

22 January 2016

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

Dear Committee,

Youth Justice and Other Legislation Amendment Bill 2015

The Queensland Association of Independent Legal Services Inc (**QAILS**) welcomes the *Youth Justice and Other Legislation Amendment Bill 2015* (the **Bill**), which will restore some balance to Queensland's youth justice system. Rather than focussing on ineffective punitive measures, the Bill appropriately prioritises rehabilitation and other interventions that will reduce youth offending and keep our community safe.

About QAILS

QAILS is the state based peak body representing funded and unfunded community legal centres operating throughout Queensland. Queensland's community legal centres have almost 40 years of service delivery experience providing free information, advice and referral, casework and representation to the community.

In 2015, Queensland's community legal centres have provided legal help to more than 1,000 young people (aged under 18), many of whom have been engaged with the youth justice system and/or the child protection system. QAILS members also have significant experience assisting victims of crime, allowing community legal centres to balance the interests of people who commit criminal offences, their victims, and the broader community.

In light of QAILS' submission to the government at the time of the *Youth Justice and Other Legislation Amendment Bill 2014*, which highlighted our concerns with the harsher sentencing laws for Queensland youth, QAILS welcomes this Bill.

THE SPECIFIC PROPOSED CHANGES

The Bill essentially reverses youth justice reforms brought in by the *Youth Justice and Other Legislation Amendment Bill 2014* and the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*.

The Bill contains provisions that:

1. Remove Boot camp (vehicle offences) orders and boot camp order from the range of sentencing options for children;
2. Prohibit publication of identifying information about a child;
3. Remove breach of bail as an offence for children;
4. Make childhood findings of guilt for which no conviction was recorded inadmissible in court when sentencing a person for an adult offence;
5. Reinstate the principle that a detention order should be imposed only as a last resort and for the shortest appropriate period when sentencing a child;
6. Reinstate the Children's Court of Qld's (CCQ's) sentence review jurisdiction and expand the jurisdiction to include Magistrates' decisions in relation to breaches of community based orders; and
7. Reinstate into the PSA the principle that imprisonment is a sentence of last resort and a sentence that allows the offender to stay in the community is preferable.

These positive amendments reflect international evidence that increasing the severity of punishment is ineffective in reducing the risk of reoffending by children and young people. It has also been viewed as unduly punitive by stakeholders, who advocate instead for measures which divert children and address the actual causes of offending.

Youth Justice Amendments

The abolition of **Youth Boot Camp detention** adheres to the findings of the government's external evaluation which concluded that it was an ineffective program and instead encouraged the need to explore evidence-based responses that meet the complex needs of young people. The repeal of this type of order will appropriately bring Queensland back in line with the majority of Australian jurisdictions.

The prohibition of '**naming and shaming**' **child offenders** duly acknowledges that publicising identifying information of a child can result in stigmatisation of the young person and their family, and can harm rehabilitative efforts and future employment prospects. It has also been found that it has no deterrence effect.

The removal of the offence of a juvenile **committing an offence on bail** is welcomed as it was an unnecessary reform given its unreasonably punitive nature and inconsistency with sentencing principles. In *R v S; R v L* [2015] Q CHC 3, Richards DCJ held that this provision offends s 16 of the *Queensland Criminal Code* which holds that a person should not be punished twice for the same offence (also known as 'double jeopardy').

Sentencing Amendments

Requiring that a detention order for children is imposed only as a last resort and for the shortest appropriate period would bring the Queensland law back to a fair and more proportionate position. This approach supports evidence that detention is an environment that fosters further criminality and can be particularly hazardous for impressionable young offenders. It provides offenders with a better ability to create criminal networks and to learn better offending strategies; something young offenders should not be exposed to where possible.

Reinstating the sentence review powers in the Youth Justice Act is also a welcomed amendment as it provides an efficient way of dealing with inappropriate sentences imposed on juveniles and quick correction of errors made by sentencing magistrates, rather than a cumbersome and formalistic appeal under s 222 of the *Justices Act 1886* (appeal to a single judge).

The 2014 reform inserted s 9(12) into the *Penalties and Sentences Act* – providing that s 9 overrides any other Act or law to the extent that in sentencing an offender for an offence, court must not have regard to any principle that a sentence of imprisonment should be imposed only as a last resort. The amendment in this Bill will again bring Queensland back in line with all other jurisdictions in Australia and also importantly recognises the established common law principle of considering imprisonment as a last resort, except for certain offences in recognition of their serious nature and need for community protection. The removal of s 9(12) gives greater judicial discretion back to the courts, upholding the fundamental notion of individualised justice.

Special considerations for Children

The laws relating to children play a fundamental role in the community and any changes need to be evidence-based and largely supported by the community itself. There is no statistical evidence that there has been an increase in the number of young people offending. For young people, early intervention, prevention and rehabilitation is most important in order to avoid a life of crime. The developing brain and maturity of a child means that they are less aware of the impact of their actions and consequently also more responsive to rehabilitative processes. Intervening early and providing positive support and individually targeted processes of rehabilitation are most encouraged where reasonable.

Increasing the legal age of an adult from 17 to 18

It is noted that the Queensland government is consulting on another Youth Justice reform in relation to increasing the legal age of an adult to 18, whereby 17 year olds would be considered under the Youth Justice laws. Queensland is currently the only state or territory in Australia to regard 17 year olds the same as those 18 and over and it is encouraged that this inconsistency should be amended. Seventeen years old should not be exposed to adult correctional centres as it introduces young people to a harmful social environment.

CONCLUSION

Working in partnership is key in addressing complex social issues such as youth justice, supporting both innovation and deep understanding. No single department or service provider, working alone, can ‘solve’ a complex problem.

While this Bill is a welcome start and has QAILS’s support, there is more to be done.

We believe therefore that **ongoing and meaningful collaboration**, particularly with the youth sector, will be critical in creating a youth justice system that genuinely reduces the involvement of children and young people in the justice system rather than entrenching them within it.

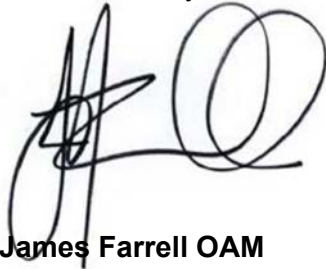
QAILS joins with the Anglican Church Southern Queensland, the Uniting Church Queensland Synod, Queensland Churches Together (representing 16 Queensland member

churches and Christian communities), to suggest a Government-hosted cross-portfolio, cross-sectoral workshop or forum to inform youth justice policy reform (see **attached** proposal).

Such an initiative offers a way for the Queensland Government and Parliament to trial complexity tools and methods on a compelling social policy problem that is relatively small in scale, but of broad concern to both government and the community. It is consistent with the Attorney-General's stated desire to encourage true participation from people at every step of the process, and helps to build ownership across the community for the youth justice reform agenda. We, like many others, are willing and eager to be a part of real systemic change that will produce positive results – for our young people, their families, the victims of crime, and the broader community.

You can contact me on (07) 3392 0092 or director@qails.org.au to discuss this issue further.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large, loopy 'F' and a large 'O'.

James Farrell OAM
QAILS Director

Youth justice in Queensland

Doing things differently to get different results

Our challenge

Rates of youth detention in Queensland have been increasing for several years, against the national trends (which are plateauing or declining). This includes increasing numbers of Aboriginal and Torres Strait Islander young people, and girls.^{1 2}

Making change happen

The proposal

The Queensland Government, in partnership with the community sector, hosts an intensive two-day workshop that brings together people with unique knowledge from across the youth justice system.

About the workshop

The workshop will use innovative complexity strategies, specifically designed to gain insights into issues where traditional methods of analysis and design have not delivered the desired results.

Diverse stakeholders share their unique perspectives, knowledge and experience of the current state.

Participants use this shared understanding as a basis for designing small scale initiatives and strategies for improvement that can be adjusted/refined, or easily and quickly halted if not obtaining the desired results.

What outcomes should we expect from the workshop?

In the two days participants will co-create:

- a collective understanding of youth justice issues that reflects the reality, experience, opportunities and constraints of the varied stakeholders in the room
- agreed priorities for action
- a positive and energising environment in which ideas and initiatives can be put forward and 'sounded out' with diverse stakeholders with minimal risk
- small scale low risk initiatives and strategies for improvement, designed for innovation and quick outcomes
- a list of people willing to work collaboratively to progress these strategies
- a summary of issues requiring further research and analysis to inform action.

Participants could include:

- Aboriginal and Torres strait Islander leaders, Elders and Justice group members
- policy makers from education, youth justice and communities
- health (including mental health), social and support workers
- legal, court, corrections and police officers
- teachers and school personnel
- young people with involvement in the youth justice system
- stakeholders from community, welfare and faith based groups working in the area
- academics working on related issues
- philanthropic youth-focused trusts or peak bodies with an interest in innovative policy development.

The youth justice sector has a history of cross sectoral collaboration, and is keen to engage with and contribute to policy development in this area.

Duration and location

2 working days, Brisbane region

Cost

Approximately \$16,000 (for workshop design, facilitation and documentation)³

Context and rationale

Youth justice urgently needs a renewed vision and strategy for reform.

The Palaszczuk Government inherited a legacy of youth justice legislation that lacks a clearly articulated policy approach and a credible evidence base.⁴ The Government has committed to a number of major changes in philosophy and approach to begin this process of renewal, including repealing the most punitive and ineffective aspects of the youth justice legislation;⁵ termination of the boot camp trial;⁶ and directing refreshed attention to early intervention and prevention programs.⁷

The Government is seeking to continue this pathway to continuous improvement across a range of justice-related areas by working in a meaningful partnership with the community:

*We are all working towards the same goals and only by encouraging true participation from people at every step of the process can we ensure those goals are reached.*⁸

Youth justice is *complex* (not complicated)

Working in partnership is critical in addressing complex social issues. It supports both innovation and deep understanding. It can also provide challenges — for example, when all the stakeholders concerned about a particular issue are convinced that their version of the problem (and solution) is correct.⁹

This means that complex problems like youth justice cannot be solved by traditional methods of policy analysis and design. Traditional methods excel at solving complicated problems. Aspects of building regulation, for example, are governed by precise, known and unchanging cause-and-effect rules that can be implemented by experts with a high degree of certainty about the outcomes.

With complex issues, ‘solving’ one aspect often reveals or creates other, even more complex, dilemmas. In a complex system, it is not uncommon for small changes to have big effects; big changes to have surprisingly small effects; and for effects to come from unanticipated causes.¹⁰

Complex problems need a different approach: new tools for identifying ‘unanticipated consequences and unrealised opportunities’¹¹

Achieving different outcomes requires different input.

There are tools and methods that are *specifically designed* for working with complex issues, multiple stakeholders and differing perspectives, which:

- support an in-depth, shared understanding of the current state
- identify possible directions for immediate action, and build in the ability to adjust and refine those pathways in real time
- provide signposts for how we decide if we’re tracking (together) toward our desired future.

This proposal offers a way for the Queensland Government to trial complexity tools and methods on a social policy problem that is relatively small in scale, but of cross-portfolio and cross sectoral concern.

References

¹ AIHW (2014), *Youth Detention Population in Australia*, released 28 Nov, p. 39. At: www.aihw.gov.au/publication-detail/?id=60129549676

² Queensland Government (2014). “Youth Justice Pocket Stats 2013-14”. Department of Justice and Attorney General; Children’s Court of Queensland Annual Report 2014 – 15.

³ Proposal costs, methodologies and deliverables are premised on using Cognitive Edge methodologies: <http://cognitive-edge.com/about-us/>

⁴ *Youth Justice and Other Legislation Amendment Act 2014*. The Bill was overwhelmingly criticised by those agencies and professionals working in this area who provided submissions during the public consultation into the Bill. Submissions are available at www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/YouthJustice2014

⁵ The Hon. Yvette D’Ath MP, Attorney-General and Minister for Justice (2015). Address to Queensland Community Legal Centres Conference, 27 May.

⁶ The Hon. Yvette D’Ath MP, Attorney-General and Minister for Justice (2015), Media release, ‘Boot camp bill hits \$16.7m, independent evaluation finds’, August 20, statements.qld.gov.au/Statement/2015/8/20/boot-camp-bill-hits-167m-independent-evaluation-finds

⁷ *ibid*

⁸ *ibid*

⁹ Conklin, Jeff. (2005) *Dialogue Mapping: Building Shared Understanding of Wicked Problems*. Wiley.

¹⁰ OECD (2009) *Applications of Complexity Science for Public Policy: new tools for finding unanticipated consequences and unrealized opportunities*, www.oecd.org/science/sci-tech/43891980.pdf

¹¹ *ibid*