Rethinking Youth Remand & Enhancing Community Safety

A Discussion Paper

Coalition Against Inappropriate Remand (CAIR)

CAIR is a coalition of community-based youth, legal, educational and social justice organisations working together to abolish inappropriate remand in custody of young people in Queensland.

March 2008

CAIR Member Organisations:

Aboriginal & Torres Strait Islander Legal Service (Qld South) Ltd (ATSILS)
Catholic Education, Archdiocese of Brisbane
Prisoners Legal Service
Queensland Youth Housing Coalition (QYHC)
Sisters Inside Inc.
Southside Education
UnitingCare Queensland Centre for Social Justice
Youth Advocacy Centre Inc. (YAC)
Youth Affairs Network of Queensland Inc. (YANQ)
Youth and Family Service (Logan City) Inc. (YFS), including Logan Youth Legal Service

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Table Of Contents

Supporting Information and Evidence

Executive Summary

Overview

74% of the young people in custody in Queensland Youth Detention Centres on 30 June 2006 were on remand - the outcome of a dramatic upward trend over recent years.

Inappropriately detaining young people in custody puts community safety at risk. Many young people only ever commit a single, minor, juvenile offence, yet evidence suggests that many first-time alleged offenders are remanded in custody. Most children on remand in Youth Detention Centres in Queensland are charged with minor, non-violent offences. Repeated studies have shown that the younger a child is detained in custody, the greater the likelihood that they will re-offend as a juvenile and end up in prison as an adult. Detaining a young person increases their likelihood of future incarceration, and therefore diminishes the chance that they will become a productive citizen. There is substantial evidence to indicate that detaining young people increases both short and long term risks to public safety.

Detaining unconvicted children or young people not charged with a serious violent offence, is unjust and in contravention of Queensland's human rights obligations. The frequent detention of young people charged with bail violation or offences which would not normally result in a custodial sentence, is of particular concern.

The most recent available estimate of the cost of keeping a young person in detention was $567 per day (NSW, 2005). This suggests that it cost in the vicinity of $57,000 to keep the 101 young people on remand in Queensland Youth Detention Centres on 30 June 2006, for a single day. It further suggests that it costs over $20 million annually, to keep unconvicted 10 - 16 year olds on remand in Queensland.

All the evidence indicates that preventative and early intervention strategies could be expected to save tax dollars and to enhance public safety - in both the short and long term. The alternatives outlined in this paper are, at worst, cost neutral. Estimates of the cost of diversionary options have ranged from $10 per day for a youth justice conference, to $35 per day for community-based supervision, to $106 per day for a brokerage program, to $278 per day for a community placement program.

Current policies and practices are unnecessarily punitive and wasteful. The Queensland Government has acknowledged that remand in custody may have negative consequences for a young person. It asserts that a decision to hold a young person on remand balances the presumption of innocence with community safety. This paper provides clear evidence that this balance is not being achieved, and that the current trend toward detaining more and more young people on remand actually places both the community and young people at greater risk. It proposes concrete strategies which would enable Queensland to reorient its juvenile justice policies to reduce the overuse of detention amongst young people on remand … and make considerable cost savings.

Findings

Few young people in custody are serious offenders. There is clear evidence that diversionary options have a deterrent and rehabilitative effect on most young people who come into contact with the criminal justice system. Yet, it would appear that young people are increasingly being incarcerated for less and less serious offences. The detention of young people charged with non-violent, low-level offences and bail violations appears to have driven the increase in the number of young people on remand in Queensland.

Over recent years, the Queensland Government has introduced a number of diversionary measures, most notably *conferencing*. These are positive moves. The limited information available indicates that such interventions can have had a positive impact on both individual young people and victims of crime. However, these measures continue to be applied as the exception, rather than the rule. The majority of young people charged with an offence in Queensland continue to be processed within the mainstream juvenile justice system. As a result, increasing numbers are being remanded in custody.

Queensland has a significantly higher proportion of young people on remand in custody than the national average. An overburdened court system and under-resourced community services have contributed to the number of young people incarcerated prior to sentencing. Expenditure on Youth Detention Centres diverts resources away from more cost-effective alternatives to incarceration and essential services such as hospitals and schools.

Young people in Youth Detention Centres are highly disproportionately Aboriginal and Torres Strait Islander. Young people in custody typically come from low socio-economic backgrounds, and often have troubled family histories and high rates of school failure. Many have a history of involvement with child protection authorities, and many are under the care of the state. Many are homeless, or facing mental health issues. Some in Youth Detention Centres, particularly Aboriginal and Torres Strait Islander young people, are as young as 10 years old.

Other jurisdictions have pursued concrete strategies to reform their juvenile justice system and have enhanced public safety. By engaging preventative and early intervention strategies, they have actually reduced youth detention and youth crime rates. These strategies have increased the number of young people who become active, contributing citizens and saved millions of dollars.

International experience demonstrates that capacity drives utilisation. The more a jurisdiction invests in expanding Youth Detention Centres, the more its policies and practices become oriented toward using this additional space. On the other hand, jurisdictions that have expanded community-based alternatives, have found that they can effectively reduce their youth detention populations and save significant tax dollars.

The Queensland Government appears to be planning for failure. It has recently announced plans to build a new 4000 bed adult prison at Gatton, due for completion in

2020. The government has also announced its intention to increase the youth detention capacity in Townsville by 48 beds. Given the demonstrated causal link between youth and adult detention, Queensland is at risk of using Youth Detention Centres as *kindergartens* for a planned increase in adult imprisonment.

The current *Review of the Juvenile Justice Act 1992* (JJA) presents an opportunity for policy makers to rethink Queensland's overall approach to youth detention. Some legislative improvements and diversion of more young people charged with low level offences and bail violations to community-based alternatives would allow Queensland to provide better services to young people and the community, without the added cost burden of increasing secure beds.

The over-incarceration of young people on remand is a matter of particular urgency. The Queensland Government should not wait for completion of the Review to address this immediate crisis.

Using this Report

This discussion paper is deliberately solution-focused.

It is also soundly evidence-based.

Detailed background information is provided in the second part of the paper. Evidence for claims made in "The Solutions" are under parallel headings in "The Problems".

List of Recommendations

This paper recommends that the Queensland Government:

1. Cancels plans to increase the number of Youth Detention Centre beds and reallocates funds to developmental alternatives to detention for children and young people on remand.

2. Makes detailed data on the Youth Detention Centre population, including the youth remand population, publicly available. This should include information about the profile of young people in custody, details of their juvenile justice process and the outcome of charges.

3. Requires that the Department of Child Safety and the Department of Communities collect and publish monthly statistics in relation to all Aboriginal and Torres Strait Islander young people, showing:
   - 3.1 The number of young people who have been transported away from their home community.
   - 3.2 The reason for the movement.
   - 3.3 The length of time that each young person spent away from their home community.

4. Ceases to hold children under 15 on remand through legislating to raise the age of criminal responsibility to 15 years.

5. Immediately adopts policy to limit detention on remand to those 15 - 17 year olds facing charges with a possible custodial sentence of more than 1 year. These young people must also be a flight risk, or a threat to ongoing investigation, or likely to commit a further criminal act.

6. Immediately adopts policy to:
   - 6.1 Discontinue the practice of setting bail conditions for young people charged with summary and other minor offences.
   - 6.2 Preclude denial of bail on the basis of social needs, including a lack of child protection, accommodation or support services.
   - 6.3 Allocate sufficient resources to meet the social needs of all alleged offenders.
   - 6.4 Make the Department of Communities responsible for ensuring that these needs are met.
   - 6.5 Require that the Department of Communities prove that every possible reasonable alternative to detention has been taken, prior to a young person being remanded in custody.

7. Legislates to prohibit the use of remand in custody on the basis of social rather than criminal criteria. Provisions should disallow detention:

   7.1 For alleged summary and other minor offences.
   7.2 As a substitute for addressing social needs.
   7.3 As a response to bail violation.

8. Redirects investment from expanding the juvenile justice system to funding a range of community-based crime prevention initiatives.

9. Commits to properly fund and resource Aboriginal and Torres Strait Islander legal and community organisations to:

   9.1 Develop and implement culturally appropriate models of mentoring and conferencing within local communities.
   9.2 Establish Youth Murri Courts throughout Queensland.

10. Legislates to require allocation of a local community mentor and provision of the required social services as a condition of bail for young Aboriginal and Torres Strait Islander suspects.

11. Provides the necessary resources to:

   11.1 Enable a local Aboriginal or Torres Strait Islander community to establish a pilot Community Detention Camp.
   11.2 Use a Participatory Action Research framework to progress, develop and expand this approach.

12. Commits to developing youth bail support programs in further regional cities and remote communities, and exploring means to implement the community development principles underlying the Youth Bail Accommodation Support Service (YBASS) when establishing these services.

13. Expands young people's access to legal representation and support across the state, either through specifically funded community legal centres or youth legal services.

14. Immediately allocates funding for bail accommodation services in Mt Isa, Rockhampton & Townsville.

15. Involves youth and community organisations in researching and developing a continuum of new community-based alternatives to remand which divert alleged minor offenders from exposure to involuntary supervision.

16. Takes a *whole of government and community* approach, actively including a wide variety of government instrumentalities and community organisations, to provide community education which:

   16.1 Addresses irrational fears about the nature of youth crime.
   16.2 Markets the social and economic benefits of alternatives to detention for young people.

This education should be undertaken with both government employees involved with the juvenile justice system and the wider public.

17. Avoids creating new ways of increasing the youth remand population through inappropriate bail conditions, including:

    17.1 Extending the use of placement restrictions or curfews.
    17.2 Introducing home detention, electronic monitoring or anti-social contracts/orders.

And that, at the very least, the Queensland Government:

18. Immediately:

    18.1 Directs police to prioritise use of diversionary alternatives to arrest of young people in all situations.
    18.2 Consults with the community sector whilst developing the Risk Assessment Instrument for government use, to ensure that it protects against the inappropriate remand in custody of young people charged with minor offences.

19. Immediately establishes stringent guidelines to expedite the legal process for young people being held on remand in custody. This should include a requirement that a conference is convened or the young person appears in court within 7 days, and that the case continues to be reconvened at least every 7 days until resolved.

20. Immediately reviews the jurisdiction of the Children's Court magistrate to include property offences involving monetary limits of $5000.

21. Immediately acts to reduce the number of young people on remand due to failure to appear, through:

    21.1 Enabling magistrates to dismiss simple offences on public interest.
    21.2 Enabling magistrates to determine simple offences in the absence of a young person, on their written request, and impose an unsupervised order.
    21.3 Authorising police prosecutors to negotiate amend and withdraw Children's Court matters.
    21.4 Reorienting the role of Department of Communities to focus on preventing failure to appear.

22. Immediately appoints and resources specialist police, Children's Court magistrates, police prosecutors and legal practitioners to expedite proceedings within the juvenile justice system. That resourcing for this initiative at least meets the levels recommended by Human Rights and Equal Opportunities Commission and the Australian Law Reform Commission in 1997.

The Solutions

Meeting Human Rights Obligations

It is time for Queensland to honour its long-standing commitment to an approach which is more in keeping with its international human rights obligations. All the evidence indicates that further custodial beds are not required. The number of **sentenced** young people in custody has reduced significantly, and youth crime rates have remained relatively stable, over the past 15 years. The New York experience demonstrates that an increase in custodial beds directly leads to increases in the number of young people detained on remand. The Queensland Government should act on its own principles and replace detention of young people on remand with the *alternate measures* required by The Beijing Rules[1].

Recommendation 1:

That the Queensland Government cancels plans to increase the number of Youth Detention Centre beds and reallocates funds to developmental alternatives to detention for children and young people on remand.

Young people often enter the juvenile justice system at a crisis point in their life, which highlights long term issues. Early intervention strategies are critical to ensuring that young people do not enter the system, or are involved for the shortest possible time with the lowest possible levels of punitive intervention. It is important that Queensland develop a flexible service delivery system which is based on the needs of each young person and addresses the underlying causes of their involvement in the system.

Making Information Available

In order to develop high quality, evidence-based strategies to reduce the number of young people on remand, data is required about young people in Queensland Youth Detention Centres and adult prisons. This should include[2]:

Profile of Young People in Custody:

- Age of young people (on remand).
- Race of young people (on remand).
- Gender of young people (on remand).
- Care status of young people at initial/subsequent detention.
- Accommodation status of young people at initial/subsequent detention.
- Mental health status of young people at initial/subsequent detention.

1 The UN Standard Minimum Rules of the Administration of Juvenile Justice

2 Based on Tresidder & Putt 2005

- Drug and alcohol status of young people at initial/subsequent detention.
- Education/employment status of young people at initial/subsequent detention.

Juvenile Justice Process of Young People in Custody:

- Length of detention (on remand)
- Number and frequency of court hearings (during remand)
- Initial basis for detention (on remand)
- Specific nature of charges (including possible custodial sentence associated with the offences).
- Number of young people (on remand) facing their first criminal charge.
- Number of young people (on remand) with a previous custodial sentence.

Outcomes for Young People on Remand:

- How many times the charges were unsubstantiated.
- How many young people received a community-based sentence.
- How many young people were given a suspended sentence.
- How many young people received a custodial sentence.

Comparative information should be available across all categories for at least the past 20 years to enable assessment of detention trends and their impact on the nature and frequency of youth crime. The interrelationships between the data should be provided to enable a clear profile of the remand and wider Youth Detention Centre population. Data should clearly distinguish information related to young people on remand and those serving custodial sentences.

Access to detailed race and ethic data, in particular, was the first step to addressing the deeper causes of disproportionate detention of young people of colour in Santa Cruz, USA.

Recommendation 2:

That the Queensland Government makes detailed data on the Youth Detention Centre population, including the youth remand population, publicly available. This should include information about the profile of young people in custody, details of their juvenile justice process and the outcome of charges.

Given the highly disproportionate rate of detention of Aboriginal and Torres Strait Islander young people, it is important that further data be gathered on this specific group. Repeated studies have demonstrated that young people who are removed from their home community are particularly vulnerable to long term harm. It is therefore critical that welfare authorities be more accountable for their treatment of Aboriginal and Torres Strait Islander young people. Like Canada, the Department should be required to make data on the removal of young people from their home communities publicly available.

Recommendation 3:

That the Queensland Government requires that the Department of Child Safety and the Department of Communities collect and publish monthly statistics in relation to all Aboriginal and Torres Strait Islander young people, showing:

3.1 The number of young people who have been transported away from their home community.
3.2 The reason for the movement.
3.3 The length of time that each young person spent away from their home community.

Distinguishing *Criminal Justice* and *Social Justice*

The Forde Inquiry (1999) concluded that many young people were being remanded in custody due to lack of appropriate accommodation and support. Since these findings, the rate of incarceration of unconvicted young people in Queensland has increased significantly. Many young people are being remanded due to homelessness and/or lack of access to essential services, particularly mental health and substance abuse services. Others are being incarcerated for breach of onerous bail conditions set for minor alleged offences. It is clear that large numbers of unconvicted young people are being incarcerated for social, rather than criminal, reasons.

In 1997, the *Seen and Heard: Priority for Children in the Legal Process* report was submitted to Federal Parliament. Recommendation 228 focused on bail, and argued that there should be a presumption in favour of bail for all young suspects. It argued that unrealistic bail criteria should not be imposed, including *monetary* conditions, *24 hour curfews* or conditions that *impose policing roles on carers*. It stated that police should have statutory duty of care to ensure appropriate accommodation for young people on bail and explicitly stated that *Lack of accommodation is not sufficient reason to refuse bail to a young person.*[3]

The Report's recommendations on sentencing of young people should be seen as equally relevant to the pre-sentencing phase, since these recommendations were predicated on the assumption that few young people would be remanded in custody if Recommendation 228 were followed. Changes required to improve the effectiveness of sentences included:

- Ensuring proportionality - that a sentence reflects the seriousness of an offence (Recommendation 239).
- Imposing the least restrictive sanctions consistent with the legitimate aim of protecting victims and the community (Recommendation 239).
- Maintaining and strengthening family relationships wherever possible (Recommendation 239).
- Recognising the impact of deficiencies in the provision of support services in contributing to offending behaviour (Recommendation 239).

[3] HREOC & ALRC 1997.

- Tailoring sentences to the individual needs and the circumstances of the young person, including addressing any difficulties they may have in complying with orders (Recommendation 240).
- Considering any special health requirements of young people, including drug treatment and counselling (Recommendation 240).

The best possible outcomes for young people, and society as a whole, require broadening the opportunities for young people to make positive life changes that address risk factors for offending such as access to accommodation, education, income and family support services. More responsive and tailored resources are required to achieve this goal.

Queensland should adopt the approach of a variety of international jurisdictions which have outlawed, or severely curtailed, the use of remand in lieu of social measures. Sweden, for example, has been highly successful in reducing its remand rates through a partnership between justice and social initiatives. Sweden has focused on youth crime as a social issue to be **solved**, rather than behaviour to be **punished**. 2 key strategies have dramatically reduced the number of young people on remand in Sweden:

- Addressing the behaviour of young people under 15 within the social system - and investing in education, mental health and family support.
- Only allowing remand in custody of 15-17 year olds under exceptional circumstances, and only where the offence carries a sentence of at least 1 year.

Like Sweden and Canada, Queensland should better integrate its social justice and criminal justice systems. In practical terms, following the Swedish model would mean that when someone younger than 15 commits a crime, this should be regarded as a social welfare problem, and social services should be responsible for finding a suitable solution based solely on the young person's social situation. For young people aged 15-17, responsibility for youth crime should be shared between judicial and social services.

Recommendation 4:

That the Queensland Government ceases to hold children under 15 on remand through legislating to raise the age of criminal responsibility to 15 years.

Recommendation 5:

That the Queensland Government immediately adopts policy to limit detention on remand to those 15 - 17 year olds facing charges with a possible custodial sentence of more than 1 year. These young people must also be a flight risk, or a threat to ongoing investigation, or likely to commit a further criminal act.

This principle of partnership should extend to any other initiatives. For example, if establishing a youth drug and alcohol court, provision should be made for adequate community-based detoxification and rehabilitation programs at the same time.

Another key contributor to inappropriate detention of young suspects is their failure to be granted bail, even if only facing minor charges. Bail conditions should not be set for young

people charged with summary and other minor offences. Rather, the focus should be on meeting their social needs. Authorities should be empowered to direct Department of Communities staff to take responsibility for ensuring that social issues being faced by the young person are met. This includes ensuring their access to accommodation or support services.

In the case of more serious charges, bail conditions should be ***proportionate both to their circumstances and the offence***[4]. Department of Communities staff should take ultimate responsibility for ensuring that social issues, including inadequate accommodation or support services, are not a barrier to accessing bail or meeting bail conditions. Departmental staff should be ultimately responsible for ensuring that these social needs are met.

Reducing the number of young people on remand requires a practical reframing of the system's approach to detention as ***the last resort***[5]. The Department of Communities should be required to prove that every possible reasonable alternative to detention has been taken, including:

- Ensuring that the young person has a mentor/advocate, and,
- Ensuring that the young person has access to culturally appropriate accommodation, education, transport, income, family support, mental health services or substance abuse services, as required.

Recommendation 6:

That the Queensland Government immediately adopts policy to:

6.1 Discontinue the practice of setting bail conditions for young people charged with summary and other minor offences.
6.2 Preclude denial of bail on the basis of social needs, including a lack of child protection, accommodation or support services.
6.3 Allocate sufficient resources to meet the social needs of all alleged offenders.
6.4 Make the Department of Communities responsible for ensuring that these needs are met.
6.5 Require that the Department of Communities prove that every possible reasonable alternative to custody has been taken, prior to a young person being remanded in custody.

If, like Canada and Sweden, young people could not be detained on remand *as a substitute for appropriate child protection, mental health or other social measures*[6], Queensland could be expected to drastically reduce the number of young people on remand.

Young people on bail have already been found not to be a threat to the safety of the community. Yet some young people are placed on remand as a result of bail violations despite having committed relatively minor offences. Clearly this is inconsistent with

4 UN Convention on the Rights of the Child, Article 40(4)
5 (Qld) Juvenile Justice Act 1992, Schedule 1; UN Convention on the Rights of the Child, Article 37(b)
6 Canadian Youth Criminal Justice Act s29(1)

international instruments and the Queensland Charter of Juvenile Justice Principles. Preclusion of this option would also contribute significantly to a reduction in remand rates.

Recommendation 7:

That the Queensland Government legislates to prohibit the use of remand in custody on the basis of social rather than criminal criteria. Provisions should disallow detention:

7.1 For alleged summary and other minor offences.
7.2 As a substitute for addressing social needs.
7.3 As a response to bail violation.

Many studies have demonstrated that social and economic stress and geographic concentration of poverty are key drivers of youth crime and criminalisation[7]. This is particularly marked in Aboriginal and Torres Strait Islander communities. A developmental strategy to reduce the number of young people on remand could be expected to have the added benefit of reducing rates of youth crime.

It is essential that public resources are diverted from Youth Detention Centres to local community-based services. A variety of strategies explored in the USA have consistently found that alternatives to detention are most effective when they are created and operated by community-based organisations, rather than the juvenile justice system. In the USA, Canada and New Zealand, like Australia, culturally appropriate services run by Indigenous community organisations have been consistently found to produce the highest success rates in changing the behaviours of Indigenous young people. This gives communities a stake in the justice system and addresses causes of youth crime through helping build healthy, viable families and communities.

Recommendation 8:

That the Queensland Government redirects investment from expanding the juvenile justice system to funding a range of community-based crime prevention initiatives.

Addressing Aboriginal and Torres Strait Islander Over-Representation

The juvenile justice system has been spectacularly unsuccessful in reducing the number of Aboriginal and Torres Strait Islander young people entering the juvenile justice system. Given their life-long experience of non-Indigenous authorities in their lives, there is no logical reason to expect that the mainstream juvenile justice system would command young people's respect.

On the other hand, when appropriately constituted and resourced, initiatives such as Youth Murri Court, Youth Justice Conferences and mentoring programs have achieved considerably greater success in changing the behaviours of Aboriginal and Torres Strait Islander young people. The potential value of community-driven programs playing a more

[7] For example, Weatherburn and Lind 1998:5-6

central role in the youth justice system is reinforced by the successful outcomes of community-based Indigenous initiatives in other jurisdictions, including New Zealand, Canada and the USA.

Aboriginal and Torres Strait Islander young people are not a minority group on the periphery of the juvenile justice system. They constitute over 50% of 10 - 16 year olds on remand. Therefore, responses to address their needs should be seen as a core component of the system - an equally important and equitably resourced process, run parallel with the non-Indigenous system.

Generalised reform strategies cannot be expected to automatically produce positive outcomes for Aboriginal and Torres Strait Islander young people. As demonstrated in Santa Cruz, USA and Canada, it is important to develop a specific strategy rather than assuming that overall reforms will have positive outcomes.

Step 1 - Expanding Existing Successful Service Models

All the existing models depend upon two key factors for their immediate and ongoing success:

- At an immediate level: Initiatives are effective when implemented at the local level, and include the participation of Elders and community members from the young person's own country.
- In terms of ongoing success: Initiatives will only function effectively in the long term if Elders and community members are properly paid at professional levels and have security of tenure.

It is essential that any programs have adequate funding and a commitment to continuity. Aboriginal and Torres Strait Islander communities are facing many problems, and must make decisions about the areas in which they invest energy and limited human resources. A guarantee of continuity and proper resourcing provides the best chance of developing and maintaining viable alternatives to the mainstream youth justice system for Aboriginal and Torres Strait Islander young people.

A sophisticated mentor program, providing support to young people at all levels of the system, should be the central element of a new, developmental approach to responding to Aboriginal and Torres Strait Islander young people. Allocation of a mentor to every young person exposed to the juvenile justice system could be expected to dramatically improve outcomes. A mentor should be appointed to a young person upon their first contact with the police, playing the role of support person during questioning. This would be consistent with the 1997 findings of HREOC & ALRC:

> *The national standards for juvenile justice should require Indigenous young people to be assisted to understand their rights during police questioning through processes developed in conjunction with Aboriginal legal services and other relevant Indigenous organisations.* (Recommendation 215)

Mentors should be stable people from the young person's own community, with the ability to instil a sense of cultural pride in the young person. They might be an older young

person with previous experience in the juvenile justice system, a successful sports person or an older community member. Their role would be to advocate for the interests of the young person within the system and support the young person in addressing their social and personal issues. This would include practical support such as arranging identification documents, helping them access income support or accommodation, arranging mental health or substance abuse services and providing transport to attend school. Given that most re-offending occurs within 2 years, a consistent mentor should support the young person for at least this period.

Local Youth Justice Conferences should be established for all Aboriginal and Torres Strait Islander young people charged with offences throughout Queensland. As in New Zealand, a conference should be the first point of call for all matters which cannot be addressed through earlier diversion of young people from the system, and should be able to accept referrals at any stage of the juvenile justice process. Similarly, a parallel system of conferencing for young people unwilling to admit charges should be established, with the primary goal of addressing the social issues facing the young person. Again, this has been successfully implemented in both Canada and New Zealand. It is also consistent with the HREOC & ALRC findings:

> *The national standards for juvenile justice should require governments to ensure Indigenous communities are able to develop their own family group conferencing models. Existing conferencing schemes should be modified to be culturally appropriate.* (Recommendation 202)

Youth Murri Courts should be established throughout Queensland, to address the most serious allegations and matters contested by the young person. Again, it is critical that these be constituted at a local level, under the auspice of local Aboriginal or Torres Strait Islander community organisations.

Recommendation 9:

That the Queensland Government commits to properly fund and resource Aboriginal and Torres Strait Islander legal and community organisations to:

9.1 Develop and implement culturally appropriate models of mentoring and conferencing within local communities.
9.2 Establish Youth Murri Courts throughout Queensland.

Step 2 - Developing New Preventative Strategies Designed to Minimise Young People's Exposure to the Juvenile Justice System

Given the wide variety of social issues facing Aboriginal and Torres Strait Islander communities, it is important to identify those which have the greatest impact on youth crime and criminalisation[8].

Schools provide a central location from which a variety of social needs can be addressed, including access to nutrition and health services. Employment of local Aboriginal or Torres

[8] These priorities were identified by ATSILS 2007

Strait Islander people to provide personal encouragement, instill cultural pride and play the role of a surrogate parent has been highly successful in increasing school attendance and academic performance of children, particularly at a primary school level. Similarly, provision of nutritious meals in a school setting has been instrumental in improving children's health and providing an incentive for school attendance.

Living in a safe, secure environment provides an important foundation for young people. An untapped reservoir of potential foster carers exists within Aboriginal and Torres Strait Islander communities. Many have been excluded from the system as a result of a criminal record related to offences many years ago, despite meeting all other child safety principles. Excluded foster carers should be reviewed on a case-by-case basis, taking into account the nature of the original offence and their more recent behaviour.

The Queensland Government should also consider committing to removal of young people from their communities as an action of last resort. This would provide important context to making its departments more accountable for any forcible relocation of young people from their home community, as proposed in **Recommendation 3**.

Step 3 - Developing New Bail Support Mechanisms

Precluding setting of bail conditions for young people charged with minor offences (**Recommendations 5 & 6**) would go a long way toward reducing the number of Aboriginal and Torres Strait Islander young people in custody on remand. Similarly, placing onus of proof for provision of services to address young people's social needs on the Department of Communities (**Recommendation 6**) would dramatically increase young people's access to services and reduce the number of young people on remand for social reasons.

Every Aboriginal or Torres Strait Islander young person should also be allocated a mentor, as part of their bail conditions.

Recommendation 10:

That the Queensland Government legislates to require allocation of a local community mentor and provision of the required social services as a condition of bail for young Aboriginal and Torres Strait Islander suspects.

If the worst happened, and no alternative to remand existed for an alleged serious offender, it is important that detention arrangements are culturally appropriate, and provide a genuine learning opportunity for the young person. Any remanded Aboriginal or Torres Strait Islander suspect should be accommodated in a Community Detention *Camp* - not dissimilar to the Swedish Youth Homes model. These small, localised programs would emphasise self respect and pride in cultural identity. Auspiced by local Aboriginal or Torres Strait Islander community organisations, most would be located in rural settings, sufficiently remote that it would be impractical for young people to leave. The camps would be staffed by human services staff who would provide guidance for young people to address their personal issues by engaging traditional skills. Provision of education and training opportunities for young people would be central to the daily routine of the camps.

Each young person's mentor would be responsible for ensuring that young people could continue their education/training program, or access employment, upon leaving the camp.

Recommendation 11:

That the Queensland Government provides the necessary resources to:

11.1 Enable a local Aboriginal or Torres Strait Islander community to establish a pilot Community Detention Camp.

11.2 Use a Participatory Action Research framework to progress, develop and expand this approach.

Prioritising Alternatives to Custody

Given the large number of young people on remand for minor offences, it is reasonable to expect that many young people in custody on remand in Queensland would be suitable for community-based programs focused on providing support services to the young person and their family. A fundamental shift is required in the way we address youth crime from ***cops, courts and corrections*** toward addressing the deeper social causes of offending.

The Canadian Youth Criminal Justice Act is based in the belief that the youth justice system should reserve its most serious interventions for the most serious crimes and reduce the over-reliance on detention for non-violent young people. As a result of the Act, Canada has seen a substantial reduction in the rates of both charging and detention of young people. This has been achieved by increasing the use of non-court measures for less serious cases and re-orienting the system's approach to non-court measures so that they are viewed as the normal, expected and most appropriate response to less serious offending by youth.

In order to develop new preventative and early intervention programs in Queensland, it is important to draw on existing successful service models. The Youth Accommodation Bail Service (YBASS), auspiced by the Youth Advocacy Centre (YAC), is a key example. The success of YBASS is predicated on its community development principles.

Step 1 - Community Development Principles for Developing Successful Services

The YBASS brokerage model has been successful in providing an alternative to remand in custody and reducing the re-offending rates of its participants. YBASS negotiates a shared support arrangement with youth accommodation services, provides support to the young person and brokers the process of meeting a young person's other social needs. These can include provision of essentials (eg. clothes, personal hygiene items), personal development (eg. tutor, sporting costs) or specialist support workers (eg. counsellor, psychiatrist).

The YBASS model has key characteristics that demonstrably contribute to its effectiveness. The strong **social justice values** underpinning the service are at the core

of its success. Everyone involved with YBASS is required to commit to applying these values consistently to all aspects of operation of the service.

The service has progressively documented and evaluated the **community development principles** which have grown from this philosophy. YBASS depends on other services for many aspects of service delivery to young people. Developing and maintaining strong relationships with service providers plays a critical role in the credibility of the service, and ultimately, to outcomes for young people. YBASS particularly focuses on developing partnerships with Department of Communities, youth accommodation services and legal professionals. The quality of staff relationships with young people is equally important. The service is committed to establishing non-judgmental, safe, supportive relationships with all young people and prioritising their, often-changing, needs.

Effective service provision requires a balance between taking a planned approach to the needs of all stakeholders and being creative, flexible and responsive. Critical elements in effectively addressing stakeholder needs include having an adequately resourced brokerage budget and allowing workers sufficient autonomy (within clear parameters) to make speedy service delivery decisions. This depends on maintaining strong supportive relationships between staff and taking a collaborative approach to service delivery. It is important that the staff team includes both common ground (compatible values and youth work styles) and differences (a variety of complementary backgrounds and skills, including employment of Indigenous workers and staff familiar with Department of Communities processes). Employment of staff with pre-existing credibility in the sector is important.

Recommendation 12:

That the Queensland Government commits to developing youth bail support programs in further regional cities and remote communities, and exploring means to implement the community development principles underlying the Youth Bail Accommodation Support Service (YBASS) when establishing these services.

There is a huge discrepancy in young people's access to appropriate advocacy services across Queensland. Provision of an advocate for a young person throughout the justice process is a long term investment in crime prevention, and could play a key role in reducing the number of young people remanded in custody. It would assist in restoring the power differentials between young people and the youth justice system. An advocate should be involved from the beginning of the process, including providing initial advice and support at police interview. Adequate resourcing for advocacy/legal/mentoring services for young people throughout Queensland would reduce the risk of young people being inappropriately remanded in custody. Should the worst happen, it would enable young people to challenge inappropriate remand in custody.

The potential value of advocacy services has been demonstrated in both Cook and Tarrant counties (USA), where *failure to appear* rates have been reduced by 50%.

Recommendation 13:

That the Queensland Government expands young people's access to legal representation and support across the state, either through specifically funded community legal centres or youth legal services.

Step 2 - Developing New Preventative Strategies Designed to Minimise Young People's Exposure to the Juvenile Justice System

There is clear evidence that the more exposure young people have to involuntary supervision within the juvenile justice system, the greater the likelihood that they will re-offend. Therefore, finding means to divert young people, particularly first-time alleged minor offenders, from court should be a high priority.

Instead of investing significant economic resources into forcible means of *protection* or behaviour change, we need to begin to directly address the circumstances that compromise youth and community safety, and invest in programs and supports that facilitate youth and family development. Provision of services to young people and their families should be viewed as a human right, rather than an *optional add-on* to a criminalising process.

The Swedish experience has demonstrated the importance of treating young people's participation in services as fully voluntary. Some of the voluntary programs which should be instituted are:

- Offering families assistance to access income and housing.
- Providing safe/secure/affordable accommodation for young people unable to live at home.
- Extending the range of community-based and residential placements for young people who do not stay with their parents.
- Resourcing young people to participate in culturally and individually appropriate support services.
- Resourcing young people to attend culturally and individually appropriate education/training.

Step 3 - Developing New Bail Support Mechanisms

Department of Communities (equivalent) staff have historically played the key role in supervision of young people on bail. Substantial international and Australian evidence suggests that community-based support, located outside the young person's family, provides better outcomes for young people and the community. A major reorientation of the roles of the Department and community organisations is required.

There is evidence that inappropriate bail conditions sometimes set young people up for failure. The goal should be to do everything possible to enable young people on bail to meet their bail conditions and stay out of detention. Bail conditions need to become more

flexible and better tailored to the circumstances and needs of individual young people. Youth advocacy can play a critical role in ensuring development of realistic bail conditions, and helping young people meet these. Extended advocacy services for young people throughout Queensland (**Recommendation 13**) should be resourced to undertake this role.

Parents potentially play the most important, ongoing, constant role in supporting their child in the juvenile justice system and beyond. However, often family stresses have contributed to young people offending. An investment in family support can be central to reducing the risk of re-offending. Parents may need support in addressing family and parenting issues. They should be assisted to support their child through the system through access to information, timely notice and opportunities to engage, that take into account their work commitments. Penalising parents through provisions such as parenting contracts/orders or increased requirements to pay compensation/restitution could be expected to undermine parental authority or create a multiplier effect in families without the capacity to pay. This may further reduce parents' ability to support their child.

Given the large number of young people without suitable accommodation and support, provision of services in these areas is essential to reducing remand rates. Over 10 years ago, the HREOC & ALRC report further recommended establishment of bail hostels in all regions. Community-based youth accommodation options must be funded to ensure that young people are not refused bail due to the failure of the systems responsible for meeting their social needs. A variety of bail shelter models have been implemented internationally, and these could contribute to development of best practice in bail accommodation provision.

Recommendation 14:

That the Queensland Government immediately allocates funding for bail accommodation services in Mt Isa, Rockhampton & Townsville.

A wealth of international models exist which could contribute to improving bail support programs for young people. These include:

- Youth conferencing processes which do not require an admission of guilt (New Zealand).
- Different models of youth advocacy (Tarrant & Cook counties, USA).
- Local, small-scale Evening Reporting Centres, focused on supportive services such as tutoring and counselling (Cook County, USA).
- Small, localised, therapeutic Youth Homes (Sweden).
- Peer Courts (Santa Cruz, USA).

Recommendation 15:

That the Queensland Government involves youth and community organisations in researching and developing a continuum of new community-based alternatives to remand which divert alleged minor offenders from exposure to involuntary supervision.

Generating a Cultural Shift

Existing policies and processes have not been adequate to achieve behaviour change amongst authorities involved with the incarceration of young people on remand. Police, Department of Communities staff and juvenile justice authorities continue to contribute to the alarming rates at which young suspects are being detained on remand.

Similarly, little has been done to assuage irrational community fears in relation to youth crime. Therefore, it is hardly surprising that community expectations tend to focus on punishment, rather than rehabilitation of young people. The community wrongly assumes that this enhances public safety.

Information is critical to informed debate. Unfortunately there is little available information about the juvenile remand population in Queensland. All too often, public debate about youth detention is fuelled by misleading media reports that suggest that large numbers of young people are committing serious offences. This has led to a perception that young people are not being adequately 'punished' for their offending. Whilst some young people commit serious offences, this is a small cohort. It is important that deterrent and rehabilitatory options which have a positive impact on the majority of young people are not lost.

Recommendation 16:

That the Queensland Government takes a *whole of government and community* approach, actively including a wide variety of government instrumentalities and community organisations, to provide community education which:

16.1 Addresses irrational fears about the nature of youth crime.
16.2 Markets the social and economic benefits of alternatives to detention for young people.

This education should be undertaken with both government employees involved with the juvenile justice system and the wider public.

Preventing Further Escalation of Remand Rates

Currently, placement restrictions and curfews can be included in young people's bail conditions. New sentencing options such as home/periodic detention, electronic monitoring and anti-social contracts/orders are currently being explored, and could be allowed in bail conditions. Evidence from the UK, where Anti-social Behaviour Orders (ABSO's) are in use, demonstrates that increased numbers of young people have been placed in custody as a result of breaching ABSO's[9].

Any extension of possible bail conditions into these areas risks increasing the number of young people on remand in custody due to breach of bail conditions. Judges and

[9] Wadley, Davina *Comparative Analysis of Approaches to Move-On Powers in Other Jurisdictions* in Taylor & Walsh 2006:31-33

magistrates may be more willing to impose such bail conditions than to directly remand young people in custody. Therefore, young suspects who would not otherwise have been detained would be at increased risk of incarceration. This could be expected to further increase the number of young people on remand in Queensland.

Recommendation 17:

That the Queensland Government avoids creating new ways of increasing the youth remand population through inappropriate bail conditions, including:

17.1 Extending the use of placement restrictions or curfews.
17.2 Introducing home detention, electronic monitoring or anti-social contracts/orders.

At the very least … Improving Existing Juvenile Justice Processes

Whilst CAIR believes that a major overhaul of the juvenile justice system is required, there are some preventative actions which should be taken swiftly to address features of the current system which directly contribute to high remand levels.

Arrest rates for young people must be reduced. If the JJA[10]'s stated goal of detention as a *last resort* is to function effectively in practice, this must be used to inform all police decisions about whether to arrest young people or prefer diversionary alternatives. Detention of all but repeat or serious violent offenders on remand is clearly not ***proportionate to the offence*****.** Development of clear criteria would help police determine whether a child can be arrested and/or taken to a Youth Detention Centre or adult prison. It would also increase the Department of Communities' accountability for meeting the principles outlined in the Act.

Development and review of risk assessment instruments were the first step in:

- Reducing the number of young people in custody in Broward County, USA, by almost 2/3 and reducing youth violent crime rates by 1/3. It also saved the county millions of dollars.
- Addressing disproportionate rates of incarceration for coloured young people in Multnomah County, USA. The county achieved equitable incarceration rates for all races of young people and reduced violent crime rates by almost 1/4.

Recommendation 18:

That, at the very least, the Queensland Government immediately:

18.1 Directs police to prioritise use of diversionary alternatives to arrest of young people in all situations.
18.2 Consults with the community sector whilst developing the Risk Assessment Instrument for government use, to ensure that it protects against the inappropriate remand in custody of young people charged with minor offences.

[10] (Queensland) Juvenile Justice Act 1992

The New Zealand experience has demonstrated that viable systems can be put in place to ensure that any young person on remand is detained ***for the shortest possible period of time***[11]. In New Zealand, all young people charged with an offence participate in a family conference at some point in the juvenile justice process. The normal deadline for completion of a conference is 1 month. However, when a young person is on remand, a conference must be convened within 7 days and completed within a further 7 days. Similarly, young people on remand in Queensland should be fast-tracked to attend a conference or appear in court, to minimise the damaging effects of detention.

Recommendation 19:

That, at the very least, the Queensland Government immediately establishes stringent guidelines to expedite the legal process for young people being held on remand in custody. This should include a requirement that a conference is convened or the young person appears in court within 7 days, and that the case continues to be reconvened at least every 7 days until resolved.

This would be aided by extending the range of 'serious' offences which could be finalised by a magistrate, and allowing these to be dealt with in a summary way. Consideration of this option was raised by the (then) Queensland Children's Court Magistrate in 1999, as a means of reducing the length of time young people spent on remand[12].

Recommendation 20:

That, at the very least, the Queensland Government immediately reviews the jurisdiction of the Children's Court magistrate to include property offences involving monetary limits of $5000.

Failure to appear in court is a key cause of inappropriate custody on remand. This can be readily addressed in the short term. Magistrates should be enabled to dismiss simple offences on public interest and determine simple offences in the absence of a young person, on their request in writing, and impose an unsupervised order. Police prosecutors should have the authority to modify or drop charges in relation to Children's Court matters. The Department of Communities should be reoriented toward information provision and support to attend court, including taking responsibility for:

- Notifying young people and their parents of court dates, and reminding them of these in the lead-up to appearances, including 24 hours prior to appearance.
- Providing practical support to enable court attendance, such as ensuring availability of transport or negotiating systems to enable parents to attend court without threatening their employment.

Again, the reorientation of the role of government welfare authorities toward helping young people avoid incarceration has occurred with considerable success in Cook County, USA.

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[11] The Beijing Rules, 13.1

[12] Mr A. Pascoe SM in Children's Court of Queensland Annual Report 1998-1999, cited in YAC 2007:24-25.

Recommendation 21:

That, at the very least, the Queensland Government immediately acts to reduce the number of young people on remand due to failure to appear, through:

21.1 Enabling magistrates to dismiss simple offences on public interest.
21.2 Enabling magistrates to determine simple offences in the absence of a young person, on their written request, and impose an unsupervised order.
21.3 Authorising police prosecutors to negotiate, amend and withdraw Children's Court matters.
21.4 Reorienting the role of Department of Communities to focus on preventing failure to appear.

In 1997, the *Seen and Heard* report to Federal Parliament focused on the need for specialists in several areas of the juvenile justice system. Implementation of the following recommendations in Queensland would go a long way toward increasing the efficiency and effectiveness of the system:

- There is at least one police officer trained in children's issues in each patrol and each major police station has a specialised youth officer who deals only with matters involving young people (Recommendation 206).
- All DPP staff who prosecute juvenile justice matters be given specialised training in children's issues particularly concerning the exercise of the discretion to withdraw charges in minor matters (Recommendation 231).
- All magistrates and judges who hear juvenile justice matters receive specialised training, including components on matters such as communications skills, child development, Indigenous culture, juvenile justice procedures and the structural causes of offending (Recommendation 236).

The system would be further enhanced by appointment of more specialist Children's Court Magistrates, through reducing the current delays due to magistrate and judges' unfamiliarity with the jurisdiction. Like New Zealand (where over 75% of young people are now diverted from the juvenile justice system by specialist police), a focus on police training could be expected to reap significant dividends in remand reduction. Further, given the larger amount of time required to represent young people in criminal matters, Legal Aid Queensland should be resourced at a higher rate for representing children than adults.

Recommendation 22:

That, at the very least, the Queensland Government immediately appoints and resources specialist police, Children's Court magistrates, police prosecutors and legal practitioners to expedite proceedings within the juvenile justice system. That resourcing for this initiative at least meets the levels recommended by Human Rights and Equal Opportunities Commission and the Australian Law Reform Commission in 1997.

Larger Policy Considerations

When a jurisdiction invests in expanding its secure detention capacity, its policies and practices become more oriented towards using this additional jail space.
(Faraqee 2002:18)

Many young people in Queensland Youth Detention Centres and adult prisons are eligible for alternatives to detention. All too often, young people are detained for lack of community-based alternatives to detention, or an unwillingness to make use of these alternatives. Alternatively, they are detained due to inadequate wider support services, particularly housing, mental health or drug/alcohol services.

International experience clearly demonstrates that communities which opt to expand community-based alternatives rather than increase the number of secure beds found they could reduce youth detention populations and save millions of dollars without compromising public safety. In many cases youth crime rates reduced significantly as a result.

The **Supporting Information and Evidence** which follows clearly demonstrates that a decision to increase the number of secure beds for young people directly leads to increased numbers remanded in custody, and actively contributes to increases in youth and adult crime rates. If Queensland wants to reduce rates of juvenile offending and criminalisation and the cost of addressing these increases, it is imperative that we dramatically reduce the number of young people on remand. Capacity drives utilisation; utilisation drives increased offending and recidivism.

All too often, young people's detention on remand reflects failures by other systems, particularly the child protection, welfare, mental health and education systems. In order to address the wider issues facing youth and families who come into contact with the juvenile justice system, it is essential that government work collaboratively with community organisations to address this crisis in youth detention.

By adopting a social justice approach, Queensland could realistically begin to tackle the causes of crime, such as unemployment, poverty, unstable home environments, mental illness and drug addiction. This would be a significantly more cost-effective means of addressing youth crime, than locking up alleged minor offenders in Youth Detention Centres.

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Supporting Information And Evidence

The Context

About CAIR *(Coalition Against Inappropriate Remand)*

CAIR is a coalition of community-based organisations with a social justice focus. The Coalition includes Christian and secular, youth, legal and educational organisations. Together Coalition members employ over 15,000 people, represent over 250 organisations and individuals, and are supported by thousands of volunteers.

CAIR was formed to work together to abolish inappropriate remand in custody of young people in Queensland. The aims of CAIR are:

1. To seek a moratorium on building new youth detention centre capacity until a social impact assessment has been completed.
2. To undertake research to develop a continuum of responses to address the rates of remand.
3. To seek the support of the broader sector from across the state for this continuum of responses.
4. To work with the government to advance the responses developed.

This discussion paper should be seen in the context of Coalition members' support for significant wider reforms within the youth justice system. The new Juvenile Justice Act should aim to reduce young people's engagement with the justice system in general, and minimise the damaging affects of detention in particular. At present, however, the juvenile justice system in Queensland criminalises poverty and disadvantage and further discriminates against young people who are often already struggling with every day life.

We believe that it is time for Queensland to lead the way in addressing existing unjust, ineffective and inefficient practices in juvenile justice. (The wider juvenile justice reforms sought by CAIR members are listed in **Appendix 1**.) In particular, it is time for Queensland to reduce the number of unconvicted young people in custody.

Profile of Young People on Remand in Queensland

The current review of the JJA has highlighted the large numbers of young people inappropriately incarcerated on remand in Queensland. The Queensland Government has acknowledged that:

> *High numbers of young people held in custody is a commonly identified concern in Australia and overseas. Young people may be detained in custody … before a finding of guilt has been made or before their sentence has been finalised.*
> (Department of Communities 2007:10)

Indigenous young people are over-represented at all stages of the youth justice system, including … status in a detention centre (on remand and on custodial sentence). (Department of Communities 2007:11)

However, what the Department has failed to acknowledge in the *Issues Paper* is that**:**

1. **Queensland leads Australia in rates of detention of unconvicted young people, and,**
2. **Aboriginal and Torres Strait Islander young people are <u>massively</u> over-represented**.

Further, indications are that a 10 - 16 year old is at least 4 times more likely to be remanded in custody in Queensland than an adult[13].

Rates of Detention on Remand

Overall rates of incarceration of young people in Australia have more than halved since 1981, and have remained relatively stable since 2000. Whilst overall incarceration rates in Queensland have been slightly lower than national averages over the past 5 years, very little improvement has occurred in Queensland's rates of incarceration of young people since 1981. The relative stability in rates of youth incarceration in Queensland is in marked contrast with the significant reductions being achieved in other states … most notably, Victoria, which achieved an 839% reduction its Youth Detention Centre population between 1981 and 2006.[14]

The trend toward incarcerating unconvicted young people has been clearly emerging over the past 15 years. Despite the fact that the total Youth Detention Centre population was similar in 1992 and 2005[15], there has been a dramatic increase in the proportion of young people remanded in custody, compared to those serving sentences, in Youth Detention Centres in Queensland:

- In 1992 remandees accounted for 20% of the Youth Detention Centre population.
- In 1998 remandees accounted for 50% of the Youth Detention Centre population.
- In 2005 remandees accounted for 63% of the Youth Detention Centre population.[16]
- By 30 June 2006 remandees accounted for 74% of the Youth Detention Centre population.[17]

In other words, Queensland's achievements in reducing the rate of sentencing of young people to Youth Detention Centres have been offset by similar increases in the rate of young people being remanded in custody.

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[13] According to the Bail Accommodation Interest Group (2000:3), in 2000, when 52% of young prisoners were on remand, only 12% of adult prisoners were on remand.

[14] Based on Taylor 2007:11

[15] Based on Australian Institute of Criminology graph, included in Commission for Children and Young People and Child Guardian 2007:99

[16] Department of Families Youth and Community Care cited in Bail Accommodation Interest Group 2000:26, and Taylor 2006 cited in Commission for Children and Young People and Child Guardian 2007:99

[17] Taylor 2007:34

This increase in detention on remand is despite the fact that in Queensland there were general **decreases in youth offending** in 2005-6 (continuing the overall trend of recent years), **and** that young people are rarely involved in serious offences against people, **and** that a number of alternatives to court exist, **and** that the number of young people appearing before the courts decreased.[18]

As at 2002-3, just under 50% of young people in Youth Detention Centres nationally were on remand[19] - a rate that remained relatively constant until 2005. This is a matter of serious concern. Of even greater concern is the evidence that young people have consistently been detained on remand in Queensland at significantly higher rates than the national average. A detailed study based on a quarterly census in 2002-3 found that:

- In Victoria, between 17% and 35% of young people in detention were unsentenced.
- In WA, between 30% and 39% of young people in detention were unsentenced.
- In NSW, between 41% and 59% of young people in detention were unsentenced.
- In SA, between 54% and 63% of young people in detention were unsentenced.
- **In Qld, 58% to 72% of young people in detention were unsentenced**.[20]

The most recent data from the first two quarters of 2006 is alarming. Nationally, the percentage of young people on remand in Australia ranged from 58% to 60%. In Queensland, during the same period, the percentage of young people in custody on remand ranged from 72% to 74% - between 12% and 16% higher than the national average in each quarter.[21] Hopefully, these increases at both a state and national level are not indicators of an emerging trend.

Over-Representation of Aboriginal and Torres Strait Islander Young People

Aboriginal and Torres Strait Islander young people comprise more than half the total Youth Detention Centre population in Queensland[22]. This compares poorly with an average incarceration rate (both sentenced and on remand) of approximately 20% amongst adult Aboriginal and Torres Strait Islander prisoners[23].

In 2001, rates of Aboriginal and Torres Strait Islander over-representation reached a disturbing high, with this group of young people 33 times more likely to be in custody in Queensland than non-Indigenous young people. Whilst rates have progressively improved over the past 5 years, in 2006, Aboriginal and Torres Strait Islander young people were still incarcerated at 15 times the rate of non-Indigenous young people.[24]

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18 Commission for Children and Young People and Child Guardian 2007:95-100

19 Based on Charlton & McCall 2004, cited in Tresidder & Putt 2005:9.

20 Based on Charlton & McCall 2004, cited in Tresidder & Putt 2005:9. Other state/territory data has not been included - smaller jurisdictions fluctuated widely because of their low number of detainees.

21 Based on Taylor 2007:34

22 Taylor 2007:39

23 King et al 2005:69

24 Taylor 2007:24

Aboriginal and Torres Strait Islander young people are particularly over-represented amongst 10 - 14 year olds in Queensland Youth Detention Centres[25]:

- In 2000, 79% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.
- In 2001, 69% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.
- In 2002, 67% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.
- In 2003, 67% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.
- In 2004, 55% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.
- In 2005, 78% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.
- In 2006, 61% of 10-14 year olds in custody were Aboriginal or Torres Strait Islander.

The percentage of Aboriginal and Torres Strait Islander 15 - 16 year olds in custody fluctuated between 48% and 65% over the same period[26]. Overall, across the 4 quarters of 2005-6, between 51% and 59% of the young people in juvenile detention in Queensland were Aboriginal and Torres Strait Islander. Again, Queensland compared unfavourably with national averages of between 44% and 46% across the same period.[27] During 2005-6, Aboriginal and Torres Strait Islander young people were remanded in custody at a similar rate to non-Indigenous young people[28].

Current Government Policy

Over the past 15 years, the Queensland Government has been very **successful** in reducing the number of 10 - 16 year olds sentenced to Youth Detention Centres. A range of alternate sentences have been widely utilised. These include informal cautions/warnings, formal cautions, discharge, conferencing, fines, good behaviour bonds, pre-sentence supports, community service and suspended sentences.

Queensland has been equally spectacularly **unsuccessful** in addressing the dramatic increase in the number of young people in custody on remand. A variety of possible reasons for the large number of young people on remand in custody have been identified and detailed in this paper. Perhaps the most startling features of the youth remand population are:

- The number of young people remanded in custody due to lack of appropriate accommodation and/or support, as highlighted by the Forde Inquiry.
- The number of young people spending longer periods on remand than the likely sentence for the offence with which they have been charged, due to weaknesses in legislation and court processes.

Despite funding some innovations such as the Youth Bail Accommodation Support Service (YBASS), Government juvenile justice funding continues to be largely directed toward maintaining and increasing the capacity of Youth Detention Centres, rather than addressing the remand issue through (cheaper) community-based alternatives and improvements in the government systems affecting young people.

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25 Based on Taylor 2007:13
26 Based on Taylor 2007:14
27 Based on Taylor 2007:39
28 Taylor 2007:36

The Queensland Government recognises that detention on remand can adversely affect young people:

> *Consequences may include community stigma towards the young person (irrespective of the court outcome) and increased participation in crime following release.* (Department of Communities 2007:10)

The Department asserts that a decision to hold a young person on remand *must balance the presumption of innocence with the protection of the community*[29]. Yet the current reality is that young people are held on remand in custody for months, or even years, whilst awaiting finalisation of charges unlikely to result in a sentence of that length (eg. breaking, entering and taking a laptop - an item worth over $1000)[30]. The Youth Advocacy Centre recently cited a case where young woman with no criminal history was accused of unlawfully taken a $2.20 chocolate bar and may have been detained after failing to appear in court[31].

By default, government policy makes detention the major response to young people with health and welfare needs in the juvenile justice system. Youth Detention Centre beds in Queensland are predominantly, and increasingly, allocated to young people on remand. Despite the consistently reducing demand for secure beds for sentenced young people, the Premier has recently announced plans to increase the Youth Detention Centre capacity in North Queensland by 48 beds[32]. By contrast, less than one hour later, the Minister for Communities made a statement to the Queensland Parliament on the value and importance of early intervention in reducing youth crime[33].

This **policy incongruence** is at the core of this discussion paper.

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29 Department of Communities 2007:10
30 YAC 2007:24
31 YAC 2007:26
32 Hon AM Bligh, Hansard, Thursday 1 November 2007 (9.38am)
33 Hon LH Nelson-Carr, Hansard, Thursday 1 November 2007 (10.22am)

The Problems

Applying Policy in Practice

Unacceptable numbers of alleged young offenders are being inappropriately held on remand in Queensland Youth Remand Centres and adult prisons … and, Aboriginal and Torres Strait Islander young people comprise a hugely disproportionate percentage of these. In allowing this situation to occur, Queensland is in contravention of a number of international human rights obligations and its own legislation and policies.

Australia is a signatory to both the *UN Convention on the Rights of the Child*, and the *UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules*). According to the UN Convention:

> *The arrest, detention or imprisonment of a child shall … be used only as a measure of last resort and for the shortest appropriate period of time.*
> (Article 37(b), UN Convention on the Rights of the Child)

More specifically, The Beijing Rules state:

> *Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time*, and, *Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive placement or placement with a family or in an educational setting or home.*
> (13.1 & 13.2, UN Standard Minimum Rules for the Administration of Juvenile Justice)

The Convention specifically addresses the issue of proportionality:

> *A variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, education, and vocational training, programs and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*
> (Article 40(4), UN Convention on the Rights of the Child)

Indeed, the current Queensland JJA appears to support these sentiments. It includes a *Charter of Juvenile Justice Principles* which is designed to guide all actions related to the administration of juvenile justice in Queensland. These include:

- *a recognition of the vulnerability and maturity of children and their need for special protection when they have contact with the criminal justice system.*
- *the diversion of the young person from the criminal justice system as opposed to the institution of formal criminal proceedings wherever appropriate.*
- *the detention of a young person as a last resort.*

- *a focus on the rehabilitation of a young offender.*
  (Schedule 1, Juvenile Justice Act 1992, cited in Department of Communities 2007:6)

So why, since the enactment of this legislation, has the remand rate grown from 20% to over 70% of the Queensland Youth Detention Centre population? Clearly there are problems with translating policy into practice.

Limited Data

Limited information is publicly available about young people being held on remand in Queensland Youth Detention Centres and adult prisons. However, national data indicates that alleged offenders are being held for relatively minor offences:

- Less than 10% of young people remanded in custody ended up serving a custodial sentence.
- 44% of young people who had their first experience of supervision within the juvenile justice system in Australia in 2005-6 ended up in Youth Detention Centres - most often on remand.[34]

A recent Victorian study found that that between 2000 and 2003 there was a statistically significant decline in the seriousness of the criminal histories of (adult and juvenile) suspects on remand[35]. A major study of the juvenile remand population in Tasmania found that two key factors were at the core of high remand rates:

- Young people ended up in custody on remand as a result of their personal circumstances - a variety of health and welfare reasons, particularly unstable home environment or mental health concerns, reduced young people's likelihood of getting bail.
- Young people were in remand for long periods due to delays in the juvenile justice system - accessing legal representation, police investigations and court processes often moved slowly.[36]

Given the higher proportion of young people on remand in Queensland Youth Detention Centres than interstate, it is likely that a larger proportion are being held for minor offences, and even more young people in breach of their first supervision order are in custody. The Queensland Government has acknowledged the importance of health and welfare issues in the local youth remand population. Local anecdotal evidence confirms that juvenile justice processes are frequently drawn out over months or, sometimes, years. This is despite the clear intention of Queensland legislators to take a more appropriate, rehabilitatory approach. Current sanctions for many young people are **in*appropriate to their wellbeing***, and **dis*proportionate to their circumstances*** and/or ***to the offence.***

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34 Cited in Mulligan 2007:28
35 King et al 2005:73
36 Tresidder & Putt 2005:27-29

It is difficult to address this problem in an evidence-based manner, without the necessary information. In the absence of clear data about the remand and wider Youth Detention Centre populations in Queensland, this paper has largely depended on logical deduction, anecdotal evidence and data from other jurisdictions.

The Social and Family Context

The limited research available on remand populations in Australia has found that:

- 10-16 year olds in Queensland are more than 4 times more likely to be on remand than adults[37].
- The majority of people held on remand (both adult and juvenile) are more likely than others in custody to be homeless, unemployed or have some form of mental health issue[38].
- There has been a massive increase in the number of people with mental health issues who are detained because they have nowhere else to go[39].
- The vast majority of (adult and juvenile) women in custody have a history of abuse, with up to 98% having been physically abused and 89% sexually abused (many of these as a child)[40].
- The four key factors which play a central role in the decision to remand in custody (amongst both juveniles and adults) are - prior correctional history, history of drug and alcohol dependence and a *mental disorder*[41].
- Up to 25% of remand prisoners have difficulty understanding court procedures, and the majority of these are suspected of having an intellectual disability[42].
- People with intellectual disabilities are particularly over-represented in the remand population - mainly *due to not understanding their bail conditions, previous breaches of bail conditions or lack of appropriate supports, accommodation and resources*[43].
- People who appear in court in a drug affected state are more likely to be remanded in custody, despite often being arrested for relatively minor offences[44].

Further, there is clear evidence from Victoria of a significant change in the nature of the (adult and youth) remand population:

- A decrease in the seriousness of the criminal history of remandees.
- An increase in the number with illicit drug, and to a lesser extent, alcohol, issues.
- An increase in the proportions with a history of treatment for a *mental disorder*.[45]

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37 Based on Bail Accommodation Interest Group 2000:3

38 Morgan & Henderson 1998, 2001 cited in King et al 2005:57

39 Cited in Mulligan 2007:30

40 Kilroy 2004:8,26

41 King et al 2005:73.

42 Parton et al 2004.

43 Attorney-General's Department 1995/2000; Hays 1993/1994; Jackson et al 1994; Lyall et al 1995 cited in Parton et al 2004.

44 King et al 2005:96

45 King et al 2005:73-75. These trends were in marked contrast with the perceptions of police and court officials who saw the main function of remand in custody as being the protection of the community

Anecdotal evidence from Queensland indicates that some young people end up on remand due to inflexible and inappropriate bail conditions. For example, a young person may be required to report to police on the north side of Brisbane, yet be attending school on the south side. They may therefore be forced to choose between maintaining their bail conditions and continuing their schooling.[46] This situation is exacerbated when the bail conditions are disproportionate to the alleged offence, particularly in the case of street or petty offences. Further, bail conditions such as placement restrictions and curfews are unlikely to aid in rehabilitation, are highly onerous and a failure to comply often results in young people being detained on remand.

In 1999, the Forde Inquiry concluded that many young people in Queensland are remanded in custody due to lack of appropriate accommodation and support. The Inquiry recommended:

> *That alternative placement options be developed for young people on remand in order to reduce the number placed in juvenile detention centres.* (Recommendation 6)

Whilst some action has been taken in response to this recommendation, remand in custody remains the most common outcome for young suspects without suitable accommodation.

All the evidence indicates that the issue of high remand rates amongst young people in Queensland relates more to issues of *social* justice, than *criminal* justice. This is particularly true of Aboriginal and Torres Strait Islander young people.

Racial Disparities in Remand[47]

Addressing the problem of racial disparity in youth remand rates should not be seen as a 'post-script' to a wider problem. Over 50% of the 10-16 year olds on remand in Youth Detention Centres are Aboriginal or Torres Strait Islander. These groups are particularly significantly over-represented amongst 10-14 year olds in Queensland Youth Detention Centres. The over-representation of young Aboriginals and Torres Strait Islanders is the single most significant problem facing the juvenile justice system.

Aboriginal and Torres Strait Islander young people face many of the same social and economic issues as non-Indigenous young people. But the extent to which they face these difficulties, and the depth of these issues as a cause of crime, is significantly greater. The historical dislocation and separation of Aboriginal and Torres Strait Islander families has resulted in cycles of dysfunction, with families having faced social and economic problems for several generations. Many families are characterised by an inability to care for children as a result of lack of parenting experience themselves and/or

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from serious offenders. However, officials also recognised the reality that alleged offenders were often placed on remand for lack of drug/alcohol, mental health or intellectual disability services (ibid: Chapter 5).

[46] Cited in Mulligan 2007:30

[47] This section is minimally referenced, because the facts are beyond dispute … they are largely accepted as 'common knowledge'.

alcohol and drug abuse. Domestic violence is a daily reality for many young people still living with their families. Most young offenders have been disconnected from the education system - often since Year 3. Many do not have safe, secure accommodation or reliable income. Many do not have regular access to healthy food. Many do not have the basic documentation required to access services - a Birth Certificate or Medicare Card - or the transport required to reach them. They therefore face a high level of mental and physical health problems, and may turn to violence or substance abuse in response. They often also identify particularly strongly with their peer group, in the absence of more positive life supports.

Limited culturally appropriate services exist for young people at risk of incarceration as a result of homelessness. In particular, there are few culturally appropriate accommodation services. Whilst foster care with more functional Aboriginal or Torres Strait Islander families may be the ideal situation, particularly for 10-14 year olds, many potential foster carers do not qualify for a *Blue Card* due to old criminal convictions. (This is hardly surprising given the prevalence of criminal history, often for relatively minor or once-off offences, amongst Aboriginal and Torres Strait Islander community members.)

Bail conditions are often set for young people charged with 'street offences' or 'petty offences' under the Summary Offences Act, Regulatory Offences Act, Police Powers and Responsibilities Act and some traffic matters. Many Aboriginal and Torres Strait Islander young people live in perpetually unstable accommodation. Their frequent presence in public places often contributes to being charged with summary offences. Their homelessness means they cannot provide a reliable address to receive correspondence. These young people face *particular difficulties reporting to comply with … conditional bail programs when their main priority is securing a roof over their heads*[48]. They are therefore particularly vulnerable to failing to meet bail conditions or failing to appear in court, and being remanded in custody. Yet, the original alleged offence was clearly one which did not require incarceration 'for the protection of the community', since they were granted bail. Detention for summary offences is both **dis*proportionate to their circumstances and the offence.***

The workings of the juvenile justice system are an even greater mystery for many Aboriginal and Torres Strait Islander, than non-Indigenous, young people. In addition to the powerlessness experienced by all young people facing the system, Aboriginal and Torres Strait Islander young people must also deal with cultural discomfort. There is considerable evidence to show that these young people often fail to understand what is happening to them, putting them at risk of greater legal vulnerability. Many police, lawyers and magistrates/judges fail to understand the background and needs of these young people. This lack of understanding is evident in the allocation of inappropriate 'support people' when police record an interview - for example, appointing someone from a different tribal group to the young person[49].

The juvenile justice system is at risk of having a limited impact on Aboriginal and Torres Strait Islander young people's behaviour. It provides no significant differentiation from

[48] ATSILS 2007:7
[49] ATSILS 2007:16

the many other authorities that take a similarly punitive, controlling role in the young person, and their family's, life.

Yet, there is clear evidence that interventions in which appropriate Elders play a key role, do have a significant impact on Aboriginal and Torres Strait Islander young people's behaviour. Often, however, these potentially productive alternatives are inadequately resourced and are sometimes inappropriately structured. For example, for Murri Courts or conferencing to have the desired effect on young people, they must include Elders who know, or know of, the young person or their family. They should be from the area of, or belong to the *country*, of the alleged offender. Without this mantle of authority, the process can be seen as 'white man's law' and treated with indifference by young people. Inclusion of inappropriate Aboriginal or Torres Strait Islander community members does not engender respect by the young person, and removes the ability for these potentially positive forums to be effective in reducing recidivism.

The Fiscal and Social Costs of Youth Detention Centres

In 2000, it was estimated that the cost of detaining a young person in Queensland was $300 per day. By comparison, a brokerage program was estimated to cost $106 per day, and a community placement program, $278 per day.[50] The relative cost of keeping an Aboriginal or Torres Strait Islander young person in custody, compared with investing in a mentor program, is significant[51]. According to the NSW Auditor General, a more recent estimate of the average cost of incarcerating a young person is $567 per day[52]. This compares with the average cost of community-based supervision ($35 per day) and a youth justice conference ($10 per day)[53].

This is only the immediate cost. It does not take into account the future costs associated with an increased likelihood of offending amongst young people who are detained, compared with those who are supported to address the deeper causes of their offending. Long term costs are likely to be even higher for Aboriginal and Torres Strait Islander young people caught in a multi-generational pattern of offending. Repeated studies have demonstrated a link between severity of penalties (pre or post conviction) and future offending[54].

Recent Australian data demonstrate that the earlier a young person is *supervised* by the juvenile justice system, the more likely that they will have repeated interactions with the system and/or receive a custodial sentence. For example, young people initially under supervision at age 11 were found to spend 24% of their supervised time in custody at

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50 Bail Accommodation Interest Group 2000:1-2. Based on a model of "Brokerage Program" (targeted at 15+) involving service delivery provided by youth shelters to employ relevant staff to assist young people whilst being accommodated on remand and a "Bail Community Placement Program" (targeted at U15's) involving a support network of caregivers in given communities.

51 This is despite the demonstrated effectiveness of mentoring in reducing recidivism. ATSILS 2007:13

52 Department of Juvenile Justice cited in NSW Audit Office 2005:220

53 Department of Juvenile Justice cited in NSW Audit Office 2005:220

54 Including Vignaendra & Fitzgerald 2006 and Cunneen & White 1995 & Patterson et al 2000 cited in Tresidder & Putt 2005:8.

age 15, whereas young people initially under supervision at age 14 were found to spend 4% of their supervised time in custody at age 15. This study also found that around 35% of young people aged 10-12 in 2001-2, were also in supervision in 2005-6, compared to only 8% whose first experience of supervision was at age 14.[55]

Further, a recent longitudinal study in Queensland found that there was a very high rate of progression from juvenile supervised orders to the adult corrections system. Over 79% of all juveniles on supervised orders in 1994/5 (89% of Aboriginal and Torres Strait Islander young people and 91% of young people also on care and protection orders) had progressed to the adult corrections system by 2002. Clearly the current punitive responses to juvenile offending are not effective deterrents and *more innovative, early intervention … can be expected to return the greatest crime prevention dividend.*[56]

The JJA focuses on short term punitive strategies which have failed to address rates of criminalisation amongst young people, and have resulted in increases in remand levels. The *Issues Paper* for the review of the Act implies a commitment by the Department of Communities to continuing on this path. Its proposals are characterised by increased use of volunteers to administer bail and sentencing, and increasingly punitive measures for them to administer. Further pressure on already disadvantaged families can only reduce their ability to improve family circumstances and relationships. Similarly, added pressure on already disadvantaged Aboriginal and Torres Strait Islander communities can only reduce their ability to improve the situation of their communities.

It seems illogical that cheaper, demonstrably more effective, community-based, culturally appropriate alternatives have not been funded to work with relatively few young people, and that further bail support programs have not been established. Apart from the evidence that many young people on remand do not belong in custody, community-based, culturally appropriate responses clearly offer the potential of significant social and economic cost savings in both the short and long term.

The current approach defies all the evidence about how best to reduce rates of crime and incarceration. This trend can only result in further social and economic costs - for young people, their families, other victims of crime and the wider community. This is a false economy.

Disproportionate Focus on Youth Detention

Given the number of young suspects likely to be on remand for minor offences, it is reasonable to expect that many young people in custody on remand in Queensland would be suitable for community-based programs focused on providing support services to the young person and their family. In fact, young people's access to mainstream youth services, particularly accommodation services, may be reduced as a result of being on bail[57]. Yet, funding for alternatives to detention is severely limited. Clearly, the Queensland Government prioritises funding of secure beds over alternatives to

[55] Cited in Mulligan 2007:32-33
[56] Lynch et al 2003:2-6
[57] ATSILS 2007:17

detention. Funding is highly disproportionately allocated to Youth Detention Centres at the expense of alternative government and community-based interventions. This applies to both preventative programs and bail services.

Departmental restructuring has directly contributed to the number of young people on remand in custody. Prior to de-amalgamation, the Department of Families was able to grant bail for young people to reside as directed by the Department. Where a young person sought bail but did not have stable accommodation, the court would release the young person into the care of the Department of Families on the basis that the Department would be responsible for finding them accommodation. These orders recognised that whilst it might not have been possible to sort out the young person's accommodation problems on the day of court, further work by the Department would achieve this. These types of orders are no longer made.[58]

There is now disagreement between Department of Community and Department of Child Safety as to who is responsible for arranging accommodation for young people. The Department of Communities further claims that it does not have the legal authority to undertake this responsibility. It appears that neither department is adequately resourced to meet the accommodation needs of young suspects - whether or not they are currently under the care of the Department of Child Safety.[59] According to one service:

> *In practice what happens now is that if a young person in the care of the Department of Child Safety is arrested and brought to court, it is unlikely that their CSO from the Department of Child Safety will be there. Therefore it is left to the court officer from the Department of Communities (perhaps after contacting the CSO) to inform the court of options and if, in the limited time available, options have not been found, it is likely the young person will be remanded in custody. For young people not in the care of the Department of Child Safety, it is even more unlikely that accommodation options will be found, because for these young people neither the Department of Child Safety nor the Department of Communities are legally responsible for doing so.* (Logan Youth Legal Service 2007:33)

In response to recommendations of the Forde Inquiry, the Queensland Government funded the Youth Bail Accommodation Support Service (YBASS). YBASS is the only independent bail support program for young people in Queensland. The service recognises that many of the young people who are vulnerable to incarceration on remand have high levels of social need. YBASS provides the courts with an alternative to remand in custody, through brokering culturally appropriate placements for young people on bail and providing the necessary supports.[60] YBASS is funded to work with young people in Greater Brisbane, Moreton and Sunshine Coast regions. Since opening in 2001, YBASS has worked with 483 young people (as at 31 December 2007). Currently YBASS works with 90 young people per year. By comparison, Queensland Youth Detention Centres typically accommodated 90-100 young people (that is, approximately 55-65 young suspects on remand) on any given day in 2004-5[61]. In other

58 YAC 2007:26; Logan Youth Legal Service 2007:22
59 YAC 2007:26
60 YBASS 2007:1; Gilmore 2004:18
61 Commission for Children and Young People and Child Guardian 2007:99

words, many more unsentenced young people have been detained, than provided with bail support and many young people are effectively detained on remand due to homelessness.

YBASS is only resourced to provide services to a fraction of the young people in remand or at risk of remand in Brisbane. Allocation of $1 million in the 2006-7 Queensland Government budget for a bail accommodation service in Cairns is a positive development. Yet the problem remains, that no services exist for young people in other major Queensland population centres outside South East Queensland, or in remote communities.

Lack of Community Understanding

The Department of Communities asserts that a decision to hold a young person on remand *must balance the presumption of innocence with the protection of the community*[62]. The Issues Paper for the Review of the JJA argued that the ***expectations of the victim and community***[63] were important considerations when examining sentencing and diversionary options. It is important to distinguish between:

- Community *expectations* - the reactions or preferences of community members, possibly based on lack of information, and,
- Community *best interest* - evidence-based data on the likely outcomes of different sentencing and diversionary options.

The community at large seems overwhelmed by a culture of fear. The community at large appears fearful of young people, and seems to believe that many are serious, violent offenders. The community at large appears to believe that youth crime is increasing. The community at large seems unaware of the **facts** about youth crime, that:

- Locking young people up (particularly for minor offences) is likely to increase long term crime rates.
- Many young people in Youth Detention Centres, particularly those on remand, have committed very minor offences of the kind that have commonly occurred in past generations. (Imagine if young people in the 1940's had been detained for scrimping apples!)
- Many young people only ever commit a single, minor, juvenile offence.
- Youth crime rates, at worst, have been relatively consistent over many years, and there is some evidence of a small downward trend.
- There is significant evidence that a developmental approach to alleged offending by young people reduces youth criminalisation and may reduce youth crime rates.

62 Department of Communities 2007:10

63 Department of Communities 2007:7

Re-offending Post-Remand

Young people are much more likely to re-offend if they have been in custody.

The Queensland Government has repeatedly acknowledged that detention (particularly on remand) can result in increased involvement in crime post-release[64]. The Minister for Communities recently stated that:

> *… by intervening with some young people early on and giving them the attention they need there can be significant positive changes in their behaviour and future. This in turn leads to a reduced risk of the young person reoffending and hence being able to reintegrate into society.* (Hon LH Nelson-Carr, Hansard, 1 November 2007, 10.22am).

Many studies have documented the detrimental effects of custody on juveniles, including the risk of *further and worse behaviour as a result of associating with other young offenders*[65].

There is a significant body of evidence, from several states including Queensland, to suggest that diversionary strategies have a deterrent and rehabilitative effect for most young people. For example, a major longitudinal study in NSW investigated the rate of re-offending over 5 years amongst young people who were diverted from the court system. It compared this with findings on rates of re-offending amongst young people who went straight to court. Indications were that:

- Young people who were cautioned by police were least likely to re-offend.
- Young people who participated in youth justice conferences appeared less likely to re-offend that those who proceeded straight to court.

Whilst acknowledging that police are more likely to caution young people facing minor charges, the gap between the group of young people who were cautioned and those who experienced more punitive responses was significant. This suggests that diversion and non-supervised sentences are meaningful *real consequences* for most first-time offenders.[66]

Similarly, the use of culturally appropriate shaming processes in Youth Murri Court has been *extremely successful in reducing recidivism for a broad spectrum of offences*[67]. This includes both summary offences and those categorised as serious offences.

The Queensland Government has acknowledged that many young people in the juvenile justice system have protection issues[68]. Their home is already an unsafe place. Large

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64 For example Department of Communities 2007:10; The Hon LH Nelson-Carr (Minister for Communities), Hansard, 1 November 2007 (10.22am).

65 Including Cunneen & White 1995, and Patterson et al 2000, cited in Tresidder & Putt 2005:8

66 Vignaendra & Fitzgerald 2006:13

67 ATSILS 2007:15. It is important to note that these shaming processes are only effective when implemented in a culturally appropriate way. Of particular importance is the involvement of Elders and others from the community with which the young person identifies.

68 Department of Communities 2007:6

numbers of Aboriginal and Torres Strait Islander young people on remand do not live with their parents. Repeated studies have demonstrated the contribution of neglect and abuse to youth offending[69], particularly amongst Aboriginal and Torres Strait Islander young people[70] and young women. Over 50% of women in Queensland prisons were in care as a child, approximately 25% were detained as a child, and many report having been abused in Youth Detention Centres[71]. Yet, most emerging sentencing options (and potential bail conditions) suggest an increase in the use of punitive responses based in the young person's home environment. This indicates a focus on immediate cost savings at the expense of long term costs:

- **Home Detention** is cheaper than detention. Parents become unpaid *prison officers*, and the young person's home becomes a *prison*. However, the role of family members becomes confused. Parents are likely to be distracted from playing a developmental role with their child. This could be expected to contribute to further, long term, family breakdown. It is certainly unlikely to improve the young person's home environment, or their parents' ability to provide support.
- **Electronic Monitoring** makes both parents and the community into unpaid *prison officers*. It demonstrates a lack of faith in the young person's parents, and effectively detains both parents and the young person. It could be expected to have similar affects to home detention, further undermining parental confidence or willingness to take a supportive role with their child.
- **Curfews** may also force young people to remain in an unsafe home environment. This could be expected to result in a high rate of breach of curfews. It defies the evidence about the importance of group association in the lives of young people, particularly for those homeless young people who regard their social group as their 'family', and depend on their peers for safety, support and self confidence. (This is particularly common amongst Aboriginal and Torres Strait Islander young people[72].) This is an onerous requirement which again places the most vulnerable young people at even greater risk of detention.
- **Anti-social contracts and orders** may also force young people to remain in an unsafe home environment. The evidence from Britain indicates that anti-social contracts/orders do little to change behaviour or tackle the root causes of disadvantage. In fact, orders can exacerbate the very problems which led to offending. They can be a cause of increasing homelessness, through leading to eviction and exclusion from housing. An increased number of young people were placed in custody in Britain as a result of breaching orders.[73]

To force young people to live in an unsafe home environment under threat of detention can only **either** increase rates of remand **or** increase rates of neglect/abuse amongst these young people (thus increasing the risk of future offending).

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69 This includes physical abuse (Stewart et al 2002; Weatherburn & Lind 1998), sexual abuse (Kilroy 2004:8, 26) and exposure to domestic violence (American Society of Pediatrics 1999 cited in Mulligan 2007:8).

70 ATSILS 2007:3-4

71 Kilroy 2004:8

72 ATSILS 2007:8

73 Wadley, Davina *Comparative Analysis of Approaches to Move-On Powers in Other Jurisdictions* in Taylor & Walsh 2006:31-33

Efficiency & Effectiveness of the Current System

According to stakeholders in the Tasmanian study on the juvenile remand population, **long periods** on remand resulted from:

- Inadequate access to, or poor level of service by legal representatives;
- Defence lawyers having to wait for evidence from the prosecution;
- Negotiations between defence and prosecution;
- Further investigation of matters by the police;
- Other matters being investigated and further charges laid; and
- Preparation of pre-sentence reports.[74]

These Tasmanian findings are strikingly similar to anecdotal evidence from Queensland. For example, similar concerns were raised by participants in the YANQ Juvenile Justice Review Forum held in September 2007.

Too many young people are being arrested. The current interaction between the JJA and the Police Powers and Responsibilities Act 2000 (PPRA) has led to high levels of arrest, which in turn have led to high levels detention of young suspects on remand. Whilst police are required to consider diversionary alternatives to commencing court proceedings against a juvenile (S11, JJA), once police have determined to commence court proceedings the JJA (S12) provides that the preferred method for commencing court proceedings is through notice to appear, or complain and summons. In practice, however, these provisions have very limited application - they do not apply to indictable offences and the PPRA (S365 (3)) specifically preserves the power of arrest where a police officer reasonably believes this is necessary to achieve certain purposes (eg. questioning or investigation of an indictable offence). Therefore, police have wide discretion to arrest young people without regard to the provisions of the JJA.

Too many young people charged with 'serious' offences are spending long periods on remand. The limited definition of 'serious' offences in the JJA (S8 (2)(a)) means that young people are often detained for offences which would be dealt with summarily for adults. This is an outdated provision which includes, for example, breaking and entering and taking property worth over $1000 (eg. a single laptop). Since these charges must be dealt with by a judge, this can take months and sometimes years.

Too many young people charged with minor offences are on remand. Magistrates are unable to dismiss charges 'in the public interest', and police prosecutors are not able to withdraw or negotiate even minor charges without recourse to a police inspector. As a result, young people charged with offences such as evading a rail fare or stealing a chocolate bar, end up with a criminal record. Delays in dealing with these matters often results in young people being placed on remand due to failure to appear in court. It has also resulted in delays which can extend the length of time in detention for alleged minor offenders.[75]

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[74] Tresidder & Putt 2005:27-28

[75] YAC 2007:26

Queensland legislation and policy recognises that young people have very different needs to adults. One implication of this recognition is the need for justice processes which are designed to address the particular vulnerabilities of young people. It is essential that key authorities - particularly police, legal practitioners and magistrates/judges - are familiar and experienced in these.

In practice, a lack of adequately experienced and skilled juvenile justice authorities plays a key role in maintaining the unjust incarceration of many young people on remand. Queensland's juvenile justice system is inadequately resourced to address the specialist needs of young people.

International Case Studies

A wealth of international evidence supports the merits of taking a non-custodial approach to remand for young people. Data consistently demonstrates that community-based interventions for most unconvicted young people are both cheaper and more effective than remanding these young people in custody.

The following case studies outline successful reforms in the area of remand in custody, being undertaken in 4 countries - Canada, the USA, Sweden and New Zealand. (Some information on their overall approach to juvenile justice is included to provide context to these reforms.)

Case Study 1 - Canadian Legislative Reform[76]

The current Queensland and 'old' Canadian youth justice systems are very similar. Prior to 2002, Canada had the highest rate of youth incarceration in the Western world (including the USA). The courts were over-used for minor cases that could be better dealt with outside the courts and sentencing decisions resulted in disparities and unfairness in youth sentencing. In particular, the system did not make a clear distinction between serious violent offences and less serious offences. The *Renewal of Youth Justice* strategy was developed to address these (and other) problems. As a result, the Youth Criminal Justice Act 2002 was developed.

> The best way to deal with youth crime is to prevent it - through community-based crime prevention and by addressing the social conditions associated with the root causes of delinquency. (Department of Justice, Canada http://www.justice.gc.ca/en/ps/yj/aboutus/yoas7.html)

The new Act is driven by a commitment to prevent youth crime by addressing its underlying causes, responding to the needs of young people and providing support for young people at risk. It focuses on ensuring that young people's rights are respected, and reducing the over-reliance on incarceration for unconvicted young people (and those who have not committed a violent offence). The Act contains many provisions that provide stronger legislative direction intended to:

- Reduce the number of young people remanded (and sentenced) to detention.
- Re-orient the system's approach to non-court measures so that they are viewed as the normal, expected and most appropriate response to less serious offences.

Detention as a response to social welfare issues has been prohibited:

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76 Information on the Canadian experience sourced from the website of the Department of Justice, Canada: http://www.justice.gc.ca/en/ps/yj/aboutus/yoas8.html

- s29 (1) *A youth justice court judge or a justice shall not detain a young person in custody prior to being sentenced as a substitute for appropriate child protection, mental health or other social measures.*
- Similarly, s39 (5) prohibits a custodial sentence as a substitute and s39 (2) requires the court to consider *all alternatives to custody raised at the sentencing hearing …*

The legislation also includes provisions designed to increase the number of cases addressed outside the court system, thus allowing youth courts to focus on the more serious cases. These measures are particularly strong in relation to Indigenous young people:

- Police must consider alternatives to the laying of charges in all cases involving Indigenous youth and, when appropriate; exercise their discretion to take no legal measure.
- Police departments are required designate youth specialists and provide specialised training to all officers involved in the administration of the Act.
- When a court judge denies bail, the judge must consider releasing the young person into the custody of his or her parents, or another responsible person.
- Indigenous communities must be provided with resources to develop bail supervision and other programs that will serve as alternatives to detention.
- Young people can only be removed from their community as an absolute last resort.
- Child Safety must continue to provide services to clients charged with an offence, and work in a more integrated/coordinated way with Youth Justice services.

The Canadian government has also legislated to establish focussed diversion measures for Indigenous young people which incorporate the following principles:

- Indigenous culture must be integrated into the program.
- Diversion schemes should involve the use of Indigenous elders and Indigenous culture.
- Programs should be able to accept referrals at any stage of the criminal justice process. In particular, they are able to accept referrals from an Indigenous community before any charges have been laid and, if possible, before the authorities have become involved.

Further, the welfare department is made more accountable for its treatment of Indigenous young people. It is required to collect and publish monthly statistics showing:

- The number of youth that have been transported away from their home community.
- The reason for the movement.
- The time that the young person spent away from his or her community.

According to a 2005 Canadian Department of Justice report, under the new Act (which was enacted in March 2003) the charge rate for youth in 2003 decreased by 17% from the figure for 2002 (the most significant annual decrease in 25 years), and use of custodial sentences had decreased significantly in all major offence categories. As at 2003, official publications were unclear whether detention of youth by police had

changed under the YCJA. However, more recent anecdotal evidence suggests that the changes have now been more fully implemented, and Canada has succeeded in significantly reducing the number of young people being held on remand in custody.

Canada's commitment to preventative approaches was reflected in a decision to move toward transferring 5% of funds from the criminal justice budget to crime prevention activities at a local level. It also massively increased (by $C850 million) funding for the National Children's Agenda, which focused on early intervention to address poverty (and other issues) amongst children and young people.

Case Study 2 - Cost-Efficient Alternatives in the United States[77]

> *Juvenile incarceration rates are driven by juvenile justice politics and policies, not by juvenile crime. During an era of punitive policymaking in the 1990s, while the nationwide juvenile arrest rate for major violent offences decreased 33 percent, the number of juveniles confined in correctional institutions increased 48 percent. Considerable discretion built into juvenile justice often means that youth from resource-rich neighbourhoods and families are deal with informally, whilst disadvantaged youth - disproportionately youth of colour - penetrate more deeply into the system.*
>
> *… Reforms, such as diversion and treatment, cost less than prison. They are also better at holding youth accountable and reducing recidivism. Justice reinvestment allows jurisdictions to finance reform by redirecting criminal justice dollars towards less expensive community-based interventions.* (Youth Transition Funders Groups 2006:3)

This quote from the USA could equally describe the situation in Queensland. Despite the fact that juvenile crime rates have decreased every year for more than a decade, many jurisdictions in the United States continue to detain more and more young people. However, like Canada, many are re-evaluating their approach to youth crime, with a view to reducing crime, criminalisation and recidivism.

The US juvenile justice system is administered at a county level. Most jurisdictions, when faced with overcrowded detention centres and an ever-increasing detention population, increase the number of custodial beds. In New York, for example, the decision to increase the number of custodial beds for young people directly led to increased numbers of young people on remand in custody. This was despite the fact that judges in New York recognised that the court system was simply perpetuating the problem of juvenile crime and many felt that young people had been failed by other public systems, particularly the education, child welfare and mental health systems.

However, an increasing number of counties in the USA have resisted the pressure to expand capacity and opted to test alternative approaches. These counties have benefited through significant cost savings and reduced juvenile detention populations.

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77 Most information about US programs sourced from Faruqee 2002, pp 14-18; Youth Transition Funders Group 2006:3-6

These savings have been achieved without compromising public safety - in many cases, new strategies have contributed to reductions in youth crime.

Over a 5 year period, Broward County, Florida (Pop: almost 2 million), reduced the number of young people in custody each day from 161 to 56. In 1987, the county launched a 5 year, multi-pronged systems reform effort designed to reduce the use of secure detention, shorten lengths of time spent in detention and create a mix of alternatives to custody for young people on remand.

As a first step to reducing detention, the county developed a Risk Assessment Instrument (RAI) to determine which young people actually belonged in custody. By diverting selected young people to newly created community-based alternatives, the county saved $5.2 million between 1988 and 1993. This was despite the considerable start-up costs for the new programs. The success of the Broward County experiment resulted in its use as the basis for major juvenile justice reform in other US counties, each of which has provided new insights into the means to best address the specific problems of each jurisdiction.

With a population a little larger than Queensland's (5 million), Cook County in Chicago nearly halved its daily secure detention population between 1996 and 2001 - from 848 to 450, including a reduction of 31% in the number of youth of colour in detention. Over the same period, rates of violent juvenile crime dropped by 33%. County officials partnered with community organisations to implement a continuum of alternatives to detention and to reform the system's response to youth who failed to appear in court, violated probation or were charged with minor offences. The county clearly distinguished between the role of government and non government services:

- **Government Role:** Probation staff are required to take a proactive role - aiming to minimise the likelihood of young people compounding their problems through, for example, failure to appear for a hearing or violating probation (eg. Probation Officers are responsible for reminding young people of court dates which are often confused or forgotten). The Probation Department also employs *community advocates* to assist young people appearing in court (eg. buying clothes or making medical appointments). These strategies have reduced *failure to appear* rates by 50%. (A similar strategy is used in Tarrant County, Texas. In the Youth Advocate Program, probation staff train community members to provide intensive, individualised supervision to youth pending trial as an alternative to incarceration. Their role is to monitor the young person and engage with their support network - parents, relatives, neighbours and professions. Again, this approach has resulted in a substantial reduction in crime and recidivism rates.)
- **Non-Government Role:** One of the most successful innovations was development of Evening Reporting Centres, run by community organisations. These were open from 3pm to 9 pm (the time period during which young people were considered most likely to commit offences) in neighbourhoods with high offending rates. The Centres were staffed on a ratio of 1 worker to 5 young people, with a focus on employing local staff. Each Centre catered for a maximum of 25 young people, and provided recreational activities, tutoring, counselling and referral. Some were targeted at

particular population groups (eg. young women). 91% of participants in community-based programs remained arrest-free and attended their court hearings.

Total savings that resulted from sending young people to Evening Reporting Centres and other community-based programs in lieu of detention amounted to $3.5 million per year.

Whilst 80% of Oregon's Multnomah County population is white, the remaining 20% includes people from a wide variety of cultural backgrounds, with Asian and African Americans each accounting for approx 5% of the population[78]. The county significantly reduced the racial disparities in its detention population by paying special attention to racial and cultural biases in detention practices and by locating alternative community-based programs in communities of colour. Risk assessment instruments were reviewed for criteria which might disproportionately affect particular racial groups (eg. gang affiliation, which was often assumed by location). As a result of these strategies, the county achieved an overall decline of 43% in its Youth Detention Centre population. Between 1995 and 2000, juvenile arrests for violent crime declined by 24%, for property crime by 40% and total youth crime by 26%. In 1994, an African American or Latino young person was twice as likely to be in custody as a white young person. By 2000, all cultural groups had almost identical detention rates.

Santa Cruz[79] was one of many jurisdictions which focused on addressing the disproportionate number of youth of colour in the juvenile justice system. Fundamental to their reforms was an acknowledgment that overall reforms did not, in and of themselves, produce improved outcomes for youth of colour. Reducing racial disparities in detention had to be an express goal of wider reform, rather than an assumed outcome. Access to detailed racial and ethnic data about young people in custody was an essential first step to addressing the conscious and sub-conscious causes of disproportionate detention of these young people. Four new diversion programs, alone, doubled the number of young people of colour diverted from the juvenile justice system over a few years. The programs developed included educational services, peer court, neighbourhood accountability boards, therapeutic groups, youth development services and family support. Key to this success was the geographic and linguistic accessibility of services, employment of culturally competent staff, working closely with families and an attitude of partnership between (government and non-government) stakeholder organisations.

Case Study 3 - The Swedish Model[80]

The Swedish Government views imprisonment as *the most inhumane form of punishment,* and has sought to *drastically reduce* its use with children and young people. A variety of strategies have been tested over the past 30 years - all focused on addressing young people's social and economic circumstances, rather than protection of

78 http://en.wikipedia.org/wiki/Multnomah_County%2C_Oregon

79 The Juvenile Detention Alternatives Initiative in Building Blocks for Youth 2005: 9-15

80 Information on the Swedish approach sourced from Sarnecki & Estrada 2004:3-5,14-18; Kriminalvarden nd:5-6; Swedish Prison and Probation Service http://www.kriminalvarden.se/templates/KVV_InfoMaterialListing____4022.aspx

society or punishment. Most recently, in 1999, new sentencing provisions were instituted. In Sweden (pop: approximately 9 million) all the evidence suggests that:

> *Until the middle of the 1970's Sweden experienced a substantial increase in the levels of criminality and other social problems among juveniles. From that point onwards the trends seem to have stabilized, and there are even signs that levels of juvenile crime may have diminished.* (Sarnecki & Estrada 2004:21)

In Sweden, the age of criminal responsibility is 15 years old. Behaviours that would be considered a crime if the young person was 15 years old, are viewed in Sweden as a social welfare issue not a criminalisation issue. If a child commits a crime under the age of 15, then the Social Welfare Board is mainly responsible for responding. Decisions about appropriate measures are based on the child's social situation. There are severe restrictions on the ability of the social services to use coercive measures, and the vast majority of under 15 year olds receive fully voluntary social care. Any application of coercive measures requires support from both local social welfare boards and county administrative court, and appeal to a higher court is available.

For 15 - 17 year olds, responsibility for addressing crime is shared between the social services and judicial authorities. Since 1999, children between the ages of 15-17 are subject to sanctions, such as serving a sentence in a Youth Home[81] as opposed to a youth detention centre. These smaller facilities aim to reduce the harmful effects of time spent in custody, through a focus on treatment rather than punishment. This is reflected in the fact that the staff-to-resident ratio is about 3 times the ratio of detention centres (ie. approximately three staff per young person). Youth Homes are located throughout the community, and enable young people to serve out their sentence as close to their family and friends as possible.

Custodial detention has been abolished for the vast majority of young people who have committed serious, or repeated, crimes in Sweden:

- Prior to 1999, approximately 60 young people were detained, with a further 25 sentenced to a special form of probation which began with a short period in custody, each year.
- Since 1999, no more than 4 young people aged 15 - 17 were detained each year. These were generally young people with sufficiently long sentences that they would be detained beyond age 21.

Similarly, a 15 - 17 year old may only be held on remand where there is *exceptional cause*. During 2005, for example, a total of only 12 young people were held on remand. In order to be held in remand, a young person must be reasonably suspected of a crime that carries a sentence of at least one year, **and also be** a flight risk, or, there is a serious risk that they will impede investigations, or, there is a serious risk of continued criminality.

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[81] Similar therapeutic approaches using small home-like facilities have also been tested with considerable success in Missouri and Louisiana, in the USA (Youth Transition Funders Group 2006:4-5).

Case Study 4 - Family Group Conferences in New Zealand[82]

The development of Family Group Conferences (FGCs) in New Zealand during the late 1980's was driven by a concern that treatment of young people in the juvenile justice system should be culturally appropriate, address due process concerns, empower families and provide effective diversionary procedures, without placing too much power with the police.

According to the Ministry of Justice, *the New Zealand juvenile justice system today reflects an understanding that:*

- *Contact with the criminal justice system is often itself harmful;*
- *Youth offending is often opportunist behaviour which will be outgrown;*
- *Young people should be confronted, held accountable for their offending behaviour and given opportunities to take responsibility for their actions by making amends to the victim(s) of their offence(s); and*
- *By involving the young person in a face-to-face meeting with the offence victim, they can see the effects of their conduct in human terms.*

According to the Ministry, FGCs aim *to involve the young offender, the victim and their families in the decision-making process with the objective of reaching a group-consensus on a 'just' outcome. In this way they reflect some aspects of centuries-old sanctioning and dispute resolution traditions of the Maori of New Zealand. They also encapsulate restorative justice ideologies, by including the victim in the decision-making process and encouraging the mediation of concerns between the victim, the offender and their families as a means to achieve reconciliation, restitution and rehabilitation.*

FGC's are **fundamental** to the practice of juvenile justice in New Zealand:

1. A *child offender care and protection conference* must be convened when the police (after consultation with a FGC coordinator) believe that a young person charged with an offence is in need of care or protection.
2. A *pre-charge FGC* must be convened when the police (after consultation with a FGC coordinator) continue to wish to charge a young person with an offence. The FGC must be convened prior to laying charges in the Youth Court.
3. A *custody conference* must be convened where a young person denies a charge, and the Youth Court orders that the young person be placed on remand in custody.
4. A *court-ordered FGC* must be directed when a young person "does not deny" a charge in the Youth Court.
5. An FGC must be held to make recommendations about the best way to deal with a young person who has had a charge *proved* against them before the Youth Court, and this has not been previously considered.
6. A FGC may be directed by a Youth Court at any stage in the proceedings.

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82 Most information on the New Zealand system drawn from: http://www.courts.govt.nz/youth/fgc.html

Approximately 76% of youth offending in New Zealand is dealt with by police diversion schemes devised and operated by specialist officers. Approximately 8% (generally where there is an intention to charge) are referred by police to FGCs and outcomes are usually agreed and implemented without referral to a court. In the other 16% of cases the young person is arrested and referred directly to the Youth Court, which must refer all *proved* cases within its jurisdiction to an FGC for a recommendation on sentencing.

In order to ensure that the process works swiftly, the legislation imposes strict time limits within which FGCs must be convened. All FGCs must be completed within one month. Where a young person is in custody, the process is faster - a FGC must be convened within seven days and completed within a further seven days. These timeframes stem from an awareness that young people already work within much shorter time frames than adults and that response to offending tends to have more meaning when applied relatively quickly. They also serve to minimise the length of time young people spend on remand in custody.

The outcome of an FSC is a plan, which must be agreed to by all parties to the FGC, and all parties involved in implementation of the plan. (Approximately 10% of FGCs fail to arrive at an agreed plan, and once agreed, very few plans are disputed by the police or Youth Court.) In 95% of cases, FGC-recommended outcomes involve accountability measures of some kind. Plans commonly include an apology and/or reparation to the victim, community service requirements and/or a requirement to participate in counselling/rehabilitation programs or education. Where the young person completes the agreed plan successfully, the Youth Court can expunge all record of their offence.

Much of the success of the New Zealand model is due to its alignment with social justice principles and Maori tradition. Crime is seen as a failure of both the individual and society. This is in line with the causal factors of Aboriginal and Torres Strait Islander over-representation within the Queensland juvenile justice system. The model extends beyond juvenile justice and explores social welfare issues. For example young people are mandated to attend FGCs and there is no requirement to admit guilt, and they can be referred by police or Youth Court to an FGC to find out if there are social care needs that may be contributing to offending behaviour.

The current literature on juvenile conferencing suggests that young people attending FGCs are re-offending *less* and are more likely to *cease* offending than those who are sent to court[83].

[83] Luke, G. & Lind B. (2002) *Reducing Juvenile Crime: Conferencing Versus Court*, **Contemporary Issues in Crime and Justice,** No. 69.

Appendix 1

Wider Juvenile Justice Reforms Sought by CAIR

- Trying 17 year olds in the juvenile justice system, rather than the adult criminal justice system.
- Addressing this and all other breaches of Queensland's human rights obligations under the Convention on the Rights of the Child and other United Nations instruments to which Australia is a signatory (including public naming of young people).
- Diverting young people from the youth justice system wherever possible, and employing strategies which are demonstrably effective in addressing youth crime and recidivism (eg. community-based programs focused on family functioning, behaviour, interpersonal skills and community integration).
- Abandoning all plans to expand Queensland's incarceration capacity for young people (particularly since planned increases in detention capacity cannot be justified by either population growth or changes in youth crime rates).
- Focusing on alternatives to detention for convicted young people. Research and international evidence clearly demonstrate that alternative sentencing is almost universally in the interest of the wider community in terms of relative cost, crime prevention and reducing juvenile/adult recidivism rates.
- Not assuming the safety of young people's home environment when considering sentencing options. Many young people come from homes which are not suitable environments for home sentencing options.
- Supporting parents of convicted young people, rather than criminalising them or requiring them to play the role of *prison officers*. Addressing the wider needs of young people and their families through community-based programs which assist families to work toward healthy and constructive relationships
- Including convicted young people in the wider community, rather than alienating them through strategies which serve to reinforce their criminalisation (eg. public naming, electronic monitoring and anti-social orders). Alleviating the negative labelling and resulting criminal identity generated through these types of strategies.
- Ensuring that sentencing does not set convicted young people up for failure, through age-inappropriate or culturally-inappropriate placement restrictions, deferred sentencing and curfews.
- Maintaining and better resourcing Youth Murri Courts, which provide a small but positive contribution toward increasing inclusion of Aboriginal and Torres Strait Islander young people in communities.
- Increasing the number of services outside the criminal justice system designed to address homelessness, educational disadvantage, alcohol and other drug dependence and mental health issues amongst young people.
- Ensuring that substantial, holistic, pre and post release transition support is provided to young people who are detained. Institutionalisation means that young people experience great difficulties when integrating, or reintegrating, into the community.