

Submission in response to the Safer Streets Crime Action Plan – Youth Justice

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The Youth Justice Research Division ('YJRD') thanks the Queensland Government for this opportunity to contribute in response to its 'Safer Streets Crime Action Plan – Youth Justice' ('the Action Plan'). The YJRD would welcome the opportunity to provide more detailed submissions on specific proposals arising from this process. The YJRD acknowledge and applaud the Government's proposal to provide a Blueprint to 'further assist young people and their families to demonstrate their full potential.' The YJRD urges the Government, in developing an innovative 'youth justice system that leads the nation', to:

- take an evidence-based approach. The implementation of any legislation, program or service should be informed by evidence as to what works and what does not work in youth justice;
- ensure that any program or service implemented by any stakeholder is comprehensively evaluated; and
- recognise that developmental characteristics of young offenders impact on their involvement in criminal activity and the justice system (Scott & Steinberg 2008). These characteristics differentiate young offenders from adults and justify a separate system of youth justice.

Any concern about a spike in youth offending is unwarranted. The percentage of young offenders in Queensland has remained relatively unchanged for a number of years. In fact it has decreased in the last couple of years (ABS 2013; CCQ 2012).

The President of the Children's Court of Queensland ('CCQ') stated in his 2012 Annual Report that '[t]he statistics seem to demonstrate that there are a small number of persistent offenders who are charged with multiple offences' (CCQ 2012, p. 6). It is these offenders that need the most assistance. Many of these offenders will have a child protection history, be homeless (AIHW 2012a), be in out-of-home-care, engage in substance abuse, have a mental and/or physical illness, and/or low levels of educational attainment (AIHW 2011). The YJRD suggests that assistance to these young people is best achieved through early, front-end intervention, taking an evidence-based and holistic approach. This submission addresses these issues, and specifically responds to a number of the questions raised in the Action Plan.

EARLY INTERVENTION

The Action Plan sets out the following questions:

Is the Early Intervention Youth Boot Camp a good way to get young people back on track and back in school?

Are there other ways to get young people back on track?



What other strategies are there to intervene early and prevent young people starting to offend in the first place...?

How can future investment in youth justice enable the most efficient and effective delivery of services to young people?

Future investment in youth justice should be guided by the principles of ‘justice reinvestment’ (Law Council of Australia 2013). Funds directed toward the expansion of custodial facilities should be redirected to crime prevention, reduction and rehabilitation (Smart Justice for Young People 2013, p. 11). Justice reinvestment involves geographic analysis of justice system data to determine which community and neighbourhood ‘hotspots’ contribute most to prison admissions and identify those communities and neighbourhoods to which people in prison often return after their release. Once these hotspots have been identified, further data analysis is undertaken to identify any particular service gaps or systemic or legislative factors which may be contributing to the high rate of prison admissions or offending in those areas. A range of reinvestment options are then generated which are designed to redirect funding that would otherwise be spent on incarceration of people from hotspot areas and reallocate it towards more effective initiatives as determined on the basis of the empirical data.

In the United States of America, reinvestment has often involved funding of ‘front-end’ initiatives such as early-intervention, post-release and other preventive community programs. Reinvestment may also involve specific policy and legislative changes, such as financial incentives to encourage courts to use alternative sentencing options or changes to bail and remand laws.

Justice reinvestment has successfully facilitated the transformation of numerous incarceration-focused justice systems across key American states and local jurisdictions toward prevention and community-oriented justice systems. It simultaneously created significant cost efficiencies for state and local governments (see Legal and Constitutional Affairs Reference Committee 2013, p. 48). Following a recent inquiry into the value of justice reinvestment to criminal justice in Australia, the Legal and Constitutional Affairs References Committee supported the implementation of justice reinvestment in Australia (Legal and Constitutional Affairs Reference Committee 2013). If the Queensland Government wants an evidence-based, cost-effective approach, justice reinvestment is a philosophy of intervention that warrants serious consideration.

Front-End Initiatives

Research clearly indicates that individual, family, peer and wider community factors contribute to the risk of being involved in the justice system (Watt, Howells &



Delfabbro 2004). Programs and/or services should focus on increasing young people's engagement with education, family or leisure pursuits in an attempt to reduce the number of youths entering the criminal justice system (NSW Attorney General and Justice 2009, p. 6). Family-based interventions that increase parents' capacity to care for their children have long been identified as strategies to prevent the initial involvement in offending behaviours (Watt, Dadds, Best & Daviess 2012). In light of the observations made by the President of the CCQ in his 2012 Annual Report, the YJRD recommends that Queensland increase investment in programs and services that increase young people's engagement with education, family and leisure pursuits.

Early Intervention Youth Boot Camps

It is unclear whether the Early Intervention Youth Boot Camp ('EIYBC') on the Gold Coast is/was effective in addressing the complex needs of at risk youth. It is disappointing that the evaluation of the Gold Coast trial was not completed prior to tenders being called to roll out EIYBCs to Rockhampton and the Fraser/Sunshine Coast.

The Gold Coast's program involves an initial ten-day, short-term confinement program ('the first phase') which emphasizes structure, routine, discipline, respect and physical activity (Department of Justice and Attorney-General 2013). Research indicates that the militaristic nature of boot camps are not effective in reducing recidivism, and thus cannot be suggestive of a way to get young people back on track (Wilson et al 2005). The associated disruption from school and family seems unnecessary and contrary to the evidence that suggests that engagement with these institutions has a positive impact on at risk youth. The second phase of the EIYBC that involves referral to community-based services is commendable. Especially if those programs said to be available in the Sentenced Youth Boot Camp ('SYBC') program, such as 'intensive family support and the delivery of the [sic] cognitive behavioural therapy' (Department of Justice and Attorney-General 2013) extend to the EIYBC. However, the second phase of the EIYBC could and should be decoupled from the first phase to achieve the same result.

LEGAL PROCESSES

Questions relating to improvements in legal processes also featured in the Action Plan.

How could the legal system be improved so young people charged with crime are dealt with quicker?

What other areas should be reviewed to try to reduce the number of young people committing crimes?



The YJRD provide comment upon two areas of the legal process:

Young People who are Potentially Unfit for Trial

Inconsistent with international research detailing unique fitness competency limitations experienced by young people, recent research demonstrates that young people in Queensland are half as likely as adults to be found unfit for trial (O'Leary, O'Toole & Watt 2012). The low rate of referral of young people to the Mental Health Court largely accounts for this discrepancy. The same research revealed that many more young people were identified by legal and youth justice professionals as potentially unfit than were referred to the Mental Health Court. The main reasons for non-referral appear to be pragmatic or tactical (Watt, O'Leary & O'Toole, forthcoming). That is, the delay occasioned by referral to the Mental Health Court, the perceived uncertainty in outcome in the Mental Health Court and the lack of facilities designed specifically for young people found unfit for trial weighed against resort to this avenue. Delays are particularly inappropriate for young people (see *Convention of the Rights of the Child* ('CROC') art 40(2)(iii) & *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('Beijing Rules') r 20.1). Children's Court Magistrates should be given power to order the expert and timely assessment of a young person's fitness in order to make consequential orders. It should be noted that facilities for young people on forensic orders are currently inadequate (O'Leary, O'Toole & Watt 2012). This needs to be addressed urgently.

Criminal History Proposal

Evidence suggests that most young people grow out of criminal activity (Richards 2011; Mulvey 2010; Piquero et al 2001). However, if young people are labelled and feel stigmatised they are more likely to reoffend (McGrath 2009; Hosser et al 2008). The current law permits courts when sentencing an adult to consider only their recorded juvenile convictions. Arguably, public interest considerations go some way to justifying such recourse for the inevitably more serious offending behaviour that would result in the recording of a conviction. However, the proposal noted in the Action Plan to extend judicial access to the full juvenile criminal history (including where convictions are not recorded) is unnecessary and detracts from the purpose of not recording a conviction, which is to avoid such stigmatisation.

BAIL

What new ways could support young people on bail to stay out of trouble?

What other areas should be reviewed to try to reduce the number of young people committing crimes?



To ensure that young people are not refused bail due to lack of or unstable accommodation, it is essential that funding for suitable residential bail support services, such as the Youth Bail Accommodation Support Service ('YBASS'), be continued and extended state-wide.

Currently, some young offenders within Queensland are provided with the opportunity to participate in a conditional bail program (Youth Justice Services 2012). The conditional bail program, as supervised by Youth Justice Services, should continue to be reserved for young people who the court believes to be highly unlikely to comply with bail conditions without structured supervision. Further, the supervision of conditional bail needs to continue to be administered on the basis that a person is innocent until proven guilty in a court of law. For this reason it would be inappropriate for a court, in undertaking bail supervision, to make orders intended to address a young person's alleged offending behaviour, where that offending has not yet been admitted or proven. Accordingly, conditional bail supervision by Youth Justice Services should continue to be directed to improving a young person's prospects of complying with bail conditions.

Breach of Bail Proposal

The current Queensland approach of bringing those young people accused of breaching bail before a court for reconsideration of their bail is preferable to the proposal mentioned in the Action Plan to make breach of bail an offence. The law properly distinguishes sentences (which follow a criminal conviction) and bail (which is intended to ensure an accused attends court). This distinction should not be further blurred (see Stubbs 2010). The New South Wales Law Reform Commission ('NSWLRC'), in its recent review of bail, correctly observed that functions of the criminal justice system, such as denunciation, punishment and deterrence, 'are not the province of bail law' (NSWLRC 2012, p. 17, [0.5]). The proposal, to make 'breach of bail an offence to reduce the number of repeat young offenders', exceeds the province of bail law and, if the recent experience of New South Wales is any guide, will not be effective. Even in New South Wales where there is no offence of breach of bail, the NSWLRC noted that arrests for failure to comply with bail conditions had increased, resulting in more young people in detention and an increase in court time but there was no evidence of a corresponding 'statistically significant reduction in crime as a result' (NSWLRC 2012, p. 14, [0.50]). The criminalisation of bail breaches will increase offending rates of young people.

Young people are often subjected to multiple (see NSWLRC 2012, p. 195, [12.17]), stringent bail conditions aimed at controlling their behaviour, such as curfews and non-association requirements (NSWLRC 2012, p. 14, [0.49]; p. 197, [12.23]), sometimes unrelated to their offending (Stubbs 2010; NSWLRC, 2012, p. 194, [12.13]-[12.14]). Yet, young people are often dependent on others to meet their bail



conditions (NSWLRC 2012, p. 169, [11.9]-[11.10]). Combined with developmental considerations, these factors make it more difficult for young people to comply with bail conditions (NSWLRC 2012, p. 193, [12.12]) and justify the current differential treatment for young people who breach bail.

SENTENCING

The majority of questions in the Action Plan related to sentencing young people and addressing concerns about recidivism.

Is the Sentenced Youth Boot Camp a good way to stop the cycle of youth crime and close the revolving door of youth detention?

Are there new options the court should have available to them when sentencing young people?

How can sentencing better address the causes of offending by young people?

What else could be done to address the causes of crime for young people already in the justice system?

What other areas should be reviewed to try to reduce the number of young people committing crimes?

Are there other ways to stop the cycle of youth crime and detention for people who are committing serious or repeat crimes?

To assist young people to stop offending ... what kinds of services or programs are needed...?

What other strategies are there ... to prevent [young people] from continuing to offend?

Are there other ways to get young people back on track?

The sentencing of young people in Queensland should focus on rehabilitative programs that address the underlying causes of offending behaviour, provide diversionary community-based options that connect youth with work and job training, and secure accommodation opportunities. Those programs ‘aimed at nurturing a positive change in young people, and in particular those employing cognitive behavioural techniques, are the most effective overall. Those based on strategies of control or coercion – on surveillance, deterrence, and discipline – are far less effective and in some cases can actually make matters worse’ (Ross et al 2011, p. 3; see also Noetic 2010). Sentencing practice should reflect the finding that the more restrictive an intervention, the greater its negative impact (Richards 2011). In that vein the YJRD submit that:



Sentences for Young People Should Include Evidence-Based Therapeutic Interventions.

As previously explained, individual, family, peer and wider community factors contribute to the risk of re-offending among youth involved in the justice system (Watt, Howells & Delfabbro 2004). A recent statistical review of 548 independent research samples with young offenders demonstrates that the provision of cognitive-behavioural skills training and coordination of services to meet the complex needs of young offenders have the greatest effect in reducing rates of re-offending (Lipsey 2009). Importantly the largest reduction in further offending occurs when intensive interventions are made with youth who are at the highest risk of persistent offending (Sawyer & Borduin 2011). Therapeutic home-based intervention programs tailored to the needs of the young offender and overseen by dedicated case workers are, demonstrably, best practice in juvenile justice (Ross et al 2011; Noetic 2010; Allard, Ogilvie & Stewart 2007). Orders that allow youth justice case workers to tailor the degree and frequency of their interventions based on a young person's circumstances and responsiveness are preferable, as those case workers are in the best position to ensure that the amount and type of intervention is appropriate in all the circumstances.

Not only are evidence-based therapeutic interventions effective at reducing recidivism, but they also perform well in cost/benefit analyses (Drake, Aos & Miller 2009). A particular challenge within Australia has been the implementation of multi-systemic therapy programs, though this has been achieved within the Western Australia Health System and in New Zealand. Within Queensland, some evidence based programs are currently being implemented, including Aggression Replacement Therapy and mentoring services (eg, youth workers; Lipsey 2009).

The Principle that Detention is a Last Resort Must Be Maintained.

The Action Plan stated that '[c]onsideration is also being given to removing the principle that when sentencing a young person for an offence, detention should be the last resort.' This proposal is inconsistent with the evidence of what works. Evidence shows that detention is not effective in reducing recidivism among young people (McGrath & Weatherburn 2012), and, by definition, incarceration disengages young people from society (Smart Justice for Young People 2011, p. 1).

The proposal that detention should not be the last resort is also inconsistent with the *Convention on the Rights of the Child* art 37(b) and the *Beijing Rules* r 19.1. All Australian jurisdictions currently provide for detention of young people to be a measure of last resort.

Young offenders tend to be involved primarily in non-violent offences (CCQ 2012, p. 16). Detention should be reserved for people who are a danger to society and who



are capable of understanding what they did was wrong: repeat, violent offenders who do not have intellectual disability or mental health issues (a secure hospital should be available for youth in those categories) (Keyzer 2011).

Deterrence Should Not Be a Priority in Sentencing Young People.

Research has shown that due to developmental characteristics, young people engage in dangerous or risky acts despite knowing the risks involved (Cauffman & Steinberg 1995). Long-term impacts or consequences of their behaviour are less likely to enter into a young person's decision-making processes (Steinberg 2009). Rather, young person's actions 'are largely influenced by feelings and social influences' (Steinberg 2005, p. 72), including excitement, stress and the presence of peers (see O'Brien et al 2011; Steinberg 2007). Deterrence as a sentencing purpose is particularly ineffective for young people and so it should be given little weight in the sentencing exercise.

The Courts Power to Order Diversion to a Youth Justice Conference Should Be Restored.

Under the previous legislation, more than half of the referrals to youth justice conferencing were made by courts, with the remainder by police (CCQ 2012, p. 7). While there is conflicting evidence regarding the impact of youth justice conferencing on recidivism (see Smith & Weatherburn 2012; see also discussion in Noetic 2010, p 38), it is clear that conferencing at least has the same impact as courts on reoffending (Smith & Weatherburn 2012). As such, given the economic benefits (Noetic 2010, p. 38), high rate of satisfaction among conference participants (Trimboli 2000; Noetic 2010, p. 38; see CCQ 2012, p. 7.), and requirement under the *Beijing Rules* r. 11 for diversion where appropriate, youth justice conferencing should be favoured. Taking away the option of court-ordered youth justice conferencing will have a significant and negative impact on the benefits associated with this measure.

The Proposal Referred to in the Action Plan Regarding Further Provision for Naming and Shaming in Queensland be Rejected.

The proposed expansion of the existing naming laws to 'repeat young offenders' does not recognise the unique developmental characteristics of young people (O'Leary, forthcoming). Considering these characteristics, a presumption against naming (as exists in the Australian Capital Territory, South Australia, Victoria, Tasmania and, for those matters dealt with in the Children's Court, in Western Australia) should be preferred (O'Leary, forthcoming).

Expanding the naming laws in Queensland will impede the potential rehabilitation of young offenders and does not act effectively as a general deterrent (Lincoln 2012; O'Leary & Lincoln 2012). The only jurisdiction with more expansive naming laws than



Queensland is the Northern Territory. In the Australian States and Territories, the Northern Territory consistently rates among the highest in proportion of offending young people (ABS 2013) and has the highest proportion of young people in detention (AIHW 2012). Further, research relating to the naming of juveniles convicted of criminal offences in the Northern Territory found that naming has harmed young people, resulting in harassment and/or disruption to their education (Chappell & Lincoln 2012).

Sentenced Youth Boot Camp Should be Avoided.

Decades of international research reveals that boot camps are ineffective in stopping the cycle of youth crime (Lincoln 2012a). Particularly, the techniques used in the residential phase of the SYBC implement traditionally unsuccessful philosophies, including through short-term confinement, strict discipline and tough physical activity, which fail to address the causes of youth crime (Lincoln 2012a). Findings repeatedly show that boot camps are ineffective in addressing psychological, cognitive and familial needs (Richards & Lyndeham 2012). Instead, sentenced youth are segregated (for one month under the SYBC residential phase) and inadequately equipped with the necessary skills for reintegration into the community (Parent 2003).

Closing the revolving door of youth crime primarily requires the identification of the causes of youth crime. While the community supervision phase of the SYBC may, if appropriately tailored, go some way to identifying and targeting the causes of youth crime, the legislative limitation of a maximum of five months of community supervision seriously hampers any potential benefit.

REINTEGRATION

Two of the questions around detention services in the Action Plan relate to the issue of reintegration.

What types of programs should be available inside detention centres and on release from detention?

Would it be appropriate for young people in detention to be granted a leave of absence, or in some cases early release, i.e. to attend work?

Gradual reintegration into the community increases the chance of success for young offenders and reduces the risk of re-offending. Comprehensive assessment and treatment planning, which identifies the range of risks and protective factors for young people, is essential. Planning and coordinating services to reduce risk for continued offending and increase strengths for young people enhances the potential for better functioning in the community and lower risk of continued offending (Lipsey



2009). Reintegration services should be provided for all incarcerated youth including sentenced and remanded juvenile offenders.

COORDINATED DELIVERY

The final questions that the YJRD considers relate to the manner of delivering youth justice services.

To assist young people to stop offending ... who is best placed to deliver these services?

How can government and non-government services deliver a more coordinated response to young people and their offending?

Young people involved in the justice system can have complex needs relating to education, mental health, family and other relationships, substance abuse, and the development of pro-social attitudes. Multi-agency coordination is essential to address these problems. The 2010 *Review of Effective Practice in Juvenile Justice* (NSW) found that the complexity and scope of an effective response to juvenile crime necessitates a whole-of-community approach, involving coordination between state and local agencies responsible for administering juvenile justice, the police, welfare agencies, schools, health authorities, etc (Noetic 2010). The failure of governments to address these complex problems due to poor multiagency coordination is one reason many young people enter and re-enter the justice system.

The Queensland government should pilot alternative models of service delivery such as:

- the Youth Offending Team ('YOT') model established in England in the late 1990s. The YOT is a multi-agency team that includes representatives from social services, police, probation, education and health. YOTs undertake the same work as is currently offered by Youth Justice workers, such as community based supervision, preparation of court reports and post-release support. The multi-agency approach streamlines service provision and reduces duplication.
- complex needs assessment panels (Watt, Robin, Fleming & Graf 2013) that coordinate the provision of care across multiple agencies, resulting in better continuity of care and engagement with services. Complex needs panels develop comprehensive plans to meet the diverse array of needs for clients with co-occurring difficulties while facilitating the integration of multiple services.



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YOUTH JUSTICE RESEARCH DIVISION MEMBERS



Patrick Keyzer
BA (Hons), LLB
(Hons), LLM, Grad Dip
Legal Prac, PhD

Patrick is a Professor of Law at Bond University and Director of the Centre for Law, Governance and Public Policy. Keyzer has written or edited 23 books, including *Sex Offenders and Preventive Detention* (Federation Press, 2009), *Dangerous People* (Routledge, 2011) and *Preventive Detention: Asking the Fundamental Questions* (Intersentia, 2013). He regularly contributes to the *Criminal Law Journal* and to *Psychiatry, Psychology and Law*. In 2006 Keyzer undertook a consultancy to the NSW Department of Ageing, Disability and Home Care relating to the treatment of people with intellectual disability in the NSW criminal justice system, and has recently concluded a consultancy with the Endeavour Foundation relating to access to the Disability Care system.



Robyn Lincoln
BA, MQUAL

Robyn is an Assistant Professor in Criminology at Bond University where she has taught and researched for the past twenty years. Her research interests have ranged from runaway and homeless youth, to violence in Aboriginal communities, to fraud by medical practitioners. Robyn's recent work has centred on the new field of forensic criminology where she has examined forensic interviewing techniques and miscarriages of justice. At present she is engaged on a number of projects including one study that explores the consequences of naming Indigenous youth involved in justice proceedings and others in the crime prevention arena. She has co-authored books such as *Justice in the Deep North*, *Jean Lee: The Last Woman Hanged in Australia*, *Crime on My Mind* and *Crime Over Time*; as well as journal publications on criminal profiling, inequality and crime, DNA evidence, forensic interviewing, sex offenders and Indigenous justice.



Jodie O'Leary
BA, LLB (Hons), Grad
Dip Legal Prac, LLM
(High Dist)

Assistant Professor in the Faculty of Law, Bond University, Jodie teaches and researches in criminal law. In practice Jodie worked mainly at Legal Aid Queensland, in the Youth Legal Aid team, during which time she edited and contributed to a joint Legal Aid, Department of Communities publication entitled *Juvenile Justice – A Legal Practitioners Guide* (2003 – 4th edn) and travelled state-wide to educate practitioners about the amendments to the then *Juvenile Justice Act*. Jodie joined Bond full time in 2005. In 2009 she was project manager for the project 'Homicide in Abusive Relationships', the final report of which led to legislative reform in Queensland. In 2011 she was awarded a Vice-Chancellor's Research Grant, along with Suzie O'Toole and Dr Bruce Watt, for an ongoing project examining Juvenile Fitness for Trial in Queensland.



Suzie O'Toole
BSW, LLB (Hons),
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Suzie is a Senior Teaching Fellow at Bond University who teaches criminal law and criminal procedure. Suzie graduated with a Bachelor of Social Work from the University of Queensland and a Bachelor of Laws (1st Class Honours) from the University of Technology, Sydney. Suzie worked as a social worker with juveniles in London and Sydney and worked as a criminal defence lawyer representing young people in Sydney before joining Bond University in 2007. Her most recent publication in the journal *Psychiatry, Psychology and Law* explores mental health service provision in the courts. Her doctoral research is on the same topic.



Bruce Watt
MPsych, BA (Hons)
Psych, PhD

Dr Bruce Watt is a Forensic and Clinical Psychologist, employed as an Assistant Professor with Bond University. He lectures in psychological assessment and forensic psychopathology. Commencing his career researching interventions with incarcerated violent offenders, he has subsequently investigated family based interventions for antisocial youth, predictors of juvenile violent recidivism, community correlates of violence and psychopathy. Currently he is evaluating a return to work assist program, animal cruelty and firesetting among juvenile offenders, as well juvenile fitness for trial. Beyond academia, Bruce's private practice specialises in forensic psychology assessment for Children's Court, Criminal Court and Family Law. He has worked and provided supervision in child and youth forensic mental health services for 15 years.

