YANQ YOUTH AFFAIRS NETWORK OF QUEENSLAND INC

PO Box 116, 36 Baxter Street, Fortitude Valley Q 4006 Phone (07) 3852 1800 or 1 800 177 899 Fax (07) 3852 1441

June 28, 1996

Hon. Denver Beanland,
Attorney-General and Minister for Justice,
GPO Box 149
BRISBANE Q 4001

Dear Minister,

Re: PROPOSALS TO CHANGE THE JUVENILE JUSTICE ACT 1992

Thank you for the opportunity to feedback our position in relation to the proposals for change to the Juvenile Justice Act 1992.

As the peak body in the non-government youth sector in Queensland it is important that YANQ has the opportunity to respond to issues of concern for the sector. Many of YANQ's members work directly with young people who will be affected by these proposed changes.

As a statewide organisation, the timelines have been difficult to work within. This submission is therefore not as comprehensive as we desired. If you have any questions about our submission, please contact me at YANQ.

Yours sincerely,

Penny Carr
Policy and Research Coordinator

YOUTH AFFAIRS NETWORK OF QUEENSLAND INC.

SUBMISSION TO THE ATTORNEY-GENERAL

in regard to

PROPOSALS TO CHANGE THE JUVENILE JUSTICE LEGISLATION

compiled by

Penny Carr
Policy and Research Coordinator
28-6-96

ABOUT YANQ

The Youth Affairs Network of Queensland (YANQ) is the independent non-government umbrella organisation of groups and individuals from Queensland's youth sector. YANQ acts to promote the interests and well-being of young people in Queensland, advocates for them to government and the community, and encourages the development of policies and programs responsive to the needs of young people.

YANQ consists of over 400 individual and organisational members throughout the State, including youth services, advocacy groups, church groups and community organisations with interests in areas as diverse as juvenile justice, housing, health, rural issues, young people with disabilities, young women's issues and young people from Aboriginal and Torres Strait Islander and non-English speaking backgrounds. Associate members are drawn from federal, state and local government bodies.

OVERVIEW

YANQ is concerned by the spirit in which these proposals are put forward. The press release accompanying the proposal document makes several statements which are misleading to the public.

YANQ is concerned that much of what is referred to as 'the considerable public concern...expressed at the continued level of juvenile crime', is generated by comments which mislead the public. Comments in the abovementioned press release such as

'..offenders laughed at the law when they walked away with a slap on the wrist'

misrepresents actual consequences for juvenile offenders and disregards the fact that statistics from the previous Department of Family Services and Aboriginal and Islander Affairs. Those statistics show that both the severity and length of detention of juveniles have increased dramatically since the Juvenile Justice Act 1992 was introduced .

TRANSFER OF DETENTION TO QUEENSLAND CORRECTIVE SERVICES COMMISSION

YANQ is also concerned with the transfer of juvenile detention centre to Queensland Corrective Services Commission (QCSC). The former Office of Cabinet reviewed the administrative location of Juvenile Justice in 1995. The outcome was for it to remain in the Family Services department.

YANQ acknowledges there were problems previously with security in the juvenile detention centres. YANQ believes however, these problems have been adequately addressed. If a comparison was made between escapes from juvenile and adult centres over the last 12 months, juvenile detention centres would show a much lower rate. Enclosed is YANQ's submission to the Office of Cabinet's 'Review of the Administrative Location of Juvenile Justice'.

PRINCIPLES OF JUVENILE JUSTICE

YANQ has some concerns in regard to the addition of four further Principles of Juvenile Justice. YANQ adamantly supports the principle that "a child who commits an offence should be treated in a way that diverts the child from the courts' criminal justice system" (Juvenile Justice Act 1992 p.12) and is concerned that the current proposals dilute the focus of this principle.

In relation to the addition of:

(a) the need for the community to be protected from unlawful behaviour, and

(c) the encouragement of parents to fulfil their responsibility for the care and supervision of their children;

YANQ's concern is in regard to the allocation of resources. The principle in section *(a)* is already addressed by the range of sentencing options which exist under the Act. Detention of children, in line with Australia's obligations as a signatory to the United Nations Convention on Rights of the Child (CROC), is to be used as a last resort.

With the inclusion of these 2 principles our concern is that those resources which would otherwise be directed into the diversion and rehabilitation of children within the system will be redirected. They will be redirected into taking out orders against parents and guardians, and to the building of more institutions to house children who, under the proposed changes, may be arrested more often and detained for longer.

These additions seem to dilute a commitment to diversion of children from the system. Diversion of young people from the criminal justice system should remain an important focus of this legislation. Young people's crime is generally unplanned, opportunistic and episodic; most young people grow out of offending and most children who appear in court do not re-offend (O'Connor I., 1992, CJC Report on Youth, Crime and Justice in Queensland).

Diversion must remain a priority because of the effect of 'criminalising' children once they enter the system.

The addition of,

(d) the strengthening of the family unit by means of suitable disposals

is of concern because of its meaning is unclear.

REFERRALS TO COMMUNITY YOUTH CONFERENCING

YANQ supports the principle of Community Youth Conferencing where:

- it is agreed to by both victim and offender;
- where it is used as a 'mid-way' point;
- where it is conducted by ***independent trained specialists***, and,
- where it is used culturally appropriately.

YANQ applauds this initiative as one which provides an opportunity for diversion for young people at risk of becoming recidivist offenders.

POLICE CAUTIONS

YANQ is completely opposed to the previous cautions being taken into account when sentencing on subsequent offences, as set out in section 19(a) & (b) of the proposals.

The issue of a caution takes place outside of any due legal process. A child issued with a caution will often have admitted guilt in regard to an offence without any prior legal advise or information. Whether a child is guilty or innocent of the offence, there is an enticement to admit guilt. With an admission of guilt (in regard to certain offences) the child will be issued with a caution, as opposed to stating their innocence and having to go through the court system.

The issue of cautions is an example of the juvenile justice system trying to divert a child's progression through the system. It is one which has been efficient in diverting large numbers of young people from further involvement with the system.

The Queensland Police Service quotes the figure of 80% in relation to the percentage of young people cautioned who then ***do not*** re-enter the juvenile justice system. This is an extremely cost effective method of diverting young people from the system and any proposal to water this down should not be tolerated.

The current proposals will raise an anomaly within the system. For example, a young person who receives a caution for a relatively minor offence of shoplifting will be tarnished by this offence in any future conflict with the law. However, a young person who is found through

the court system to be guilty of a more serious offence, eg. arson, which results in 'no recorded conviction', will not have the result of being branded with that offence forever.

Given the potential for the outcome of a caution to be more severe than proceeding through the court system, there is an imperative here that those children who do have legal advise be informed of this. The implication, therefore, is a further clogging up of the system with relatively minor offences, and more young people coming into the system who would previously been successfully diverted.

Ultimately, this will reduce the number of cautions, increase the numbers of young people coming through the system and increase the risk of those young people becoming entrenched in the system. The focus on diverting young people will definitely be watered down as a result of these proposed changes.

ARREST

In dealing with children in Queensland who come into contact with the juvenile justice system, certain principles and standards must be upheld. Prior to the Commonwealth of Australia ratifying the CROC in 1990, every State and Territory in Australia, including Queensland, agreed to this ratification.

The CROC sets out International standards for the treatment of children, including their treatment with the criminal justice system. As a signatory, Australia has a obligations in regard to its treatment of juvenile offenders.

Article 37(b) of that Convention states that:

> *'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'*

Section 23 of these proposals seems to directly contradict Australia's obligation under CROC. While there is no legislative base for enforcing these obligations, there is a moral and ethical obligation to uphold these International standards.

ATTENDANCE NOTICES

In regard to this section YANQ fully supports the submission made by the Youth Advocacy Centre Inc.

FINGERPRINTING OF JUVENILES

YANQ has a number of concerns in regard to proposed changes in regard to the fingerprinting of juveniles.

Sections 27, 28 and 58 all relate to the fingerprinting of juveniles. The proposed changes, if instigated, will result in powers to fingerprint juveniles which are far wider than those in relation to adults.

YANQ is strongly opposed to the proposals in Section 27 and 28. It is YANQ's view that the intent of these sections undermine a principle of natural justice which states that a person is innocent until proven guilty. The taking of fingerprints of any child ***before*** they are charged for an offence is an intolerable dilution of a person's rights before the law.

Further, in regard to the application to the Children's Court Magistrate for the authority to take fingerprints, no mention is made in regard to the defence counsel having the right to be heard. While we are strongly opposed to the instigation of Section 27 and 28, any process must have regard for the defence counsel to be heard in relation to the application.

YANQ is also concerned about the destruction of fingerprints when charges are not proceeded with. Onus for initiating the process to destroy fingerprints within the adult system lies with the person fingerprinted. If charges against the child are not proceeded with, the onus for instigating the destruction of the fingerprints should rest with the system which allowed them to be fingerprinted. Destruction of the prints should be done in the presence and with the knowledge of the child and/or their legal representative. As it exists in the adults system the destruction of fingerprints is a complex process. This same system ***should not*** apply to children.

YANQ also strongly opposes Section 58 of the proposals. Section 58 allows the prosecution, in any case where a child has been found guilty of an offence, to apply to the court for an order to allow the taking of fingerprints of a child who has not yet had their fingerprints taken. It is proposed that the court does not have discretion in regard to an the application and **must** grant such an application. We have a number of concerns with this:

- if the court has no discretion in the granting of an order to allow for fingerprinting there is no reason why application should be made to the court;
- the granting of an order to fingerprint should be related to the likelihood of repeat offending and the type of offence committed. The proposal as written means, for example, that a child found guilty of a street offence by a court could be fingerprinted;
- when and how will the fingerprinting occur after the court grants the order? The finding of guilt and subsequent sentencing of a child is at the end of a lengthy and legal process. This proposal seeks to further lengthen that process. Will fingerprints

be taken then and there? Will the child have to attend a police station in order for the fingerprints to be taken and will it be an offence if they don't turn up?;

- the taking of fingerprints must not be construed to be punishment for the crime. The process will lead children to believe that this is part of punishment.

RIGHT OF ELECTION

A major concern for YANQ in relation to these proposals is their failure to address the complex nature of the system. This complexity means many young people do not understand the procedure to which they must comply and that there are lengthy delays between a child being charged, a finding of guilt or innocence, and sentencing where applicable. A child's sense of time must be considered, as stated in the Principles of the Juvenile Justice Act 1992 section 4(f), in the making of decisions in regard to the child.

A child moving through this system requires a greater conceptual capacity to understand the system than an adult in relation to the adult system. This issue has not been addressed by these proposals and could be argued to be exacerbated by them.

YANQ also has a philosophical objection to investing the power in the Children's Court President to hear all serious offences committed, who, under the proposals will be required to hear matters personally or delegate to a judge of his choice. This proposes a significant change in the way District Court Judges are appointed in this State. YANQ is strongly opposed to that change.

This proposal, which seeks to centralised the power and process in regard to juvenile who commit serious indictable offences in Queensland, is questionable in light of an already clogged, convoluted and lengthy higher court system. With an allocation of resources, these matters could be dealt with in the Magistrates court.

PRESENCE AND LIABILITY OF PARENTS

YANQ is concerned that the changes proposed in this section, while having the intention of making parents accept greater responsibility in the exercise of the parental role, will in fact lead to further family breakdown and dysfunction.

Many children involved in the Juvenile Justice system come from situation where there are varying degrees of family breakdown. The broadening of powers for courts to make orders against parents and civilly enforceable compensation orders can only lead to further disharmony between the child and family. These further pressures on families, whose dysfunction often relates to structural disadvantage, may be enough to pull those families apart.

YANQ is also concerned with what constitutes 'wilful failure by a parent to ensure proper care or supervision', who defines it and difficulties involved in defining it.

SENTENCING POWERS AND OPTIONS

YANQ is concerned with the underlying thrust of these proposals being ' get tough' response to young people's crime which assumes a spiralling youth crime rate and high percentage of involvement in youth crime by Queensland's children.

Youth crime is not on the increase. Although the statistics indicate a 3% increase in convictions for young people , the population increase of 5.1% (of 10-16 year olds from 1988/9-1993/4) suggests that the proportion of young people who are offending has decreased (statistics from the then DFACS, Juvenile Justice Branch).

Less than 1% of children in Queensland are involved in crime (O'Connor I., 1992, CJC Report on Youth, Crime and Justice in Queensland).

It YANQ's firm belief that under the current legislation adequate sentences are available to the courts in sentencing children who commit crimes. Diversion needs to be a primary focus of the juvenile justice system. Where offenders pose a serious risk to society and as a last resort, there must be provision to securely detain children in custody. Provisions for courts to sentence children to lengthy periods of detention exist in the current legislation. In dealing with children in detention (as opposed to adults) the focus must be more acutely on rehabilitation and reintegration with their families (where appropriate) and communities.

The outcomes of excessively lengthy periods in detention for children results only in institutionalisation of those children. This bears a costly outcome for society.

YANQ believes increasing the available lengths of detention for child offenders **will not** reduce the incidence of youth crime. 'No scientific study has ever shown that very severe punishments deter the punished offenders any more effectively than the normal penalties administered by the courts at the present time' (Coalition for Crime Prevention, Fact Sheet 2). The outcome will be the pouring of funds into building new detention centres to house increased numbers of children and subsequently to take resources away from intervention to divert those at risk of becoming recidivist offenders.

Life Sentences

YANQ is particularly concerned with the proposal to make life sentences available in the case of juvenile offenders. Currently the system allows for a maximum sentence of fourteen years in the sentencing of a juvenile.

YANQ believes to make life sentences available as an options in the juvenile system would disregard Section 4(f) of the Juvenile Justice Act 1992. A fourteen year sentence for a child is a period of time beyond the years of their life they will be able to remember. Fourteen years for a child **is** a life sentence. Fourteen years for children is relative to 'life' for an adult.

Imposing a life sentence will mean a child cannot see the end of the process to which they are subject and their is no incentive for that child to rehabilitate. YANQ strongly opposed this proposal.

Hours of Community Service

YANQ agrees that community service is an important option to divert children from the juvenile justice system. However, YANQ disagrees with the proposal to increase the number of community service hours. There are a number of reasons for this:

- YANQ believes that the existing maximums on community service hours are adequate
- it is already difficult for children to complete these hours;
- the resource implications for these changes are enormous. In YANQ's observations the Department of Families, Youth and Community Care (DFYCC) are already struggling to put adequate resources into this area. It is already difficult to find community service placements for all appropriate children;
- the change will result in more breaches which have resource implications fro DFYCC;
- the pressure resulting from these increases will fall mainly on voluntary organisations who provide placements and oversee the orders. It is unlikely that enough organisations will be found. To increase the length of the orders and double the length of time to complete them effectively decreases the number of organisations available. Organisations which may have been able to take two placements per year maybe reduced to one per year;
- organisations who oversee children on community service orders have not been consulted to ascertain the effect on them

CONFIDENTIALITY OF PROCEEDINGS

YANQ is opposed to section 59 of the proposals. YANQ wants to know in whose interests it is to more broadly allow the press into the courts. A study in Toowoomba released in early 1995 showed that public anxiety over violent crime increased over a thirteen month period even though the likelihood of becoming a victim of violent crime did not increase in that period.

YANQ believes that allowing press into children courts where they are currently not allowed does not benefit the public or the child.