

## **Submission**

**By**

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

**In response to the**

**Juvenile Justice Amendment Bill**  
**2001**

Youth Affairs Network of Queensland  
Ph: (07) 38447713  
Fax: (07) 3844 7731  
Email: **yanq@pacific.net.au**

Prepared by  
Siyavash Doostkhah  
Policy Officer  
YANQ  
August 2001



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

The Youth Affairs Network of Queensland Inc. (YANQ) is the peak community youth affairs organisation in Queensland. Representing approximately 400 individuals and organisations from Queensland's youth sector, we promote the interests and well being of young people across the state.

YANQ advocates for and with young people, especially disadvantaged young people, to government and the community. Further, YANQ encourages and participates in the development of policies, programs, projects and research that are responsive to the needs and rights of young people.

## **Introduction**

***YANQ holds a strong view that each human being is entitled to have their fundamental rights fulfilled.*** At the very least, everyone is absolutely entitled:

- to be heard and listened to,
- to have the necessary information to make informed life decisions,
- to be involved in decision making affecting their life,
  - to food, shelter and clothing,
  - to access free health care and education,
  - to associate freely with people of their choice,
  - to live free of categorisation or labelling,
  - to equal remuneration for equal work, and,
  - to sufficient financial support to ensure they do not live in poverty.

*If, as a society, we fail to meet the basic rights and needs of our members, this can be expected to create individual fear and social instability. Society has exactly the same responsibilities to young people as to adults or any other group.*

*We believe that everybody is entitled to have their basic emotional and material rights met. The central role of governments is to ensure that this occurs.*

*Unfortunately, at the moment, Governments in Australia focus on supporting global economic interests.*

*Whilst we believe that everyone is fundamentally equal, some sections of our society do not have access to their fair share of society's resources. This includes young people, whose basic human rights are currently not being met. YANQ is committed to encouraging positive discrimination on behalf of those groups, which miss out in society so that this type of social injustice will be overcome.*

*It is only when everyone's fundamental rights are fulfilled, and each has the means to fully participate, that it will become relevant to talk about "mutual obligation" between society and its members."*  
(YANQ Values)

#### **YANQ is Concerned with the Process as well as the Outcome**

YANQ's value base and operational charter demands that we are driven and informed by our members. Since the release of the draft Juvenile Justice Bill ("the Bill") in May 1992 a range of concerns over the nature of the consultation processes, adopted by government departments, have been expressed by the community youth sector.

YANQ strongly believes that government departments, such as Department of Families, must begin to give credence to the voice of the community youth sector, which has consistently conveyed these concerns over many years without ever witnessing any significant changes to consultation processes.

YANQ is also concerned with the apparent lack of meaningful consultation with Aboriginal organisations and communities. Aboriginal and Torres Strait Islander children are still dramatically over represented in the juvenile justice system.

Recommendation 235 from the Royal Commission into Aboriginal Deaths in Custody states that:

*'The policies of government and the practices of agencies which have involvement with Aboriginal*

*juveniles in the welfare and criminal justice system should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies.'*

YANQ is extremely concerned that "the Bill" does not deal with the issue of over representation and marginalisation of Aboriginal young people in the juvenile justice system.

YANQ is also concerned that despite Australia's international obligations, "the Bill" in its current form has failed once again to incorporate the various human rights principles in legislation. The most relevant international principles and standards which must be recognised are the:

- International Covenant on Civil and Political rights (ICCPR)
- Convention on the Rights Of the Child (CROC)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") and
- United Nations Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules").

Furthermore, YANQ is highly concerned that the Queensland government is still reluctant to implement major recommendations of the Ford Inquiry. For example Recommendation 4 (Chapter 6 p.118) states: That the Queensland Government increase the budget of the Department by \$103 million to permit it to meet the national average per capita welfare spending for children, and agree to maintain the increase in line with the national average. The additional resources should focus on the prevention of child abuse through supporting 'at risk' families, respite care, parenting programs and other early intervention and preventative programs for high-risk families.

The report from the Commission of Inquiry into Abuse of Children in Queensland Institutions made the following conclusion:

*"In making our recommendations we conclude that although it was individuals who perpetrated each act of abuse, they alone cannot shoulder the whole responsibility. Some measure of responsibility must be taken by those to whom the abuses were reported and who did not act, those in charge of the institutions who did not have sufficient safeguards in place to protect the children, those members of religious organisations who turned a blind eye, the staff and management of the Department of Children's Services who did not adequately monitor the children in their care, successive State Governments that have not sufficiently valued children to adequately resource the Department entrusted with their care, and society, which ignored or accepted what happened to children in the care of the State. As a State, we must face up to past wrongs and make proper redress, and ensure that when children are in our care we do them no harm."*

There is a culture of hopelessness that affects our communities that's the direct result of the failing of capitalism. This particularly affects our young people. Yet where do governments lay the blame for the failings of their system? Certainly not with themselves where it should be. They divert attention from themselves by blaming parents and creating the myth of a juvenile crime wave.

### **Specific Issues**

YANQ strongly believes that the Juvenile Justice Act requires a comprehensive review. Meaningful and genuine consultation with the community, including young people, is necessary to ensure the relevance of the legislation. Young people in Queensland have the right to participate in decision-making processes, which have an impact on their lives.

YANQ believes that participation by young people in government decision-making processes is developmental. Further, processes to ensure that disadvantaged and

marginalised young people are given the opportunity to participate at levels comparable with their more fortunate peers must be especially developmental. That is, they need to be developed over time through a range of mechanisms rather than being driven by political expediency.

YANQ is concerned that the proposed changes to the Juvenile Justice Act does not reflect a sufficient level of coordination with other relevant legislative changes such as Police Department's replacement of the Vagrant, Gaming and Other Offences Act with a Summary Offences Bill.

Taking into account the concerns raised above, YANQ endorses the following recommendations in regards to the draft Juvenile Justice Bill.

**Name of the Act:** Name of the Act to be changed to **Youth Justice Act**

**Charter of Juvenile Justice:** The proposed Charter of Juvenile Justice Principles to be amended to:

- a) fully incorporate the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- b) Recommend that both the Chief Executive and Commissioner of Police have responsibility to ensure compliance with the Charter, and administer the Act in accordance with the Principles.

**Diversion from Formal Proceedings:** The Police and Courts must consider diversionary options, for example Youth Justice Conference, for all offences before commencing formal proceedings (eg Court).

**Cautioning:** The Act to provide a mechanism for:

- a) a charge given at a Caution to be reviewed.
- b) legal representation before a Caution is administered.

**Youth Justice Conferences:** The Act to be amended so that:

- a) If a Youth Justice Conference does not proceed and a matter or charge is referred back to a police officer or to the Court, the young person should be given the reasons for the referral and the opportunity to make comment on those reasons.
- b) Young people to be provided with a list of referrals for Legal Aid and other free legal representation.
- c) Access to Youth Justice Conference to be made available to **all** young people in Queensland.

**Right to Silence:** A young person's right to silence must be specifically stated in the Act.

**Support Person(s):** The Act to be amended so that:

- a) A young person may choose the person they prefer to have as an independent support person.
- b) Provision made to allow the support person to explain to the young person their right to silence.
- c) The support person is required to be present during interview of the young person, for all offences (not only indictable offences).
- d) A Justice of the Peace is to be the last choice as a support person, and qualified as an ultimate sentence in this subsection, viz. "..... If no one of the above is available, then a Justice of the Peace ..... etc".

**Proceedings Conducted in a Timely Way:** Any young person should be brought promptly before a Childrens Court in all instances, including when being dealt with under the Police Powers and Responsibilities Act.

**Child Protection:** Care and protection issues should be dealt with under the Child Protection Act and not affect the period young people are kept on remand.



**Right of Election to proceed in District Court:** Young people should continue to have the option of choosing to be dealt with in the District Court.

**Intensive Supervision Order:** This proposed Order will be an ineffective way of dealing with young people under 13 years of age and will only result in creating a further layer of Court Orders. Rather, the Government should ensure that the Department of Families receives more adequate resources to ensure case management of all young offenders.

**Conditional Release Order:** The Chief Executive should provide direction(s) to the young person relating to the requirements to be fulfilled by the young person when undertaking a Conditional Release Order. The direction should relate to the Conditional Release Order program and not to the 'behaviour' of the young person.

**Naming of Young Violent Offenders:** Young offenders should never be publicly identified.

Article 40(1) of the Convention on the Rights of the Child is drawn up to ensure the treatment of children in a manner, which promotes their sense of dignity and worth. Article 40(2)(vi) of the Convention places further emphasis on the need to preserve the privacy of an accused child.

**Age of Young People under the Juvenile Justice Act:** The Act should cover young people up to the age of 18 years. Queensland is the last State/ Territory in Australia, which has not addressed the issue of 17-year-old young people being locked up in adult prisons.

Currently, young people under the age of 18 do not have any voting rights. Young people under the age of 18 also lack access to other legal and social rights because of their age.

**Protection of Rights:** Any amendment(s) to the Juvenile Justice Act should ensure that the rights of young people are protected.

**Capacity Issues:** Recognition, protection or provision should be made in the Juvenile Justice Act to address the large number of children with conduct disorders who have tremendous difficulties with understanding the proceedings and yet do not fit within the category of the mental health court system.

**Bail:** A Bail regime to be put in place that addresses the needs of young people and is resourced to assist communities to support young people.

**Strip Searching:** Strip-searching is a traumatizing and inhumane process that has not proven to be successful for finding illicit drugs. Strip-searching is a form of sexual assault by the state. Strip-searching of young people must be abolished.

**Police Powers & Responsibilities Act:** The Juvenile Justice Act should be self-explanatory and contain its own provisions, to provide comprehensively for the Laws concerning children who commit or who are alleged to have committed offences, and not rely on other legislation such as the Police Powers and Responsibilities Act.

**Legal Representation:** Young people to have the right to legal representation in all matters dealt with under the Act.

## **Conclusion**

YANQ believes that the policy commitments made by Labour Government in the lead up to the 2001 state election were made in a political context, reactive to pre-election Law and Order agenda.

YANQ believes that a comprehensive review of the Juvenile Justice Act is needed to ensure progressive policies are incorporated in the Act. With Labour now governing with a clear majority, there is a moral obligation on the Cabinet to ensure that the Juvenile Justice Act is in compliance with international conventions and for the government to lead a progressive public debate and community consultation. This would bring a balance to the propaganda put forward by mainstream media, which fuels the frustration of uninformed general public.

We are living in a society that is becoming more and more unequal in material terms. We label ourselves as modern, developed and smart. However, unless we start to value our children and young people and have the backbone to legislate to ensure social and economic rights of young people are protected, we are not going to change the tide of neglect and blame which has become norm with successive Queensland Governments.

Government and the Queensland community will continue to struggle with issues relating to youthful offending and crime generally if we do not develop genuine responses to the actual causes. The Juvenile Justice Act will remain rhetorical and ineffective if government does not begin to name, recognise and seriously challenge the real issues relating to youthful offending – that is, the social, political and economic conditions that impact so negatively on so many in Queensland.

