any identification of the young person or public discussion of their case would identify them as a child in care.

It would be inequitable to only identify 'repeat offenders' who are not in care and it is not appropriate to be identifying young people in care.

Clearly, the best solution would be not to proceed with this proposed amendment.

2. ADMISSIBILITY OF CHILDHOOD EVIDENCE

Policy issues

One of the points of difference between adult and young offenders is that young people do not automatically acquire a criminal record as adults usually do. This is in recognition that young people are inexperienced and may make poor choices. It also acknowledges that a number of them have issues which tend to put them at greater risk of offending and while they are still children at law (unless they happen to be 17) there may be opportunities to change this behaviour. Hence a distinction is made between simple findings of guilt and the ability to record a conviction in the youth justice system.

There is a history of careful and detailed judicial consideration around the recording of convictions due to the potential impact this may have. The courts have considered the research around young people's offending behaviour and the opportunity for, and long-term rationality of, a young person being able to lead a meaningful life and positively contribute the community.

The adult courts are already effectively able to deduce whether young adults have a criminal history of significance. Aside from minor matters where a reprimand is given or good behaviour order made, it is for the judicial officer in the Childrens Court to decide whether a conviction should be recorded or not. If it is recorded, it can be made available to the adult court. If not, it cannot be. The Childrens Court Magistrate or Judge makes a decision on the facts and the young person's previous history in deciding whether to impose a conviction or not. This is entirely appropriate.

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

The Explanatory Notes claim that the only impact will be on court sentencing. However, adult courts are open and any reference to previous offences as a child may be publicly reported. As such, the common practice of employers in conducting internet searches into information about potential employees may render this limitation ineffective. This could be particularly significant in smaller communities where relatively minor events may be covered by local news outlets.

3. OFFENCE TO COMMIT AN OFFENCE WHILE ON BAIL

Policy issues

[T]he decision whether to grant bail triggers a number of competing considerations. These include striking an appropriate balance between, on one hand, the right to liberty and the presumption of innocence, and on the other hand, the protection of the community and the risk of re-offending.[15]

As noted previously in this submission, as well as in the Discussion Paper, young 'repeat offenders' often face a number of challenges in their lives which put them at greater risk of (re-)offending. By virtue of their youth and that the law generally (aside from the criminal law) does not recognise that children are independent before the age of 18, there are many influences which affect their lives and life situations over which they have no control and can make no choices.

An example of this is the issue of where a young person lives. Young people under 18 have difficulties in being able to rent in their own right. Sometimes the family home is not a safe or viable place for the young person to be or the family relationships are in disarray and this may lead them to leave. Their access to a legitimate income is also significantly reduced compared to an 18-year-old and therefore being able to pay rent and for other life necessities, including food and travel, becomes problematic.

If a young person is out of home for whatever reason and has no money, then involvement in offending behaviour becomes a potential consequence. This could be as simple as evading a fare on public transport. They generally do not have the life skills or experience to know where they should go to seek help and often assume that no-one would be interested in helping them anyway.

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

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

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

Young people are therefore already advised of the risks of losing bail and being remanded in custody and, as a result, it is unclear what the proposed amendment can or will achieve.

Issues specific to proposed amendment

The legislative amendment proposed is somewhat different to that anticipated. It purports to introduce an offence to which adults are not subject and its validity is questionable. The concept of an offence to commit another offence raises the question of double jeopardy. If the court not only undertakes the usual practice of taking offending while on bail into account on sentence for a subsequent offence, the young person would then also punished through a separate offence as well. The clause will impose an additional penalty on a

[15] (NSW) Public Interest Advocacy Centre (PIAC)

child, which stems from the same conduct that has already been penalised following a finding of guilt for the 'subsequent offence'.

This also raises concerns under Article 14(7) of the International Covenant on Civil and Political Rights. Since adults are not subject to a similar law, there is likely to be a breach of relevant international instruments which prohibit a child being dealt with more severely than an adult would be. Human rights obligations require the State to minimise, not increase, a young person's interactions with the criminal justice system. In addition, the State has a positive obligation to promote the establishment of laws, procedures, institutions and measures for dealing with children without resorting to judicial proceedings. The effect of the proposed clause will be to increase the likelihood of detention by creating a new offence for the sole purpose of imposing an additional penalty on a child.

It would also seem that if the young person is not found guilty of the original offence for which they were on bail, they will still incur an additional penalty for having committed an offence while on bail. This undermines the presumption of innocence. The new provision almost seems to assume that the child **will** be found guilty of the first offence.

In practice, the young person would be charged with the offence of committing an offence while on bail once there has been a finding of guilt in relation to the subsequent offence. This means the young person having to come back to the court again – an impost on the court's time and resources and likely to be a source of confusion to the young person. It is unlikely that this provision will act as a deterrent due to this timing.

The drafting of the clause seems to be problematic:

> The **finding of guilt made against the child** for the subsequent offence **is taken to be an offence** against this Act

This seems to imply that it is the court's action which is an offence!

The Explanatory Notes advise that the penalty for the proposed new offence is half that for breach of a condition of bail by an adult – which, as noted before, is a quite different scenario and there is no adult equivalent for this proposed provision.

In the event that this is a legitimate amendment, the legislation must be further amended to:

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

4. TRANSFER OF 17 YR OLDS TO ADULT CORRECTIONAL CENTRES

Policy issues

YAC did not support automatic transfer at 18 and certainly does not support automatic transfer at 17. The current system is appropriate and adequate. The Discussion Paper originally argued the need to transfer 18-year-olds on the basis of 'managing the demand' on detention centres:

> *Over the past year these detention centres have been full on a regular basis. On average 70% of young people in the detention centres are held there on remand waiting to be sentenced by a court and only approximately 10% ever receive a sentence of detention. This places significant pressure on the youth justice system, and is a great burden in terms of resources.*
>
> *One option to manage demand on youth detention centres is to automatically transfer young offenders to adult prison when they turn 18.*

(The real issue for discussion is, of course, how to reduce the large number of young people being placed in detention on remand – a situation that removing the principle of detention as a last resort is unlikely to alleviate.)

When a court makes a transfer order at time of sentence, the judicial officer has clearly made a judgement, in line with the criteria in the legislation, about that young person and their offence which leads it to state that the young person must go to the adult jail.

Where it has not made such an order, it is equally clear that the court has decided that the decision would be more appropriately made at a later time and that therefore there may be more benefit in the young person remaining in the detention centre.

A key reason for the young person to remain would be for them to be able to continue to access supports which may improve their ability not to re-offend when they leave detention which will not be available to them in the adult prison system.

The young person may have been a model inmate and been progressing well. A move to adult prison may undermine any positive work which has been done, since Corrective Services' policy and practice is not to assess the young person but follow their usual process of placing a new prisoner into high security, classifying them by way of offence. If the young person will only be there for up to six months, they will not transition from their initial security classification as classifications are only reviewed every six months. In any event, the adult prison does not have equivalent services and supports to youth detention centres.

There are important therapeutic services that are able to work with young people in detention whilst on sentence and are funded continue to work with those young people post release from detention whist they are on a supervised release order. It is the experience of YAC that some providers of therapeutic services (for example, sexual offending counsellors) are not willing to commence any service provision to young detainees if they do not believe that the service will be able to complete their therapeutic intervention with a young person because of their impending transfer to prison.

YAC is aware that sexual offending counselling may extend over many months and in some cases years. YAC is also aware that there are significant waiting periods for many types of counselling (including sexual offending) in the adult prisons and that the service providers who operate in the youth detention centres are often not funded to work in the prison system nor with persons on parole. The inflexibility and lack of review mechanisms for transferring young people to adult prisons may therefore result in young offenders not accessing appropriate therapeutic services to address their causes of offending. Transfer of their order during their sentence means that there is insufficient time to finish their therapy in detention (and therefore they are precluded from commencing it) and also insufficient time to complete therapy in the adult prison system prior to their release.

YAC is aware that the although section 276D(9) of the Youth Justice Act purports to preserve the supervised release date for young people who transfer to the adult prison, the parole board has adopted the practise of immediately revoking parole as soon as a young person is released thereby effectively requiring the young person to serve longer a longer period of incarceration than they would have served should they have remained in youth detention. This is clearly unjust.

Issues specific to proposed amendment

It must be noted that the proposed amendment was not the proposal put to the public in the Discussion Paper. Many parents are unaware that their 17 year old is subject to the adult justice system and find that quite shocking.

We are not aware of any public call for the lowering of the age. The argument now expounded in the Explanatory Notes for transfer at 17 is not about "demand on youth detention centres" but rather that it aligns with the overall age limits of the Qld youth justice system – a flawed argument as this distinction is in breach of Australia's international commitments and results in anomalies which are logically inexplicable.

It would be helpful to know on what basis the "Queensland criminal justice system recognises that 17 year olds are of sufficient maturity to be held fully accountable for their actions, including by being treated as adults when charged with an offence or being held in an adult correctional facility when sentenced to a custodial sentence".[16] This is not the internationally accepted standard and the neuro-scientific evidence clearly shows that this is not the case..

The research and evidence also indicate that imprisonment of any sort does not positively affect re-offending rates. Placing young people, whose brains and maturity are still developing, in an adult jail environment is more likely to reinforce criminal behaviour. If they are separated because of their youth, this would support the argument that they should be in youth detention rather than adult detention.

It is understood that in NSW it has been possible to get court orders to enable young people to remain at the Juvenile Centre until their HSC exams were complete. The current proposals do not allow for any such flexibility. It also prevents proper case planning and rehabilitation from occurring as the planning is limited to the time they will be in youth custody.

The Explanatory Notes make the somewhat peculiar statement that "…*this amendment makes the rights and liberties of affected offenders subject to an administrative power—the chief executive's power to issue a transfer direction*" but then states there are no conflicts with fundamental legal principles because "*no real discretion [is] afforded to the chief executive*." This would seem to be a classic case of 'having your cake and eating it.'

We would also question whether it is possible, as indicated in the Explanatory Notes, for the "chief executive's decision to issue a direction [to] be taken to be a sentence of imprisonment".

5. DETENTION AS A LAST RESORT

Policy issues

It is hard to understand the rationale for the removal of the the very long-established principle of detention as a last resort be removed, particularly for **10-17** year olds.

This amendment will place Queensland in clear breach of international obligations.

It is stated that "removal may allow courts to consider a broader range of options when sentencing young offenders".[17] YAC is not aware of any call or concern from the judiciary at any court level that their sentencing options are inadequate.

The Explanatory Notes state that *removal* [of the principle of detention as a last resort] *is intended to empower courts to use sentencing more effectively for the purposes of* ***punishing, denouncing*** *and deterring offending and protecting the community* [our emphasis]. There seems to be a continuing misapprehension that the current sentencing regime is just a 'slap on the wrist' and courts cannot impose a sufficiently 'severe' sentence: this is not the case. For both children and adults, if the offending behaviour is sufficiently serious, it has always been possible to imprison even where there is little or no previous history, if the court considers this the only way to proceed. It simply had to consider whether other options would be more appropriate. The following table compares the sentencing options presently available for child and adult offenders:

[16] Explanatory Notes at page 14

[17] Department of Justice and Attorney General *Safer Streets Crime Action Plan – Youth Justice* March 2013

Child*	Adult**
Reprimand	Absolute or Conditional Discharge
Good Behaviour Order	**Recognisance**s
Fine	Fine
Probation Order	**Probation Order**
Community Service Order	Community Service Order
Conditional Release Order	**Suspended Sentence**
Intensive Supervision Order	Intensive Correction Order
Detention	**Imprisonment**
Detention up to life –most likely transferred to adult jail	Imprisonment – indefinite

*Youth Justice Act 1992 **Penalties and Sentences Act 2000

What the 'broader range of options' could be is also not explained. The only clear option resulting from removal of the principle of detention as a last resort would seem to be that young people could be sentenced to detention earlier. By using the most significant punishment early, the court has effectively played its 'trump card' and there is nowhere else to go after this other than to keep locking the young person up for longer periods.

Research consistently shows that prisons are ineffective in rehabilitating offenders and preventing re-offending: imprisonment is therefore a poor use of public money, particularly as the building, maintaining and staffing of detention centres or prisons is very costly. It may also have a criminogenic impact: putting offending peers together will not assist in breaking a cycle of offending. This is one reason why the principle of detention as a last resort exists.

Additionally, young people, particularly young women, completing a detention sentence have been identified as at greater risk of homelessness than other societal groups.[18]

The Explanatory Notes anticipate an increase in the number of young people in detention on remand as well as on sentence. Queensland already has unacceptably high levels of remand – around 70%. A key principle of the criminal law is that a person is innocent until proven guilty and it is therefore concerning that so many young people should be in detention before guilt has been determined. Removal of detention as a last resort undermines this absolutely fundamental legal principle.

6. ABSCONDING FROM BOOT CAMP

Issues specific to proposed amendment

The Explanatory Notes refer to "absconding" and the clause should reflect this rather than simply "leaving the boot camp centre without written permission".[19] The latter could turn out to be a technical breach rather than "absconding" (that is, having an intention not to return) or indeed for a reason which may be considered to be understandable, such as the child being bullied by others and not getting support or being too scared to say anything.

7. COST OF REFORMS

At a time of fiscal constraint it seems extraordinary that no cost-benefit analysis has been undertaken to check whether the costs which will be incurred, particularly in relation to increased detention, are a cost effective use of taxpayers' monies. We already know that detention is an expensive option and that early intervention/prevention programs are cost effective. However, important and very cost efficient Queensland initiatives have been de-funded: for example, Fight Fire Fascination, Juvenile Arson Offenders Program and Motor Vehicle Offenders run by the Queensland Fire Service were shut down last November.

[18] Australian Institute of Health and Welfare 2012. Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice. Data linkage series no. 13 Cat. no. CSI 13. Canberra: AIHW

[19] Clause 14

SUPPORT FOR THE PROPOSED REFORMS

The Explanatory Notes include the following:

> *The community was engaged in the review of the Youth Justice Act 1992 through the Safer Streets Crime Action Plan – Youth Justice discussion paper and survey, conducted in early 2013. Of the 4184 respondents to this survey:*
>
> *65.9% believed that giving courts access to an adult offender's juvenile criminal history would be 'quite effective' or 'very effective';*
>
> *66.3% agreed with making it an offence for a child to breach their bail conditions;*
>
> *49.9% agreed with removing barriers to the naming and shaming of child offenders;*
>
> *and*
>
> *47.8% agreed with removing detention as a last resort for young offenders*

Survey Monkey is arguably not a particularly credible method of undertaking an objective and statistically relevant survey for an issue as complex as addressing offending behaviour. There is no ability to manage for bias in the results by ensuring, for example, a cross-section of respondents reflective of the community (for example, 47.1% of respondents were aged between 40 and 65). Thus the results have to be considered with a degree of scepticism for their usefulness in developing policy.

Additionally, general views in the community are formed on the basis of the information available to them and their own personal biases. It is almost impossible for the average person to access objective information and data on youth offending as it is commonly used as a 'football' during election times. The media is more interested in the sensational, so that is what people see most often. Most people therefore do not have an accurate picture of youth offenders and youth offending and, as a result, their view of 'what needs to be done' will not address 'the problem'. They are also not familiar with the justice system and they may not appreciate all the consequences of what may sound to them like a good idea as a 'one liner' in a survey.

Even if the results are taken as appropriate, they still do not provide a ringing endorsement of the proposed amendments:

- People were asked if they had been a victim of a crime NOT if they had been the victim of a crime where a 10-16 year old had been found to be the offender: it is unclear why the question was included
- The amendment relating to the automatic transfer of **17 year olds** was not canvassed and the rationale for transfer of 18 year olds is quite different to that now put forward for 17 year olds
- 49.9% and 47.8% is not even a bare majority: it means that over 50% were ambivalent or did not consider naming and shaming or removal of detention as a last resort as effective
- More respondents considered the following as quite effective or very effective "in preventing youth crime and making Queensland safer" than access to a child's criminal history as an adult or making breach of bail an offence:
    - providing education and employment (77.5%)
    - providing better support to children subject to abuse and neglect (76.8%)
    - early intervention and prevention (75.4%)
    - treatment to tackle drug addiction (73.7%)
    - employment programs (71.1%)
    - better mental health care (71.7%)
    - better supervision of young people by their parents (70.4%)
    - treatment to tackle binge drinking (68.2 %)

It is also reported in the Explanatory Notes that "[k]ey criminal justice experts, community agencies and the legal sector were invited to provide submissions on policy proposals". These submissions were not published on the Department of Justice and Attorney-General website as is now common practice for public inquiries and reviews (this was the case for the Carmody Inquiry into Child Protection). We therefore do not know

what these expert stakeholders had to say and their level of support for the proposed amendments as the Explanatory Notes are silent in relation to this.

IN CONCLUSION

While there is no indication of a crime wave at any level, it is unclear why there is such a focus on youth crime and not crime in general. As is well recorded, the issue of young people's behaviour has always been a matter of (not particularly rational) concern to society for almost as long as society has existed:

> "*Young people today are unbearable, without moderation... Our world is reaching a critical stage. Children no longer listen to their parents. More and more children are committing crimes and if urgent steps are not taken, the end of the world as we know it, is fast approaching*."
>
> **Hesiod, Greek poet**
> **8th Century BC**

There is no research or evidence to support the contention that the proposed amendments will reduce offending and make Queensland safer (noting that Queensland is not, in any event, an unsafe place to be) – indeed, the results are likely to be the reverse, resulting in a greater drain on the public purse which will be difficult to justify since the evidence provides no support for the proposals.

The Explanatory Notes anticipate an increase in the number of young people in detention, both on sentence and on remand. Knowing that incarceration is criminogenic and expensive, and having recognised the problematic characteristics of the small cohort of repeat offenders, it is unclear why it has been decided to take an aggressive stand towards repeat offenders **before** taking positive action to address why they are offending through the *development of the Blueprint to guide long term, evidence-based reform and the close engagement of non-government organisations and partner agencies in integrated service delivery are intended to address the causes of offending and reduce the incidence of children becoming entrenched in a life of offending*

The Texas (USA) based group **Right on Crime** puts forward *The Conservative case for reform: Fighting Crime, Prioritizing Victims, and Protecting Taxpayers*, noting that *Cost-effective interventions that leverage the strengths of families and communities to reform troubled youths are critical to a successful juvenile justice system*[20].

The **most effective** approach would be to reduce the likelihood of a child or young person ever developing anti-social or offending behaviour patterns by:

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

For those already in the system, providing therapeutic support, assisting their development of life skills and ensuring that they receive an education will be most effective.

It is to be hoped that the Blueprint for Youth Justice will take up this approach. YAC would be keen to participate in development of this.

The review of the youth justice system and the legislation provided an opportunity to ensure that addressing youth offending aligns with the research and evidence so that public monies are spent to best effect. Good policy must be based on objective evidence of the potential for a response to address the issue at hand, even if this runs counter to populist opinion. There is a great deal of evidence around how best to respond to offending and offenders. YAC urges the government to act on this evidence for the benefit of all concerned.

[20] http://www.rightoncrime.com/priority-issues/juvenile-justice/