

Submission by
YOUTH ADVOCACY CENTRE INC
to the
Inquiry of the Legal Affairs and Community Safety Committee
In relation to the
Youth Justice and Other Legislation Amendment Bill 2019



July 2019

INTRODUCTION

The Youth Advocacy Centre Inc (YAC) is a well-respected specialist community legal and social welfare agency for young people who are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years old) and/or are homeless or at risk of homelessness (15-25 years old) – young people who are among the most marginalised and excluded by our community and often the most harshly judged. This is particularly unfair given that these young people are usually “troubled”, victims of their environmental, family or personal circumstances, becoming “troublesome” as a result of these factors. YAC’s aim is to provide a safety net of legal and social welfare services and then seek to transition young people to more secure lives and opportunities, for their benefit and that of the community more broadly.

COMMENT IN RELATION TO THE BILL

YAC is supportive of the Bill’s provisions which aim to address barriers (or perceived barriers due to some apparent confusion with the current bail framework in relation to children) in the youth justice system which are contributing to high levels of remand in Queensland. The proportion of those young people held in custody on remand is understood to be over 80% (with those in custody on sentence therefore being less than 20%) – that is, they are **alleged** offenders at this point. The level of remand runs counter to the concept of “innocent until proven guilty” and, while its impact is currently exacerbated by the use of the watch house to hold children for days or weeks at a time, it is an issue which needs to be addressed in general.

Time in custody, including remand, is to be avoided because research indicates that being incarcerated is itself criminogenic. Every time we put a child into a custodial setting, there is a greater risk that they will return to it – even Youth Detention Centres which are ostensibly better suited to working with children and have procedures, activities and interventions which seek to ameliorate that risk.

However, at the present time, police watch houses, effectively maximum security cells for adults, are being used to hold children for lengthy periods. This is a crisis situation as police watch houses and QPS procedures are not designed to hold children for more than a few hours at a time.

It is noted that the Corrective Services Act 2006 envisages that adults should not generally be held in the watch house for more than 21 days, on bail or sentence. There is no such limit provided for children in the Youth Justice Act 1992. That is because there has always been an expectation that children will not be held in watch houses for a sustained period of time (supported by an MOU with QPS on the use of watch houses for children in October 2004 and the QPS Operational Policies Manual). The police themselves have readily acknowledged that they have limited skills and capacity to manage children in the watch house and they do not want to have to take on this role.

YAC believes that being held in the watch house environment is detrimental to the physical and mental wellbeing of children. YAC staff and its Chairperson have visited the watch house at the invitation of the officer in charge. QPS are clearly going to some lengths to ameliorate the situation to the extent that can be achieved in what is a maximum security adult facility. The only exercise option is 15 – 60 minutes a day in a 4m x 4m courtyard with high walls and no vegetation. Aside from that, the children are effectively in glass cages for days on end with very little to do. For young women in particular, using the toilet or shower with exposure to cameras viewed by male staff is problematic. Due to the layout of the watch house, adult detainees and children can be visible and audible to each other.

We run the risk of the cohort consigned to stays in the watch house having ongoing involvement in the Youth Justice system as a result: the aim is to reduce re-offending, but this situation could actually assist ongoing involvement in the system rather than diversion from it. It is to be hoped that the finalisation of the security upgrade to the detention centres will be finished **very soon** making much needed bed space available.

If the level of remand in custody was significantly reduced overall, the potential for the use of watch houses now and into the future would necessarily cease to exist.

Therefore, in both the short and the long term, the amendments in relation to bail are important in supporting reduction in the level of remand, together with other government initiatives such as the bail support programs.

Below are some more specific comments.

Timeliness and priority for young people in custody

The prosecution officers and the defence lawyers are key to ensuring that matters are dealt with in a timely manner, without compromising the right of children to appropriate representation and choices as to how they wish their matter to be dealt with. It is YAC's view that there are times when the prosecution and defence do not sufficiently appreciate the need for children's matters to be dealt with expeditiously and appropriate training and professional development opportunities (particularly for accreditation for appearance in the Childrens Court jurisdiction) needs to emphasise this.

YAC recognises that delays may be the result of insufficient resources to be able to prioritise Childrens Court matters. There has been a commendable increase in resources "inhouse" for Legal Aid Queensland (LAQ) in recognition of this. Sadly, this has not been reflected in increases in the community legal centre sector for those centres who have specialist youth justice lawyers nor in funding for private practitioners acting for clients through LAQ grants of aid.

Pre-sentence reports

The Explanatory Notes state that "there may be other practical ways that the court can obtain the information it is seeking, for example, directly from the child's legal representative". It seems odd that the court would not simply ask a lawyer in court about any matter it was appropriate for her to apprise the court of rather than order a report. Care needs to be taken that this provision does not unintentionally put the lawyer in a compromised position with her client and relates to issues which are not within her role, and potentially fails to note that legal privilege may prevent a lawyer from providing the information required.

Information sharing

YAC welcomes the underlying principle that wherever possible and practical a person's consent should be obtained before disclosing confidential information relating to the person to someone else. Information sharing provisions do not need to be relied upon where consent has been given and a person is aware that information is being shared and the purpose for that. This is more likely to ensure the engagement of the person in any process if they feel that others are working with them rather than in a secretive or non-transparent manner. This in turn is more likely to ensure that any support provided is taken up.

YAC's main concern in terms of sharing information is with respect to education facilities and whether this may put children at risk of being suspended or excluded – particularly since State Schools may suspend simply on the basis of charges and suspend or exclude where there is a conviction (even where a conviction is not recorded), irrespective of whether the offences had anything to do with behaviour related in any way to the school. Disengagement from education and training is a key risk factor in ongoing involvement with the youth justice system. Suspension and exclusion undermine the goal of diverting children.

Electronic monitoring devices

YAC endorses the rationale behind these provisions as set out in the Explanatory Notes. It is understood that the intent is that electronic monitoring devices not be used with children at all. However, the wording that a court cannot "require" the "imposition" of electronic monitoring devices may not convey that meaning and we believe that this could be stated more directly. The current wording may enable a device to be worn "by consent" or "voluntarily". It is noted that young people in custody will often "consent" to almost any condition to obtain their liberty.

Body worn cameras and CCTV in YDC

YAC cautiously welcomes these provisions for the reasons articulated in the Explanatory Notes. It notes, however, that the operation of these provision will be subject to guidelines and that the sections will not come into effect until the guidelines are developed. YAC would be keen to have an opportunity to comment on the guidelines.

Terrorism related bail and amended sentencing principle

YAC does not agree with the amendments consequent to the passing of the *Justice Legislation (Links to Terrorist Activity) Amendment Bill 2018* (Terrorism Bill), and refers to its submission to the Committee in relation to that Bill; nor does it agree with the proposed amendment to section 150 (sentencing principles).

YAC's concern in relation to the Terrorism Bill was that it expressly intends to treat children in the same way as adults despite the fact that we have a modified criminal justice system for dealing with children who have, or are alleged to have, broken the law. This is because children are considered to be less culpable than adults due to their limited life experience and an increased understanding that children and young people's development involves periods of opportunistic action, risk taking and reduced consequential thought. We also know that their behaviour can be changed with the right interventions.

Issues of bail are now also being compromised as a result of the Terrorism Bill.

Similarly, the introduction of new subsection (3) to section 150 fails to differentiate adults from children. It is highly concerning that our youth justice system is incrementally being eroded through such inclusions. It is our understanding that the Sentencing Council, in its Final Report and Recommendations on *Sentencing for criminal offences arising from the death of a child homicide* in October 2018 were not intended to apply to children in the youth justice system.

Additionally, some clear anomalies arise: for example, if a ten year old was considered responsible for the death of an eleven year old.

Bi-partisan approach to youth justice

From a broader perspective, YAC notes the recent significant investment in relation to youth justice in the recent State budget, recognising the importance of prevention and early intervention as well as therapeutic responses, which aligns well with YAC's approach and is to be welcomed.

It is a great concern that crime, and particularly, youth justice continues to be a 'political football' with the result that not only is there a great deal of misinformation (to be generous) about youth offending, but there is a lack of consistency of law, policy and practice as different political perspectives take hold. This is not helpful in developing a coherent and appropriate response to youth offending.

The data contained in the Magistrates Court of Queensland Report for 2017-18, indicate that children made up only 8.1% of defendants appearing in the jurisdiction and were alleged to be responsible for just under 10% of the charges laid. (The increase in numbers in the Childrens Court between 2016-17 and 2017-18 is associated with the inclusion of 17 year olds.) This obviously means that over 90% of defendants are adults and consequently, one would surmise, the far greater threat to community safety is adults, not children.

"For decades, adolescents in trouble with the law have been portrayed as scary, predatory and less than human.....These images dominate our understanding and prevent us from seeing them as they actually are (Dorfman and Schiraldi 2001), as we would if they were our own children or a neighbour's child. They prevent us from seeing them as young people with creativity and energy, and smarts, and possibility, in need of help to get back on track and very much worth the investment."

YAC reiterates its call for a bi-partisan supported, evidence based approach to responding to youth offending, with particular emphasis on prevention, early intervention, diversion and therapeutic responses, in order to get children on the right track and provide their families with the resources and capabilities to support this. We need to avoid the “back and forth” changes in policy which further contribute to the system failing children and the community. As such, we would urge all Members of the Committee and the House to support the amendments relating to bail proposed in this Bill and endorse the general direction currently being taken in responding to youth offending and youth offenders.

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