

Our ref: Children's Law Committee

28 June 2013

Assistant Director-General, Youth Justice
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

By post and email to: youthjusticeblueprint@justice.qld.gov.au

Dear Assistant Director-General

SAFER STREETS CRIME ACTION PLAN – YOUTH JUSTICE

Queensland Law Society welcomes the opportunity to comment on the Safer Streets Crime Action Plan – Youth Justice.

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the options available to address youth justice issues. We provide our views in the submission below.

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Yours faithfully

Annette Bradfield
President

Submission

SAFER STREETS CRIME ACTION PLAN – YOUTH JUSTICE

*A Submission of the
Queensland Law Society*

28 June 2013

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1. Boot camps

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

The Society supports protection for young people from the full force of the criminal law due to their inherent vulnerabilities and differences between adult and child cognitive development. In particular, we support the use of non-custodial sentencing options for children and young people. In our view, it is imperative to maintain the principle that detention should be used as a last resort. Research suggests that detaining young people is the most significant factor that could result in recidivism.¹ As such, diversionary programs act as a circuit breaker to stop reoffending and address underlying behavioural issues.

The Society supports the implementation of evidence based policy, and ongoing monitoring and evaluation of the quality and impact of new programs. We consider that following the two-year trial of the current Sentenced Youth Boot Camp Order, the program would benefit from an evaluation that examines whether the Boot Camp Order has prevented recidivism. The evaluation could also assess what programs and elements of the Sentenced Youth Boot

¹ Holman and Ziedenberg 2006, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, USA, p.4; Gatti, U, Tremblay R, & Vitaro F 2009. Iatrogenic effect of Juvenile Justice. *The Journal of Child Psychology and Psychiatry* 50(8): 991-998; Huizinga D et al. 2003. The effect of juvenile justice system processing on subsequent delinquent and criminal behaviour. A cross-national study. Washington, D.C.: US Department of Justice <https://www.ncjrs.gov/pdffiles1/nij/grants/205001.pdf>; McAra L & McVie S 2007. Youth justice? The impact of system contact on patterns of desistance from offending. *European Journal of Criminology* 4(3): 315-345

Camp were successful, and what elements fell short. This would provide valuable insight into the effectiveness of the boot camp in stopping the cycle of youth crime.

We submit that, in the long term, it is beneficial to ensure that young people are supported within their community. Ongoing intervention must be part of the approach to ensure adequate support is offered to the child and his or her family so they can be assisted to address underlying causes of offending behaviour.

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

The recent comments of the President of the Childrens Court of Queensland in the Annual Report 2011/2012 sheds light on youth justice trends in Queensland:

Youth Justice Trends Summary

Again there was an overall decrease in the number of juveniles whose cases were disposed of in all Queensland courts in 2011-2012. The decrease was 6.9%, following a decrease of 8.6% in 2010-2011. However, the number of charges heard increased.

There was a 9.7% increase in the number of charges heard.

Of the 5,906 juveniles whose cases were finalised, 84.9% (5,012) were either found guilty or pleaded guilty.

The number of detention orders imposed decreased by 38.3% and the use of Immediate or Condition Release Orders increased by 12.2%.

Cautions administered by the Queensland Police Service decreased by 9.1% from 2010-2011, with 12,238 juveniles being cautioned.

The Childrens Court of Queensland dealt with 1,762 charges against 358 defendants.

This was a decrease of 15.2% from the previous year, although there was an increase of 5.3% in the number of charges dealt with. The Magistrates Court dealt with 5,840 juvenile defendants. Of these, 313 were committed to a higher court and 5,527 were finalised. There was a 6.3% decrease in the number of juvenile defendants before the Magistrates Court. However, there was an 8.6% increase in the number of charges being dealt with.

The statistics seem to demonstrate that there are a small number of persistent offenders who are charged with multiple offences. Whilst the number of juveniles appearing before the courts is decreasing, the number of offences alleged to be committed has increased.² [emphasis added]

These figures suggest that in order to address youth crime, there needs to be a concerted focus on persistent offenders charged with multiple offences. The most appropriate and

² Childrens Court of Queensland Annual Report 2011/2012 at page 6:
http://www.courts.qld.gov.au/_data/assets/pdf_file/0019/168202/cc-ar-2011-2012.pdf

effective way to do this would not be to radically reform youth justice legislation which is aimed at *all* children and young people, but to employ targeted intervention strategies on this small group of young people.

In light of the complex social issues often faced by repeat offenders, there are opportunities for a multi-disciplinary approach. This could allow for intervention across a range of areas, such as housing, education, job training, drug and alcohol support, family support and income support. The Society supports an increase in resources for intervention and other forms of supervised orders. We suggest a youth specific service that is equipped to deal with the range of issues faced by young people could be developed, to establish a better targeted response to these issues. Orders made for this type of offender could be subject to monitoring, for example by the Commission for Children and Young People and Child Guardian.

Short term intervention through detention or removal of a young person from their community to fulfil a court order may have a positive effect on the young person in the short term. However, upon returning to their community, external factors which contributed to the young person's offending behaviour may still be present. We note the report by the NSW Auditor-General, 'Addressing the Needs of Young Offenders' found that the rate of reoffending among young people depends on the response to the offence. The report stated "if a young offender leaves the youth justice system without having factors or needs such as homelessness, drug or alcohol abuse, or family dysfunction addressed, the risk of reoffending is high."³ We consider youth crime can be better addressed for repeat offenders by offering ongoing support to the young person and their family within their own community.

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

We support a focus on prevention strategies and early intervention, however the Society is concerned about the danger of introducing young people within an Early Intervention Youth Boot Camp to an offending peer group, given the role peer influence plays in risky decision making behaviour.⁴ We note the study of 779 young offenders in Canada which examined whether intervention by the justice system could lead to high rates of criminal behaviour in adult life. The findings of the study supported the focus of the justice system on early prevention strategies, as well as the reduction of judicial stigma and the limitation of interventions that concentrate juvenile offenders together.⁵

The Safer Streets Crime Action Plan – Youth Justice ('the Action Plan') indicates there will be an evaluation of the Early Intervention Youth Boot Camp. We support this approach, and consider that publicly available results are imperative for understanding the practical impact of the Early Intervention Youth Boot Camp.

³ Auditor-General New South Wales (2007) 'Addressing the needs of young offenders' Sydney, at page 24: http://www.audit.nsw.gov.au/ArticleDocuments/139/164_Needs_Of_Young_Offenders.pdf.aspx?Embed=Y

⁴ See M. Gardner and L. Steinberg (2005) "Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study" *Developmental Psychology* 41(4): 625-635.

⁵ Gatti, U, Tremblay R, & Vitaro F 2009. Iatrogenic effect of Juvenile Justice. *The Journal of Child Psychology and Psychiatry* 50(8): 991-998 at pages 996-997.

We consider that any response which aims to get young people back on track and back in school needs to take into account the acknowledged disadvantages faced by young offenders such as low levels of education and learning difficulties. We also consider there are a number of early intervention options that must remain available, including the use of cautions by police, drug diversion and youth justice conferencing. These options will be further discussed below.

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

The Society considers that existing mechanisms could be better utilised to deliver positive outcomes in youth justice. There is a need for increased funding for agencies and organisations providing support and referral services for young people. Our members report that this is particularly important in the areas of mental health, drug and alcohol misuse, anger management and other behavioural and therapeutic interventions including those dealing with inappropriate sexual behaviour. These services should be delivered by youth-specific organisations and with programs that are designed to address the specific issues faced by young people.

2. Youth Justice Act Review

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

Psychiatric interventions

We note that better resources in this area will assist the funding of current interventions. This would allow for more intensive case work, which may make the interventions more effective. We submit there should be easier access to effective psychiatric and psychological assessment. One way to achieve this would be to provide a list of who can perform assessments, and the rates involved, that is shared between and accessible to all stakeholders in the youth justice system. Further, we consider that the court should be allocated a budget to fund psychiatric assessments where the courts consider it would benefit the child and assist the court.

Criminalisation of children in care

The Action Plan notes that approximately 70% of young people in the youth justice system are known to the child protection system.⁶ The Society is concerned about the effects of criminalisation of young people in residential care. Whilst we are supportive of a variety of placement options being available for children and young people in care, we are increasingly concerned about how regularly young people are referred to the police for what in our view should be considered more appropriately as discipline or behavioural issues rather than criminal issues. When lawyers acting for children and young people in this situation advocate on their behalf with Child Safety Services and the residential care provider, it is often argued by both that this is the policy in place for all behavioural issues without any discretion to be

⁶ Safer Streets Crime Action Plan – Youth Justice, page 11

applied. We consider that this results in the unnecessary and damaging entry of children in care into the youth justice system through the calling of police as a disciplinary or behavioural management tool.

It is of considerable concern that these highly vulnerable children and young people are often brought into the criminal justice system without a referral to a lawyer for advice or without the presence of an appropriate support person at a police interview. Section 421, *Police Powers and Responsibilities Act 2000* deals with the questioning of children. This provision does not mandate the presence of a lawyer when children are questioned. All that is required is that, “before questioning starts, the police officer has, if practicable, allowed the child to speak to a support person chosen by the child in circumstances in which the conversation will not be overheard.” In residential care facilities, the only support person available or known to the child may also be the complainant.

Furthermore the issue of bail can be complicated with children and young people faced with returning to the placement where the allegations arose or being left without a placement option due to what is alleged to have occurred. It is the Society’s view that where young people in care are dealt with by courts for offences arising in their residential placements, in many instances youth justice conferences are a particularly effective and appropriate response. The focus in a skilfully convened conference on making reparations for the harm caused by the offence and the participation of the victim can help to support and strengthen the young person’s placement.

In September 2011, a stakeholder working group convened by Child Safety Services examined issues surrounding young people in residential care and offending. The working group provided a regular forum for the stakeholders, including residential care services, child safety services, legal services and Police, to develop shared responses to these issues. The group has since been disbanded. One of the tasks undertaken by the working group was to develop a fact sheet to support young people in residential care, detailing their legal requirements and outlining relevant legislation should they be approached by police. This fact sheet has not been published. Given the significant representation of young offenders within the child protection system, we suggest the re-establishment of the group. The assistance of the working group could provide valuable insight and practical knowledge in dealing with these issues.

Review of the *Youth Justice Act 1992*

We note the Government’s intention to review the *Youth Justice Act 1992*, particularly with regard to:

- Expanding the existing naming laws so that the names of repeat young offenders can be made public
- Making breach of bail an offence to reduce the number of repeat young offenders

- Allowing courts access to a person’s juvenile criminal history when sentencing them as an adult, so the court can see their full criminal history.⁷

We make the following comments below regarding these proposals.

Naming laws

The Society does not consider that publicly naming children will serve as an effective deterrent for committing further crimes. In fact, research has shown that the Northern Territory provisions allowing the public naming of children have had the following outcomes:

- Naming is detrimental to the young person. It may result in harassment and/or disruption to their educational prospects; and
- Identification of young people in that jurisdiction translated to reporting in the media in a haphazard manner.⁸

In 2008, the NSW Standing Committee on Law and Justice undertook an extensive investigation into the relative benefits and disadvantages of public naming for youth offenders. It was ultimately found that this would have a detrimental impact on youth offenders and their rehabilitation, victims of crime and their families.⁹ The Chair’s foreword states:

Juvenile offenders can be punished and encouraged to take responsibility for their actions without being publicly named. Judicial sentences for juveniles can and do reflect community outrage, denouncement of the crime and acknowledgement of the harm caused to victims. There are confidential processes such as juvenile youth conferences, in which the offender must often face their family and the victim of their crime, that utilise shame constructively and supportively to help the offender reintegrate into the community. The importance of rehabilitation is all the greater when a juvenile offender is involved, since the benefits flowing to the offender and the community will continue for the rest of their life.

The prohibition impacts not just on juvenile offenders, but also victims, their families and the media.¹⁰

The Society is concerned with the practical consequences of this proposal, particularly:

- This proposal could significantly affect the ability of these children to find employment. Being “known” as a child offender will be a mark against a child and deter potential employers. Fewer job opportunities will mean fewer opportunities for

⁷ Safer Streets Crime Action Plan – Youth Justice, page 7

⁸ <http://lawgovpolicy.com/2012/07/17/look-before-leaping-into-a-human-rights-quagmire/>, referencing Duncan Chappell and Robyn Lincoln, Naming and Shaming of Indigenous Youth in the Justice System: An Exploratory Study of the Impact in the Northern Territory : Project Report

⁹ NSW Standing Committee on Law and Justice, The prohibition on the publication of names of children involved in criminal proceedings, 2008 found at:

[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/a6e0bf2fbb2c4cc5ca25743900104238/\\$FILE/FINAL%20REPORT.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/a6e0bf2fbb2c4cc5ca25743900104238/$FILE/FINAL%20REPORT.pdf)

¹⁰ Ibid

children to become income earners and productive citizens of the economy in the long term;

- This proposal could also significantly affect victims of crime, who may be more easily identified through naming offenders to a crime;
- The families of these young people will also suffer as a result, as their communities may ostracize and blame them for the actions of their children; and
- We also note that there are likely to be significant numbers of applications for non-publication of names in court processes, which will affect the court resources needed to be dedicated to each matter. These costs to the community need to be factored in for any proposed reform to the current naming provisions in the Act.

Breach of bail

The Society considers that making breach of bail an offence may have a direct impact on remand and detention rates. Consequently, there would also be an increase in the costs associated with detention. We note that in Queensland 137 young people were in detention each day on average from 2011-12.¹¹ The proportion on remand for an average night in this quarter was 70%, compared to 52% nationally,¹² amounting to approximately 96 children in custody awaiting sentence on an average night.¹³ Further, the Action Plan states that it costs \$660 per day to house a person in a youth detention centre. Based on these figures, Queensland spends approximately \$63,360 a day on children on remand, or \$23,126,400 annually. The Society also notes that we have received reports from our members of a recent surge in the number of young people in detention.

A report by the Australian Institute of Health and Welfare (AIHW) indicated that nationally, in 2010-11, the median length of completed periods of detention was three days for children on remand.¹⁴ The Action Plan indicated that of the 70% of young people held on remand, waiting to be sentenced, only 10% ever receive a sentence of detention.¹⁵ Given there may be limited value in such short periods of detention, and the associated cost implications, we consider the needs of the community regarding children on remand could be met using alternative programs.

Other associated costs include costs of watch-house custody and transporting defendants, as well as the potential for over-crowding of detention centres. Further long term costs may also arise from these changes, given research suggests that detaining young people is the most significant factor that could result in recidivism. The financial cost of remand and recidivist offending would be substantial, as would the social and financial cost of victimisation.

¹¹ Safer Streets Crime Action Plan – Youth Justice, page 13

¹² AIHW 2012. Juvenile detention population in Australia 2012. Juvenile justice series no. 11. Cat. no. JUV 11. Canberra

¹³ Ibid

¹⁴ Ibid

¹⁵ Safer Streets Crime Action Plan – Youth Justice, page 10.

Criminal histories in adult sentencing

Under the current provisions youth convictions are admissible in adult criminal proceedings if a judge determines that is an appropriate consequence. We would support the maintenance of the status quo in relation to this issue. We do not consider that there is a need to change the existing position.

The Society's long-held position is that sentencing should have at its core a system of judicial discretion exercised within the bound of precedent. This is the most appropriate means by which justice can be attained on a case by case basis. We recognise the importance of judicial discretion and its role in ensuring an effective justice system. We note the UN Convention on the Rights of the Child states:

A child recognised as having infringed the penal law [is] to be treated in a manner... [that] takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

The Australian Institute of Criminology stated that most people 'grow out' of offending, noting research which found 'the relationship between age and crime is nonetheless "one of the most accepted tenets of criminology"¹⁶. We submit that as most youth do not continue criminal behaviour the recording and use of youth criminal history should reflect this reality.

3. Effective sentencing options

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

The Society submits that the court should have an option for an order based on the community reparation model. This type of order focuses on helping young people understand and take accountability for their actions, by making reparations to the victim or the community, and demonstrating the effect of a person's actions on the victim of a crime.

The Society has read the report by Mr Bruce Grant, 'Observing best practice juvenile justice programs in the UK, Canada, and USA' published in 2004.¹⁷ This paper details a number of different programs used in those jurisdictions which we would recommend. We **enclose** a copy of this report for your reference.

Detention as a last resort

The Society strongly opposes the removal of the principle of detention as a last resort. The Action Plan provides statistics and information as to the exorbitant costs of youth detention and discusses at length the importance of early intervention, diversion and responding to

¹⁶ Australian Institute of Criminology, 2011 "What makes juvenile offenders different from adult offenders?" Trends and Issues in Crime and Criminal Justice No. 409, found at: <http://www.aic.gov.au/documents/4/2/2/%7B4227c0ad-ad0a-47e6-88af-399535916190%7Dtandi409.pdf>; Fagan A & Western J 2005. Escalation and deceleration of offending behaviours from adolescence to early adulthood. *Australian and New Zealand Journal of Criminology* 38(1): 59–76

¹⁷ Observing best practice juvenile justice programs in the UK, Canada, and USA, Bruce Grant, 2004, Winston Churchill Memorial Trust found at http://churchilltrust.com.au/site_media/fellows/Grant_Bruce_20022.pdf

causes of crime. Removing the principle of detention as a last resort will be counter-productive to all of these stated goals in the Action Plan.

The Action Plan states that the “removal may allow courts to consider a broader range of options when sentencing young offenders”.¹⁸ The Society considers that the removal would only allow courts to consider detention more readily. It does not provide for a broader range of sentencing options.

The removal may also directly impact on the rates of sentenced detention. As highlighted in the Action Plan, increases to sentenced detention rates will increase demand on youth detention centres. We consider that the law should continue to encourage a focus on community-based supervision and rehabilitation.

Based on NSW data, a community based service order costs the state approximately \$20 a day.¹⁹ As indicated in the Action Plan, 137 young people are in detention each day, at a cost of \$660 per child, per day. If the effect of a breach of bail offence and the removal of detention as a last resort was to increase the detention population by 10% this would amount to an additional \$9240 a day or \$3.37 million a year. If the additional 10% of children (14 children) were put on community based service orders, costing the state approximately \$20 a day per child²⁰ this would save \$8960 a day, or \$3.27million a year.

4. Responding to causes of crime

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

The Society considers the current range of sentencing options available to the courts are sufficient. However, we note that sentencing would better address the causes of offending by ensuring the young person has proper support available to complete their orders. It is important the court does not unknowingly set the young person up to fail for example by making sure that the young person has adequate transportation to participate in any programs they are required to complete.

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

The Australian Bureau of Statistics published statistics in 2011 highlighting that there is an over-representation of the youth population as victims of crime, particularly assaults (including sexual assault).²¹ We agree with the report, which stated that “the high rate of victimisation of juveniles is critical to consider, as it is widely acknowledged that victimisation

¹⁸ Safer Streets Crime Action Plan – Youth Justice, page 8

¹⁹ Audit Office of NSW ‘NSW Auditor -Generals Report, Financial Audit’ Volume 7 (2012) Sydney, page 27 found at: http://www.audit.nsw.gov.au/ArticleDocuments/256/01_Volume_Seven_2012_Full_Report.pdf.aspx?Embed=Y

²⁰ Ibid

²¹ What makes juvenile offenders different from adult offenders?, 2011 found at: <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi409.html>

is a pathway into offending behaviour for some young people.”²² Other areas which need to be addressed include:

- The provision of adequate drug and alcohol treatment: Our members report that there are very few detox beds available for young people.
- Adequate housing: Our members report that it is difficult for a young person to receive housing assistance. In particular, we note the work of the Youth Bail Accommodation Support Service, which works with young people remanded in custody or at risk of being remanded in custody because they do not have accommodation. We consider this program should be expanded, as it could directly address the concerns surrounding the high rate of people in custody on remand.
- Family-based support programs: we **enclose** a snapshot of family-based programs used in Canada to prevent and reduce youth crime, which include family therapy and integrated approaches.²³ Considering these options may be useful in supporting youth to stay out of the justice system.

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

The Society has previously noted the value of collecting better statistics and releasing that information to the public. It is very difficult to assess the current state of the youth justice system without the availability of data related to young people’s experiences in the system, such as:

- preventative measures
- initial contact
- rates of remand
- rates number and types of charges laid
- rates of recidivism
- assessments of programs
- costs of programs and orders

We consider that government and non-government services could add to existing data collections systems to capture the factors for holding a youth on remand. For example, if information were to be collected about factors such as whether remand was due to unstable living circumstances, a lack of permanent address or unstable mental condition, this would allow for more detailed consideration of the issues facing young people within the criminal justice system. This would be a simple, efficient means of collecting data and would provide

²² Ibid

²³ Family-based Programs for Preventing and Reducing Juvenile Crime, Public Safety Canada, found at: <http://www.publicsafety.gc.ca/res/cp/res/red-juv-cri-eng.aspx>

valuable insight to service providers, resulting in better outcomes for youth and the community.

Capturing this data would allow for a skilled agency to work with the young person and coordinate a response designed to deal with risk factors. Members of the Society's Children's Law Committee would be pleased to work with your department to further develop the contents of such a data collection tool.

5. Managing demand for youth justice services

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

The Society considers that the most cost effective and targeted method to address the support for young people on bail would be to increase the number of bail assistance support programs in Queensland, particularly for repeat offenders.

Given the costs and the number of children in custody on remand, there are significant savings to be made by making available greater support for young people on bail and adequate oversight.

We note that conditions can in some instances be particularly onerous. Onerous bail conditions may be impractical and set the child up to fail. For example, a 24 hour curfew may aggravate existing problems in the home environment and disrupt the child's education.²⁴ We consider that bail conditions should reflect the situation of the young person, particularly where a family or living situation may not be conducive to 24 hour supervision and care. They must also be proportionate to the severity of the alleged offence.

Our members report that children may fail to appear for court or in compliance with their conditions due to a lack of transportation and particularly that Child Safety Services does not always provide for transportation for children in their care. Children are reliant on the support of family, friends or public transport. Young offenders often lack adequate support networks, with many coming from disadvantaged backgrounds, single-parent, dysfunctional, or disengaged families.²⁵ It is reported that around one in seven children in detention had experienced homelessness, while approximately one in five reported times where they had no money for food or other basic things.²⁶ We consider that assistance with transport for court appearances would help to address these vulnerabilities and in doing so support children in complying with their bail conditions.

²⁴ Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report no 84 (1997) [18.159].

²⁵ Mazerolle, P., & Sanderson, J. (2008). *Understanding remand in the juvenile justice system in Queensland*. Brisbane: Griffith University, 32

²⁶ Commission for Children and Young People and Child Guardian (2011) 'Views of Young People in Detention Centres, Queensland, 2011' Brisbane, 14, 55 found at http://www.ccydpcg.qld.gov.au/pdf/publications/reports/Views-of-Young-People-in-Detention-Centres-Queensland_2011/Full-Report.pdf>

Bail programs provide an opportunity to deliver a co-ordinated response to a young person, as discussed above. These programs can assist a young person to comply with bail conditions, whether by sourcing accommodation, or supporting young people to remain engaged with education.

There has been no research which indicates the reasons why young people may currently be breaching bail. We consider that having an understanding of the nature of the imposed conditions, and why these conditions are breached will lead to an improved ability to target the causes.

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

We consider the following options would improve the efficiency of the court process:

- Adequate legal aid funding for young people's matters;
- Greater availability within the Childrens Court for Magistrates and Judges to hear matters. A number of Queensland Courts delegate one day or a few hours of one day per week to Childrens Court matters. This is particularly problematic where a young person is remanded in custody awaiting a bail application, but is delayed until the Childrens Court is able to hear the matter on the delegated day; and
- Young people who are applying for bail on a non-Childrens Court day outside of Brisbane could, where practicable, be transferred to Brisbane Court so they may have the bail application heard immediately.

Transfer of 18 year olds to adult correctional centres

The Society notes the automatic transfer of 18 year olds to adult correctional centres is suggested as a solution to manage demand on youth detention centres. We note the figure provided in the Action Plan that on average 70% of young people held in a detention centre are on remand, and approximately 10% are there for sentenced detention.

The Society considers that this figure supports targeting the **remand** numbers in the detention centres, as opposed to those who are there on sentenced detention. At best, the option of automatic transfer to adult prison would only be able to focus on less than 10% of the detention population. The focus should be shifted to address the high remand figures. This is the only way that the demand on youth justice centres can sustainably be addressed.

The Society strongly supports the maintenance of judicial discretion in transfer matters. There will be situations where the costs of transfer, compared to the amount of time left for a young person's sentence, will be disproportionate. The Society also considers that maintenance of programs, such as access to educational support, is instrumental for a young person held in State custody. Transfer of a young person to an adult prison may undermine the progress made by a young person, remove the structure and discipline provided to them, and undermine the investment made by these programs. Continued access to these programs must be assessed by the courts on the facts of each particular case. Young people, many of whom will go on to be productive citizens of the community, will be exposed

to hardened criminals unnecessarily if judicial discretion is not maintained, which currently ensures that transfer to an adult prison is appropriate.

Also, we note that there has been judicial comment in relation to the failure of Corrective Services to transfer the classification of security level upon transfer to adult prison. Our members have reported cases where, even if a young person is on detention on the lowest security, they are put into adult prison as a new admission with higher security levels. We consider that the appropriate transfer of security level must occur.

6. Early intervention and diversion

What other strategies are there to intervene early and prevent young people starting to offend in the first place, or to prevent them from continuing to offend?

The Society considers that a wider range of early intervention strategies should be available, and existing strategies should be better utilised. We highlight the importance of police cautioning, youth justice conferencing and drug diversion as important options for early intervention. We consider a review of the legislation should examine how existing legislation could be used more effectively, given there appears to be a decrease in the use of some of the below diversionary strategies.

Cautioning

The use of police cautioning is a valuable tool for early intervention, as it avoids some of the negative consequences of the criminal justice system, such as labelling and stigmatisation. A study by Griffith University found that 35% of cautioned young people never reappear in the criminal justice system (up to the age of 25 years).²⁷ Furthermore, 30% of young people reappear only once or twice.²⁸ This study also found that police cautions are cost effective, costing \$1275 compared to a youth court appearance, which costs \$3701.²⁹

However, statistics suggest that the use of cautioning by police officers appears to be decreasing. The Childrens Court Annual Report noted that in 2010-2011, the number of cautions administered has decreased by 11.9% from the previous year, and again decreased by 9.1% in 2011-2012.³⁰

Conversely, the number of reprimands and other minor penalties ordered for matters dealt with in the Magistrates Court increased by 2.1% in 2011-2012.³¹ The Society considers

²⁷ A. Stewart "Youth Justice: A Balanced Approach" Presentation found at: <http://www.yac.net.au/wp-content/uploads/2013/06/AS-presentation.pdf>

²⁸ Ibid

²⁹ Ibid

³⁰ Childrens Court of Queensland Annual Report 2011/2012 at page 6:
http://www.courts.qld.gov.au/_data/assets/pdf_file/0019/168202/cc-ar-2011-2012.pdf

Children's Court of Queensland Annual Report 2010/2011 at page 7:
http://www.courts.qld.gov.au/_data/assets/pdf_file/0019/131608/cc-ar-2010-2011.pdf

³¹ Childrens Court of Queensland Annual Report 2011/2012 at page 23:
http://www.courts.qld.gov.au/_data/assets/pdf_file/0019/168202/cc-ar-2011-2012.pdf

cautioning should be used where possible to remove first time offenders or minor offenders from the criminal justice system, and reduce the likely negative impacts on young offenders, which can result from the formal processes.

Youth Justice Conferencing

The Youth Justice Conferencing Program allows police to refer an offender to mediation with a victim and their family. The Society considers youth justice conferencing is an effective diversionary tool and an appropriate mechanism to address young people's accountability for offending behaviour. The Childrens Court of Queensland Annual Report 2011-2012 stated that 95% of conferences resulted in agreement being reached, with 98% of participants indicating the conference was fair and they were satisfied with the agreement. We note that utilisation by the police is particularly important following the removal of court ordered youth justice conferencing. The Society opposed the removal of court ordered conferencing, and suggests that this option should be reinstated. Alternatively, we consider that this valuable diversionary program may benefit from further funding, allowing for greater utilisation by police.

Drug diversion programs

The Society supports the use of drug diversion programs for young offenders. We note the 2008 report by the Australian Institute of Criminology found "the majority of people who were referred to a police-based Illicit Drug Diversion Initiative (IDDI) did not reoffend in the 12 to 18 month period after their diversion. In most cases, those who did reoffend did so only once during that time."³² Furthermore, the results in Queensland indicated that among people with no recent criminal history, post-diversion offending did not change for 77%.³³ The study also found among people with recent prior offending, offending decreased for the majority (60%) after diversion.³⁴ These results are not youth-specific, however they offer valuable insight into the effect of the program.

7. Effective non-government investment

To assist young people to stop offending what kinds of services or programs are needed and who is best placed to deliver these services?

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

A multi-disciplinary approach to rehabilitation of young offenders is vital. This can incorporate education, job training, drug and alcohol support services, family support, income support

³² J. Payne, M. Kwiatkowski & J. Wundersitz, 2008, Police drug diversion: a study of criminal offending outcomes, Australian Institute of Criminology, Research and Public policy series 97, page x

<http://www.aic.gov.au/documents/D/3/8/%7BD38D861B-B2C3-4D93-A877-A8EA3E5B4F10%7Drpp97.pdf>

³³ Ibid, 62

³⁴ Ibid

and housing support. We once again suggest youth specific services that specifically target the issues that young people face would be beneficial.

We refer to the findings of a report for the Minister for Juvenile Justice in NSW which summarised the issue of whole of government approach as follows:

The complexity and scope of an effective response to juvenile crime requires a whole-of community approach involving coordination between government, the non-government sector and the community. This is because youth offending is often related to other problems that the juvenile justice system cannot address in isolation (e.g. mental illness, substance abuse etc). Therefore, juvenile justice systems need to [be] coordinated and cover the full spectrum of required services including family intervention, family and school-based therapies, drug and alcohol rehabilitation services, mental health services, foster care services, specialist indigenous services, housing and employment services and detention services etc.³⁵

A 2003 report also noted:

Just as no single agency can be held responsible for the high rate of progression from juvenile supervised orders to the adult corrections system, no single agency can sensibly be made responsible for managing interventions designed to interrupt this progression. If interventions are to be developed, implemented and evaluated to effectively address the precursors to juvenile offending, they will need to involve a very wide range of government departments, some of which may not immediately see their core business as incorporating a crime prevention dimension. Genuinely effective crime prevention strategies will need to involve arms of government as diverse as Housing, Education, Health, Police, Families, Treasury, Public Amenities (parks, roads swimming pools etc.), and Transport. A coordinated whole-of-government approach to crime prevention would yield very substantial benefits over the long term, but would also produce significant benefits in the short term if properly developed and implemented.³⁶

8. Improving detention centre services

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

We support continued access to the appropriate health and education facilities in detention centres. As we have already discussed above, access to mental health, drug and alcohol misuse, anger management and other behavioural and therapeutic interventions including those dealing with inappropriate sexual behaviour would be important within detention centres.

³⁵ Review of Effective Practice in Juvenile Justice, page v found at:

http://www.djj.nsw.gov.au/pdf_htm/publications/general/juvenile%20justice%20effective%20practice%20review%20final.pdf

³⁶ Mark Lynch, Julianne Buckman and Leigh Krenske (2003) "Youth Justice: criminal trajectories" Trends and Issues in Crime and Criminal Justice, Australian Institute of Criminology pp 261-280.

We also note the importance of post-release support for both the young person and his or her family, which we have discussed earlier in our submission.

What types of discipline should be used in detention centres? Is it valid to withhold access to some activities or privileges to demonstrate to young people that there are consequences for their behaviours?

The Society considers that any form of discipline used in detention centres must be consistent with international standards contained in:

- Convention on the Rights of the Child
- United Nations Standard Minimum Rules for Administration of Juvenile Justice (the 'Beijing Rules')
- Standard Minimum Rules for the Treatment of Prisoners
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty

We consider the right to education for all children to be fundamental, and note that it would be inappropriate to withhold access to education as a means of disciplining a child.

Furthermore, periods of isolation in custody are not appropriate for children. Confinement would deprive children of their access to education, and the other necessary individual assistance. We note in particular United Nations General Comment Number 10 (2007) in relation to children's rights in juvenile detention which states:

Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.³⁷

We note also the importance of maintaining contact with the child's family, guardian of friends. Visitation rights must not be withheld from young people as punishment. This would contravene the need to act in the best interests of the child. We consider the State must ensure that children are able to maintain relationships and contact with their parents on a regular basis. This underpins the need for rehabilitation and strengthening of social ties, within the child's own community.

We note in particular Rules 66 and 67 of the UN United Nations Rules for the Protection of Juveniles Deprived of their Liberty:

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the

³⁷ GENERAL COMMENT No. 10 (2007) Children's rights in juvenile justice, page 24, found at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>

inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.³⁸

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? What might need to be considered to make this a viable option?

The Society considers that allowing young people to participate in a leave of absence, early release or day release will enable them to make a more successful transition into the community.

We encourage assistance that introduces the young person to processes, responsibility and challenges that will be faced outside the structures of detention. Work release, vocational skills courses and community service or other opportunities allow the young person to learn valuable life skills.

³⁸ Found at: <http://www.un.org/documents/ga/res/45/a45r113.htm>