Submission response to the Review of the Juvenile Justice Act 1992

October 2007

Submission – Review of the Juvenile Justice Act 1992

By: Kobie Mulligan

© Youth Affairs Network of Queensland Inc. 2007

This work is licensed under a
Creative Commons Attribution-NonCommercial-NoDerivs 2.5 License.
It can be shared under the conditions specified by this license at
http://creativecommons.org/licenses/by-nc-nd/2.5/au/.

Youth Affairs Network of Queensland Inc.
30 Thomas Street
West End, Brisbane Qld 4001
Ph: (07) 3844 7713
Fax: (07) 3844 7731
Website: www.yanq.org.au

YANQ acknowledges the work of Kobie Mulligan in preparing this submission. YANQ also acknowledges contribution of youth sector members who attended our forums and provided feedback which assisted us in developing this submission.

Contents:

List Of Recommendations …… Page 4

YANQ …… Page 7

Introduction …… Page 7

Indigenous Over-representation …… Page 10

The front end: Police …… Page 11
The back end: Imprisonment …… Page 14

Abolishing Short Term Prison Sentences …… Page 15

Incarcerating 17 year olds as Adults …….. Page 16

Inquiries, Recommendations, Legislation …… Page 17
Rationale for treating 17 year olds as children for the purpose of criminal law…… Page 22

Reducing Remand …….. Page 27

Social Justice …… Page 31

Sentencing & Diversion …… Page 33

Conferencing …… Page 34
Home Detention …….. Page 35
Acceptable Behaviour Contract/Orders …….. Page 36
Electronic Monitoring/Curfews …… Page 37
Deferred Sentencing …… Page 38

Accountability …… Page 38

Parental Accountability …… Page 38
Child Safety Accountability …… Page 39

Naming of Juveniles …….. Page 40

List of Recommendations made by YANQ

Recommendation 1: That a preamble be added to the Juvenile Justice Act strengthening the case for imprisonment to be used only after all other options have been exhausted and; that the values behind the Juvenile Justice act makes it explicit that the focus of the juvenile justice system is on rehabilitation and reintegration.

Recommendation 2: That specialist trained staff are employed at all levels from policing to courts, diversionary and rehabilitation program to deal with young people with disabilities, young people with mental health issues and young people from other culturally and linguistically diverse backgrounds.

Recommendation 3: That the Qld Government expand the Youth Drug Court and adequately resource treatment options across the state with both detox and rehabilitation services.

Recommendation 4: Expand the Youth Murri Court to all areas in the state and have resources for community services support to assist with rehabilitation and reintegration.

Recommendation 5: That Elders in the Murri Court be paid for their contribution to community.

Recommendation 6: That resources are provided for prevention and early intervention including specific work with children and young people in the care of the state.

Recommendation 7: That the Department of Police, Corrective Services and Communities commit to ensuring that their workforce receive tertiary education in either Justice Studies or related disciplines such as Sociology, Psychology and Social Work, inclusive of indigenous studies.

Recommendation 8: YANQ recommends that the Police and Communities Departments develop strategies for enhancing the cultural competency of their workforce to deal with the diversity of our multicultural community.

Recommendation 9: That police officers, particularly junior officers, receive adequate, continuing training on issues related to cultural awareness and sensitivity, and best practice in responding to young people.

Recommendation 10: That the progress of police officer through the ranks, is directly based on their use of cautioning, conferencing and other diversionary options to meet the targets in recommendation 11.

Recommendation 11: That the Qld police as a matter of urgency, in consultation with key stakeholders, develop a whole of police service strategy and specific targets for diversion of Indigenous young people.

Recommendation 12: That the Qld government abolish short term prison sentences (6 months and under).

Recommendation 13: That regulation is passed to proclaim section 6 (1) Juvenile Justice Act 1992 and that imprisonment of 17 year olds in adult prison is stopped immediately including the practice of keeping 17 year old in an isolated section of the adult prison.

Recommendation 14: That the department allocates resources for the establishment of a bail accommodation service located in Mt Isa, Rockhampton, and also allocates funding for an expansion of the Brisbane service.

Recommendation 15: Bail conditions become more flexible.

Recommendation 16: That the Queensland Government introduce legislative provisions prohibiting the imprisonment of juveniles as a social measure.

Recommendation 17: That, in recognition of the evidence that the earlier a young person is officially 'supervised' by the juvenile justice system, the more like they are to re-offend, Queensland raises the age of criminal responsibility to 15.

Recommendation 18: That juvenile offenders under the age of 15 be dealt with in a 'social justice' context, where the crime is considered a social welfare problem, and the underlying causes for the crime are discovered and adequately addressed.

Recommendation 19: That the Queensland Government make publicly available statistics relating to juvenile remand, inclusive of the characteristics of those detained.

Recommendation 20: That the Queensland government implement into the legislation a mandatory requirement that young (10-12 for example) first time offenders be automatically referred to juvenile justice conferencing.

Recommendation 21: YANQ opposes the implementation of home detention; Acceptable Behaviour contracts or Anti-Social Behaviour Orders.

Recommendation 22: YANQ opposes the use of electronic monitoring and curfews for young people.

Recommendation 23: YANQ opposes the use of deferred sentencing in Queensland.

Recommendation 24: That the department of child safety be held accountable for the numbers of young people on child safety orders who are also incarcerated.

Recommendation 25: That department of child safety officers be automatically fined for failing young people in court.

Recommendation 26: In line with the various United Nations Conventions, and in upholding the aim of the juvenile justice system to *rehabilitate*, that the naming of juveniles should be abolished.

> Why isn't it just and proper to treat these juvenile offenders as we deal with the neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities? Why isn't it the duty of the State instead of asking merely whether a boy or girl has committed the specific offence to find out what he is, physically, mentally, morally and then, if it learns that he is treading the path that leads to criminality, to take him in charge, not so much to punish as to reform, not to degrade but to uplift, not to crush but develop, not to make him a criminal, but a worthy citizen. [1]

About the Youth Affairs Network Queensland

The Youth Affairs Network Queensland Inc. (YANQ) is the peak community youth affairs organisation in Queensland. Representing approximately 260 individuals and organisations from Queensland's youth sector, we promote the interests and well being of young people across the state. YANQ advocates for and with young people, especially disadvantaged young people, to government and the community. Further, YANQ encourages and participates in the development of policies, programs, projects and research that are responsive to the needs of young people.

Introduction

YANQ welcomes the opportunity to contribute to the review of the *Juvenile Justice Act* 1992, and would strongly encourage the Department to consult with the young people whom this review and legislation will ultimately affect.

We would like the Department to note that under the *United Nations Convention on the Rights of the Child*, article 1 states: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Throughout this submission YANQ will use this international principle to define 'juvenile', and as such we will be commenting on issues inclusive of 17 year olds.

We would also like the department to note that the term 'detention' refers to imprisonment, and 'supervision' refers to any other order made within the juvenile justice system.

The aim of this paper is to discuss the issues that YANQ see as pertinent within the Juvenile Justice system, and to suggest realistic alternatives to some of the practices currently being implemented. We intend to address some of the points in the 'Issues Paper', in addition to raising other concerns that have been put forward by various community members. Some of the main issues raised by stakeholders and to be discussed below include: the high number of youth held on remand; the continued over-representation of Aboriginal & Torres Strait Islander (ATSI) youth; the continued practice of incarcerating 17 year olds in adult prisons and; the structure and use of conferencing.

[1] As cited in Polk et.al, *Early Intervention: Diversion and Youth Conferencing: A National Profile and Review of Current Approaches to Diverting Juveniles from the Criminal Justice System,* Australian Government Attorney-General's Department (2003) p1.

It is the intention of this submission to comment upon the factors affecting Queensland youth through all three tiers of the criminal justice system: the police; the courts and the prisons[2].

Throughout much of the academic literature, Queensland is repeatedly cited for its forward thinking in relation to Juvenile Justice. We were amongst the first to implement police cautions and[3] we were also amongst the first to enshrine conferencing in legislation.[4] In addition to this, we have been acknowledged for our innovative 'bail services' such as the 'conditional bail program' and the 'youth bail (accommodation) service.[5]

So why is it that in amongst such apparent success, our juvenile system continues to fail our young people? What is extremely disturbing to note, and needs immediate addressing, is the number of young people involved in the juvenile justice system, who are also the subject of child protection orders.

Queensland has been criticized internationally for its treatment of its vulnerable young people. Qld has consistently come under the microscope regarding the imprisonment of 17 year olds in adult prisons. Qld has also received international criticism for the over representation of ATSI youth at all stages of the criminal justice system.

Recent statistics are demonstrating a general trend nationwide, that numbers of juveniles in detention are steadily decreasing.[6] However, in the year 2005-2006, there was actually an *increase* of 4% in the number of young people subject to juvenile justice supervision, compared to the 2004-2005 statistics.[7] Alarmingly, on a national scale, the numbers of juveniles sent to detention has risen by 4% in the one year.[8]

Unfortunately, what we are seeing from the Department of Communities in their public information, is an emphasis on *expansion* of the juvenile justice system, inclusive of detention centres. YANQ does support the expansion of the 'front end' of the juvenile system – such as conferencing, police cautions, education and prevention, but is not supportive of expansion at the 'back end' of the system such as building more juvenile prisons.

Prevention Rather Than Cure

The analogy of the ambulance at the bottom of the cliff assisting those who have fallen off the cliff is quite apt as a metaphor for how successive Queensland Governments have responded to juvenile justice in Queensland. This is where the emphasis has always been and therefore attracted the vast majority of social spending. YANQ contends that if a long-term strategy was put in place that had a significant financial

---

2 Note: The term 'prison' is used purposefully in the body of this submission. YANQ is of the belief that the terminology 'correctional centre' is not an adequate representation of such institutions.

3 Note 1 at 5.

4 Id at 30

5 Id at 61

6 Taylor, N, *Juveniles in Detention in Australia, 1981-2005,* Technical and Background Paper No.22, Australian Institute of Criminology, 2006.

7 *Juvenile Justice in Australia 2005-2006*, Australian Institute of Health and Welfare, (2007) p ix.

8 Id at x

commitment to preventative and early intervention and diversion strategies we would see a reduction in the need for 'back end' solutions as less people "falling over the cliff" and becoming victims.

Recommendation 1
That a preamble be added to the Juvenile Justice Act strengthening the case for imprisonment to be used only after all other options have been exhausted and; that the values behind the Juvenile Justice act makes it explicit that the focus of the juvenile justice system is on rehabilitation and reintegration.

Recommendation 2
That specialist trained staff are employed at all levels from policing to courts, diversionary and rehabilitation program to deal with young people with disabilities, young people with mental health issues and young people from other culturally and linguistically diverse backgrounds.

Recommendation 3
That the Qld Government expand the Youth Drug Court and adequately resource treatment options across the state with both detox and rehabilitation services.

Recommendation 4
Expand the Youth Murri Court to all areas in the state and have resources for community services support to assist with rehabilitation and reintegration.

Recommendation 5
That Elders in the Murri Court be paid for their contribution to community

Recommendation 6
That resources are provided for prevention and early intervention including specific work with children and young people in the care of the state

Indigenous Over-Representation

> If you take our land, you take the ground of our culture. If you take our children, you take the future of our culture. If you keep on taking, there will be nothing left.[9]

Indigenous youth continue to be over-represented in the juvenile system at an alarming rate. Statistics from the 2005-2006 period indicate that indigenous youth in Queensland make up **47%** of the youth under the various forms of juvenile justice supervision,[10] and are **13 times** more likely to be involved in the system than non-indigenous youth.[11]

Why?

'Intervention' into indigenous peoples lives has occurred since the beginning of white Australia. Indigenous people have been regulated, controlled and legislated against for well over a century.[12] Indigenous Australia has survived a history of a 'murderous frontier'; protection and segregation policies; dispossession; merging and 'absorption'; assimilation; and forced removal of children.[13] In contemporary society, the truth regarding the systematic attempts to destroy Indigenous culture has been exposed more than ever before. It has been acknowledged time and time again that the primary causes of Indigenous over-representation in the criminal justice system are a direct result of past (and continued) policies regarding indigenous people and culture. Attempts to 'remove' indigenous people and their culture have resulted in profound inter-generational effects inclusive of the high rates of incarceration, and therefore can NOT be viewed as historical issue, but rather a contemporary one. The impacts of such inter-generational effects were examined in the 1997 report into the Stolen Generations.[14]

The issues as to why Indigenous over-representation occurs have been repeatedly brought to public attention by reports such as *Bringing Them Home*; Royal Commission Into Aboriginal Death in Custody; and numerous academic articles.[15]

So why is that in an age of such open acknowledgement of *why* over-representation occurs, we still see unacceptable numbers of indigenous youth in the juvenile justice system?

---

[9] Mick Dodson, as cited in De Silva, J, Fagan, M, 'The Final Act of Dispossession' *Arena Magazine*, 1997, p31.

[10] Note 7 at 29

[11] Id at 31. Calculated by rates per 1,000. Indigenous 39.8/1,000; Non-indigenous 3/1,000. Therefore

$$\frac{39.8}{3} = 13.26$$

[12] See for example: *Aboriginal Protection and Restriction of the Sale of opium Act* 1897

[13] For more information on such policies, please see *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*

[14] ibid

[15] For example: Cuneen, C, 'Reforming Juvenile Justice and Creating the Space for indigenous Self determination' *UNSWLJ* Vol. 21 No.1 (1998); Raman,V, 'Indigenous Children in Custody: How to Move Forward', *Indigenous Law Bulletin* Vol.6 No.23 (2006)

Ten years ago, the United Nations Committee on the Rights of the Child expressed serious concern about the 'unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system in Australia'.[16] And ten years later, not much has changed. There have been some apparent attempts to lessen the numbers of indigenous youth in the juvenile system (such as conferencing etc) but as will be demonstrated throughout this submission, indigenous young people are simply *not* benefiting from any 'restorative' options available in the system.

How and where does the over-representation occur in the system?

Unfortunately, the statistics demonstrate that Indigenous young people are over-represented in relation to the most punitive aspects of the juvenile system (such as arrest and imprisonment) and are *under*-represented when it comes to more 'restorative' options (such as conferencing or cautions).

The Front End – Police

Queensland Police statistics demonstrate that indigenous youth are over-represented at the 'harsh end' of the system (such as arrest) and *under*-represented when it comes to diversionary options (such as caution etc). The following information was drawn from the Queensland Police statistics for the year 2005-2006.[17]

Police Action	Non-Indigenous	Indigenous
Caution	**47%**	**26%**
Conference	**7.86%**	**5.5%**
Arrest	16%	**34.9%**

As can be noted above, Qld indigenous youth are issued with cautions approximately 1.8 times *less* that of non-indigenous youth, with non-indigenous cautions almost at 50% and cautions for indigenous youth just scraping in over one quarter.

The rates for referral to conferencing are somewhat better, however; once again indigenous youth are under-represented in the diversionary aspect of the juvenile system, where there is the potential for the young person to be 'steered out' of the system.

Of greatest concern is the excessively disproportionate rate at which indigenous young people are arrested. Indigenous youth are **2.18 times** more likely to be arrested by the police than their non-indigenous counterparts.

---

[16] Committee on the Rights of the Child, *Concluding Observations of the Committee on the rights of the Child: Australia* UN Doc CRC/C/15/Add.79 (10/10/97) para 22.

[17] Note, for the purpose of this submission, the table does not represent other options such as 'Notice to appear'; 'summons'; 'warrant' or 'other'. The comparison is made between 'arrest'; 'caution' and; 'community conference' only. This is keeping with the theme of the issues paper.

Annual Statistical Review 2005-2006 Queensland Police Service, 'Offenders' http://www.police.qld.gov.au/services/reportsPublications/statisticalReview/0506/ last accessed 8 October 2007.

This is without doubt an area that requires urgent attention. It appears that indigenous youth are being dragged into the system rather than being diverted out of it, essentially flying in the face of numerous United Nations conventions, as well as Qld policy and legislation. In fact, Cuneen has argued that the greatest failing of the Queensland Police, is their 'failure … to ensure alternatives to arrest are used for Indigenous juveniles'.[18]

So What Do We Do?

Legislation is in place for *all* young people to be diverted out of the juvenile justice system, so why is it that indigenous young people are so heavily under-represented when it comes to diversion? Some authors argue that at all stages of the criminal justice system where there is discretion involved, indigenous youth are disadvantaged.[19] A recent study conducted in Queensland suggests that indigenous people face 'over-policing' on the basis of race.[20]

> 'Black people get treated real bad by cops. Not just in the city – anywhere. We are always pulled up by coppers.'
>
> 'Every Murri in Queensland gets categorised when it comes to the police. They all look at us as if we're going to turn around and smash them up, or something. Not all of us are like that. Anywhere you go, you have brown skin, you have a Murri face or a Murri family who you hang around, you're treated the same way, too. You're categorised. It's not nice.'
>
> Indeed, one Indigenous young person related this experience:
> 'The police were telling me to get a job and stuff. And I had a job. But it was just cos of the way I look.'
>
> And one non-Indigenous, dark-skinned, participant said:
>
> 'They think that anyone that's dark is Aboriginal, so they immediately think you're a crim or a drunk.'

YANQ supports the recommendations made in the *No Vagrancy* report, and put some of them forth in this submission as recommendations to reduce the over-representation of indigenous youth in the juvenile system.

---

18 Cunneen, C, Collings, N, Ralph, N, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Agreement,* Australian Institute of Criminology (2005).

19 Gale, Bailey-Harris & Wunderitz, *Aboriginal Youth and the Criminal Justice System,* Cambridge University Press, Melbourne, 1990; Luke & Cunneen, *Aboriginal Over-representation and Discretionary Decisions in the NSW Juvenile Justice System,* Juvenile Justice Advisory Council of NSW, January, 1995

20 Walsh, T, *No Vagrancy: An examination of the impact of the criminal justice system on people experiencing poverty in Queensland,* 2007, p 39

Recommendation 7 [21]

That the Department of Police, Corrective Services and Communities commit to ensuring that their workforce receive tertiary education in either Justice Studies or related disciplines such as Sociology, Psychology and Social Work, inclusive of indigenous studies.

Recommendation 8

YANQ recommends that the Police and Communities Departments develop strategies for enhancing the cultural competency of their workforce to deal with the diversity of our multicultural community.

Recommendation 9 [22]

That police officers, particularly junior officers, receive adequate, continuing training on issues related to cultural awareness and sensitivity, and best practice in responding to young people

Recommendation 10

That the progress of police officer through the ranks, is directly based on their use of cautioning, conferencing and other diversionary options to meet the targets in recommendation 11

'Best practice' in this regard would be ensuring that indigenous juveniles are diverted away from the system at every reasonable opportunity.

An evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement recommended that:

> … the Police Service develop a strategic plan with strong management oversight to:
>
> - Increase police cautioning of Indigenous young people and referrals of Indigenous young people to conferences. In relation to conferencing, the strategic plan should be developed jointly with Youth Justice Services. Regions with low cautioning and conferencing referral rates should be targeted initially.
> - Ensure that police processing of minor offenders involve the use of attendance notices rather than arrest. Cautioning rates, conferencing referrals rates and rates of arrests compared to attendance notices

[21] Adapted from recommendation 4 of the 'No Vagrancy' report ibid.
[22] Id, recommendation 5

> need to be monitored and incorporated into Operational Performance Reviews.[23]

In the *United Nations Standard Rules for the Administration of Juvenile Justice* (the Beijing Rules) commentary is made in regards to a juveniles 'initial contact' with the juvenile system. It recognises that:

> Involvement in juvenile justice processes in itself can be "harmful" to juveniles … This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile's attitude towards the State and society.

It also recognises that diversion 'need not necessarily be limited to petty cases'. In fact, Polk et al[24] argue that because most juvenile offending is 'one off' conduct unlikely to be repeated, that the most resource intensive diversions such as conferencing, be reserved for more serious offences (or offenders). This would lead to adequate diversion of over-represented indigenous youth, and would also be a cost effective solution for Queensland.

Queensland has a 'Charter of Juvenile Principles' attached to the *Juvenile Justice Act* 1992 which states:

> If a child commits an offence, the child should be treated in a way that diverts the child from the courts criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started.[25]

This is *already* in our legislation so where is it going wrong? The reality is that indigenous youth come into contact with the juvenile justice system at an earlier age, and as we have seen, a lot more often than their non-indigenous counterparts. We have seen above, the apparent 'over-policing' of indigenous youth, and we have acknowledged the policies and practices in Australia's history that have sought to criminalise indigenous people. Whilst the above mentioned section of the 'Charter of Principles' is important to have, essentially it discriminates against indigenous youth on the grounds of criminal history. In the restorative justice model, crime represents a failure of the individual *as well as* society,[26] which is in line with the causal factors of indigenous over representation.

Recommendation 11

That the Qld police as a matter of urgency, in consultation with key stakeholders, develop a whole of police service strategy and specific targets for diversion of Indigenous young people

---

23 Note 18 at xvi

24 Note 1 at xv

25 Schedule 1 of the *Juvenile Justice Act* 1992, s 5.

26 Bazemore, G, Umbreit, M, *Balanced and Restorative Justice: Prospects for Juvenile Justice in the 21st Century*, in 'Juvenile Justice Sourcebook: Past, Present and Future, 468, 2004

The Back End Of the System – Imprisonment

Recent information has shown that Qld indigenous youth are imprisoned at a much higher rate than the national average for non-indigenous youth.[27]

Imprisonment %	Non-Indigenous	Indigenous
National	**53%**	**44.73%**
Queensland	41.5%	**58.46%**

Figures from 2005 show that Qld non-indigenous youth were incarcerated at a rate of 10.4 per 100,000 of the population[28]. Indigenous youth in Qld were incarcerated at the staggering rate of 188.1 per 100,000 of the population[29] representing an incarceration rate **18.1** times higher than those of non-indigenous youth.[30]

More recent statistics on a national level indicate that indigenous youth are more likely than non-indigenous youth to encounter the more punitive aspects of the juvenile justice prison system.

Factor	Non-Indigenous	Indigenous
Remand	**50%**	**56%**
Remand resulting in Bail	**68%**	**56%**
Sentenced Detention	**9%**	**11%**
Community Supervision	48%	**44%**

Information compiled from Juvenile Justice in Australia 2005-2006, Australian Institute of Health and Welfare, (2007)

As can be drawn from the table above, indigenous youth are more likely to be remanded into custody and sentenced to periods of detention. In addition to this, indigenous youth are *less* likely have their remand result in bail, and are *less* likely to receive community supervision as their sentence. In 2003-04, 83.9% of all admissions to detention that involved Indigenous young people were as a result of being remanded in custody.[31]

The *United Nation Convention on the Rights of the Child* explicitly states in article 37(b) that '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'. So why are we seeing such high rates of detention of indigenous youth? Australia is continuing to incarcerate its indigenous youth at unacceptable levels, and by doing so is breaching United Nations Conventions, as well as Queensland law which states: 'A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances'.[32]

27 Note 7 at 47. Calculated by average daily number in prison.
28 Note 6 at 20
29 Id at 18
30 Id at 23
31 Note 18 at 78.
32 Juvenile Justice Act 1992 Schedule 1 s17.

Abolishing Short Term Prison Sentences

The *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, cites NSW research which claims that if Aboriginal adults who were given sentences of six months or less were instead given non-custodial sanctions, then the number of Aboriginal people sentenced to prison would reduce by 54% in a twelve month period.[33] If this policy were to be implemented in Qld juvenile justice, many young people would remain free form incarceration, and in the community.

Recommendation 12
That the Qld government abolish short term prison sentences (6 months and under)

Incarcerating 17 year olds in Adult Prisons

Queensland is the only state in Australia to treat 17 year olds as adults in the criminal justice system. In 1992 when the *Juvenile Justice Act* was passed by Parliament, the Government said:

> It is the intention of this Government, as it was of the previous Government, to deal with 17-year old children within the juvenile, rather than the adult system, as per the Kennedy Report into prisons. This is consistent with the age of majority and avoids such children being exposed to the effects of adults in prisons, thereby increasing their chances of remaining in the system and becoming recidivists This change **will occur** at an **appropriate time in the future**.

The purposes cited by the Government expressing its intention to stop dealing with 17 year old children in the adult system still ring true today. Eighteen is the age of majority in Queensland and throughout Australia, yet 17 year olds in Queensland continue to be exposed to the deleterious effects of adult prisons. It is time to make this change and stop treating children as adults in the criminal justice system.

It is unfair that 17 year olds are treated as adults by the criminal law because:

- 17 year olds are often still physically and mentally immature, and ought to be dealt with by a legal system that understands that developmental immaturity;
- if children cannot vote, drink alcohol, buy cigarettes, or otherwise participate fully in society until they become 18, they should not be treated as adults by the criminal law;
- Children should not be kept in adult jails;
- the Child Protection system treats 17 year olds as juveniles; so should the Youth Justice system;
- year 12 students should be treated the same way by the criminal law, irrespective of whether they happen to be 16 or 17;

[33] As cited in Cuneen et.al note 18 p xxvii.

- Queensland 17 year olds should not be worse off than 17 year olds in every other Australian state

There have been numerous reports raising concern that Queensland continues to treat 17 year old children as adults rather than juveniles, including:

- the 1988 Kennedy Review Into Corrective Services
- the UN Convention on the Rights of the Child
- the 1997 Australian Law Reform Commission Report
- the 2002 Youth Justice Conference in Brisbane
- the 2002/03 Annual Report of the President of the Children's Court
- the 2005 UN Consideration of the Report Submitted by Australia for the 40th Session
- the 2006 Anti-Discrimination Commission Queensland recommendations

After 15 years, it is time for the juvenile justice system to include 17 year olds.

When the Juvenile Justice Act (Qld) 1992 ("the JJA") was assented to on 25 August 1992, it was envisaged that its scope would subsequently be extended to cover 17 year olds. In this respect, section 6(1) of the JJA was drafted so that this extension could take place simply, by regulation, rather than by way of legislative amendment. Nearly fifteen years have now passed since the JJA was assented to without the requisite regulation having been implemented.

Inquiries, Recommendations and Legislation.

1965 The Children's Services Act (Qld) 1965

The predecessor of the JJA, the *Children's Services Act (Qld) 1965,* had the intention of promoting, safeguarding and protecting the wellbeing of the children and youth of the Queensland through a comprehensive and coordinated program of child and family welfare. Under this legislation the definition of a "child" was a person under or apparently under the age of 17 years. Originally written in September 2004.

1988 The Kennedy Commission of Review into Corrective Services in Queensland

In 1988 the Kennedy Commission which reviewed the Corrective Services System in Queensland handed down its final report. That report contained specific reference to the operation of the juvenile justice system at that time. The Report found:

> Queensland is one of only two states in the Commonwealth that has legislation that nominated 17 years as the age at which a person is treated as an adult in criminal proceedings. All other States use 18 years as the age of majority in criminal matters. It is a matter of common sense that the system [in place in 1988] segregate persons under the age of eighteen while these people continue to be imprisoned. This is only a short term solution. In my view people under 18 just should not be in adult prisons. They are children in law, children in terms of rights and responsibilities. In other States they are in law required to go into juvenile institutions. This should be the case in Queensland. They just should not come into the prison system. To stop the entry of these young

> people into prison requires a redefinition of "child" in Queensland legislation. Amending the appropriate legislation would remove this small vulnerable group of people from the prison environment.[34]

1990 The United Nations Convention of the Rights of the Child

The UN Convention on the Rights of the Child ("CROC") was ratified by Australia on 17 December 1990 and came into force on 16 January 1991. Ratification was preceded by a detailed process of consultation with State and Territory governments and was the subject of unanimous agreement by all Australian governments. Article 1 states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." The age of majority in Australia is 18. The rights articulated in CROC are expected to apply to all children, including 17 year old children.

1992 The Juvenile Justice Act (Qld) 1992

As noted above, when the *Juvenile Justice Act* was passed it was intended to subsequently include 17 year olds The Minister then responsible for the passage of the legislation, The Hon Ann Warner, said in the course of Parliamentary debate at the time of passage:

> It is the intention of this Government, as it was of the previous Government, to deal with 17- year old children within the juvenile, rather than the adult system, as per the Kennedy Report into prisons. This is consistent with the age of majority and avoids such children being exposed to the effects of adults in prisons, thereby increasing their chances of remaining in the system and becoming recidivists. This change will occur at an appropriate time in the future.[35]

1995 – 97 UN Consideration of Australia's First Report under Convention on the Rights of the Child

Australia's First Report under CROC was produced by the Commonwealth Attorney-General's Department in 1995 and lodged with the United Nations Committee on the Rights of the Child in January 1996. The Report was considered by the Committee in September 1997, in conjunction with the Non-Government Organisations' Report. The NGO Report noted in response to Australia's First Report, the anomaly that "in some jurisdictions 16, 17 and 18 year old offenders are classed as adults." The UN Committee stated in its Report:

> 21. The situation in relation to the juvenile justice system and the treatment of children deprived of their liberty is of concern to the Committee, particularly in the light of the principles and provisions of the Convention and the other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

---

34 1 Commission of Review into Corrective Services in Queensland 1988 – Final Report – JJ Kennedy, p126, para 20.2

35 Hansard , Legislative Assembly, 5 August 1992, p 6130, per The Hon Ann Warner, Minister for Family Services and Aboriginal and Islander Affairs.

> 22. The Committee is also concerned about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system [….][36]

1997 Australian Law Reform Commission

The Australian Law Reform Commission in its seminal 1997 Report "Seen and heard: priority for children in the legal process" considered the upper age for inclusion of children in juvenile justice systems, as part of its wide-reaching Inquiry. The ALRC Report stated:

> In the Northern Territory, Victoria, Tasmania and Queensland, children are dealt with in the adult criminal system once they turn 17. In all other States, in the ACT and under federal criminal law all children are juveniles for the purposes of the criminal law, that is until they turn 18. The Inquiry considers that there should be national consistency on when a young person is dealt with in the juvenile justice or adult criminal system. An Australian child of a particular age should not be able to be tried as a juvenile in one jurisdiction and as an adult in another.[…] Children should not be treated as adults by the criminal justice system. The age of majority for the purposes of the criminal law should be 18, the age at which a child becomes an adult under general Australian law and under CROC.

The ALRC recommended as follows:

Recommendation 196. The age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions.

Implementation. All States and Territories that have not already done so should legislate to this effect.[37]

1998 Tasmania

On 14 January 1998, the Tasmanian *Youth Justice Act 1997* received royal assent. The Act defined a child as a person over the age of 10 and under the age of 18. Prior to that their legislation set the age of criminal responsibility at 7 and the age of majority at 17, two facts which were noted with concern by both the United Nations, and the ALRC in "Seen and Heard". The *Youth Justice Act 1997* was passed in response to those concerns.

1998 Queensland Evaluation of the *Juvenile Justice Act 1992*

In February 1998, the Evaluation of the *Juvenile Justice Act (Qld) 1992,* considered the issue of raising the age for dealing with children in the juvenile justice system to include 17 year old children. After describing the current regime, the Evaluation stated:

> There is, however, a significant body of opinion to the effect that the age of child regulation should be in accordance with the (then) Public Sector Management Commission recommendations and UN Conventions. This would

36 3UN Committee on the Rights of the Child, Concluding Observations: Australia, 10 October 1997

37 Report No 84, Recommendation no 196

> mean an increase in the age definition of "adult" for criminal justice purposes to 18 years. The implications of the inclusion of 17 year olds into the Children's Court system would have substantial resource implications for the [then] DFYCC which administer[ed] childhood orders and for the [then] Queensland Corrective Services Commission which [then] administer[ed] childhood detention orders. It would ensure that 17 year olds would be sentenced to detention rather than imprisonment in the adult prisons. Significantly, it would introduce a desirable measure of consistency across State legislation […][38]

2000 The Northern Territory

On 10 April 2000, the Prime Minister and the Chief Minister of the Northern Territory issued a joint statement regarding efforts to divert juveniles from the criminal justice system. A central element of the Northern Territory reforms was to include 17 year olds in the juvenile justice system. The *Sentencing of Juveniles (Miscellaneous Provisions) Act* 2000, which gave effect to the reforms commenced on 1 June 2000.

2002 *Juvenile Justice Amendment Act (Qld) 2002*

Significant amendments to the Act were passed in 2002. Prior to the drafting and passage of the legislation the Government undertook a "targeted" consultation process with the youth sector. A significant portion of the submissions provided to Government at that time expressed support for the expansion of the Act to cover 17 year olds.

2003 Youth Justice Conference, Brisbane, February 2003

The need to extend the *Juvenile Justice Act 1992* to cover 17 year old children was identified as one of the key recommendations of the national Youth Justice Conference held in Brisbane in February 2003.[39] Following a detailed consideration of a range of issues related to the treatment of 17 year olds in the criminal justice system, the following recommendation was made: "The Juvenile Justice Act 1992 should be amended to increase the age of a child to 18 years so that it is consistent with other Australian states and in line with Australia's International Treaty obligations."

The previous Minister responsible for administration of the juvenile justice system, the Hon Judy Spence, agreed to consider all of the recommendations of the Conference.

2003 President, Children's Court of Queensland Annual Report 2002-03

The President of the Children's Court of Queensland, Judge O'Brien, in his most recent 2002-03 Annual Report referred to the issue of inclusion of 17 year olds in the juvenile justice system under the heading "The Definition of Adulthood and Other Issues" and made the following comment:

---

38 An Evaluation of the *Juvenile Justice Act 1992*,Juvenile Justice Branch, Criminal Justice Program, Department of Justice, February 1998.

39 The "Making the Youth Justice System Work Better" Conference, Brisbane, 21-22 February 2003

> In February of this year Legal Aid Queensland hosted a Youth Justice Conference in Brisbane. The conference brought together a large number of individuals and organisations involved in various ways with youth justice throughout the State. One of the recommendations to emerge from the conference was that the Juvenile Justice Act be amended such that the age of a child for the purposes of the Act should be increased to 18 years. Section 6 of the Act does contain provision for the age of 18 to be fixed by regulation but this provision has never been utilised.
>
> In Queensland, young people are not lawfully permitted to vote or to drink alcohol until they reach the age of 18, yet, at the age of 17, their offending exposes them to the full sanction of the adult criminal laws. There are I believe real concerns involved with the potential incarceration of 17 year olds with more seasoned and mature adult offenders. The United Nations Convention on the Rights of the Child considers a person as a child until he/she reaches the age of 18 and other Australian States have adopted a similar approach. The recommendation deserves careful consideration.[40]

2004 Victoria

On 27 May 2004 the Victorian Attorney General announced that Victoria will amend its legislation to provide for the removal of 17 year olds from the adult criminal justice system. In this respect, the Victorian Attorney General's "Justice Statement" contained the undertaking that it would: "Implement the commitment to increase the age limit of the Children's Court from 17 years to 18 years so that young people are not caught up in the adult criminal system."[41]
Since the Amendment took effect, Queensland is isolated as the only remaining Australian jurisdiction which treats 17 years olds as adults.

2005 United Nations Consideration of Australia's Joint Second and Third Reports on CROC, and the Parallel Non-Government Organisation Report

The United Nations expressly stated concern about Queensland's practice of treating 17 year olds as adults in the criminal justice system.[42] It specifically recommended that the State party remove 17 year olds from the adult justice system in Queensland.[43]

> The Committee recommends that the State party bring the system of juvenile justice fully in line with the Convention, in particular articles 37, 40 and 39, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice.

---

40 Children's Court of Queensland 10th Annual Report, 2002/03, p5

41 New Directions for the Victorian Justice System – Attorney-General's Justice Statement, May 2004, p11, Initiative 21

42 *UN Consideration of the Report Submitted by Australia for the 40th Session.* Administration of Juvenile Justice, 73

43 *UN Consideration of the Report Submitted by Australia for the 40th Session* (CRC/C/46, § 202-238).

"Furthermore, the Committee is concerned that: … (c) in Queensland, persons of 17 in conflict with the law may be tried as adults in particular cases" (See, pp 14, Administration of Justice, 73 (c)).

2006 Anti-Discrimination Commission Queensland

The Anti-Discrimination Commission Queensland March 2006 report, *Women in Prison,* highlighted the issues involved in housing 17 year olds in adult prisons and made two recommendations:

Recommendation 48:
The Queensland Government immediately legislates to ensure that the age at which a child reaches adulthood for the purposes of criminal law in Queensland be 18 years.

Recommendation 49:
It is not in the best interest of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection until of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.

The recommendations concluded that placing a 17 year old female prisoner in specific prison areas based solely on her age is *prima facie* direct discrimination on the basis of age.[44]

Rationale for treating 17 year olds as children for the purposes of criminal law.

The reasons for including 17 year old children in the juvenile justice system include the following:

Recognition of the development vulnerability of children – desirability of the principles underpinning the JJA to apply to 17 year olds.

Many 17 years old children are still "physically and mentally immature."[45] Developments in scientific research have made it possible to study the brain using magnetic resonance imaging (MRI) instead of x-rays.[46] This advancement allows scientists to safely scan children's brains over many years without causing harm. Scientists have since conducted extensive research on the adolescent brain making significant findings in the area of adolescent brain development. Law makers are being asked to reconsider

[44] 17 year old women are kept in a segregated unit called "S4". S4 houses women with mental illness, women who have a disciplinary breach or problems, and juveniles. Sisters Inside reports that two women have been diagnosed with post-traumatic stress disorder as a result of their experience in the S4 unit. (*In Corrections*, pp121).

[45] UN Declaration of the Rights of the Child, 1959, Preamble

[46] *See, Adolescent, Brain Development and Legal Culpability*, Juvenile Justice Center, American Bar Association, Jan 2004 *citing* Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind*, Oxford University Press (2001).

juvenile justice policies in light of evidence that the adolescent brain is a work in progress.

Development

Research indicates that the human brain develops well into a person's 20s. The frontal lobe, the area of the brain that is responsible for planning and impulse control, is the last to develop.[47] Furthermore, this area of the brain undergoes more change during the teenage years than any other time in a person's life. Studies of the relationship between brain development and adolescent behaviour indicate that adolescents tend to rely on emotional areas of the brain, rather than the frontal lobe.[48]

Competency

Many studies have shown that by the age of sixteen adolescents' cognitive ability is similar to that of adults. This means that adolescents' intelligence mirrors adults. Although adolescents are intellectually mature, other developmental traits impact their decision making capacity. Common developmental traits of juveniles include impulsivity, short-sightedness, and susceptibility to peer influence.[49] These traits, in conjunction with the developmental stage of adolescents arguably make juveniles less responsible for their actions than adults.

Culpability

Criminal punishment should be based not only on the harm caused, but on the blameworthiness of the offender. To determine how blameworthy a person is the criminal justice system must take into consideration the circumstances of the crime and of the person committing it. Historically courts consider mitigating factors when considering culpability for a crime. Mitigating factors include: impaired decision-making capacity; circumstances of the crime; and the individual's personal character. These factors do not make a person exempt from punishment, but they do indicate that the punishment should be less than it would be for a different person committing a similar crime under different circumstances.[50] The underpinnings of the juvenile justice system are based on the notion that juveniles are less morally responsible for their actions and more capable of change and rehabilitation. The growing body of scientific evidence supports this premise.

Risk Factors

47 *See*, *Adolescent, Brain Development and Legal Culpability*, Juvenile Justice Center, American Bar Association, Jan 2004 *citing* Sowell, Elizabeth R, Paul M. Thompson, Kevin D. Tessner and Arthur W. Toga. *Mapping continued brain growth and gray matter density reduction in dorsal frontal cortex: inverse relationships during post adolescent brain maturation*, 21 Journal of Neuroscience 22 (2001).

48 *Adolescent, Brain Development and Legal Culpability*, Juvenile Justice Center, American Bar Association, Jan 2004 quoting Dr. Deborah Yurgelun-Todd of Harvard Medical School

49 *Less Guilty by Reason of Adolescence*, Issue Brief 3, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice.

50 Ibid.

The American Academy of Pediatrics identified a number of risk factors that increase the likelihood that an adolescent will engage in violent behaviour. Risk factors include: exposure to domestic violence or physical abuse, being poorly or inappropriately supervised, or being a victim of physical or sexual abuse.[51] The presences of any of these risk factors compound the likelihood that an adolescent will engage in violent behaviour. Nearly all young people convicted of criminal offences in Queensland report history of abuse, neglect, and assault.[52] Incarcerating these youth is not going to help them become functioning and contributing members of society. According to the Queensland Government Department of Corrective Services, in the 2005/06 financial year there were 105 17 year olds in corrective services facilities. Over the preceding 5 years, a total of 629 17 year olds were in prison. A disproportionate number of these youth are from communities with low socio-economic indicators and most likely come from extremely disadvantaged backgrounds.[53]
The principles articulated in *The Charter of Juvenile Justice Principles*[54] should apply to 17 year old children as they do to younger children. In this respect, for example, it is desirable that:

- Because many 17 year old children are vulnerable in dealings with a person in authority, such children who are under investigation or proceeding in relation to an alleged offence be given the usual special protections for children (such as the right to an independent person during a police interview) (cl 4 of the Charter);

- Diversionary strategies and sentencing options such as cautioning and referral to youth justice conferences be available as responses in appropriate circumstances (cl 5, 8, 9);

- Parents of 17 year old children should be encouraged to fulfill their responsibility for the care and supervision of the child (cl 10);

- 17 year old children should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances (cl 17);

It is current government policy, at both state and federal level, to encourage young people to remain at school in order that young people individually (and the community collectively) achieve higher educational and training standards. One likely effect of this worthy policy goal is that more 17 year olds will remain in more protected environments such as school rather than in the more predominantly "adult" environments of the workplace or managing other "adult" systems associated with greater personal independence. In this respect, retention rates for Year 12 have been steadily increasing.

---

51 American Society of Pediatrics, *Policy Statement*, 1 Pediatrics, 103 (1999).

52 *See also*, *Pathways from Child Maltreatment to Juvenile Offending*, Anna Stewart et al., Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, No. 241 (Oct 02).

53 *In Corrections: Investigating Prison Release Practice and Policy in Queensland and its Impact on Community Safety*, by Tamara Walsh (Nov. 2004), pp 113. According to a survey conducted by Boystown, 62% of respondents identified as Indigenous; 24% report having a mental illness, and as many as 70% were homeless. All of the respondents had lost their parents at a young age and had been either a ward of the state or in foster care.

54 Schedule 1, *Juvenile Justice Act 1992*

The retention rate from Year 10 to Year 12 in Queensland has, for example, risen from 38.9% in 1976 to 81.1% in 2002.[55]

Rehabilitation vs. Retribution

The evidence pointed to above, suggests that juveniles are still developing in the teenage years and are therefore more open to 'change'. It would appear the Queensland policy agrees with this notion, as the juvenile system is often seen as more 'rehabilitative' than the adult prison. It can be said that the adult prison system appears to place more of an emphasis of 'retribution' and that juvenile prison focuses more heavily on 'rehabilitation' and the juveniles' ability to change.

By imprisoning 17 year olds in an adult facility, the government is essentially denying 17 year olds the *right* to rehabilitative opportunities. Programs and education are available in the adult prisons, but at a lesser extent than that offered in juvenile. The fact that the adult system is so different to the juvenile system apparently indicates that the government does indeed view juveniles as perhaps less culpable and more amenable to change than adults. By continuing to imprison 17 year olds in adult prisons, the government is seriously contradicting their own philosophy.

Alignment of Age of Adulthood in Queensland

It is highly desirable, from a public policy perspective, that the age at which a young person is dealt with as an adult by the criminal system, is aligned with the age at which it is lawful for a person to vote, drink alcohol, marry without parents' consent, and participate fully in society in other ways. Queensland law treats people under the age of 18 differently than adults. Civil law recognizes that people under the age of 18 do not have full capacity; therefore, laws regulate various activities that span almost every aspect of a youth's life.

- **Jury Duty** – You must be 18 years old to serve on a jury.
- **Voting** – You must be 18 years old to vote.
- **Marriage** – You must be 18 years old or have parental consent to marry.
- **Foreign travel** – You must be 18 years old to obtain a passport without the written consent of your parents.[56]
- **Contracts** – You must be 18 years old to enter into a contract for anything other than necessities (goods and services needed to maintain the lifestyle of a child).[57]

---

55 OESR. Bulletin: Education in Queensland (Census 2001) at http://www.oesr.qld.gov.au/queensland_by_theme/society/education_training/bulletins/census2001/education_in_qld_c01_htm.shtml#retention

56 It is a requirement of the *Australian Passports Act 2005* that before a passport may be issued to a child (anyone under 18 years who has never married) the written consent of all people with parental responsibility for the child is needed.

57 *Children and Civil Law*, Legal Aid Queensland. People under the age of 18 do not have full capacity and a contract entered into by a child cannot be enforced against a child unless it is a contract for necessities (goods and services needed to maintain the lifestyle of the child) or a beneficial contract of service such as an apprenticeship).

- **Wills** – You must be 18 years old or married to make or witness a will.
- **Gambling** – You must be 18 years old to gamble.
- **Tattoos** – You must be 18 years old to get a tattoo.
- **Alcohol -** People under the age of 18 cannot purchase liquor or drink in public places.
- **Tobacco** – You must be 18 years old to purchase cigarettes or other tobacco products.
- **Medical Treatment** – Generally 16 year olds are assumed to have full legal capacity to consent to medical treatment, however, doctors and hospitals can require the consent of the parent of a person under 18 years-old.
- **Tort (Lawsuits)** – People under the age of 18 can be sued, but the degree of reasonableness required for them is that normally required of a child of that age.

Consistent Treatment of Peers in Queensland

A great many 17 year old Grade 12 students in Queensland are currently treated as adults by the criminal justice system, while some of their 16 year old classmates are dealt with as children. The effect of this is that two classmates, one 16 and the other 17, involved in the same offending behaviour will be treated differently, despite their circumstances being equivalent in every other respect. (By way of example, the 16 year old might be police cautioned and diverted from the criminal justice system, whereas the 17 year old student may face the prospect of community-based orders.) This inconsistency is undesirable.

Alignment of Child Safety and Juvenile Justice Systems

In an effort to restructure the child safety system the Commission for Children and Young People and Child Guardian was created. The Commission is charged with promoting and protecting the rights, interests and wellbeing of all Queenslanders under 18. It is desirable that there be alignment between the child safety system and the youth justice system in relation to who those systems regard as children, and how those two systems interact.

Removing 17 year olds from Adult Jails

All 17 year old child offenders sentenced to imprisonment or remanded in custody are incarcerated in adult jails. The consequences of incarceration of children in adult facilities include that:

- 17 year old children are exposed to a potentially dangerous environment;
- They are exposed to the negative influence of "seasoned, mature offenders."[58]

It is understood that most 17 year olds are placed in what is known as "the boys' yard" at Arthur Gorrie Correctional Centre. In this respect s13(2) of the *Corrective Services Act 2000* is an attempt to limit the exposure of 17 year old children to the adult system. We understand, however, that it is not uncommon for 17 year old children to be placed at other jails within the mainstream adult population.

[58] Judge O'Brien, President of the Children's Court of Queensland, 2003-04 Annual Report

Adult prison is a dangerous and violent place. Juveniles in adult jails and prisons are at a greater risk of being violently victimized than their counterparts in juvenile detention facilities. According to research conducted in the United States, in 1988 47% of juveniles in prison were victims of violent assaults.[59] Juveniles in adult facilities were eight times more likely to commit suicide; five times more likely to report being raped or sexually attacked; twice as likely to report being beaten by prison staff; and 50% more likely to be attacked with a weapon.[60]

A limited amount of research is available about the experiences of Queensland youth in adult prisons, however, according to *In Corrections*, young prisoners report having "extremely traumatic prison experiences."[61] Former prisoners report that fights, bullying, and sexual assault are widespread in prison. There is also evidence to suggest that youth detained in adult prisons are more likely to re-offend than those sentenced to the juvenile justice system.[62]

The Queensland government, by its very actions in creating a separate space in adult prisons for 17 year olds, recognises how vulnerable 17 year old prisoners are. So why are they continuing this practice?

Consistency Across Australian Jurisdictions

It is desirable that there be consistency between Australian jurisdictions. Increasing the age in Queensland would remove the injustice that currently sees a 17 year old who would be charged, tried and possibly detained as an adult in Coolangatta (Qld), dealt with as a juvenile several metres away across the border in Tweed Heads (NSW). Queensland is isolated as the only jurisdiction in the country that continues to treat 17 year olds as adults.

Consistency with UN Convention on the Rights of the Child

Current Queensland practice is not consistent with the UN Convention on the Rights of the Child. Queensland practice should be brought into line with the provisions of CROC.

No Requirement for Legislative Amendment

When the Juvenile Justice Act 1992 ("the Act") commenced. It was always envisaged that its scope would subsequently be extended to cover 17 year olds. In this respect, section 6(1) of the Act was drafted so that this extension could take place by regulation, rather then by way of legislative amendment.

---

59 *Juveniles in Adult Prisons and Jails: A National Assessment*, United States Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (Oct. 2000).

60 *Juveniles in Adult Prisons and Jails: A National Assessment*, pp 8

61 *In* Corrections, pp. 113.

62 *See*, "The Transfer of Juveniles to Criminal Court: Does it make a difference?" Donna M. Bishop, et al. Crime & Delinquency, Vol. 42, No. 2, April 1996. A study of juveniles in the State of Florida, U.S.A. found that youth transferred to the adult court were a third more likely to re-offend than youth sentenced to the juvenile justice system.

Recommendation 13
That regulation is passed to proclaim section 6 (1) Juvenile Justice Act 1992 and that imprisonment of 17 year olds in adult prison is stopped immediately including the practice of keeping 17 year old in an isolated section of the adult prison.

Reducing Remand

The notion of remanding a person (let alone a juvenile) into custody is an extremely serious issue. Our entire criminal justice system, inclusive of the juvenile system, works on the premise that a person is innocent until proven guilty. Yet increasingly, we are seeing young people held in juvenile prisons due to social, economic, cultural and political factors, and not necessarily legal factors.

In 2005 Queensland held juveniles on remand 1.27 times above the national average. Nationally, the percent of juveniles held on remand was 49.75% whilst in Queensland, it was 63%.[63] Perhaps one of the most alarming statistics is that on a national level, of those juveniles remanded in custody, *less* then 10% ended up with a custodial sentence.[64] Even more alarming is the fact that in 2005-06 period **44%** of juveniles in Australia experienced imprisonment during their first period of 'supervision' with the juvenile justice system.[65]

These figures raise serious concerns regarding the United Nations Convention of the Rights of the Child, particularly article 37(b) which states: "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".

The remand rates in Australia are in direct breach of this convention. On a more local level, Queensland is in breach of its own charter which states that 'A child should be detained in custody for an offence, whether on arrest or not, only as a last resort and for the least time that is justified in the circumstances.'[66]

What the high remand rates and subsequent low rates of custodial sentences also show, is that the most expensive resources of the state in juvenile justice are not being used in the most efficient manner. Unfortunately there is little available information concerning the juvenile remand population in Queensland. However, in 2005 a report was released which examined the population of juvenile remandees in Tasmania.[67]

63 Note 6 p32
64 Id at xii.
65 Id at 100. This imprisonment was most commonly remand.
66 *Juvenile Justice Act* 1992, Schedule 1 s 17.
67 Tressidder, J, Putt, J, *Review of data on Juvenile Remandees in Tasmania*, Australian Institute of Criminology (2005).

In this study, it was found that 39% of juveniles held on remand were *not* subsequently sentenced to a period of imprisonment.[68] The study also produced feedback from stakeholders, and cited the following as potential causes for high remand rates:

- recidivist juveniles are well known to the local criminal justice practitioners;
- juveniles wanting to spend time on remand in the hopes of securing a backdated sentence; and
- personal circumstances of the juvenile, such as unstable home environments or mental health concerns that work against the prospect of obtaining bail[69]

Feedback from the stakeholders also suggested that some of the perceived causes for lengthy remand times were:

- 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[70]

The feedback provided by Tasmanian stakeholders is strikingly similar to that which has been expressed here in Queensland, suggesting that these issues may be a nationwide problem.[71] Of the research that is available on remand populations, it appears that the majority of people held on remand (both adult and juvenile) are more likely than others to be homeless, unemployed, addicted to drugs or alcohol, or have some form of mental disorder.[72] So it appears that the issue of high remand rates is one of a *social* justice issue as opposed to *criminal* justice.

King et. al, cite feedback from stakeholders in their research that indicates how remand rates are being increased through drug addicted defendants:

> Often these defendants are arrested for relatively minor offences for which a custodial sentence was very unlikely, yet because of their drug affected state, these defendants posed a real risk of re-offending and thus could not be granted bail.[73]

In addition to this, there have been increased numbers of people on remand with mental illness or intellectual disability. Research has indicated that people with an intellectual disability are more likely to be placed on remand, with such reasons including: not understanding their bail conditions and subsequently breaching them; previous

68 Id at 5.
69 Ibid.
70 Ibid.
71 See YANQ, Juvenile Justice Review Forum September, 2007.
72 As cited in King, S, Bamford, D, Sarre, R, *Factors That Influence Remand in Custody*, 2005, p 20.
73 Id at 96

breaches; lack of appropriate supports; and lack of accommodation.[74] Unfortunately what feedback has suggested is that such defendants are sometimes being placed into custody, as there is a better prospect for treatment on the inside, as opposed to within the community as exemplified by the following statement:

> … one of the major issues we've come across recently is that the remand system seems to have become the dumping ground for people with mental health problems and intellectual disabilities … There has been a massive increase of people with mental health issues who are in the remand system and who've got nowhere to go.[75]

One of the major factors also attributed to high remand rates, is the lack of suitable accommodation. Queensland has been cited throughout the academic literature for its approach to bail, in particular its youth bail accommodation service. This is an important service, as it essentially diverts young people away from incarceration due to social disadvantage. Feedback from various stakeholders has suggested that in some instances, bail condition may be too onerous and that there is a need for bail condition to be more flexible. For instance, a young person has a bail condition of reporting to police on the north side of the city, yet the young person attends school on the south side. Flexibility in bail conditions should be adopted in instances such as this, so that recognised rehabilitation tactics – such as education – are not interrupted.

YANQ would like to commend the department for allocating $1 million on their last budget for a bail accommodation service in Cairns. This is an important acknowledgement that such programs work to divert young people from being detained in custody, and YANQ would recommend the allocation of more resources to cover Townsville, Mt Isa Rockhampton and also to expand the existing Brisbane service. YANQ supports the recommendation made by Cuneen stating: 'The capacity of the conditional bail and bail support programs needs to be expanded in areas of identified need, and particularly in remote communities'.[76]

Recommendation 14
That the department allocates resources for the establishment of a bail accommodation service located in Mt Isa, Rockhampton, and also allocates funding for an expansion of the Brisbane service.

Recommendation 15
Bail conditions become more flexible.

Of the limited public research that has been conducted on remand populations, time and time again it is reiterated that high remand rates correlate directly to social injustices

74 As cited in Parton, F, Day, A, White, J, 'An Empirical Study on the Relationship Between Intellectual Ability and an Understanding of the Legal process in Male Remand Prisoners, *Psychiatry, Psychology and The Law* Vol. 11 No, 1 (2004).
75 Note 72.
76 Note 18

such as lack of housing; lack of services and programs etc. As one author so eloquently puts it:

> In terms of future directions, the main lesson is that we need a fundamental shift in how we approach the issue of youth crime, away from the world of 'cops, courts and corrections' towards an emphasis on meeting the health, educational and family difficulties which lie behind so much offending.[77]

Canada has implemented into its legislation, specific clauses that prohibit detention of youth for social reasons such as those mentioned above. For example in relation to remand:

> 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.[78]

And in general:

> A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures.[79]

These are just two, very simple legislative clauses which if implemented in Queensland, could drastically reduce the high numbers of remand that we are currently seeing.

Recommendation 16
That the Queensland Government introduce legislative provisions prohibiting the imprisonment of juveniles as a social measure

So if it's a social justice issue – then how do we address it?

Allen[80] argues that the juvenile system should not be viewed strictly in terms of criminality, but rather, should be working holistically as a social system. He argues that:

- More investment is needed to address education, mental health issues and family support;
- That juvenile crime should not be viewed as something to be punished – instead it should be something to be *solved*;
- That there should be a wider range of community based and residential placements for young people who do not stay with their parents; and
- That prison custody be abolished for young people under 16, eventually raising it to 18.

---

77 Allen R, *From Punishment to problem Solving: A New Approach to Children in Trouble*, Centre for Crime and Justice Studies, 2006 p9.
78 Canadian *Youth Criminal Justice Act* s 29(1)
79 Id. s39(5)
80 ibid

The last argument put forth by Allen is somewhat reflect of the policy that is currently in place in Sweden. The law as it stands in Sweden states that the age of criminal responsibility is 15, which means that a juvenile under the age of 15 cannot be sentenced.[81] It is only in exceptional circumstances that a juvenile 18 or under is sentenced to a term of imprisonment.[82]

In relation to remand, Sweden provides an excellent example of how to effectively reduce remand rates. 15-17 year olds *may* be placed on remand, but only in exceptional circumstances. The rules for placing a juvenile on remand are as follows:

> The person shall reasonably be suspected of a crime which carries a sentence of *at least one year* (emphasis added). In addition a minimum one of the three following conditions shall apply:
>
> - Flight risk;
> - Risk that the investigation shall be impeded;
> - Risk for continued criminality[83]

By placing conditions on remand such as that the possible sentence is at least one year, could have a dramatic impact on remand numbers in the Queensland jurisdiction. By adhering to the rules above, in 2005 Sweden had only **12** young people on remand (this was actually an *increase* from 9 in 2000).[84]

What is of great interest is how Sweden has successfully integrated social justice with criminal justice. Essentially, what occurs in Sweden is that the judicial system and social services work *together* in relation to juvenile crime. For young people under the age of 15, the responsibility for dealing with the crime falls to social services. For young people aged between 15 and 17, the responsibility for youth crime is shared between the two.

What this means in practical terms is that when a young person below the age of 15 commits crime, it is the responsibility of the social services to find a suitable *solution*, that is based solely upon the young persons social situation. So the 'criminality of this group is regarded as a social welfare problem'.[85] This view is consistent with Allen's argument above, that juvenile crime is something to be *solved* rather than punished.

The Qld Department of Communities is essentially in an ideal position to adopt the policies implemented in Sweden.

So how is this relevant in the Australian context?

Recent data in Australia indicates that the younger a person is at the time of their first 'supervision' in juvenile justice, the more likely they are to have repeated interactions with the system.[86] This study found that in addition to higher recidivism rates, the younger a person was upon initial contact supervision, the more like they were to receive sentences of imprisonment.

---

81 *Basic Facts About Prison and Probation Service in Sweden,* (2006) p 7.
82 Ibid
83 Id at 9.
84 Id at 10.
85 Id at 18.
86 Note 7 at 82

Age of first supervision	% of supervised time in prison at age 15
11	**24%**
14	**4%**

It was also shown in this study that around 35% of young people aged 10-12 in the years 2001-2002, were also in 'supervision' in 2005-2006, compared to only 8% for those who started aged 14.[87]

In relation to remand, the statistics showed that the earlier you came into contact with the system, the more likely you were to receive a sentence of imprisonment.

If Queensland were to follow the lead of Sweden by raising the age of criminal responsibility to 15, and only placing 15-17 years olds in custody in 'exceptional circumstances', then numbers of young people held on remand, and also the numbers sentenced to imprisonment would drastically reduce. Australian statistics demonstrate that the earlier a young person is 'supervised' by juvenile justice, then the more likely it will be that they will continue to re-enter the system.

By adopting a 'social justice' model as has been employed (and shown to be effective) in Sweden, Queensland could realistically begin to tackle the 'causes of crime', such as unemployment; poverty; unstable home environments; mental illness and drug addiction. In addition to this, it would be cost effective. Recent figured from the Department of Communities indicates that the cost of incarcerating one youth per year is $165,000.

If Queensland is serious about rehabilitation of juveniles, and is serious about adhering to the varying United Nations conventions, then it needs to take a social justice approach to juvenile crime, and view it as an issue to be 'solved' rather than 'punished'.

Recommendation 17
That, in recognition of the evidence that the earlier a young person is officially 'supervised' by the juvenile justice system, the more like they are to re-offend, Queensland raises the age of criminal responsibility to 15.

Recommendation 18
That juvenile offenders under the age of 15 be dealt with in a 'social justice' context, where the crime is considered a social welfare problem, and the underlying causes for the crime are discovered and adequately addressed.

Recommendation 19
That the Queensland Government make publicly available statistics relating to juvenile remand, inclusive of the characteristics of those detained.

[87] Id at 100.

Sentencing & Diversion Options Including Conferencing

It has been noted in the research literature, that interventions which focused on family functioning, behavioural treatment programs, interpersonal skills and community integration, were the most effective in reducing recidivism.[88] In addition to this, programs that are delivered *in* the community are more effective regarding positive outcomes and more cost effective.[89]

Diversion from the juvenile justice system must be seen as a priority for the Queensland government. It has been argued that diversion serves to steer young people away from the negative labeling effects of criminalization that may occur through interactions in the courts etc. Some authors suggest that people who are labeled as criminals tend to adopt a criminal identity, and subsequently find it hard to escape from.[90] By diverting young people away from such stigmatizing institutions such as the courts and prisons, it may be possible to reduce the levels of labeling and subsequent adoption of 'criminal' as a master status.

Conferencing

Juvenile conferencing is still a relatively new concept in Australian juvenile justice, and as such, research into its long term effects are limited. However, the information that is available appears to indicate that conferencing as a whole is producing positive outcomes for both the young person as well as the victim, with one Queensland study reporting a 99% and 97% satisfaction respectively.[91] In addition to participant satisfaction, conferences appear to be having an effect on levels of re-offending. One study compared juveniles who were referred to conferences, with juveniles who were sent to court, and suggested that conferencing, when compared with court appearances, reduces re-offending by 15-20%.[92] This information is also supported by a Queensland specific study, which demonstrated that younger juveniles, who were referred to conferences for their first offence, were *less* likely to re-offend than other juveniles who had been issued either a caution or sent to court.[93]

As has been noted earlier in this submission, juveniles who enter the system at a younger age, are *more* likely to have repeated interactions with juvenile justice. The

88 Day, A., Howells, K, Rickwood, D, *The Victorian Juvenile Justice Review*, Department of Human Services, Victoria, (2003) p2.
89 Ibid.
90 As cited in Allen, R, note 77 p17
91 As cited in Daly, K, Hayes, H, 'Conferencing and Re-offending in Queensland', *Australian and New Zealand Journal of Criminology*, (2004) Vol. 37 No. 2 p168.
92 Luke, G, Lind, B, 'Reducing Juvenile Crime: Conferencing Versus Court', *Contemporary Issues in Crime and Justice* (2002) No 69.
93 See Daly, K, Hayes, H, n91.

findings of the study mentioned above are extremely important in the context of Queensland and our youth justice system. Some authors argue that because conferencing is essentially a more expensive option compared to cautions, that conferencing should be reserved for more serious offences and offenders.[94] This may be so, but it is also important to employ such diversionary options for fist time offenders as well.

The study above reports that younger, first time offenders who participate in conferences are more likely to *cease* offending. The Queensland government needs to pay attention to this fact, as it has the potential to divert and keep young people out of the juvenile justice system.

This method of referring first time young offenders to conferences would be particularly useful in the context of indigenous youth. Research repeatedly demonstrates that indigenous youth are entering the juvenile system at earlier ages than their non-indigenous counterparts. It has also been mentioned above that indigenous youth have lower rates of referral to conferences than non-indigenous youth.

By implementing into the legislation a requirement that young (10-12 years old) first time offenders, especially indigenous youth, be referred to a conferencing process, issues such as re-offending, continued criminality *and* indigenous over-representation would be addressed in the one hit. Of course victims must be taken into account in this process, with the victim not forced into conferencing, but maintaining the right to consent.

Recommendation 20
That the Queensland government implement into the legislation a mandatory requirement that young (10-12 for example) first time offenders be automatically referred to juvenile justice conferencing.

One of the concerns that have been raised in relation to juvenile justice conferencing in the Queensland context is the role of the police. As has been noted previously in this submission, police referrals to conferencing are amongst the least utilised of the diversionary options. This is true for both indigenous *and* non-indigenous youth. In addition to this, feedback from stakeholders suggest that the requirement of having a police officer attend the conference is arduous, in that the conference has to be arranged around the difficult working hours of the police, which at times can mean that a conference wont start until 9pm. In addition to this, YANQ views as problematic the fact that young people must first either be found guilty, or admit to an offence as a pre-requisite to accessing conferencing. This seems to go against the grain of diversion from the juvenile justice system. New Zealand provides one of the best examples in relation to juvenile justice, in that a young person does not have to admit guilt to access diversionary alternatives such as conferencing. In New Zealand, a young person cannot be prosecuted for crimes unless it is for murder or manslaughter. Those young people under 14 who come to the attention of the police are either cautioned or sent to a

[94] Polk et al, note 26.

conference.[95] In addition to this, young people under the age of 14, much like the Sweden model, may be referred to the Child Youth and Family Services to determine if there is a *social* need for care and protection. A testimony to the success in New Zealand of such approaches, inclusive of conferences, is that approximately 83% young people are now dealt with via 'alternative' procedures as opposed to youth court.[96]

Another point that has been raised in Queensland feedback is that conferencing staff are employed on a casual basis, which can mean there is little stability for the process and can result in a high staff turnover rate.

These concerns can be remedied. If conferencing is made mandatory in the Queensland context then:

- conference numbers would increase;
- as a result there would be a greater need for full time conferencing staff thereby creating more stability in the process;
- young offenders would be diverted out of the system; and
- re-offending may decrease

If Qld is serious about reducing indigenous over-representation, then it needs to engage strategies to not only improve indigenous access to alternative avenues such as conferencing, but to ensure that such processes are culturally appropriate and also staffed by indigenous people. Qld needs invest in and develop a specific strategy for recruiting and training indigenous conferencing staff so as to ensure the best possible outcomes for young indigenous people in Qld.

Home Detention

Home detention is already in use in some states in Australia, and has been recognised an alternative sentencing option that allows the young person to remain in the community and to avoid the inevitable harm caused by imprisonment. However, whilst this is a realistic alternative to incarceration, there are some serious concerns about implementing this in the Queensland system.

It has been argued that the use of home detention is turning private homes into public prison space[97] and essentially turning family members into jailers. Home detention affects not just the young person subjected to it, but also the family. George (2006) notes:

> Another consequence of the HD prison is that new layers of criminality are introduced into homes (Aungles 1994:67). Ordinary activities like drinking, being late, gambling, having a friend over to visit, or leaving the house, are redefined as 'criminalised' activities because they constitute breaches of the HD order. The home is not only the site of the prison, but also the site of a set of potentially new offences which can only be committed because the home has become prison space. This replicates institutional prisons, where

95 Youth Justice New Zealand http://www.courts.govt.nz/youth/aboutyj.html last accessed October 14

96 Ibid.

97 George, A, 'Women and Home Detention – Home is Where the Prison Is', *Current Issues in Criminal Justice*, Vol. 18. No.1 (2006) p 80.

> behaviours which are 'normal' outside; swearing, not making a bed, talking back, possessing a non-transparent pen, can all constitute prison offences which attract punishment.

As has been noted previously in this report, young people have often been remanded into custody due to lack of appropriate accommodation. One of the requirements for home detention is that the person has stable accommodation. This requirement seemingly contradicts the intention of home detention as a diversionary tactic from incarceration.

In addition to this, there are concerns regarding confining a young person to a home that is potentially a causal factor in their offending (such as family violence etc). Unstable home environments have already seemingly been acknowledged as an issue by the Qld government, as evidenced by the inclusion of a youth bail accommodation service.

YANQ does not recommend home detention for young people in Queensland.

Anti-Social Behavioural Orders/contracts

The United Kingdom has introduced what is known as 'Acceptable Behaviour Contracts' (ABC's)for young people. This involves a written agreement between the young person and police; Youth Inclusion Support service or landlord, which is designed to stop the young person engaging in 'anti-social behaviour' (which is not defined). These contracts can be made for a period of up to six months.[98]

An acceleration of the ABC's are the 'Anti-Social Behavioural Orders' (ASBO) which are civil orders designed to ban a particular young person from: continuing the 'anti-social behaviour ; spending time with a particular group of friends; and visiting certain places.[99] The *minimum* time for an ASBO is two years. Despite ASBOS being a civil order, a breach of them results in a criminal charge and a young person may be sentenced to prison for up to five years.

Anti-Social behavioural Orders (ASBO) are designed to 'protect' the community from undesirable anti-social behaviour which may cause harassment, alarm or distress to one or more people in a public space. Queensland itself already appears to have an off shoot of this, in the form of Police 'move on' powers.

The Home Office in the UK advocates that ASBOS are a community based intervention, that allows the 'community to take charge' by 'collecting evidence' and helping to enforce breaches of the order. The problem with such orders, is that essentially – it further marginalizes young people who are already marginalized, and serves to reinforce any labeling that may have already occurred. By banning young people from certain areas, it raises serious concerns about a young persons access to services, access to education and employment opportunities. The arduous nature of such orders potentially restricts a young persons access to rehabilitation opportunities.

---

[98] United Kingdom Home Office http://www.homeoffice.gov.uk/anti-social-behaviour/penalties/acceptable-behaviour-contracts/ last accessed October 15 2007.

[99] ibid

How are such methods even *remotely* related to rehabilitation and reintegration of young people?

There is no evidence to suggest that ABC'S or ASBOS have any affect on reducing crime, or addressing the causes of crime, with one UK study suggesting that the breach rates for ASBOS were around [100]40%. Rather, this is a method that serves to socially exclude young people who are already excluded. One example of ASBOS working against rehabilitation is the case of a 15 year old boy who was handed a 10 year ASBO whilst still in prison under a six month sentence. What this means, is that when he was released from prison, he was automatically banned from an entire district of the city.[101]

This in no way can be seen as ensuring a young person is reintegrated and rehabilitated into society. By banning youth from certain areas, and from associating with certain people, and by making the community the 'policers', these policies are serving to further isolate young people from the very community of which they should be reintegrated to.

Recommendation 21
YANQ opposes the implementation of home detention; Acceptable Behaviour contracts or Anti-Social Behaviour Orders

Electronic Monitoring/curfews

Electronic monitoring is currently in use in several Australian jurisdictions, and in Qld, is in place for adult offenders. Whilst some may suggest that this is an alternative for imprisonment, YANQ would argue that like home detention (discussed above) it works more for retribution as opposed to rehabilitation. This can also be said for the use of curfews. Essentially, such methods make the private home a public prison space, where the family is burdened with the responsibility that would normally lay with prison officers. Once more, such methods are premised upon the assumption that the home for the young person is a 'safe place' and that it is functional, when we know that most young people who are likely to be subjected to such tactics, more often than not come from dysfunctional homes.

In addition to this, electronic tagging is *physically* labeling a young person and may further ostracise the young person. Curfews and electronic monitoring cannot be viewed as positive steps to rehabilitation, as realistically they may impinge upon a young persons ability to access employment.

Recommendation 22
YANQ opposes the use of electronic monitoring and curfews for young people

[100] As cited in Walsh, T, Taylor, M, *Nowhere to Go: The Impact of Police Move On Powers on Homeless People in Queensland* 2006 pp31-33.

[101] Humphries, P, 'Shame Faced: Pressure to Publicise the names of children who receive anti-social behavioural orders is growing', *The Guardian* October 24, 2001.

Deferred Sentence

Deferred sentences are already available in other jurisdictions in Australia. The idea behind deferred sentences, is that a young person is essentially on an 'elongated bail' with conditions, and allows the young person to demonstrate 'rehabilitation'. YANQ is concerned about the use of such methods, as often, the conditions placed upon young people (such as counseling, etc) are reliant on access to services, and as has been noted above under remand, many young people are being placed into custody because there is simply no access to such services in the community.

Recommendation 23
YANQ opposes the use of deferred sentencing in Queensland.

Accountability

Parental Responsibility

YANQ believes that the current provisions in the legislation are more than adequate in relation to parental responsibility. We would like to note, however, that the concept of parental responsibility relies on the absolute assumption that the young person is from a functional home, when all available information and statistics seem to demonstrate the exact opposite.

In order for parental responsibility to have any impact at all, the family must be functional, otherwise this notion would do a further disservice to the young person.

It is important that the family of the young person be adequately supported in the juvenile justice system. However, this is possible to achieve *without* the need for parental responsibility or 'parental contracts'. Support, access to appropriate services etc, is achievable if Queensland adheres to a social justice model, similar to that of Sweden that has been discussed above.

Child Safety Accountability

> One element of our duty is to recognise that too often the young offenders of today are the victimized children of yesterday and that they bear the legacy of how little we tried to prevent that happening. They are two sides of the same coin. Sometimes it takes a decade to see them both.[102]

[102] The Honourable Alastair Nicholson AO RFD QC, Former Chief Justice, Family Court of Australia, 'Child protection and Juvenile Justice – Tow Sides of the Same Coin', *Australian Children's Rights News*, No.39, July 2005, p10.

In 2004-2005, there were 73 young people on child protection orders, who were also the subject of a youth justice order.[103] As noted above, Queensland legislation has mechanisms enshrined in it, to hold parents accountable for criminal behaviour of their children. But what happens when children are under the 'care' of child safety? Various feedback from stakeholders suggest that quite often the reports from child safety officers are inadequate, and that occasionally, the workers do not turn up to court appearances concerning young people in their care. Former Chief Justice of the Family Court Alastair Nicholson, endorsed the suggestion that 'national standards should require that in sentencing juvenile offenders, courts should take account of failure in protective service provision or community based juvenile justice supervision for young offenders'.[104]

Why are the government departments not being held accountable for the actions of those youth in their care, as parents are?

Allen (2006) argues for a radical approach to making local 'authorities' more accountable for juvenile offending. He suggests that if local authorities (or in this case perhaps the Department of Child Safety) were required to meet some or all of the costs of young people who were in their care and held in custody, then they might be prompted to develop more 'preventative programs' or community based alternatives.[105] In the Queensland context perhaps it would promote better court reports and adequate support and representation in court for young people.

He suggests the piloting of a program where the 'authority' or department is given a sum of money based upon the costs of average use of custody over the last three years (or in this case, the costs of young people under child safety care who are also incarcerated). The 'authority' (department) is then charged for any custody in the following year (or in this case, the incarceration cost of however many young people are also under care of the department), but is allowed to keep any savings.

This form of 'cost shunting' has apparently approved successful in reducing juvenile incarceration in Oregon.[106]

Whilst this may be viewed as a radical option, it does demonstrate the fact that accountability for criminality of young people should not land solely with the parents, but should also be extended to the relevant government departments. The government simply cannot continue to promote this double standard of holding parents responsible, whilst absolving themselves.

Recommendation 24
That the department of child safety be held accountable for the numbers of young people on child safety orders who are also incarcerated.

103 As cited in *Child Guardian Report 2006*, Commission For children and Young People, p70.
104 Note 98
105 Allen, note 77, p25.
106 Ibid.

Recommendation 25
That department of child safety officers be automatically fined for failing young people in court.

Naming of Juveniles

YANQ is not supportive of any move to name juvenile offenders. Measures such as naming young offenders runs counter to the United Nations principles protecting juveniles. Some of the relevant points in the Convention on the Rights of the Child are:

- **Article 16(1)**: No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation;
- **Article 16(2)**: The child has the right to the protection of the law against such interference or attacks;
- **Article 40**: which states that young offenders be treated in a manner 'which takes into account the child's age and desirability of promoting the child's reintegration and the child's assuming a constructive role in society'

Similarly, the Beijing rules specifically state that juveniles should not be identified:

- **8.1**: The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling
- **8.2**: In principle, no information that may lead to the identification of a juvenile offender shall be published.

There is no evidence to suggest that naming of juveniles works as deterrent; has a rehabilitative effect; or produces positive outcomes. The idea that naming a young offender may assist them to feel 'shame', which in turn leads to reintegration realistically has no substantial basis.

There are some restorative justice programs that promote 'reintegrative shaming', however these are done in highly controlled environments with strict rules in place to ensure that the process is one that truly aims for reintegration – and not merely naming.

Further, naming of juveniles has the potential to impact people other than the young person. It can subsequently identify a victim, and most certainly in the case of young people, it can identify their families as well. In the United Kingdom, the effect of families being identified as a result of naming, has been demonstrated. Parents have stated that

their right to privacy and family life have been infringed upon by juvenile family members being named publicly.[107]

In addition to this, naming has the potential to further ostracise young people, who are already alienated within the community, which would be in direct conflict with the aim of the juvenile system to *rehabilitate* young people.

On a more extreme level, the naming of young people may provoke vigilante attacks. This has been recognised as a real and valid concern in the UK where Jon Venables and Robert Thompson have been granted new identities and won a high court case to protect their anonymity.[108]

Recommendation 26

In line with the various United Nations Conventions, and in upholding the aim of the juvenile justice system to *rehabilitate*, that the naming of juveniles should be abolished.

[107] Bright, M, 'Parents Cry Foul as 'anti-social' teenagers are named and shamed', *The Observer,* October 12 2003.

[108] They were the young people responsible for the bashing death of 2 year old James Bulger.