YANQ's
Submission response to the
Review of the Juvenile Justice Act 1992

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%.[1] 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.[2] 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.[3]

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.'[4]

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.[5]

In this study, it was found that 39% of juveniles held on remand were *not* subsequently sentenced to a period of imprisonment.[6] 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

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1 Note 6 p32
2 Id at xii.
3 Id at 100. This imprisonment was most commonly remand.
4 *Juvenile Justice Act* 1992, Schedule 1 s 17.
5 Tressidder, J, Putt, J, *Review of data on Juvenile Remandees in Tasmania*, Australian Institute of Criminology (2005).
6 Id at 5.

> health concerns that work against the prospect of obtaining bail[7]

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[8]

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.[9] 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.[10] 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.[11]

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 breaches; lack of appropriate supports; and lack of accommodation.[12] 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.[13]

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.

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7 Ibid.
8 Ibid.
9 See YANQ, Juvenile Justice Review Forum September, 2007.
10 As cited in King, S, Bamford, D, Sarre, R, *Factors That Influence Remand in Custody*, 2005, p 20.
11 Id at 96
12 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).
13 Note 72.

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'.[14]

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 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.[15]

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.[16]

And in general:

> A youth justice court shall not use custody as a substitute for appropriate child protection, mental health or other social measures.[17]

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

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14 Note 18

15 Allen R, *From Punishment to problem Solving: A New Approach to Children in Trouble,* Centre for Crime and Justice Studies, 2006 p9.

16 Canadian *Youth Criminal Justice Act* s 29(1)

17 Id. s39(5)

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

Allen[18] 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.

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.[19] It is only in exceptional circumstances that a juvenile 18 or under is sentenced to a term of imprisonment.[20]

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:
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> - Flight risk;
> - Risk that the investigation shall be impeded;
> - Risk for continued criminality[21]

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).[22]

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'.[23] 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?

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18 ibid
19 *Basic Facts About Prison and Probation Service in Sweden,* (2006) p 7.
20 Ibid
21 Id at 9.
22 Id at 10.
23 Id at 18.

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.[24] 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.

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.[25]

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.

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[24] Note 7 at 82

[25] Id at 100.

Submission to Review of Juvenile Justice Act 1992 Review

by

the UnitingCare QueenslandCentre for Social Justice

Reducing remand levels

The majority of young people being held in detention centres are on remand (63% in Queensland as of June 30 2005).[26] One of the reasons suggested for this is that young people may be required to appear in court for a non-detainable offence and due to social circumstances, including lack of accommodation and experiencing poverty may fail to appear in court which can then in itself become a detainable offence.

The correlation between high remand numbers and social welfare issues, have been acknowledged within international practices. In Sweden legislation is aimed at reducing juvenile remand numbers, which has resulted in only 12 young people detained on remand in 2005.[27] In Canada, legislative clauses have been introduced stating that young people should not be detained due to social welfare issues.[28] In both of these cases Queensland could benefit from the experience of decreasing the number of young people who are experiencing mental health issues, social disadvantage or require child protection who are in detention. From a justice perspective children and young people require protection, which can not be exempt within the criminal justice system.

The Canadian youth justice legislation looks to curtail youth crime by addressing the underlying causes. As a consequence young people are not to be incarcerated for social welfare issues. The Canadian legislation requires that the youth justice system should be transparent, and reduce the over reliance on incarceration. Moreover the system must reflect that young people lack the maturity of adults, and emphasise rehabilitation and reintegration.
Specifically:

- s29 (1) states that a youth should **not** be held on remand as a substitute for child protection, mental health or other social measures
- s39 (2) youth justice courts should not imprison a youth unless they have considered all alternatives to custody raised at the sentencing hearing
- s39 (5) youth justice court should not use imprisonment as a substitute for child protection, mental health or other social issues[29]

In Queensland the lack of professional representation and advocacy within the children's court is a limitation toward fair and reasonable application of the *Juvenile Justice Act.* This is evident by the

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[26] Commission for Children and Young People, Children and Young People in Queensland: A Snapshot 2007, p99. Percentage derived

[27] Swedish Prison and Probation Service http://www.kriminalvarden.se/templates/KVV_InfoMaterialListing____4022.aspx

[28] Canadian Department of Justice – Youth Justice http://www.justice.gc.ca/en/ps/yi

[29] Canadian Youth Criminal Justice Act http://www.justice.gc.ca/en/ps/yj/ycja.html

lack understanding of particular requirements and needs of young people. Queensland requires specialist 'youth' lawyers who are aware of the special circumstances which are extant due to the age of the person they are representing. Another damaging characteristic of the current system is the delay which results from the lack of specialist children's magistrates (in Queensland there is only one).

Options for Indigenous young people

Murri courts are a positive example of increasing inclusion. This is a small contribution to the systemic problem of over representation of Indigenous young people in the criminal justice system. The over representation of Indigenous people is due to visibility in the community, discrimination, and lack of options. Indigenous young people are also moved through the system at a higher rate than non Indigenous people; being offered less options prior to sentencing (such as cautions).

Indigenous young people face multifaceted discrimination in areas of health, education and housing. Similarly many do not have adequate access to transport, income or adequate health care (such as psychiatric care). This results in a difficulty in meeting court attendance dates. Research demonstrates that Indigenous young people enter the juvenile justice system at earlier ages than non-indigenous young people. Indigenous young people are also referred to conferencing at a lower rate.

We would recommend that Queensland considers suggestions from the Canadian experience. It should be legislated that police consider all other alternatives to charging Indigenous young people. Additionally we would encourage police to exercise their right to **not** take legal measures. To provide a legal foundation for these actions it must be legislated that young people be removed from communities only as an **absolute last resort**. In the Canadian experience, police have youth specialists and specific training around administering the *Juvenile Justice Act*. It is also stipulated that Indigenous communities are provided with the appropriate resources to develop bail supervision and other programs that serve as an alternative to imprisonment.

The integration of the juvenile justice and child safety systems is a foundational element of this submission. From a social justice perspective social issues must be addressed. We need to have an all of government approach to this complex and multifaceted issue.

Sisters Inside
Submission to Review of Juvenile Justice Act 1992 Review

Reducing Remand Levels

In 2004/5 youth detention population in Queensland (excluding young people in adult prisons) was typically made up of almost 2/3 young people remanded in custody awaiting trial/sentencing and just over 1/3 serving sentences[30].

The high number of young people on remand is often a result of under-resourcing

[30] Commission for Children and Young People and Child Guardian 2007: 99

of community services - young people cannot get bail because the services they need (eg. housing or mental health services) are simply not available. In other words, **individual young people are penalised for governments' failure to provide the basic services to which every community member is entitled.**

This is of particular concern when many of the young people in prison on remand have committed non-detainable offences (eg. minor shop lifting). Yet, they can be held in remand for an indeterminate length of time, since Queensland does not currently have statutory restrictions on the length of time young people can be held on remand, nor any requirement for their imprisonment to be reviewed during custody.

These young people often fail to appear in court (a detainable offence) and are then remanded in custody due to their social circumstances (most commonly, accommodation instability or homelessness). In other words, remand functions as **punishment for poverty** for these young people.

In some national and international jurisdictions, the correlation between high remand numbers and social welfare issues has been acknowledged and addressed. In Victoria, for example, bail must not be refused solely on the grounds that a young person does not have accommodation. In NSW, the prosecution of young people in prison for social reasons can be expedited to minimise the time they spend in prison. In Canada, legislation prohibits imprisonment of young people for social welfare reasons. In all these cases, the courts are not required to address the young person's social or economic needs.

However, in Sweden the legislation has gone further. The court can **require** that young people's rights and needs are addressed … resulting, for example, in only 12 young people being detained on remand in 2005 (in a country with twice the population of Queensland).

Other measures that appear to have contributed to reduced numbers of young people in remand in Canada are:

- Treating non-court measures as the normal, expected and most appropriate response to less serious offending.
- Enabling youth courts to focus on more serious cases.
- Encouraging and supporting police to exercise their discretion to reduce the number of young people entering the system.
- Requiring the court to consider all alternatives to custody raised in court.
- Instituting further requirements for Indigenous young people.

Any strategy which reduces the level of imprisonment amongst young people reduces the level of harm inflicted on them and the community as a result of imprisonment.

According to the Issues Paper, a key aim of the new Act will be to reduce the number of children and young people in prison on remand. It is critical that youth matters are expedited through increasing the number of specialist lawyers and magistrates able to address youth issues. It is critical that training on the issues affecting young people is delivered to police and others who play a key role in the

youth justice system. It is critical that young people are never imprisoned for non-detainable offences. It is critical that young people cannot be remanded in custody by police alone, without the checks and balances of judicial processes. It is critical that young people are never imprisoned because of their social and economic circumstances … that they are never punished for being poor or abused or neglected again!

Recommendation 12 - That the new Act prohibit the use of remand in custody for young people.

Options for Indigenous Young People

Nowhere is the process of **criminalisation for poverty and abuse** more evident than amongst Indigenous young people.

Like Indigenous adults in the criminal justice system, Indigenous young people are massively over-represented at all stages in the juvenile justice system. As acknowledged in the Issues Paper, they are more likely to be in detention (remand or post sentencing), charges are more likely to be pursued and they are less likely to be sentenced to diversionary activities (eg. conferencing and cautions).

It is good that cautions can be delivered by a respected member of an Indigenous community. It is good that a respected community member can be involved in conference proceedings. It is good that Youth Murri Court operates in several jurisdictions in Queensland.

However, it is important to acknowledge that these strategies exist in the context of a punitive system of juvenile justice which does nothing to address the root causes of crime. It simply displaces responsibility for administering youth justice from the mainstream system to Indigenous communities. Involvement of Indigenous elders in administering the state system of justice has a similar affect to transferring administrative responsibilities to families. It risks generating role confusion and distracting community leaders' energies from a more developmental community focus on bigger issues such as the multi-generational effects of colonisation.

Ideas from other Australian states which encourage Indigenous community members to administer sentences such as monitoring young people on intensive supervision or conditional release orders (WA) or having extra conditions such as ties to family/community considered when determining bail (NSW), risk further distracting from communities' ability to address the root causes of youth criminalisation.

In order to take a more innovative, developmental approach to Indigenous young people, it is important that any system established is fully and securely resourced. It is important that the respected Indigenous community members are given **full** sentencing authority. It is important that they are given the right to address the causes of crime in their communities, not just the symptoms.

Canada has moved in this direction. It has established a range of specific provisions for Indigenous young people in the youth justice system:

- Prohibiting removal of young people from their community, except as an absolute last resort.
- Making government departments with the authority to remove children accountable for removal of young people from their community.
- Requiring police to consider alternatives to laying charges in all cases involving Indigenous youth and, when appropriate, exercise their discretion to take no legal measure.
- Requiring judges to consider releasing the young person into parental custody parents, or custody of another responsible person.
- Resourcing Indigenous communities to develop bail supervision and other programs that will serve as alternatives to prison.
- Requiring Child Safety to work in partnership with Youth Justice services to provide services to young people charged with an offence.
- Funding diversion programs which include Indigenous culture and involvement by Indigenous elders.

Recommendation 13 - That the new Act require that Indigenous organisations and elders are permanently and securely resourced to manage diversionary and support programs for Indigenous young people.

BRISBANE CATHOLIC EDUCATION

ON THE

REVIEW OF THE

JUVENILE JUSTICE ACT 1992

Reducing Remand Numbers

The majority of young people being held in detention centres are on remand, In Queensland this was 63% as of June 30, 2005 (Commission for Children and Young People, 2007). One of the reasons for this, is that young people may be required to appear in court for a non-detainable offence (such a stealing a Mars Bar) and due to social circumstances (such as accommodation instability, poverty etc) they may 'fail to appear' in court on the date required. This failure to appear *can be* a detainable offence.

In some international jurisdictions the correlation between high remand numbers and social welfare issues has been acknowledged and remedied. In Sweden legislation and policy have worked to significantly reduce juvenile remand numbers, and in 2005 only *12 young people were detained on remand*. In Canada specific legislative clauses have been introduced stating that young people should not be detained because of social welfare issues (such as a substitute for child protection, mental health or other issues).

In Queensland there is a lack of specialised 'youth' lawyers. This needs to be addressed and adequately resourced so that there is no delay in processing these matters. Furthermore, in Queensland, there is only ***one*** specialist Children's Court Magistrate.

Recommendation 6. The State Government, through Queensland Legal Aid, fund specialist youth lawyers who would be based in centres such as Cairns, Townsville, Mt Isa, Mackay, Rockhampton, Bundaberg, Maryborough, Toowoomba, Ipswich as well as the Sunshine and Gold Coast.
These youth lawyers serve young people and children's' courts in the cities where they are based as well as in adjacent towns and communities.

Recommendation 7. The State Government through the Department of Justice appoint specialist Children's Court magistrates so that by 2012 all Children's Courts in Queensland are serviced by specialist Children's Court magistrates.

Recommendation 8.
The Department of Communities address the high percentage of young people held in custody on remand by expanding and establishing community bail accommodation options, for example, Youth Bail Accommodation Service.