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**youth affairs network qld**

## **Submission Response**

**from**

**Youth Affairs Network of Queensland (YANQ)**

### ***A Report on the Review of the Detention of Children and Young People in Watchhouses***

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## **ABOUT THE YOUTH AFFAIRS NETWORK OF QUEENSLAND**

The Youth Affairs Network of Queensland Inc. (YANQ) is the peak community youth affairs organisation in Queensland. Representing approximately 400 individuals and organisations from Queensland's youth sector, we promote the interests and well being of young people across the state. YANQ advocates for and with young people, especially disadvantaged young people, to government and the community. Further, YANQ encourages and participates in the development of policies, programs, projects and research that are responsive to the needs of young people.

YANQ also supports and promotes cultural diversity in Queensland. As such, YANQ in partnership and collaboration with the non-English speaking background (NESB) Youth Issues Network (NESBYIN) has continued to sustain the NESB Policy and Network Officer's position for the last four years.

## **Introduction**

YANQ welcomes the opportunity to respond to the August 1999 document prepared by the Youth Justice Program of Department of Families, Youth and Community Care - ***Report on the Review of the Detention of Children in Watchhouses: A report on the outcome of processes to identify issues and recommend strategies to reduce the incidence and duration of children in watchhouses*** (herein referred to as 'the report').

Preparation for this response included the participation of the Director of YANQ in the March 1999 Workshop - To Minimise the Detention of Children in Watchhouses. YANQ would also like to acknowledge the input of members in the preparation of this submission response and the further information collected in response to the current review of the *Juvenile Justice Act 1992* and the DFYCC discussion paper *Principles underlying the Youth Justice Program*. Both YANQ Policy Officers including the NESB Policy Officer have visited regional youth interagencies across Queensland over the past six months gathering perspectives on a range of issues, local and statewide including Juvenile Justice.

In keeping with the key issues identified in the March 1999 Workshop this response addresses recommendations related to:

- ◆ **Bail decisions;**
- ◆ **Strategies to minimise use of watchhouse detention; and**
- ◆ **Standards of Care**

Further, all issues related to under 18 year olds should be considered not just as children's issues. The terminology should be corrected to incorporate young people e.g. Review of the Detention of Children and Young People in Watchhouses. This is consistent with terminology such as the Youth Justice Program.

## **Our Response**

Two key methods were noted in the examination of the issues relevant to the detention of children and young people in watchhouses. In the report these are detailed as the Interdepartmental Working Group consisting of cross departmental representation - it is critical that community representation is instituted post haste if this process is to be viewed as an ongoing partnership. Further, the second key method, the 24th March 1999 Workshop to Identify Strategies to Minimise the Detention of Children in Watchhouses held at the Parliamentary Annexe - the report fails to note that this workshop was attended by a large number of concerned stakeholders, many of whom were representatives from community groups. It was this workshop that was successful in generating many practical recommendations to guide policy and practice in relation to the detention of children and young people in watchhouses.

It should also be noted that of the four main themes to emerge from the Workshop, including the need:

- for legislative amendment,
- to develop a range of program and service options for children and young people,
- for clear guidelines to ensure an appropriate standard of care is provided to children in police custody,

the fourth theme, the need for

- better support and other services for children and young people detained in watchhouses,

has been neglected. This theme is supported by recommendation 19 of the Forde Inquiry - *That the provision of advocacy services for young people in residential care facilities and juvenile detention centres be required by legislation.*

It is noted in the report, and YANQ would like to support the action, that of greater representation from regions beyond South East Queensland need to be influenced in the above processes. Resources must be allocated to resource the regions to send community identified stakeholders to attend a future workshop. This workshop should be held post haste and include the opportunity for all stakeholders to workshop the gamut of issues currently being consulted about which all relate to issues of juvenile justice, rather than the current compartmentalised approach: -

1. Review of the JJ Act
2. Review of the Detention of Children and Young People in Watchhouses
3. Principles underlying the Youth Justice Program

All the above are intrinsically linked. Given also the findings of the Commission of Inquiry into the Abuse of Children in Queensland Institutions and the number of recommendations which have particular significance to Juvenile Justice it is critical that all the above are looked at together as each informs potential changes in the others.

It is noted that the Department of Families, Youth and Community Care has established a register of all incidents of children and young people detained in watchhouses. It is essential that data is collected in a uniform fashion and clear guidelines developed regarding the collection and use of this data. Certainly it has been an issue in the past that data collection regarding 'youthful offending' and related issues has been difficult to obtain 'because of the number of agencies involved in collecting data and their varying counting methods' (DFYCC, 1999, p.10).

As per Recommendation 7 of the Forde Inquiry, *that the Department review the practice of unclothed searches with a view to reducing their use, and that detailed documenting (date, time, reason and process used) of every such search be made.* **YANQ challenges the need for strip searching in Watchhouses or any setting where young people are detained.** It is noted that the focus of these searches is on ensuring the safety of residents and staff and that searches are seen as an important strategy in ensuring dangerous objects and drugs are not introduced into 'secure' settings. However, other methods are available to officers such as the use of dogs and 'state of the art' technology with regard to drug and weapon detection.

Until such time as strip-searching is ceased data collection regarding each and every search must include the information recommended by Forde. In addition to this, for every strip search conducted the *type* and *amount* of *contraband* found must be documented. YANQ believes that this data will prove how unnecessary the practice is with negligible drugs or weapons of any kind being detected. Currently, however, there is only anecdotal evidence to support this contention and until such time as reliable uniform recording is conducted the myths regarding the necessity of the abhorrent practice of strip-searching will abound.

The use of strip searches are a blatant abuse of human rights. They are used to humiliate and further abuse as well as being undertaken for behaviour management and disciplinary reasons. It is time that this draconian practice is viewed for what it is, amongst other things, state sanctioned sexual abuse, and abolished.

It is stated clearly in the Report that given their vulnerability, children and young people should not be accommodated in watchhouses. Perhaps the principle contained in the *Juvenile Justice Act 1992* section 4 (c) that young people ".....should be detained in custody for an offence (whether on arrest or sentence) ..... only **as** a last resort" needs to be given greater emphasis given that one third, of young people who are arrested and refused bail are held in a watchhouse overnight. This is clearly a child protection issue and the state needs to be answerable for detaining children in adult facilities where their safety cannot be guaranteed nor there needs met to any sufficient degree.

Given the reasons stated in the report for the detention of young people in watchhouses it is clear that alternative mechanisms need to be created for ensuring that young people are granted bail. It is not OK that government policy on the one hand recognises that it is 'undesirable' to detain children in watchhouses but on the other abdicates responsibility by referring to the constraint, which is the size and decentralised nature of Queensland. It would appear that this rationale has immobilised the system, which now accepts accommodation of young people in watchhouses as being *unavoidable*.

If the community sector is to be truly consulted regarding alternatives then adequate resources need to be allocated to the lateral possibilities that will come from the years of experience with an appalling system that has looked no further than the fact that we live in a 'big' state. Given the size of the state we would like to reiterate that it is critical that regional input is resourced to facilitate generation of creative alternative strategies.

Given the small number of young people who offend and the even smaller number of young people who reoffend it is essential that young people are given fewer opportunities as possible to come into contact with any facet of the justice system.

The information gathered from Interstate and International policy and practice show that it is possible to look at creative alternatives.

Given that approximately half of the young people who are refused watchhouse bail are subsequently released on bail by the court when they appear, it is essential that processes that enable immediate access to the equivalent of 'the court' e.g. a magistrate via telephone or video link must be instituted.

Even though there has been a documented decrease in "bednights" per week spent in watchhouses by children and young people, data suggests that many of these "bednights" are a result of young people being refused bail or arrested as a result of being homeless. **Homelessness is not a crime.** However, as a result of no bail hostel services, safe places for young people to "sober up", and nil resource allocation for beds and support in SAAP services for these young people, many end up spending one or more nights in watchhouses as a result of their homeless status. This is not good enough!

The overrepresentation of indigenous young people in the juvenile justice system is a travesty. Statistics quoted in the report show that 60% of incidents of watchhouse detention for children for one or more nights involved indigenous children. This is further evidence to add to a growing body of information that Queensland needs resources for 24-hour service responses for indigenous young people and significant allocation to address a range of related issues for indigenous young people. In juvenile detention centres, approximately 60% of young people in Brisbane and 90% of young people in Townsville are indigenous. These statistics are appalling. For years we have heard the same statements about the *overrepresentation of indigenous young people in the juvenile justice system*, however this situation has not abated irrespective of all the talk. Aboriginal and Torres Strait Islander young people between the ages of 10 and 16 years constitute only 3.6% of that age group in Queensland.

Overrepresentation of Aboriginal and Torres Strait Islander young people results from complex connections of factors including the impact of colonisation, social and economic marginalisation, discrimination, and racism. The effect of direct discrimination compounds its way through the system. The early police decisions to proceed in a more punitive way e.g. arrest and refuse bail, against young people means they acquire a criminal record from an early age. (Cunneen 1997 p117)

Children and young people must be treated differently from adults and the systems of criminal justice must be clearly separate to reduce the likelihood of repeat participation by young people in criminal justice systems. Young people who have minimal contact with the juvenile justice system are less likely to end up in the adult one, and a very high percentage of young offenders will not re-enter either criminal justice system, if they are dealt with helpfully, respectfully, and supportively. Diversion from the system is a key principle in preventing crime committed by young people

Australia is a signatory to the UN Standard Minimum Rules for the Administration of Juvenile Justice – the Beijing Rules. Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the “promotion of the well” being of the juvenile. This objective should be considered in any discussion of detention of children and young people in watchhouses. The second objective is “the principle of proportionality” and is well known as an instrument for curbing punitive sanctions. YANG believes that refusal of bail is often used as a punitive sanction, young people are being held in custody when if they had immediate access to a court setting. They would not receive a custodial sentence. In situations such as this the response to the young offender is out of balance with the gravity of the offence. Further to this, the principle of proportionality also relates to the individual circumstances of the offender (for example social status, family situation, the harm caused by the offence and of other factors affecting personal circumstances) which should influence the proportionality of the reaction – this principle must be incorporated when considering bail applications for young people, particularly indigenous young people whose circumstances are affected by systemic issues such as the impact of colonisation. Research shows that indigenous young people are more likely to be given harsher sentences. Decisions regarding bail effect their future in the justice system, as do experiences of overnight stays in adult justice settings such as watchhouses.

The above mentioned minimum rules favour diversion wherever appropriate, stating also that diversion may be used at any point of decision-making – by the police, the prosecution, or other agencies such as the courts, tribunals boards or councils. “Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practiced on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence.) **In many cases, non-intervention would be the best response.**

Rule 13.4 of the Beijing Rules state that juveniles under detention pending trial shall be kept separate from adults and shall be detained in a **separate institution** or in a separate part of an institution also holding adults. This rule could be extended to the situation of detention in watchhouses, as the same principles should apply. Children and young people under detention (in a watchhouse or secure care) are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights. Rule 13.4 is intended as a measure against the negative influences of adult offenders.

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards specified that the Rules, should reflect the basic principle that...detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.

Rule 19 advocates that **a juvenile offender should not be incarcerated unless there is no other appropriate response**. Whether a young person is detained in a watchhouse or in a juvenile detention centre this says volumes about this society's ability to care for, guide and nurture it's children and young people. We have failed miserably. Yet all we keep doing is building more detention centres. The State must act immediately to redress the situation of our children and young people being accommodated in adult watchhouses. Surely in a smart state, an enlightened society we can come up with creative, supportive options that address these issues and consider this in light of the fact that we have increasing numbers of children and young people in detention in Queensland. This appears not to correlate to an increase in crime, only less diversion from the juvenile justice system and an increase in length of sentences. Both the severity of sentences and the length of detention have increase dramatically since the Juvenile Justice Act 1992 was introduced in 1993 and again since the amendments in 1996.

Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalisation as compared to non-institutionalisation. The many adverse influences on an individual that seem unavoidable within any institutional setting cannot be outbalanced by treatment efforts. This is especially the case for young people, Moreover, the negative effects not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for young people than for adults because of their early stage of development. Rule 19 aims at restricting institutionalisation in two regards: in quantity ("last resort") and in time ("minimum necessary period")

Recent get tough approaches, which include refusal of bail resulting in detention of children in watchhouses are not reducing crime, only extending criminal careers.

YANQ support the following recommendations as generated by workshops

### Recommendations

- ✧ Review the existing accommodation services available for homeless children and consider a range of alternatives including outstations, rented house networks, motels, etc.
- ✧ That beds at youth hostels and shelters be contracted for children who would otherwise be held in a watchhouse as a result of homelessness and that resources are tied to this for support of the young person
- ✧ That bail programs be available for all young people
- ✧ That a new bail regime for children and young people be established by way of amendment to the *Juvenile Justice Act 1992*
- ✧ That there be a positive presumption in favour of bail for children under 15
- ✧ That children under 12 always be granted bail
- ✧ That there be no reverse onus on a child or young person in terms of their entitlement to bail as currently exists, namely that young people should not be required to show cause.
- ✧ That the reason for refusal of bail be recorded by police
- ✧ That video link facilities are available in all regions to ensure that no young person need spend time in a local watchhouse as a result of being refused police bail.
- ✧ That the use of telephone bail and video technology in court is available in courts in order to facilitate expeditious hearing of bail application and to avoid unnecessary court appearances by children
- ✧ That police be able to caution children on the basis that a plea of no contest would be sufficient rather than an admission of guilt for an offence
- ✧ Repeal the provisions in the *Juvenile Justice Act 1992* which make some cautions admissible as part of a child's criminal history
- ✧ Establish a community based diversion program similar to the one currently operated by Murri Watch for adults
- ✧ That Official Visitors from the Children's Commission monitor any new facilities for use by children who are refused bail to ensure that an appropriate standard of care is provided

The following recommendations are listed to address the short term, that is until such time as legislation, practice and procedures ensure that children and young people are no longer detained in watchhouses.

- ❖ That a pool of casual Youth Workers be employed to be available on call to provide support and supervision to children and young people detained in watchhouses
- ❖ Investigate how to better coordinate Children's Court schedules with the flight schedule of the Police Air Wing so that children remanded in custody or sentenced to detention can access the Police Air Wing and minimise the length of time they are detained in police watchhouses or court cells awaiting transportation
- ❖ Investigation of the classification of special cells in watchhouses as dedicated children's and young people's cells. This would primarily be considered in locations where children could be held for up to a week while a trial is in progress
- ❖ A number of watchhouses in rural and remote locations require refurbishment and should include areas for family visits – this needs to be done irrespective of age of person being detained!!
- ❖ That Queensland Health take responsibility for monitoring health issues in watchhouses
- ❖ That minimum standards for the care of children and young people in watchhouses be established which take into account issues such as health, substance dependence, age, gender and disability.
- ❖ There must be a set of clear policy principles in the event that detention in a watchhouse is necessary.
- ❖ That specially trained staff be employed in watchhouses where children and young people are being detained for the purpose of supervision and care.
- ❖ That watchhouse staff should be trained in the supervision and care of children and young people in custody.
- ❖ "Accredited Persons" such as Youth Workers could stay with a young person in some instances – including 24-hour surveillance if necessary.
- ❖ That the Department of Families, Youth and Community Care maintain a register of all children detained in watchhouses

## Bibliography

- Cunneen, C. 1997 Juvenile Crime, Justice and Corrections
- Department of Families Youth and Community Care (DFYCC), 1999 Principles Underlying the Youth Justice program Discussion Paper
- Forde Inquiry 1999 Abuse of children in Queensland Institutions
- United Nations, 1986 United Nations Standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules, Department of Public Information, New York.
- United Nations United Nations Convention on the Rights of the Child
- Youth Affairs Network of Queensland (YANQ) 1998 Youth Speak 1998 Information Sheet – Juvenile Justice – Crime is not out of control