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Via email: youthjusticeblueprint@justice.qld.gov.au

28 June 2013

Dear Sir / Madam,

## **Submission in response to the paper 'Safer Street Crime Action Plan- Youth Justice'.**

The Law and Justice Institute (Qld) Inc. submits that:

1. Detention should continue to be a last resort for children being sentenced for a criminal offence.
2. Children should be named by courts only in exceptional circumstances.
3. Breach of bail should not be a criminal offence for children.
4. Courts should not be able to access a person's juvenile criminal history when sentencing that person as an adult.

These issues are discussed further below.

### **Background**

This submission has taken into account a number of matters as background information. Most importantly it is important to remember that human brains are not fully developed until adulthood. The frontal lobe is one of the last parts of the brain to mature. It is the 'executive' part of the brain that regulates decision-making, planning, judgment, expression of emotions, and impulse control. This part of the brain may not fully mature until the mid-20s.<sup>1</sup> Children who confront the justice system do not have fully developed capacity to take responsibility / understand their actions. Childrens' Courts were established in recognition of this and were based on the notion of *parens patriae* which has come to be understood to

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<sup>1</sup> 'Using Adolescent Brain Research to Inform Policy': fact Sheet, 2012, [http://www.nijn.org/uploads/digital-library/Brain-Development-Policy-Paper\\_Updated\\_FINAL-9-27-12.pdf](http://www.nijn.org/uploads/digital-library/Brain-Development-Policy-Paper_Updated_FINAL-9-27-12.pdf)

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refer to the responsibility of the childrens' courts, their associated processes and the state to act in the best interests of the child and this principle has also justified courts that deal with children exercising a wide discretion in relation to penalty.<sup>2</sup>

Some further matters we have considered in writing this submission are:

- a) In all Australian jurisdictions currently key elements of juvenile justice include diversion of children from court where appropriate and a principle of detention as a last resort.<sup>3</sup>
- b) 'Around 700 young people are detained in Queensland's youth detention centres each year. Around half of these young people are of Aboriginal or Torres Strait Islander descent, making Indigenous young people more than 15 times more likely to be detained than their non-Indigenous peers. Around two-thirds of those detained on an average day are on remand and around a third are serving a sentence.'<sup>4</sup>
- c) In Australia 17 per cent of juveniles in detention have an IQ below 70 and mental illness is also over represented among juveniles in detention.<sup>5</sup>
- d) Queensland has the highest rates of stock (children in state care) and flow (children going into state care) in Australia.<sup>6</sup>
- e) Queensland children achieved below national average results in Naplan tests in 2012.<sup>7</sup>
- f) Queensland is the only state in Australia where 17 year olds are considered to be adults,<sup>8</sup> the United Nations Convention on the Rights of the Child defines a child as a person under the age of 18 years old.<sup>9</sup>

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<sup>2</sup> Cunneen C and White R 2007 *Juvenile Justice: Youth and Crime in Australia* Oxford University Press, pp13-14.

<sup>3</sup> Australian Bureau of Statistics, 'Juvenile Justice'

<http://www.abs.gov.au/ausstats/abs@.nsf/0/694C4FA5A02E10D4CA2574390014D093?opendocument>

<sup>4</sup> Commission for Children and young people and Child Guardian, 'Views of Young people in detention centres Queensland 2011', at 6, [http://www.ccyipc.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland\\_2011/Full-Report.pdf](http://www.ccyipc.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland_2011/Full-Report.pdf)

<sup>5</sup> Richards, K 2011 'What Makes Juvenile Offenders Different from Adult Offenders?' Trends and Issues in Crime and Criminal Justice.

<sup>6</sup> Tilbury, C 2009 'A "stock and flow" analysis of Australian child protection data' 4 (2) *Communities, Children and Families Australia* 9-17 at 12, 14.

<sup>7</sup> National Assessment Program: Literacy and Numeracy, national Report for 2012.

[http://www.nap.edu.au/verve/resources/NAPLAN\\_2012\\_National\\_Report.pdf](http://www.nap.edu.au/verve/resources/NAPLAN_2012_National_Report.pdf)

<sup>8</sup> Australian Bureau of Statistics, 'Juvenile Justice'

<http://www.abs.gov.au/ausstats/abs@.nsf/0/694C4FA5A02E10D4CA2574390014D093?opendocument>

<sup>9</sup> Article 1, United Nations Convention on the Rights of the Child

<http://childrensrightsportal.org/convention/text/>

## 1. Detention should continue to be a last resort:

Every state and territory in Australia currently includes a provision stating that detention is a last resort for children. The *United Nations Convention on the Rights of the Child* (UNCROC) observes:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.<sup>10</sup>

Detention may exacerbate the criminal offending of the child because they are removed from their families, educational institutions and friendship groups and this marginalises them from their communities.<sup>11</sup>

Further, it is well known that detention fosters further criminality- thus incarceration ultimately leads to a more unsafe community.<sup>12</sup> Studies have shown that incarceration within a juvenile detention centre does not prevent recidivism. Some have referred to this as the 'contamination' theory where impressionable young offenders mix with other young offenders and learn criminal behaviours from a 'pro-criminal' peer-group.<sup>13</sup>

Recent studies consistently emphasise that detention should be a last resort for children who offend. In 2009 Victoria undertook a major inquiry into strategies to prevent high volume offending and recidivism by young people. The final report of the inquiry recommended incarceration for young people should only be used as a last resort and that generally alternative strategies such as diversionary programs are more likely to be successful. The report of the Victorian Inquiry found that engaging young people in

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<sup>10</sup> Article 37 (b) *Convention on the Rights of the Child*: <http://childrensrightsportal.org/convention/text/>. The principle has been followed by the Queensland Court of Appeal: *R v Taylor & Napatali; ex parte A-G (Qld)* [1999] QCA 323; (1999) 106 A Crim R 578; *Lovell v The Queen* [1998] QCA 36; [1999] 2 Qd R 79; *R v Dullroy & Yates; ex parte A-G (Qld)* [2005] QCA 219;

<sup>11</sup> Austin J, Dedel Johnson K, and Weitzer R 2005, 'Alternatives to the Secure Detention and Confinement of Juvenile Offenders', *Juvenile Justice Bulletin* (September) (<https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>)

<sup>12</sup> Richards K, 2011 'What Makes Juvenile Offenders Different from Adult Offenders?' *Trends and Issues in Crime and Criminal Justice*, February .

<sup>13</sup> Richards K, 2011 'What Makes Juvenile Offenders Different from Adult Offenders?' *Trends and Issues in Crime and Criminal Justice*, February.

education, training, constructive leisure activities and/or meaningful employment 'empowers young people and assists in preventing youth offending'.<sup>14</sup>

In 2000 New Zealand undertook a thorough review of the response to juvenile crime. Drawing on available reports and literature they prepared a list of 'what doesn't work'. First on the list was:

Shock tactics, punitive, deterrent and 'punishing smarter' approaches, including scared straight, boot camps, corrective training and shock parole probation. These are interventions where the primary focus is on punishment, inducing fear of prison, and harsher treatment, with little or no emphasis on teaching new skills or reducing risk factors.<sup>15</sup>

### **2. Children should be named only in exceptional circumstances.**

Routine naming of children in criminal cases should not be introduced and it would be contrary to the approach taken in most of Australia. Currently in Queensland as well as most Australian jurisdictions, New Zealand, England and Wales, a child who is convicted of criminal offences cannot, as a general rule, be named in public forums such as court reports and the media.<sup>16</sup> In Australia, the only State or Territory that has the jurisdiction to publish the names of any juvenile offenders is the Northern Territory.<sup>17</sup> All other states and the ACT restrict the publication of the names of juveniles, unless there are exceptional circumstances that justify publication.<sup>18</sup> A significant recent review of legislation in New

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<sup>14</sup> Drugs and Crime Prevention Committee, Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People – Final Report (parliament of Victoria, Melbourne, 2009) at v [http://www.parliament.vic.gov.au/images/stories/committees/dcpc/high\\_volume\\_crime/DCPC-Report\\_HighVolumeCrime\\_2009-07-22.pdf](http://www.parliament.vic.gov.au/images/stories/committees/dcpc/high_volume_crime/DCPC-Report_HighVolumeCrime_2009-07-22.pdf)

<sup>15</sup> Kaye McLaren, 'Tough is not enough- Getting smart about youth crime' Ministry of Youth Crime, New Zealand, 2000, <http://www.myd.govt.nz/documents/resources-and-reports/publications/tough-is-not-enough-2000-nz-.pdf> p89.

<sup>16</sup> Thomas Crofts and Normann Witzleb. "'Naming and shaming" in Western Australia: Prohibited behaviour orders, publicity and the decline of youth anonymity." *Criminal Law Journal* 35 (2011): 34 – 35; Bichel, Kerry. "Naming and Shaming: Is it in anyone's best interest?." *The Verdict* 3 (2008): 12 - 16.

<sup>17</sup> *MCT v McKinney & Ors; McGarvie v MCT* (2006) NTSC 35; *Youth Justice Act (NT)* (Section 3).

<sup>18</sup> Chappell D and Lincoln R 2009 "'Shhh ... We can't tell you': An update on the naming prohibition of young offenders." 20 *Current issues in criminal justice* 477 - 484.

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South Wales examined the evidence and concluded that naming should only ever occur in exceptional circumstances.<sup>19</sup>

There is already an exception to the general rule that children can not be named in Queensland and this was developed to protect the public: in Queensland in exceptional circumstances a child can be named (Section 234, *Youth Justice Act, 1992* (Qld)). To date judges have rarely named children, suggesting that their current powers are sufficient.

There is a real concern that naming convicted children may diminish the named child's prospects of rehabilitation, i.e. reducing their chances of becoming productive members of society because they will be excluded from their communities.<sup>20</sup> Research suggests that naming may lead to exclusion from educational opportunities<sup>21</sup> and offenders may find it more difficult to find employment.<sup>22</sup>

Experts contend the protection of children's anonymity, once they are convicted of a criminal offence, recognises their limited maturity.<sup>23</sup>

There is no evidence that naming juveniles deters them from committing further crimes.<sup>24</sup>

While some victims and their families might benefit from the naming of juvenile offenders alternative ways currently exist which can ensure their interests are served. For example via mediation, compensation schemes and community service orders the voice of victims can be listened to without requiring public identification of the juvenile offender.<sup>25</sup> Youth justice mediation is already available in cases of juvenile offending in Queensland and this provides

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<sup>19</sup> Robertson C 2008 "Final Report, The prohibition on the publication of names of children involved in criminal proceedings." *Standing Committee on Law and Justice* 231, XIV.

<sup>20</sup> Bichel K 2007 "Naming + shaming = ?." 61 *Legal Aid Queensland* 22 - 24. *Legal Aid Queensland*.

<sup>21</sup> O'Leary J and Lincoln R 2012 'Look Before Leaping Into A Human Rights Quagmire' *Centre for Law, Governance and Public Policy*. 25 July . <<http://lawgovpolicy.com/2012/07/17/look-before-leaping-into-a-human-rights-quagmire/>>.

<sup>22</sup> *MCT v McKinney & Ors; McGarvie v MCT* (2006) NTSC 35.

<sup>23</sup> Richards K 2011 "What makes juvenile offenders different from adult offenders?." *Trends & Issues* 409 *Australian Institute of Criminology*.

<sup>24</sup> Crofts T and Witzleb N 2011 ""Naming and shaming" in Western Australia: Prohibited behaviour orders, publicity and the decline of youth anonymity." 35 *Criminal Law Journal* 34 – 35;

<sup>25</sup> Robertson C 2008 "Final Report, The prohibition on the publication of names of children involved in criminal proceedings." 231 *Standing Committee on Law and Justice* XIV.

an opportunity for victims to explain the effects of the crime to the offender and for the offender to apologize.

### **3. Breach of bail should not be a criminal offence for children**

Recent research on juveniles breaching bail in NSW found that generally breaches of bail by juveniles related to breach of conditions, such as curfew or being without their parent present, rather than reoffending.<sup>26</sup> Creating an offence of breach of bail for children would widen the net of criminalisation, potentially creating unnecessary further contact for the child with the justice system, increasing the chance of the child being placed on remand and reducing their opportunity for diversion from the criminal justice system.

A new offence of breach of bail may also create further delays in processing cases.

Because Indigenous young people are more likely to be arrested they are more likely to be placed on bail.<sup>27</sup> Criminalisation of breach of bail will have the greatest impact on Indigenous offenders who are already over-represented in the detention population.

In the ACT a key factor in considering bail conditions for young people was found to be safe and secure housing.<sup>28</sup> Those children who have limited access to safe and secure housing maybe the children most likely to breach bail and thus also most in need of social support rather than further criminalisation.

Already significant numbers of children are held in remand for breaching bail. Remand is already over utilised. A 2010 NSW report found that 60% of young people were in custody for breaching bail conditions, of those in custody for breaching bail 56% had committed no

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<sup>26</sup> Vignaendra, S., Moffatt, S., Weatherburn, D. and Heller, E, *Recent trends in legal proceedings for breach of bail, juvenile remand and crime*, New South Wales Bureau of Crime Statistics and Research, Crime and Justice Bulletin Number 128.25. See also Bargen J 2008, 'Juvenile justice: Responding to Australia's Children and Young People in Trouble with the Law' 92 *Reform* 28

<sup>27</sup> Chris Cunneen and Rob White, 'Juvenile Justice: Youth and Crime in Australia' Oxford University Press, 2007, p157.

<sup>28</sup> Explanatory Notes, Bail Act Amendment Bill, 2012 ACT, [http://www.austlii.edu.au/au/legis/act/bill\\_es/bab2012131/bab2012131.html#fnB1](http://www.austlii.edu.au/au/legis/act/bill_es/bab2012131/bab2012131.html#fnB1);

further offence and 60% of young people in custody for breaching bail were granted bail again.<sup>29</sup> The main result was extra work for the courts.

Further diversion is the approach to breach of bail most consistent with worlds best practice approaches and with the principle of detention as a last resort.<sup>30</sup>

#### **4. Courts should not be able to access a person's juvenile criminal history when sentencing them as an adult.**

Submissions to the Australian Law Reform Commission's (ALRC) 1997 inquiry generally agreed that it was appropriate that a child's criminal history lapsed on attaining adult status.<sup>31</sup> This approach recognises that most children 'grow out' of criminal behaviours and that adults should not be stigmatised and disadvantaged by a criminal record that they obtained as a result of mistakes made as a child. For example a young adult may find it more difficult to obtain work if s/he has to disclose a criminal record they obtained as an immature child.

We submit that the current provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) are appropriate and generally that convictions for offences committed as a child should lapse after five years.

#### **5. Suggested changes to the criminal justice system**

##### **a. Sentencing**

A major review on youth justice strategies conducted by the Australian Institute of Criminology in 2002 (AIC, 2002), concluded that programs that: addressed numerous risk factors associated with young people entering the criminal justice system; worked across a variety of social settings; targeted a young person's individual needs (particularly through case management approaches); altered the way a young person thinks and acts through a

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<sup>29</sup> Katrina Wong, Brenda Bailey, Diana Kenny, 'Bail me out', Youth Justice Coalition, NSW. <http://www.yjconline.net/BailMeOut.pdf>

<sup>30</sup> See *Effective Practice In Juvenile Justice; Review of Effective Practice in Juvenile Justice*, Report for the New South Wales Minister for Juvenile Justice, Noetic Solutions Pty Limited (2010).

<sup>31</sup> Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal process* Report no. 84 at chapter 19 (1997).

variety of therapies and were culturally specific had the best chance of producing effective outcomes to prevent offending or reduce re-offending.<sup>32</sup>

The AIC 2002 report provides a list and an analysis of options that 'work' or show promising results for young offenders (and therefore for the community). These include:<sup>33</sup>

- Social competence and (cognitive behavioural) training programs in schools– such programs were found to be help prevent violence and substance misuse.
- Mediation- Family group conferencing showed promising results, peer mediation was found to be ineffective but offender-victim mediation has been found to be promising.
- Probation- Intensive supervision in community when combined with other services and when agencies work co-operatively is promising. (Probation is less effective when it simply means frequent contact with a probation officer).
- Drug Courts show promising results. Although the Drug Court no longer operates in Queensland, a good model has already been developed and trialled in Queensland and has shown some good outcomes.<sup>34</sup>
- Education –type programs based in schools may be promising these programs target at risk youth with differently structured teaching techniques/ rules.
- Employment focussed responses that provide vocational training and job placements have seen some success.
- Multidimensional approaches with therapeutic component may help. It must be emphasised Bootcamps have generally been found to be ineffective although if they have a therapeutic approach there have been better results. Similarly wilderness programs have been found to be ineffective- although better results if they include a therapeutic component.

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<sup>32</sup> Australian Institute of Criminology, 'What works in reducing young people's involvement in crime?' (2002), <http://www.aic.gov.au/documents/E/1/2/%7bE12C7388-6983-45A3-9D25-05B8D2855764%7d2002-12-whatworks.pdf>

<sup>33</sup> Australian Institute of Criminology, 'What works in reducing young people's involvement in crime?' (2002), <http://www.aic.gov.au/documents/E/1/2/%7bE12C7388-6983-45A3-9D25-05B8D2855764%7d2002-12-whatworks.pdf> p42.

<sup>34</sup> Jason Payne, *The Queensland Drug Court: a recidivism study of the first 100 graduates* (2008) Australian Institute of Criminology <http://www.aic.gov.au/documents/7/C/C/%7B7CCCCFD2-FFF6-4DAB-B17F-49700902BC1D%7Drpp83.pdf>



Research shows that a diversionary or therapeutic approach to children's offending is the best way to reduce recidivism.<sup>35</sup>

### **b. Bail**

We make the following suggestions in relation to bail:

- Police should be required to first consider alternatives to arrest in relation to failures to comply with bail conditions. This should be a legislative requirement.
- The Queensland Government should develop and fund a residential bail program to assist young people to meet bail conditions associated with residence conditions.
- The Queensland Government should commit to reducing the numbers of children on remand and adhere to the UNCROC (detention should be a last resort).

### **6. Addressing the causes of crime for children already in the justice system:**

**a. Literacy and numeracy** should be a core component of continuing support in detention. A recent program developed in Victoria is already demonstrating significant success.<sup>36</sup> Many children in detention will have experienced:

- Frequent absentee periods from school
- Difficulties with language<sup>37</sup>
- Difficulties in basic numeracy and literacy
- Behavioural and emotional problems
- Mental health issues
- Under achievement at school due to marginalisation and disengagement.

Generally a stronger focus on literacy and numeracy in Queensland schools would benefit all Queensland children, not just potential offenders.

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<sup>35</sup> See Carrington K 2009 *Offending Youth: Sex Crime and Justice* Federation Press, chapter 9.

<sup>36</sup> ABC 7.30, 20 February 2013, <http://www.abc.net.au/7.30/content/2013/s3694873.htm>

<sup>37</sup> Snow, P.C., Sanger, D.D., 2011, Listening to adolescents with speech, language and communication needs who are in contact with the youth justice system, in *Listening to Children and Young People with Speech, Language and Communication Needs*, eds Sue Roulstone and Sharynn McLeod, J&R Press, UK, pp. 111-120

**b. Better recognition and support of children and young people with fetal alcohol spectrum disorder (FASD) and other cognitive disabilities.**

While cognitive disabilities are often hidden and are often undiagnosed. FASD is particularly invisible as people with FASD often have a normal IQ. Under the umbrella of FASD there are several types of diagnoses which are associated with various cognitive and physical impairments.<sup>38</sup> People with FASD are at high risk of criminal behaviour: a 1996 study found that 60% of those with a FASD came into contact with the criminal justice system.<sup>39</sup>

Red flags for FASD (and also for other cognitive disabilities) include:

- a repeated history of 'fail to comply',
- lacking empathy, poor school experiences,
- unable to connect actions with consequences,
- does not seem to be affected by past punishments,
- opportunity crimes rather than planned crimes
- crimes that involve risky behaviour for little gain gang involvement
- superficial relationships / friends.

It is no surprise that children with an FASD or other cognitive disabilities are at particular risk of coming into contact with the criminal justice system.

It is important that those working in the criminal justice and child protection systems and in education have an understanding of these disabilities as they have implications for developing appropriate conditions for bail and sentencing and for identifying appropriate programs and responses. Mainstream education and cognitive behaviour programs, for example, may not be effective.<sup>40</sup>

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<sup>38</sup> Lyons Jones K and Streissguth A 2010, 'Fetal alcohol syndrome and fetal alcohol spectrum disorders: A brief history' 38(4) *Journal of Psychiatry and Law* 373, at 379.

<sup>39</sup> Streissguth A, Barr H, Kogan J, Bookstein FL 1996 Understanding the occurrence of secondary disabilities in clients with fetal alcohol syndrome (FAS) and fetal alcohol effects (FAE) Final report to the centers for disease control and prevention, Seattle, WA University of Washington School of Medicine.

<sup>40</sup> Douglas H 2010 'The Sentencing Response to Defendants with Foetal Alcohol Spectrum Disorder' 34 *Criminal Law Journal* 221-239

### **c. Detention programs and transition back to community**

We agree with the recent report of the Commission for Children and Young People and Child Guardian:

The collaborative efforts of the Department of Communities, Department of Education and Training, and Queensland Health to improve the programming in detention centres over the last decade are commendable. It should, however, be noted that any gains young people make through their participation in detention programs are likely to be short lived unless they are reinforced in the community. As such, it is important that young people be provided with appropriate opportunities and support to continue the types of programs they commence in detention once they return to the community.<sup>41</sup>

And:

In line with best practice literature, it would be desirable that all young people be involved in transition planning immediately after their admission to detention. It is also desirable that young people and their families be encouraged to take an active role in the planning process to maximise the chance of a positive outcome.<sup>42</sup>

We agree with the Action Plan suggestion that children in detention should to be granted a leave of absence, or in some cases early release, i.e. to attend work programs or educational or vocational programs. Appropriate support will be pivotal to ensure that this can work effectively, including appropriate housing and transport arrangements.

### **7. Government and non-government services need to deliver a more coordinated response to children and their offending:**

We agree that the response to youth justice requires a whole of government response. A study of chronic offenders by the Australian Institute of Criminology (AIC, 2005) noted that chronic young offenders were more likely to have: grown up with drug using parents and siblings, experienced physical abuse from parents when growing up, experienced problems

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<sup>41</sup> Commission for Children and young people and Child Guardian, 'Views of Young people in detention centres Queensland 2011', at 3, [http://www.ccypcg.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland\\_2011/Full-Report.pdf](http://www.ccypcg.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland_2011/Full-Report.pdf)

<sup>42</sup> Commission for Children and young people and Child Guardian, 2011 'Views of Young people in detention centres Queensland', at 60, [http://www.ccypcg.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland\\_2011/Full-Report.pdf](http://www.ccypcg.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland_2011/Full-Report.pdf) (notes omitted).

at school and started their offending at a younger age. The key factor was the early age of first offence.<sup>43</sup> The AIC 2005 study recommended that strategies that delay the onset of the age of first offending could reduce criminal offending overall. Thus targeting early intervention – ie in child protection intervention, education settings and responses to domestic violence may be pivotal.

### **a. Better resourcing of Child safety**

Children caught up in the justice system are often involved with child protection services from an early age. The expected reforms to Child Safety will have great relevance to keeping kids out of the justice system. At the moment child safety workers usually work for an extremely short period with Child Safety. Child Safety workers are often very young and very inexperienced and, because they often do not have the opportunity to develop a relationship with particular families, they are more likely to operate in a highly risk averse way.<sup>44</sup> Child protection interventions often result in children being removed from the family and entering the revolving door of the foster care system. Better resourcing of the child protection system is needed, including better wages and better conditions – so workers stay in their positions and enjoy the rewards that would result from longer term work with families in a better resourced and supervised environment. Child safety workers should not be understood as ‘tertiary interveners’ rather they should be involved in assisting families to build on their strengths and help play a key role in early intervention and support.<sup>45</sup>

### **b. Improved responses to domestic and family violence**

It is now accepted that a child who witnesses or is exposed to domestic violence is likely to experience negative psychological, behavioural, health and socio-economic impacts.<sup>46</sup> It is

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<sup>43</sup> Makkai T and Payne J 2005 ‘Risk factors for early Initiation into Crime’ Australian Institute of Criminology, [http://www.ocsar.sa.gov.au/docs/other\\_publications/papers/TM.pdf](http://www.ocsar.sa.gov.au/docs/other_publications/papers/TM.pdf)

<sup>44</sup> See generally: Walsh T and Douglas H 2012 ‘Lawyers’ Views of Decision-making in Child Protection Matters: the Tension Between Adversarialism and Collaborative Approaches’ 38 (2) Monash University Law Review 181-211

<sup>45</sup> See generally: Healy, K. and Olstedal, S. (2010). Child protection systems in Australia and Norway: An institutional comparison focused on workforce retention. *Journal of Social Policy*, 39(2), 255-274.

<sup>46</sup> Humphreys C, 2008. Problems in the system of mandatory reporting of children living with domestic violence. *Journal of Family Studies* 14(2/3): 228–239

likely that many children who come into contact with the criminal justice system as a result of their anti-social behaviour are living in a violent household.<sup>47</sup>

Police should be better trained in responding to family violence and encouraged to take domestic violence seriously. Recent surveys of Queensland Police attitudes presented by Paul Mazerolle demonstrate that Queensland police are more reluctant than ever to engage with domestic violence and take it seriously.<sup>48</sup> Children are the losers as a result of this attitude. Police need to remove violent male perpetrators from the home and where appropriate provide referral or initiate criminal charges. Resources should be made available so that appropriate responses are accessible to perpetrators. In some cases this may be perpetrator programs.

### **c. More and better accommodation options for families leaving violence.**

In this regard we need better resources for women's shelters that are able to accommodate families in need of protection. Homelessness is a serious problem for women and children who have lived with domestic violence and homelessness often contributes to child protection removals of children into the foster care revolving door system<sup>49</sup> – and thence those in foster care often graduate into crime. Homelessness also reduces options and complicates bail and sentencing decisions where a young person is charged with a criminal offence.

Yours sincerely



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On behalf of the Law and Justice Institute (Qld) Inc.

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<sup>47</sup> Herrenkohl T, Sousa C, Tajima E, Herrenkohl R & Moylan C 2008. Intersection of child abuse and children's exposure to domestic violence. *Trauma, Violence & Abuse* 9(2): 84–99.

<sup>48</sup> Griffith, Domestic Violence Symposium, 3 May, 2012, <http://www.griffith.edu.au/criminology-law/violence-research-prevention-program/news-events/domestic-violence-symposium/speakers>

<sup>49</sup> Walsh T and Douglas H 2008 'Homelessness and Legal Needs: A South Australia and Western Australia Case Study' 29 (2) *Adelaide Law Review* 359-380