



commission for
children and young people
and child guardian



Commissioner's message

Seventeen year olds should be removed from adult prisons and treated in accordance with the provisions of the *Youth Justice Act 1992*, with full access to the *Charter of Youth Justice Principles*. This Charter not only enshrines special protections for young people on the basis that they are more vulnerable than adults, but it also importantly includes principles of accountability and responsibility for young people.

This paper presents a case for the removal of 17 year olds from Queensland's adult prisons and their transfer into the youth justice system. All young people under the age of 18 years should be dealt with in a way that promotes their rights, safety, physical and mental wellbeing and ultimately - their responsible and socially acceptable development.

Positive action, beginning with a clear, time-limited commitment from the Queensland Government is necessary to remove 17 year olds from adult prisons. It is proposed that transferring all 17 year olds to the youth justice system is the crucial first step but it is not the complete solution.

More detailed exploration needs to be undertaken to determine the most effective way for 17 year olds to be transferred to the youth justice system as part of a continuum of interventions and supports that addresses risk factors for children and young people across the years of their development. This paper explores some of the alternatives to detaining young people that could be implemented more widely to reduce re-offending and support young people on more productive pathways.

A handwritten signature in black ink that reads "E Fraser".

Elizabeth Fraser

Commissioner for Children and Young People and Child Guardian

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Executive Summary

Queensland is the only remaining Australian state or territory where 17 year olds are sent to adult prisons and dealt with via the criminal justice system. In all other states and territories, young people up to the age of 18 years remain in the youth justice system, which places a strong emphasis on diversion and rehabilitation, as well as providing for the specific requirements of young people's health, continuing education and employment.

This is particularly concerning when most 17 year olds in adult prisons are on remand and either unconvicted or unsentenced.¹

In Queensland, the youth justice system is administered pursuant to the *Youth Justice Act 1992's Charter of Youth Justice Principles*. These principles ensure that while young people who commit offences must be held accountable for their offending behaviours, they should be dealt with in a way that promotes their rights, safety, physical and mental wellbeing and ultimately - their responsible, beneficial and socially acceptable development. These principles do not apply to young people when they turn 17 in Queensland.

The Commission acknowledges the long-standing and ardent advocacy work and recommendations made by a number of advocacy groups in respect of this issue.² Since 2001,³ the Commission has consistently advocated that 17 year olds should be in youth detention as opposed to adult prisons and that the scope of the *Youth Justice Act 1992* should be extended to 17 year olds.⁴ While the Commission has always recognised the resource and infrastructure implications that would be involved in raising the application of the youth justice system to all young people under 18, these matters cannot justify continued inaction on this issue.

¹ 75% of 17 year olds in adult prisons were on remand in 2008, *Young Adult Offenders Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities 2008 – 2011*, Queensland Corrective Services, July 2008. (Internal draft)

² Youth Affairs Network Queensland, Campaign Kit, *Stop Locking Up Children in Adult Prisons*, available at <http://www.yanq.org.au/children-in-adult-prisons>; T.Hutchinson, 'Being Seventeen in Queensland' (2007) 32(2) *Alternative Law Journal* 81-85; T Hutchinson, 'When a Child is Not a Child' (2006) 30 *Criminal Law Journal* 1-8; C. Moynihan, Justice for all... unless you're a 17-year-old Queenslander, available at <http://www.legalaid.qld.gov.au/publications/head-note/edition-61/Pages/Justice-for-all-unless-you're-a-17-year-old-Queenslander.aspx>; Sisters Inside Submission to the Juvenile Justice Amendment Bill 2001 Consultation Draft, *Age Does Matter*, July 2001, available at <http://www.sistersinside.com.au/media/juvenilejustice.pdf>; Legal Aid Queensland's Response to the Discussion Paper: *Review of the Juvenile Justice Act 1992, and Including Seventeen Year Olds in the Juvenile Justice System Background Paper*, January 2007, Prepared by Legal Aid Queensland, Logan Youth Legal Service, Youth Advocacy Centre, Youth Affairs Network of Queensland Inc & Sisters Inside Inc

³ Commission for Children and Young People and Child Guardian, (2001). *Submission regarding the Juvenile Justice Amendment Bill*.

⁴ T Hutchinson, 'When a Child is Not a Child' (2006) 30 *Criminal Law Journal* 1-8

In the Commission's view, all young people under the age of 18 years should have access to the principles in the *Youth Justice Act 1992* and the *Charter of Youth Justice Principles*.

The *Charter of Youth Justice Principles* in the *Youth Justice Act 1992* not only enshrines special protections for young people on the basis that they are more vulnerable than adults, but it also importantly includes principles of accountability and responsibility for young people.

The child rights-based justifications for the removal of 17 year olds from adult prisons are well-accepted and virtually undisputed, namely that the practice is contrary to Articles 1 and 3 of the *United Nations Convention on the Rights of the Child*.

This paper outlines the current situation in Queensland and presents a case for the removal of 17 year olds from adult prisons and their inclusion in the youth justice system based on the principles of the *United Nations Convention on the Rights of the Child* and the delivery of better outcomes for the community and for young people in the long term. In arguing this case, the Commission will focus on:

1. the **vulnerability of these young people** who have experienced complex, and in some cases, extreme histories of disadvantage, and
2. **research evidence** in relation to more effective approaches to deter young people from offending, intervene to prevent re-offending and ultimately, better safeguard the community.

Despite the media's often exaggerated and negative portrayal of young people, over 90% of young people have no contact with the justice system throughout their lives and most children grow into responsible, law-abiding adults. For the minority of young people who exhibit criminal or anti-social behaviours, research continues to reveal disturbing evidence about the life histories of the majority of these young people in youth detention and prison. For 17 year olds, it may be the last opportunity for effective assessments and appropriate interventions to intercept their trajectories towards re-offending.

In the Commission's view,⁵ all children and young people have the right to have their developmental and educational needs met, including 17 year olds.

⁵ The Queensland Commission for Children and Young People and Child Guardian has a legislative duty to advocate for the rights, interests and wellbeing of all Queensland children under the age of 18 and to promote laws, policies and practices which enable young people to be cared for in a way that protects them from harm, promotes their wellbeing, and provides access to services necessary to meet their needs.

Although 17 year olds in Queensland are separated from the adult prison population where possible, the placement of these young people in adult prisons exposes them to the over-emphasised security of adult prison facilities. It also denies them what could be their last chance to access and engage in developmentally appropriate programs, intensive intervention and diversionary options, and importantly, consistent education, training and avenues to work.

Furthermore, the existing policy may result in 17 year olds being separated from their peers in the prison for extended periods to ensure their safety. This practice may undermine these young people's basic right to feel safe.⁶ According to the Commission's latest *Views of Young People in Detention Centres Survey*,⁷ having regular and positive interaction with family and friends, is an important determinant of a young person's sense of safety in detention.

The Commission accepts that some young people need to be incarcerated, both for the safety of the community and in the interests of justice. However, placing 17 year olds in adult prisons precludes them from accessing appropriate services that support healthy development and provide critical opportunities to break the cycle of offending behaviour. It also divests them of their rights as young people.⁸ On this basis, the paper argues that 17 year olds should be removed from adult prisons and transferred to the youth justice system.

In the Commission's view, a firm commitment needs to be made to transfer 17 year olds from adult prisons to youth detention and ensure they fall within the jurisdiction of the *Youth Justice Act 1992* by a specific time. Transferring all 17 year olds to the youth justice system is the crucial first step, but it is not the complete solution. Detailed exploration is required of the most effective way for 17 year olds to be transferred to the youth justice system as part of a continuum of interventions and supports that begin in the early years and address risks factors for children and young people across the years of their development. This paper explores some of the alternatives to detaining young people that could be implemented more widely to more effectively reduce re-offending.

Further, this paper contends that it will be crucial to link the transfer of 17 year olds from adult prisons to the youth justice system with evidence-based approaches to reduce the

⁶ Article 3 of the United Nations Declaration of Human Rights provides that *everyone has a right to security of person*

⁷ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

⁸ Petrosino, A., Turpin-Petrosino, C., & Buehler, J. (2002). "Scared Straight" and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency. Cochrane Database of Systematic Reviews (No. CD002796) - this involved systematic review examining nine outcome studies of young offenders briefly exposed to adult prisons through 'scared straight' programs showed that young offenders who were randomly allocated to these programs were re-arrested at almost twice the rate of those who were not allocated to the programs.

numbers of young people in detention, including whilst on remand. Such approaches promote diversion and more intensive intervention with serious young offenders to circumvent young people's trajectories to re-offending and subsequent, further disadvantage. Research evidence about what works in redirecting the paths of young people, protecting the community and achieving long term cost efficiency, provides some clear direction to achieve these objectives.

As the last state in Australia to extend the youth justice jurisdiction to 17 year olds, Queensland is in a unique position to learn from the other jurisdictions, anticipate and prepare for any difficulties and glean the most effective approaches to improving outcomes for 17 year olds.

While removing 17 year olds from adult prisons and including them in the youth justice system presents significant challenges, in the Commission's view, it is an opportune time to address this problem given the national focus on prevention and early intervention through initiatives such as the National Child Protection Framework, the Early Years Strategy, Closing the Gap and the Federal Government's White Paper, *'The Road Home: A national approach to reducing homelessness'*.

The Queensland Government has made significant improvements to youth detention centres following the Forde Inquiry. It is equally important that the Forde Inquiry's lessons and recommendations are applied in relation to 17 year olds in adult prisons.

Recommendations

The Commission makes the following recommendations to the Queensland Government to address the issue of 17 year olds detained in adult prisons and excluded from the youth justice system:

- 1. That before 1 March 2011, a time-specific commitment be made to:**
 - a. transfer 17 year olds from adult prisons to youth detention, and**
 - b. make the necessary legislative amendments to ensure that all young people under the age of 18 years fall within the jurisdiction of the *Youth Justice Act 1992* and have access to the *Charter of Youth Justice Principles*.**
- 2. That bail be made available for all 17 year olds awaiting the outcomes of their matters before the courts, unless they pose a serious risk to others or themselves, and that all 17 year olds with criminal charges have full access to legal representatives.**
- 3. That systems be put in place in youth detention centres to enable the separation of more serious and/or dangerous detainees from the more vulnerable detention centre population.**
- 4. That options be explored to determine the most effective way for 17 year olds to be transferred to the youth justice system as part of a continuum of interventions and supports across the years of young people's development.**
- 5. That if 17 year olds cannot be removed from adult prisons immediately, the Commission for Children and Young People and Child Guardian be provided with access to all 17 year olds in adult prisons to monitor their safety, wellbeing and experiences to further inform the government's policy position on this specific issue.**

Introduction

Queensland continues to be the only state or territory in Australia to treat 17 year olds as adults in the criminal justice system, and consequently they can be placed on remand or sentenced to a term of imprisonment in adult correctional facilities. At 30 June 2009, there were 39 17 year olds in Queensland's adult prisons (36 males and 3 females).⁹ From 1 July 2005, the age at which children would be dealt with as adults in the criminal justice system was 18 in all the other Australian states.¹⁰

This paper outlines the national and international evidence supporting the removal of 17 year olds from adult prisons as part of the broader issue of concern about the exclusion of 17 year olds from the youth justice system. It provides several proposals to improve the outcomes for high risk and vulnerable young people in the justice systems, as well as the community.

In the Commission's view, and on the platform of the *United Nations Convention on the Rights of the Child*, this issue can no longer be ignored on the basis that:

1. we have a **social responsibility to vulnerable young people** who have complex histories of disadvantage
2. these young people require **targeted and developmentally-appropriate intervention, support and services**, and
3. there is a growing tide of **research evidence** in relation to more effective approaches to deter young people from offending, intervene to prevent re-offending and ultimately, provide safer outcomes for the community.

The law in Queensland for 17 year olds

Ages of majority and consent

The age of majority in Queensland is 18 for most purposes, including voting, getting married, sitting on a jury, hiring R-rated films or seeing them in a cinema, buying or viewing pornography, purchasing alcohol and tobacco products, buying a can of spray

⁹ Australian Bureau of Statistics. (2009). *Prisoners in Australia, 2009*, cat. No. 4517.0. Canberra: Author.

¹⁰ G. Urbas, "The Age of Criminal Responsibility," Canberra: Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, No 181 (2000) 3, <<http://www.aic.gov.au/publications/tandi/ti181.pdf>> at 24 October 2007.

paint or getting a tattoo. The age of consent is 16 in all states and in Queensland the age of consent for anal sex is 18. A person under 18 is defined as a minor or a child.

Criminal proceedings and sentencing

In Queensland, a child is defined under the *Youth Justice Act 1992* as a person who has not turned 17 years of age.¹¹ Section 6 of the *Youth Justice Act 1992* allows the Governor in Council to extend the definition to include persons under 18 years by enacting a regulation to this effect; however, this power has never been exercised. A person will be treated as a child under the *Youth Justice Act 1992* if they commit an offence as a child¹² (a child offence), and are found guilty before they turn 18 years.¹³

While there are specific instances when a person will be sentenced as an adult for a child offence (see Appendix 1), a person will be sentenced as an adult if he/she commits a child offence, but proceedings do not commence until after the person turns 18.¹⁴ In all cases where a person is sentenced as an adult for a child offence, the sentencing court must consider the fact that the person was a child at the time of the offence and the sentence that might have been imposed upon them as a child.¹⁵

Transfers from youth detention to adult prisons

The *Youth Justice Act 1992* makes provision for a person serving a period of detention in a youth detention centre to be transferred to an adult prison on the application of the Department or the person.¹⁶ The Children's Court is the only court empowered to make such an order. The person must be 18 years or more or, 17 years or more and either previously held in custody in a prison, on sentence, remand or otherwise, or sentenced to serve a term of imprisonment. On application by the person or the Department, the court may order that the person serve the unserved period of detention in a youth detention centre as a period of imprisonment in an adult prison. Once the court has made an order that the period of detention be served as a period of imprisonment, the provisions of the *Corrective Services Act 2006* apply.¹⁷

¹¹ Section 4, Schedule 4 of the *Youth Justice Act 1992*, *child* means—(a) a person who has not turned 17 years; or (b) after a day fixed under section 6—a person who has not turned 18 years.

¹² Sections 132 & 134 *Youth Justice Act 1992*.

¹³ Section 140 *Youth Justice Act 1992*.

¹⁴ Section 140(1) *Youth Justice Act 1992*.

¹⁵ Section 144 *Youth Justice Act 1992*.

¹⁶ Sections 349 and 276C *Youth Justice Act 1992*.

¹⁷ Section 276(6) *Youth Justice Act 1992*.

A case for the removal of 17 year olds from adult prisons and their inclusion in the youth justice system

This paper illustrates some of the differences and disadvantage that take place when young people are dealt with as adults in the criminal justice and corrections system.

The vulnerability of this group of young people

There is clear evidence to show that a majority of young people who exhibit criminal or anti-social behaviour have a long and complex history of disadvantage. Local, national and international data consistently show that young people in detention are an especially vulnerable group of young people with complex needs.

For example:¹⁸

- around 80% of young people in detention have experienced multiple traumatic events during their lifetime, including physical assault, threats of violence and sexual assault.¹⁹ In most cases, the trauma has been perpetrated by those responsible for their care, such as a parent, guardian or other family member²⁰
- between 40% and 70% of young people in detention have at least one family member with a substance abuse problem²¹ and around half are no longer living with their parents²²
- the Australian Institute of Criminology has linked youth offending to child abuse and neglect²³
- a survey by the New South Wales Department of Juvenile Justice found that around 40% of young people in detention have a parent who has been in prison²⁴
- around 75% of young people in detention have left school before completing Year 9, usually after a history of suspensions²⁵

¹⁸ As referenced in Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

¹⁹ Abram, K.M., Teplin, L.A., Charles, D.R., Longworth, S.L., McClelland, G.M., & Dulcan, M.K. (2004). Posttraumatic Stress Disorder and trauma in youth in juvenile detention. *Archives of General Psychiatry*, 61, 403-410.

²⁰ Prichard, J., & Payne, J. (2005). *Alcohol, Drugs and Crime: A Study of Juveniles in Detention*. Research and Public Policy Series no. 67. Canberra: Australian Institute of Criminology.

²¹ Bickel, R., & Campbell, A. (2002). Mental health of adolescents in custody: the use of the 'Adolescent Psychopathology Scale' in a Tasmanian context. *Australian and New Zealand Journal of Psychiatry*, 36, 603-609; Prichard, J., & Payne, J. (2005). *Alcohol, Drugs and Crime: A Study of Juveniles in Detention*. Research and Public Policy Series no. 67. Canberra: Australian Institute of Criminology.

²² Prichard, J., & Payne, J. (2005). *Alcohol, Drugs and Crime: A Study of Juveniles in Detention*. Research and Public Policy Series no. 67. Canberra: Australian Institute of Criminology.

²³ Stewart, A., Dennison, S., & Waterson, E. (2002). Pathways from Child Maltreatment to Juvenile Offending. *Trends and Issues in Crime and Criminal Justice*, 241.

²⁴ New South Wales Department of Juvenile Justice (2003).

²⁵ Prichard, J., & Payne, J. (2005). *Alcohol, Drugs and Crime: A Study of Juveniles in Detention*. Research and Public Policy Series no. 67. Canberra: Australian Institute of Criminology; New South Wales Department of Juvenile Justice (2003).

- according to the Department of Community Safety (formerly Queensland Corrective Services)²⁶, the majority of 17-year-olds present on admission with high levels of unemployment and low levels of education
- almost 90% of young people in detention have symptoms of mental illness²⁷ and around 60% meet full diagnostic criteria for at least one psychiatric disorder in the six months prior to detention²⁸
- at least one half of young people in detention have recent symptoms of alcohol or drug abuse or dependence²⁹
- many young people enter detention with untreated physical health problems, including sexually transmitted diseases, dental problems, respiratory conditions and ear, nose and throat conditions,³⁰ and
- 16% of young people surveyed in the Commission's *Views of Young People in Detention Centres Survey*³¹ reported being homeless before entering detention.

Furthermore, 17% of young people surveyed in the Commission's 2009 *Views of Young People in Detention Centres Survey* report³² were in the care of the Department of Communities, Child Safety Services.³³

Clearly social justice concerns are at the core of this issue. From a social responsibility perspective, it is crucial that collaborative efforts are harnessed to engage and support young people on more productive pathways. In the Commission's view, these young people are a vulnerable group who are at high risk and deserve every possible chance for a better life.

Recognising the complex needs and vulnerability of these young people, the *United Nations Convention on the Rights of the Child*, *United Nations Rules on the Protection of*

²⁶ *Young Adult Offenders Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities 2008 – 2011*, Queensland Corrective Services, July 2008 (Internal Draft).

²⁷ Bickel, R., & Campbell, A. (2002). Mental health of adolescents in custody: the use of the 'Adolescent Psychopathology Scale' in a Tasmanian context. *Australian and New Zealand Journal of Psychiatry*, 36, 603-609.

²⁸ Teplin, L.A., Abram, K.M., McClelland, G.M., Dulcan, M.K., & Mericle, A.A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry*, 59, 1133-1143.

²⁹ Stathis, S., Letters, P., Doolan, I., Fleming, R., Heath, K., Arnett, A., et al. (2008). Use of the Massachusetts Youth Screening Instrument to assess mental health problems in young people within an Australian youth detention centre. *Journal of Paediatrics and Child Health*, 44, 438-443; Teplin, L.A., Abram, K.M., McClelland, G.M., Dulcan, M.K., & Mericle, A.A. (2002). Psychiatric disorders in youth in juvenile detention. *Archives of General Psychiatry*, 59, 1133-1143.

³⁰ Bolin, K., & Jones, D. (2006). Oral health needs of adolescents in a juvenile detention facility. *Journal of Adolescent Health*, 38, 755-757; Fasher, A.M., Dunbar, N., Rothenbury, B.A., Bebb, D.K., & Young, S.J.W. (1997). The health of a group of young Australians in a New South Wales juvenile detention centre: A pilot study. *Journal of Paediatrics and Child Health*, 33, 426-429; Hein, K., Cohen, M.I., Litt, I.F., Schonberg, S.K., Meyer, M.R., Marks, A., et al. (1980). Juvenile detention: Another boundary issue for physicians. *Pediatrics*, 66, 239-245; New South Wales Department of Juvenile Justice (2003); Oh, M.K., Smith, K.R., O'Cain, M., Kilmer, D., Johnson, J., & Hook, E.W. (1998). Urine-based screening of adolescents in detention to guide treatment for gonococcal and chlamydial infections. *Archives of Pediatric and Adolescent Medicine*, 152, 52-56.

³¹ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

³² Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

³³ now Department of Communities, Child Safety Services.

*Juveniles Deprived of their Liberty*³⁴ and *Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities*³⁵ all stipulate that young people should have access to basic services and standards of treatment. Specifically:

- meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society³⁶
- treatment which takes into account the needs of persons of his or her age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society³⁷
- coordinated and varied educational and accredited vocational programs suited to individual needs, interests and market-place opportunities, positive learning experiences, which systematically assess and improve the numeracy levels, literacy levels and the work-place knowledge, experience, and qualifications of young people,³⁸ and
- specialised programs that assist young people to understand why they offend and what measures they can take to stop or reduce their future offending.³⁹

However, these basic rights are not afforded to 17 year olds in adult prisons in Queensland.

Nationally and internationally recognised child rights

There is a compelling child rights-based justification for the removal of 17 year olds from adult prisons. The treatment of 17 year olds as adults in the criminal justice system and their incarceration in adult prisons, is contrary to Australia's obligations under the *United Nations Convention on the Rights of the Child* and ignores the recommendations of the

³⁴ These Rules were adopted by the Committee on the Rights of the Child as adding to the content of the United Nations Convention on the Rights of the Child.

³⁵ These standards were developed in 1999 by the Australasian Juvenile Justice Administrators, which is a Standing Committee of the Community and Disability Services Minister's Advisory Council providing support to the Community and Disability Services Minister's Conference.

³⁶ *United Nations Rules on the Protection of Juveniles Deprived of their Liberty* – these Rules were adopted by the Committee on the Rights of the Child as filling out the content of the United Nations Convention on the Rights of the Child.

³⁷ Article 37(c) states that every child (under 18 years) deprived of liberty shall be treated in a manner which takes into account the needs of persons of his or her age. Article 40(1) states that every child recognised as having infringed the penal law has a right to be treated in a manner which 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.

³⁸ Standard 4.2, *Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities*.

³⁹ Standard 4.3, *Australasian Juvenile Justice Administrators Standards for Juvenile Custodial Facilities*.

Australian Human Rights and Equal Opportunity Commission⁴⁰ and the Australian Law Reform Commission.⁴¹

While Australia's ratification of the *United Nations Convention on the Rights of the Child* is reserved in so far as the obligation to separate children from adults in prisons,⁴² Australia has unreservedly ratified the remainder of the of the United Nations Convention on the *Rights of the Child*, including Article 1 which provides:

“for the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

Queensland's treatment of 17 year olds as adults in the criminal justice and corrections system is therefore in breach of this obligation.

General Comment Number 10 of the United Nations Committee on the Rights of the Child regarding children's rights in juvenile justice provides that '*every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice*'⁴³ and recommends that where State parties treat 17 year olds as adult criminals, they should change their laws to ensure their juvenile justice rules are applicable to all persons under the age of 18 years.⁴⁴

The Anti-Discrimination Commission Queensland contends that this practice also breaches Article 3 of the *United Nations Convention on the Rights of the Child*, which provides:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies or legislative bodies, the

⁴⁰ Recommendation 196, Human Rights and Equal Opportunity Commission, Australian Law Reform Commission, (1997). *Seen and Heard: Priority for children in the legal process*, Report of the National Inquiry into Children and the Legal Process, Report 84, Canberra: Author - "the age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions."

⁴¹ Recommendation 196, Human Rights and Equal Opportunity Commission, Australian Law Reform Commission, (1997). *Seen and Heard: Priority for children in the legal process*, Report of the National Inquiry into Children and the Legal Process, Report 84, Canberra: Author - "the age at which a child reaches adulthood for the purposes of the criminal law should be 18 years in all Australian jurisdictions."

⁴² Article 37(c) of the United Nations Convention on the Rights of the Child - "every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so." Australia's reservation provides: "*The obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia therefore ratifies the Convention to the extent that it is unable to comply with the obligation imposed by Article 37(c).*"

⁴³ Committee on the Rights of the Child, *General Comment No. 10 – Children's rights in juvenile justice*, UN Doc CRC/C/GC/10 (2007), para 37. At http://www2.ohchr.org/english/bodies/chr/docs/GC10_en.doc. The rules of juvenile justice referred to by the Committee are the rules of a particular State party that govern juvenile justice in their jurisdiction.

⁴⁴ Committee on the Rights of the Child, *General Comment No. 10 – Children's rights in juvenile justice*, UN Doc CRC/C/GC/10 (2007), para 38. At http://www2.ohchr.org/english/bodies/chr/docs/GC10_en.doc. The rules of juvenile justice referred to by the Committee are the rules of a particular State party that govern juvenile justice in their jurisdiction.

best interests of the child shall be a primary consideration.

In the Anti-Discrimination Commission Queensland's view, *recognising the vulnerability of young people and that many 17 year olds are still mentally and physically immature, it is in these young people's best interests to be dealt with under the youth justice system if they commit an offence.*⁴⁵

In the Australian Human Rights Commission's view, 17 year old children should not be incarcerated with adult offenders unless it is in their best interests on the basis that when Articles 1 and 3 of the United Nations Convention on the Rights of the Child are read together, the best interests of the child principle applies to all children below the age of 18 years.⁴⁶

These child rights arguments are neither new, nor are they contentious. The child rights justifications for the removal of 17 year olds from the criminal justice system have been comprehensively detailed in many other publications on this issue.⁴⁷

The need for targeted and developmentally-appropriate intervention, support and services

Targeted and developmentally-appropriate intervention, support and services tailored to meet the specific needs of young people, are well-accepted as critical for increasing their rehabilitative prospects. The link between participation in vocational education and training and recidivism is also well-established. A 2005 study in Queensland found that participation in education and training prior to initial custodial release, decreased the chance of an offender returning to prison from 32% to 23%.⁴⁸

Young people in youth detention centres also consider that training and employment readiness are critical. The Commission's 2009 *Views of Young People in Detention Centres Survey* report⁴⁹ found 86% of respondents in detention centres believed that they would benefit from help with finding employment or training.

⁴⁵ Anti-Discrimination Commission Queensland. (2006). *Women in Prison*, A Report by the Anti-Discrimination Commission Queensland. Brisbane: Author.

⁴⁶ Correspondence to the Commission for Children and Young People and Child Guardian from the Hon Catherine Branson QC, President of the Australian Human Rights Commission, 21 September 2010

⁴⁷ Youth Affairs Network Queensland, Campaign Kit, *Stop Locking Up Children in Adult Prisons*, available at <http://www.yanq.org.au/children-in-adult-prisons>; T.Hutchinson, 'Being Seventeen in Queensland' (2007) 32(2) *Alternative Law Journal* 81-85; T Hutchinson, 'When a Child is Not a Child' (2006) 30 *Criminal Law Journal* 1-8; C. Moynihan, Justice for all... unless you're a 17-year-old Queenslander, available at <http://www.legalaid.qld.gov.au/publications/head-note/edition-61/Pages/Justice-for-all-unless-you're-a-17-year-old-Queenslander.aspx>; Sisters Inside Submission to the Juvenile Justice Amendment Bill 2001 Consultation Draft, *Age Does Matter*, July 2001, available at <http://www.sistersinside.com.au/media/juvenilejustice.pdf>.

⁴⁸ University of Queensland. (2005). *Vocational education and training provision and recidivism in Queensland correctional institutions research report*, National Centre for Vocational Education Research.

⁴⁹ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

The provision of consistent and continuous specialised and tailored services and programs cannot realistically be delivered to 17 year olds in adult prisons given that they comprise only a small minority of the population. While Queensland's adult prisons apply the empirically recognised 'what works' principles⁵⁰ when assessing offenders' levels of risk, suitability for programs and accommodation placement, young people have a different set of criminogenic needs compared to adult offenders, including education, family and social factors, substance abuse and mental health.

The Australian Institute of Criminology⁵¹ contends that the 'what works' approach requires greater adaptation for younger youth justice clients aged between 10 and 17, largely due to developmental changes taking place between the age of entry into youth justice services, and the age when adult services are offered. The Australian Institute of Criminology refers to work on violence prevention, which suggests that adolescents between the ages of 15 and 18 should attend programs that address the development of pro-social peer groups, conflict resolution and work/job skills.⁵²

The Department of Community Safety's (formerly Queensland Corrective Services) ability to apply the 'what works' principles to young prisoners is also affected by other factors, including the limited amount of time 17 year olds spend in custody before turning 18, the location of prisoners and resource allocation under budgetary constraints.

For example, the Department of Community Safety does not deliver criminogenic programs to 17 year olds in adult prisons on the basis that:

1. the majority of 17 year olds are on remand, and
2. 17 year olds spend a limited amount of time in a youth unit before exiting the system or transferring to the adult prison population where they can access a criminogenic program.

At best, these young people have access to limited, generic programs and supports designed for the adult offender population. While the Department of Community Safety has sought to improve some of the difficulties and limitations in managing the small number of 17 year olds in Queensland's adult prisons through the development of its *Young Adult Offenders Strategy*, there continue to be significant concerns for 17 year

⁵⁰ The 'what works' approach is a body of literature.

⁵¹ Day, A., Howells, K., Rickwood, D., (2004). *Current Trends in the Rehabilitation of Juvenile Offenders*, Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, Number 284

⁵² Farrell et al. 2001.

olds detained in adult prisons in Queensland which warrant more detailed attention and action.

The Department of Community Safety acknowledges that managing the 17 year old cohort of prisoners and providing targeted and co-ordinated intervention services:

“can be challenging... due to the small number of these offenders in custody, the high number of un-sentenced 17-year-old offenders and the short amount of time spent as a young adult offender in custody before turning 18... Young adult offenders will not be able to access the criminogenic programs, as a significant proportion of offenders are on remand and the current offender management process will not be applicable.”⁵³

Educational programs, activities and courses in adult prisons, including basic literacy and numeracy, are classified as privileges and can be withdrawn if a prisoner commits a ‘breach of discipline’, despite the Department of Community Safety’s recognition⁵⁴ of research showing a strong correlation between participation in education and training prior to initial release and reduced recidivism.⁵⁵ Despite the obvious importance of prisoners, including 17 year olds, being exposed to consequences for poor behaviour, depriving young people of educational services as a punitive measure is likely to have more significant, long-term consequences for the young people and society.

The impact of the lack of access to programs is well known to the Queensland Government as a result of the 1999 *Forde Inquiry Report into Abuse of Children in Queensland Institutions*, which found:

“the extremely limited nature of the educational, vocational and recreational programs results in boredom and disaffection throughout the detainee population. There is a pressing need for programs that will engage young people, deal with their interests and also be of future vocational benefit.”⁵⁶

Youth detention centres in Queensland would have more scope to provide 17 year olds with better access to professional care, counselling, and activities which are targeted to the gender, cultural beliefs, and health needs of young people in detention. Detention centre staff are specifically trained to work with adolescents. Detention centres’ daily

⁵³ *Young Adult Offenders Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities* 2008 – 2011, Queensland Corrective Services, July 2008. (Internal draft)

⁵⁴ *Young Adult Offenders Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities* 2008 – 2011, Queensland Corrective Services, July 2008. (Internal draft)

⁵⁵ This research found that participation in education and training prior to initial release decreased the chance of an offender returning to prison from 32 per cent to 23 per cent.

⁵⁶ Page 236, *Forde Inquiry Report into Abuse of Children in Queensland Institutions* (1999).

routines are also geared towards young people engaging in programs that include cultural, educational, pre-vocational, vocational, and recreational programs.

While the Department of Community Safety recognises the need for tailored and specialist programs and has made efforts within its limited budget to cater for alternative programs for the relatively small population of 17 year old prisoners,⁵⁷ these are not enough to address the developmental needs of young people. Seventeen year old prisoners require the same range of specialist supports, training, education as all other young people in Queensland's youth detention centres, to assist them to re-enter society with the best possible rehabilitative chance.

The unavailability of youth diversionary and sentencing options

Research from the United States suggests that detention alone is not an effective deterrent of crime for young people.⁵⁸ More recently, a 2010 study by the New South Wales Bureau of Crime Statistics & Research⁵⁹ examining the effect of prison on adult re-offending among offenders convicted of either non-aggravated assault or burglary, found that offenders who received a prison sentence were slightly more likely to re-offend than those who received a non-custodial penalty.⁶⁰

The Director of the NSW Bureau of Crime Statistics & Research, Dr Don Weatherburn, said that these findings are consistent with a growing body of evidence suggesting that prison either does nothing to deter offenders or increases the risk of re-offending.⁶¹ In Dr Weatherburn's view:

Prison can be justified on other grounds, such as punishment and incapacitation.⁶² To the extent that prison does control crime it's only through long

⁵⁷ such as the *Big Feat Program*.

⁵⁸ An extensive systematic review of studies of criminal justice system interventions in North America (MacKenzie 1997) concluded that incapacitating prolific offenders at an appropriate point in their criminal careers could reduce crime. However, the crime reduction effect is diminished when low risk offenders who probably would not have re-offended, are incarcerated. Difficulties in assessing the relative risk and which point offenders are at in their criminal careers also mean that incapacitation can be an expensive crime prevention option. Other research has examined how various sentencing options (e.g. prison versus intermediate sanctions versus traditional probation) influence levels of recidivism among individuals. A recent meta-analytic study of various sanctions employed in North America concluded that there is no strong evidence to suggest that harsh punishment-based sanctions (such as imprisonment) deter re-offending (see Smith, Goggin and Gendreau 2002). International research suggests that other correctional interventions that aim to 'get tough' (such as boot camp) or that increase the degree with which offenders are monitored in the community do not impact upon recidivism to any greater degree than other more traditional criminal justice responses (see MacKenzie 2000).

⁵⁹ Weatherburn, D. (2010). *The effect of prison on adult re-offending*, NSW Bureau of Crime Statistics and Research, Number 143

⁶⁰ The Bureau compared 96 matched pairs of convicted burglars and 406 matched pairs convicted of non-aggravated assault. One member of each pair received a prison sentence, the other received some form of non-custodial sanction. All offenders were exactly matched on offence type, number of concurrent offences, prior prison experience, number of prior prison appearances in court and bail status at final appearance.

⁶¹ Media Release from the NSW Bureau of Crime Statistics and Research, *The effect of prison on adult re-offending*, 21 September 2010

⁶² Media Release from the NSW Bureau of Crime Statistics and Research, *The effect of prison on adult re-offending*, 21 September 2010

prison terms and they only work for people who offend a lot when they're free. ⁶³

The growing evidence about the failure of prisons to rehabilitate offenders aside, 17 year olds do not have access to the numerous protections and special considerations that young people do under the *Youth Justice Act 1992*, which recognise that young people are more vulnerable than adults.

Authorities dealing with young people at all stages under the *Youth Justice Act 1992*, including police, must have regard to the *Charter of Youth Justice Principles*, which provides a legislative code for dealing with young people who come in contact with the youth justice system. These principles underlie the operation of the *Youth Justice Act 1992*⁶⁴ and require:

- recognition of the vulnerability of children and their need for special protection when they come into contact with the justice system
- consideration of diversion of young people from the justice system as opposed to the institution of formal criminal proceedings, and
- young people to be held accountable and encouraged to accept responsibility for their behaviour.⁶⁵

The *Charter of Youth Justice Principles* in the *Youth Justice Act 1992* not only provides for special protections for young people who come into contact with the youth justice system, but it also importantly includes principles of accountability and responsibility for young people, including the first principle that the community should be protected from offences and principle 8(a) which provides for young people who have committed offences to be dealt with in a way that holds them accountable and encourages them to accept responsibility for their offending behaviour.

In addition to the overarching *Charter of Youth Justice Principles*, the *Youth Justice Act 1992* also contains special provisions for how police, and the courts must deal with young people throughout the various stages of a criminal matter. These special considerations are not applicable to 17 year olds dealt with as adults.

Arrest

The *Youth Justice Act 1992* provides young people with access to several alternatives to charging a young person and court and detention, including point of arrest options such as not taking any action, cautioning a young person or requiring a young person to

⁶³ 612 ABC Radio, PM Program, interview by David Mark with Dr Don Weatherburn, 21 September 2010

⁶⁴ Section 3 of the *Juvenile Justice Act 1992*.

⁶⁵ *About Youth Justice*, Youth Justice website, Department of Communities (Community Services), 2009.

participate in a Youth Justice Conference, unless the arrest is necessary.⁶⁶ Seventeen year olds treated as adults in the criminal justice system do not have access to this broader range of arrest alternatives and diversionary options.

Criminal procedures and accused person's rights

Unlike young people dealt with under the *Youth Justice Act 1992*, 17 year olds:

- are not subject to the requirement for police to notify their parents of their arrest
- do not have access to the provision in section 305 of the *Youth Justice Act 1992* regarding their parents' entitlement to know their whereabouts when in custody
- are not subject to the publication protections in section 301 of the *Youth Justice Act 1992* and can be publicly named
- can be required to give DNA samples without a court application
- are not subject to principle 18 of the *Charter of Youth Justice Principles* and can be held on remand in adult prisons
- are not required to have a parent present for police interviews to proceed,⁶⁷ and
- are subject to less restricted search and seizure police powers.⁶⁸

Court and jury election

Generally, young people charged with offences are dealt with by Childrens Court Magistrates on a summary basis. Only in specific circumstances⁶⁹ can a Childrens Court Magistrate hold committal proceedings to allow charges to be heard by a Childrens Court judge, that is, the Childrens Court when constituted by a Childrens Court judge or a District Court judge.⁷⁰ For example, a matter must proceed by way of committal if a Childrens Court Magistrate is not satisfied that he or she can adequately deal with an indictable offence summarily.⁷¹ Seventeen year olds on the other hand, are required to attend the Magistrates, District or Supreme Court, depending on the charge.⁷²

Under the *Youth Justice Act 1992*, a young person can also choose whether to have their matter dealt with by a Childrens Court judge rather than by judge and jury.⁷³ Seventeen year olds do not have this option.⁷⁴

⁶⁶ Section 13 of the *Youth Justice Act 1992*

⁶⁷ Dr Terry Hutchinson and Jamie Nuich, QUT Faculty of Law, September 2010, Submission to Commission for Children and Young People and Child Guardian.

⁶⁸ Dr Terry Hutchinson and Jamie Nuich, QUT Faculty of Law, September 2010, Submission to Commission for Children and Young People and Child Guardian.

⁶⁹ For example, ss 81 and 82 of the *Youth Justice Act 1992* deal with how a Childrens Court magistrate must deal with serious and indictable offences. Section 93 of the *Youth Justice Act 1992* deals with when an offence is an indictable offence other than a serious offence. Part 6, Division 2 of the *Youth Justice Act 1992* deals with the specific jurisdiction of Childrens Court judges.

⁷⁰ Children's Court judge is defined in the *Youth Justice Act 1992* dictionary to mean the Children's Court when constituted by a Children's Court judge or a District Court judge.

⁷¹ Section 77 of the *Youth Justice Act 1992*.

⁷² Dr Terry Hutchinson and Jamie Nuich, QUT Faculty of Law, September 2010, Submission to Commission for Children and Young People and Child Guardian.

⁷³ Section 98(2) of the *Youth Justice Act 1992*

Bail and remand

Seventeen year olds are not afforded the protection of principle 17 that stipulates that a *child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances*. Accordingly, bail options do not have to be considered or exhausted for a 17 year old before he/she can be remanded in custody, nor does a 17 year olds' time spent on custodial remand have to be for the *least time justified in the circumstances*.

Furthermore, 17 year olds are not subject to the same right of young people under principle 18, that a child detained in custody should only be held in a facility suitable for children. As a consequence, 17 year olds can be placed on remand in an adult prison until such time as they are convicted and/or sentenced.

Sentencing considerations

Under the *Youth Justice Act 1992*, young people also have access to specific sentencing considerations. If a young person goes to court and is found guilty, there are specific sentencing principles the court must take into account under the *Youth Justice Act 1992*.

While courts can only impose a sentence of imprisonment as a last resort for both adults⁷⁵ and youths,⁷⁶ section 150 of the *Youth Justice Act 1992* stipulates special sentencing considerations for young people, including that a child's age is a mitigating factor in determining whether or not to impose a penalty. Contrary to the *United Nations Convention on the Rights of the Child*,⁷⁷ 17 year olds sentenced as adults under the *Penalties and Sentences Act 1992* do not receive any specific legislative consideration of their rights or wellbeing as young people, beyond the recognition of their age as a sentencing consideration.

⁷⁴ Dr Terry Hutchinson and Jamie Nuich, QUT Faculty of Law, September 2010, Submission to Commission for Children and Young People and Child Guardian.

⁷⁵ Section 9(2)(a)(i) *Penalties and Sentences Act 1992*, Sections 150(2)(e).

⁷⁶ Schedule 1, No 17 of the *Youth Justice Act 1992*.

⁷⁷ Article 40(3) provides that States Parties shall seek to promote the establishment of laws and procedures specifically applicable to children (under 18 years) alleged as, accused of or recognised as having infringed the penal law.

Denying 17 year olds' access to alternatives to prison could be significantly costing the Queensland Government. In 2008-09, the average cost⁷⁸ of providing each Queensland prisoner per day with correctional services was approximately \$270.00.⁷⁹ By comparison, the daily cost of supervising an offender in the community and the infrastructure costs for community supervision may be less. Further, an American analysis of 200 studies of treatment outcomes⁸⁰ found that the most effective types of community-based interventions for persistent and serious young offenders can reduce recidivism by as much as 40%, a rate similar to the most effective institution-based interventions.

In addition, 17 year olds dealt with under the *Penalties and Sentences Act 1992* face further possible disadvantage and stigmatisation by virtue of automatic recording of convictions when imprisonment orders are made under the *Penalties and Sentences Act 1992*. This can negatively affect young people's prospects of post-release employment.

Discriminatory impacts and disadvantages of protective measures for 17 year old females in adult prisons

Strategies put in place to protect 17 year old females in adult prisons are having unintended negative impacts that increase their vulnerability and isolation and also reduce their access to social, educational and recreational activities.

In 2006, the Anti-Discrimination Commission Queensland found in its *Women in Prison Report*:⁸¹

Young women in the prison system can be more vulnerable than older women and have special needs... Women prisoners are victims as well as offenders. Very few are serious violent offenders. They pose little risk to public safety. Many are single parents with dependent children. More than half have been diagnosed with a specific mental illness. Significant numbers have been drug users, and more than 40% have been victims of non-consensual sexual activity, often as young girls.

⁷⁸ Total cost per prisoner per day is the combined operating expenditure and capital costs per prisoner per day, net of operating revenues and excluding payroll tax. Capital costs include the user cost of capital (including land), depreciation and debt servicing fees where applicable. Total cost excludes expenditure on transport and escort services where these are reported separately by jurisdictions.

⁷⁹ *Report on Government Services 2010*, (2010). Australian Productivity Commission, Volume 1, Chapter 8.

⁸⁰ Lipsey, M.W., & Wilson, D.B. (1998). Effective intervention for serious juvenile offenders: A synthesis of research. In R. Loeber & D.P. Farrington (Eds.), *Serious and violent juvenile offenders: Risk factors and successful interventions* (pp. 313-345). Thousand Oaks: Sage.

⁸¹ Anti-Discrimination Commission Queensland. (2006). *Women in Prison*, A Report by the Anti-Discrimination Commission Queensland. Brisbane: Author.

This Report also identified particular practices that may discriminate against 17 year old female prisoners on the basis of age.

As a result of its consultations with women in prison, the Anti-Discrimination Commission Queensland found that:

- young women can be placed anywhere in female prisons, but that they are often put in the protection unit by prison authorities concerned for their safety. This action can stigmatise prisoners for the whole time they are in prison, as they may be thought to be an informer by other prisoners. Due to this stigmatisation, they may remain in the protection unit for the entire time they are in prison
- women in the protection unit are extremely restricted in their space, movement and activities compared to almost all other prisoners which the Anti-Discrimination Commission Queensland's view considers amounts to *prima facie direct discrimination on the basis of age*, and
- 17 year olds in prison often had no one to look after them; they were often frightened and very vulnerable to self-harm.

As a result of these types of practices, the Anti-Discrimination Commission Queensland made the following recommendations in its *Women in Prison Report*:

- that the Queensland Government immediately legislate to ensure that the age at which a child reaches adulthood for the purposes of the criminal law in Queensland be 18 years, and
- that it is not in the best interests of 17 year old offenders to be placed in an adult prison, or for correctional authorities to place a female 17 year old offender in a protection unit of an adult prison. The Queensland Government and correctional authorities should take immediate steps to cease this practice.

Similar issues have been raised by Sisters Inside Inc.⁸² The Sisters Inside Submission in relation to the *Juvenile Justice Amendment Bill 2001* examined the ramifications for 17 year old females in adult prisons and indicated that although many 17 year old females were victims of sexual abuse, they were subjected to mandatory strip searches in adult prisons, irrespective of whether a reasonable and honestly held suspicion that the prisoner might have received contraband exists.⁸³

⁸² a community organisation which regularly visits women in Queensland prisons.

⁸³ Sisters Inside Submission in regard to the Juvenile Justice Amendment Bill 2001 'Age Does Matter', July 2001, 5.

The over-emphasised physical security of adult prisons

Seventeen year old males in adult prisons are exposed to the over-emphasised physical security of adult prison itself:

“Behind 10-metre high fences, topped with coils of razor wire, some 17-year-olds, dressed in regulation brown T-shirts and shorts, are playing table tennis. Another prisoner paces up and down the jail’s spartan young offenders unit, which is surrounded by cells. There is some natural light but there are no windows you can look out of and see the sky.”⁸⁴

The dangers of exposing young people to over-securitisation was again highlighted in the *Forde Inquiry Report into Abuse of Children in Queensland Institutions*, which recommended that:

“open detention facilities for juveniles should be established... with no or minimal security measures.”

The Forde Inquiry identified fundamental deficiencies with youth detention, which impacted on the 17 year olds who were in Queensland youth detention centres at the time. While significant improvements have been made to youth detention centres in Queensland following the Forde Inquiry, it is important that its lessons and recommendations are also applied in relation to 17 year olds in adult prisons.

Other disadvantages for 17 year olds in adult prisons

Currently in south east Queensland, 17 year old male offenders are accommodated at the Brisbane Correctional Centre in a dedicated youthful offenders unit and 17 year olds females are accommodated at the Brisbane Women’s Correction Centres. Seventeen year olds are also accommodated in other correctional centres depending on an individual assessment of their needs.⁸⁵

The requirement for adult prisons to separate 17 year olds from the adult population when it is reasonable to do so, means that it may be reasonable to house a 17 year old with the general adult population or it may sometimes result in a young person being completely isolated from the prison population for extended periods to ensure their

⁸⁴ Glennie, C., ‘Juvenile detention laws creating ‘school for crims’. ABC Local website, 31 December 2009, www.abc.net.au

⁸⁵ Queensland Corrective Services, unpublished data.

safety. These young people's interaction with their family and friends is also significantly restricted in adult prisons. Prisoners at the Brisbane Correctional Centre are permitted up to two hours of visits per week from Monday to Sunday.

These practices may undermine 17 year old prisoners' basic right to feel safe⁸⁶, according to the Commission's latest *Views of Young People in Detention Centres Survey*,⁸⁷ which found that having regular and positive interaction with family and friends, is an important determinant of a young person's sense of safety in detention.

In recognition of the critical part visitors play in the reintegration of young people back into the community upon release from detention, the *Youth Justice Act 1992's Charter of Youth Justice Principles* requires youth detention centres to facilitate young people's maintenance of their relationships with family and the community. Visits with family and friends at the Brisbane Youth Detention Centre are permitted between 6.00pm and 7.15pm on Mondays, Tuesdays, Thursdays and Fridays and between 11.30am to 1.00pm and 2.30pm and 3.45pm on Saturdays and Sundays.

Also, s.269 of the *Youth Justice Act 1992* allows for a young person to be granted a leave of absence to visit family for a specific purpose and period of time and subject to conditions. This is not permitted under the *Corrective Services Act 2006* for 17 year old prisoners.

Seventeen year olds in adult prisons also do not have access to the Commission's Community Visitors who independently monitor the treatment of young people and the provision of services in youth detention centres. Community Visitors are also independent advocates for these young people. It was the lack of independent advocates for children and young people in Queensland institutions, including youth detention centres, which led to the Forde Commission of Inquiry's recommendation that Official Visitors be empowered to act as advocates by listening to, giving voice to, and facilitating the resolution of, the concerns and grievances of children and young people in such facilities.⁸⁸

Community visitors provide important services to vulnerable children and young people by ensuring that their concerns, views and wishes are listened to and seriously considered. Community Visitors listen to children and young people and support them to

⁸⁶ Article 3 of the United Nations Declaration of Human Rights provides that *everyone has a right to security of person*

⁸⁷ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

⁸⁸ Forde Inquiry Report into Abuse of Children in Queensland Institutions 1999, page 266.

work through problems and issues, and importantly, help them to access other support people and services.

The benefits to young offenders of having a mentor-like figure, and particularly for young people who have been the subjects of abuse in the past, were revealed in a recent Crime and Misconduct Commission research paper.⁸⁹

The Commission also does not have the legislative authority to visit or investigate complaints about 17 year olds detained in adult prisons. As such, the Commission has a limited ability to conduct research and monitor the systems in relation to these young people.

Moving forward - building on what works

Short-term cost and practical hurdles should not deter or justify the Queensland Government's delay in considering how steps can be taken to remove 17 year olds from adult prisons and include them in the youth justice system.

Although cost, particularly the capital costs, is identified as an impediment to changing the status quo, change is necessary. Changes which reduce the numbers of young people in detention may reduce some of the cost impost, based on the following:

- detention may be a more costly option than community-based alternatives to managing young offenders⁹⁰
- reducing the unnecessarily high youth remand rates will mean significantly fewer young people being sent to detention, alleviating the demand for correctional facilities⁹¹
- investment in cheaper bail support and accommodation options will reduce the number of young people in detention, along with the huge subsequent costs
- redressing the chronic over-representation of Aboriginal and Torres Strait Islander young people will mean fewer young people in detention, and
- the outcomes achieved by Victoria's diversionary and crime prevention focus to reduce the number of young people in detention since transferring 17 year olds from adult prisons to detention in 2005.

⁸⁹ Teague, R., Mazerolle, P., Legosz, M., & Sanderson, J. (2007). Childhood Physical Abuse and Adult Offending – Are they linked and is there scope for early intervention? *Crime and Misconduct Commission Research and Issues Paper, No. 6*, this report emphasised the importance of the support of particularly a father figure in insulating young people from the negative and criminogenic consequences of experiencing abuse during childhood.

⁹⁰ Austin, J., Johnson, K.K., & Weitzer, R. (2005). *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*. Washington DC: U.S. Department of Justice

⁹¹The majority of 17 year old offenders in adult prisons are on remand (75% in 2008) - *Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities 2008 – 2011*, Queensland Corrective Services, July 2008 (Internal Draft); this is also the same for juvenile offenders in detention centres, with nearly three quarters of the 500 young people who spent time at the Brisbane Youth Detention Centre in 2008-09, being on remand (*Youths locked up for months awaiting trial*, Sunday Mail, 20 September 2009)

Similarly, action on this issue should not be impeded by concerns about mixing 17 year olds in adult prisons with the younger youth detention centre detainees who have committed lesser crimes. While this is a justifiable issue, steps can be taken to separate high and low risk offenders within youth detention centres. In recognition of the critical role that age and gender play in life experience, offending behaviour and developmental requirements of young people, Victoria has three juvenile justice centres covering male and female populations of different ages.⁹² New South Wales also operates age and gender specific detention centres.⁹³

It is also important to note that only a very small portion of the population has been sentenced or remanded in custody for declared serious violent offences or sexual assault.⁹⁴ Young people in adult prisons are predominantly incarcerated for breaking and entering, robbery or assault-related offences. The Queensland Police Service Statistical Reviews indicate that the majority of offences committed by 17 year olds between 2006 to 2009 were 'other' offences, which include, traffic-related, drug, weapons, trespassing or liquor offences.

The Queensland Government's continued reliance on the legislative intention in s.6(1) of the *Youth Justice Act 1992* (which enables the Governor in Council to change the age of a child for the purposes of the Act) without making a firm commitment to change, is not sufficient to resolve this matter and creates legislative uncertainty, particularly given the length of time that has now passed without action. As Queensland's Supreme Court Chief Justice, Paul De Jersey, stated, this is:

*"a real problem that we should, from a social responsibility point of view, be addressing a little more rigorously."*⁹⁵

⁹² The Melbourne Youth Justice Centre is a custodial facility for males aged 15 to 20 years who have been sentenced to a Youth Justice Centre Order by the Children's Court or an adult court for senior clients (18-20 years of age); the Malmesbury Youth Justice Centre is solely a senior, male youth training centre and accommodates young men aged between 18 and 21 referred from adult court under the Dual Track System, and the Parkville Youth Residential Centre is the sole facility providing custodial accommodation for remanded or sentenced young women in Victoria's juvenile justice system. It also accommodates young men aged 10 to 14 years on remand or sentence by the Children's Court to a Youth Residential Order.

⁹³ There are eight juvenile justice centres in NSW and one emergency short-term accommodation unit at Broken Hill. These centres are located at St Marys (the principal remand centre in NSW for males aged 15 years and over), Campbelltown (primarily accommodates males under the age of 16 years, who are on control orders or remanded in custody), Lidcombe (accommodates females on control orders or remanded in custody), Central Coast (accommodates males aged 16 to 21 years, mostly on control orders), Wagga Wagga (accommodates low to medium risk males, mainly from the Riverina and South-Western areas of NSW who are on control orders or remanded in custody), Dubbo (accommodates males, mainly from the Central and Far West areas of NSW who are on control orders or remanded in custody), Emu Plains (accommodates males, mainly from the Central and Far West areas of NSW who are on control orders or remanded in custody) and Grafton (accommodates male detainees, mainly from the far North Coast, Mid North Coast and New England areas, who are on control orders or remanded in custody). A detention centre for young women offenders operates at Juniperina juvenile justice centre at Lidcombe. Reiby Juvenile Justice Centre at Campbelltown addresses the special needs of 10 to 16 year old male detainees with behaviour difficulties.

⁹⁴ *Young Adult Offenders Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities 2008 – 2011*, Queensland Corrective Services, July 2008 (Internal Draft).

⁹⁵ Australian National News Wire, 7 February 2008.

Positive action, beginning with a clear, time-limited commitment from Government is required to work towards the removal of 17 year olds from adult prisons. A progressive approach, starting with a firm commitment to change, would allow the Queensland Government to prepare financially and operationally for the removal of 17 year olds from adult prisons.

The solution to this problem does not end with transferring 17 year olds to youth detention centres. The most effective way to achieve this transition needs to be extensively explored and considered as part of a continuum of supports and interventions across the years of young people's development.

As an example, this paper considers the removal of 17 year olds as part of a renewed youth justice approach focussed on preventing, intervening early and diverting young people from detention, including remand, to reduce the number of young people in detention and circumvent their trajectories towards re-offending and disadvantage.

Research evidence about what works in redirecting the paths of young offenders, protecting the community and achieving long term cost efficiency, provides some clear direction to achieve mutually positive outcomes.

While transferring 17 year olds from adult prisons to detention centres will initially result in increased numbers of young people in detention, the following steps to prevent youth offending and reduce the numbers of young people being sent to detention, could be simultaneously undertaken:

Increasing alternatives to detention

Given the significant link between youth incarceration and adult offending, it is crucial for the youth justice system to strengthen and increase the availability of effective diversionary programs to divert more young people away from both the youth and adult justice systems and provide alternatives to incarceration for high risk young offenders.

While some studies have shown inconclusive results, overall *research indicates that... for the vast majority of young offenders, diversion from the formal court process will reduce the likelihood of re-offending*.⁹⁶

⁹⁶ Drugs and Crime Prevention Committee, Parliament of Victoria. (2010). *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People - Final Report*, Victoria: Author.

The New South Wales Bureau of Crime Statistics and Research's recent report, *The effect of prison on adult re-offending*, has also renewed debate about the role of prisons in Australian society altogether in terms of their ability to effectively control crime and deter people from re-offending.⁹⁷

Ways to achieve effective diversion need to be investigated and consideration given to strategies that are already working effectively in other jurisdictions to determine how they can be adapted to meet Queensland's needs. Non-government agencies could play a critical role in developing and providing evidence-based developmental interventions for young people in the youth justice system.

Victoria's approaches to diverting young people from both the youth and adult justice systems have seen a steady decline in the number of beds in use in Victorian youth detention centres⁹⁸ and may provide a useful model for Queensland. In 2005, Victoria legislatively increased its youth justice jurisdiction to 18 years, which initially led to increased numbers in youth detention.⁹⁹ However, Victoria's diversionary options have had an impact on decreasing the numbers of young people in Victoria's youth detention centres.

A 2008 audit of services to young offenders by the Victorian Auditor-General's Office found a reduction in the number of young people serving custodial sentences in Victoria between 2000–01 and 2007–08. This audit also found diversion from progression into the youth justice systems and increased access to pre-release, transition and post-release support programs. The result of this diversionary and prevention focus has seen Victoria record rates of only 9 young people in 100,000 placed in custody, compared to the national rate of 31 in every 100,000.

In the Commission's view, Queensland should consider more innovative approaches to diversionary initiatives. For example, Victorian courts have the option of making a Youth Residential Order, which sentences a young person aged between 10 and 14 to a period in custody in a youth residential centre. These orders can be applied in cases where young people have been found guilty of very serious offences or who have appeared in court many times before and are used to divert young people from progressing further into a life of crime.

In recognition of the critical role that age and gender play in life experience, offending behaviour and developmental requirements of young people, youth residential centres

⁹⁷ 612 ABC Radio, PM Program, interview by David Mark with Dr Don Weatherburn, 21 September 2010.

⁹⁸ Between 2000 and 2004 (*Juvenile Justice in Australia 2000-01 to 2003-04*, Australian Institute of Health and Welfare).

⁹⁹ *Juvenile Justice in Australia 2006-07*, Australian Institute of Health and Welfare.

provide specific and separate service responses to these young people. The Parkville Youth Residential Centre in Victoria is designed specifically to create a domestic living environment supporting relationship-based interventions in a safe and secure setting. Provision of programs and services at the centre and post-release support services, including a community residential and outreach program for young women, are aimed at proactively addressing issues including offending behaviour, substance abuse and homelessness to achieve positive rehabilitation and community reintegration.

It is also important to consider young people's individual circumstances and maturity as well as their age in considering prison alternatives. Another area of interest to explore is a 'dual track' custodial sentencing option, which allows a young offender up to the age of 21 years to receive a custodial sentence to a youth justice centre instead of an adult prison, if the court believes the young person has reasonable prospects for rehabilitation, or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison. This system is in place in Victoria and is designed to provide an alternative to prison and prevent early entry into the adult system for the more vulnerable and lower risk offenders.

Other alternatives to youth detention which could be considered are day and evening reporting centres and home detention.¹⁰⁰ Day and evening reporting centres are non-residential programs requiring offenders to report daily activities to case managers. They are a mechanism for enhanced supervision of offenders and provide services such as drug treatment, job training referrals, life skills services, and counselling.

The rate of youth incarceration in Scandinavian countries is very low. This low rate is largely attributable to the broad approach used by Scandinavian countries which emphasises the integration of knowledge and skills across the entire youth justice continuum and welfare-based prevention of youth crime. However, the evaluation of these types of international youth justice systems is somewhat limited by a lack of rigorous system and program evaluation and analysis. The bulk of publicly available information is focused on describing the services available within jurisdictions, not evidence based evaluations of youth justice outcomes.¹⁰¹

¹⁰⁰ Austin, J., Johnson, K.K., & Weitzer, R. (2005). *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*. Washington DC: U.S. Department of Justice.

¹⁰¹ *Review of Effective Practice in Juvenile Justice, Report for the New South Wales Minister for Juvenile Justice*, Noetic Solutions Pty Limited, 2010

Intensifying intervention programs for young people not suitable for diversion

Intensive intervention programs which have been demonstrated to be effective in stemming further offending, need to be available for young people who are at high risk of becoming persistent and serious offenders. That is, those for whom diversion is no longer an appropriate response, but whose behaviour does not warrant custodial sentencing.

Research shows that programs which meet the following principles of effective intervention have a greater likelihood of reducing recidivism:¹⁰²

1. **Risk principle** - treatment interventions should be used primarily with higher risk offenders
2. **Need principle** - target criminogenic risks/needs
3. **Treatment principle** - treatment and services should be behavioural in nature
4. **Responsivity principle** - barriers to treatment should be treated, such as lack of motivation, anxiety, reading levels, and individual differences such as age, gender should be taken into account, and
5. **Fidelity principle** - program integrity should be maintained throughout the delivery of services.

In an American analysis of 200 studies of treatment outcomes,¹⁰³ the most effective types of community-based interventions for persistent and serious young offenders were those focused on individual counselling, interpersonal skills, anger management and multi-systemic intervention. The study found that these types of community-based interventions can reduce recidivism by as much as 40%.

Family-type group homes were also found to be effective among this group of young people. These community-based homes involve small numbers of young people living with supervised adults or 'parents' who deliver behavioural modification programs.

While no one strategy is effective for all young people or all settings, programs that can reduce violent crime by even 10-20% are likely to be cost-effective given the high cost of youth crime for victims, communities, and the youth and criminal justice systems.

¹⁰² Andrews, D.A., Zinger, I., Hoge, R.D., Bonta, J., Gendreau, P., & Cullen, F.T. (1990). Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis. *Criminology*, 28, 369-404; 2000; Lipsey, M.W., & Wilson, D.B. (1998). Effective intervention for serious juvenile offenders: A synthesis of research. In R. Loeber & D.P. Farrington (Eds.), *Serious and violent juvenile offenders: Risk factors and successful interventions* (pp. 313-345). Thousand Oaks: Sage; Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. In J. Horney (Ed.), *Criminal justice 2000: Vol. 3—Policies, processes, and decisions of the criminal justice system* (pp. 109–175). Washington, DC: U.S. Department of Justice, National Institute of Justice.

¹⁰³ Lipsey, M.W., & Wilson, D.B. (1998). Effective intervention for serious juvenile offenders: A synthesis of research. In R. Loeber & D.P. Farrington (Eds.), *Serious and violent juvenile offenders: Risk factors and successful interventions* (pp. 313-345). Thousand Oaks: Sage

Improving transitions back into the community

Assisting young people transitioning from detention back into the community will also be critical in helping to prevent recidivism and reduce demand on custodial facilities. Studies show that young people in detention are very likely to reoffend and return to detention following their release to the community.¹⁰⁴ Therapeutic supports such as interpersonal skills and counselling programs and multi-systemic interventions are considered the most effective ways of reducing the risk of reoffending among chronic young offenders,¹⁰⁵ yet findings from the Queensland Commission's own research provide an important implication for the design of post-release programs for young people leaving detention.

The Queensland Commission for Children and Young People and Child Guardian conducts biennial surveys of young people in detention and publishes the global findings in its *Views of Young People in Detention Centres Survey* (Views Survey) reports.¹⁰⁶ The surveys explore young people's views and experiences from detention and the broader youth justice system.¹⁰⁷

Findings from the 2009 Views Survey, show that young people are more likely to view practical supports (e.g. employment and training, sporting activities and mentoring) as helpful in their transition to the community than therapeutic supports (e.g. counselling and drug and alcohol support).¹⁰⁸ Specifically, most respondents believed they would benefit from:

- help with finding employment or training (86%)
- help with money (82%)
- help to play a sport (74%), and
- having someone from whom to get advice (73%).

This finding suggests that young people may engage in therapeutic post-release programs more readily if those programs also include a significant practical component such as sporting, employment and training programs and mentorship activities. The finding also reinforces the fact that these are still young people – still developing, growing up and not fully mature. This is particularly highlighted by the finding young people rate

¹⁰⁴ Australian Institute of Health and Welfare. (2008). *Juvenile Justice in Australia 2006-07*. AIWH Juvenile Justice Series no. 4. Canberra: Author. & Lynch, M., Buckman, J., Krenske, L., & Livingstone., M. (2003). *Youth justice: Criminal Trajectories*. Canberra: Australian Institute of Criminology.

¹⁰⁵ Lipsey, M., & Wilson, D. (1998). Effective intervention for serious juvenile offenders: A synthesis of research. In: Rolf Loeber and David Farrington (Eds). *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions*, (pp. 313-45). Thousand Oaks: Sage.

¹⁰⁶ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

¹⁰⁷ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

¹⁰⁸ Evans, R., & Fraser, E. The Views and Experiences of Aboriginal and Torres Strait Islander Young People in Queensland's Youth Detention Centres. *Indigenous Law Bulletin*. Volume 7, Issue 15, 2009.

'help with playing sport' as one of their primary needs, which would be unlikely to appear in a list of what adults consider they need help with to re-enter the community.

Not meeting young people's multi-faceted needs concurrently upon their transition back into the community may be highly inefficient. For example, arranging housing for a young person with unaddressed mental health issues places them at risk of eviction; arranging education or training for a young person without meeting clothing or studying on-costs, places them at risk of withdrawal or failure.

Reducing the youth remand population

Reducing youth remand rates is critical as it will alleviate demand and subsequent resources required to accommodate young people in detention centres. In 2008, 75% of 17 year olds in adult prisons were on remand,¹⁰⁹ as were most young people in Queensland's youth detention centres.¹¹⁰ This means that these young people have neither been tried or convicted for the offence/offences with which they have been charged.

In recent years, young people on remand have accounted for between 50% and 75% of all young people held in Queensland's youth detention centres at any point in time,¹¹¹ which is a higher proportion than in most other states and territories.¹¹²

Custodial remand exposes young people to the most extreme end of the justice system before sentencing occurs, despite the well-established link between detention and re-offending. Youth remand is particularly problematic as it not only places significant demands on the youth justice system, but it also passes up opportunities to intervene effectively to assess and treat the critical criminogenic needs of young people, which is unable to be provided when a young person's guilt or innocence is yet to be established.¹¹³ Remand was identified in the 1999 *Forde Inquiry Report into Abuse of Children in Queensland Institutions* as 'another insidious form of systems abuse'.¹¹⁴

¹⁰⁹ *Young Adult Offenders Strategy for the Management of 17-Year-Old Offenders in Corrective Services Facilities 2008 – 2011*, Queensland Corrective Services, July 2008. (Internal draft)

¹¹⁰ According to Department of Communities' unpublished data, during 2008-09, the average daily number of young people in youth detention in Queensland was 126.5, with 80.1 being the average number of young people on remand and 46.4 on average being sentenced to a detention order.

¹¹¹ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.; Taylor, N. (2007). *Juveniles in Detention in Australia, 1981-2006*. Technical and Background Paper no. 26. Canberra: Australian Institute of Criminology.

¹¹² Taylor, N. (2007). *Juveniles in Detention in Australia, 1981-2006*. Technical and Background Paper no. 26. Canberra: Australian Institute of Criminology.

¹¹³ *Understanding Remand in the Juvenile Justice System in Queensland*, Professor Paul Mazerolle and Dr Jennifer Sanderson, Griffith University, March 2008

¹¹⁴ *Forde Inquiry Report into Abuse of Children in Queensland Institutions* (1999), Page V.

To reduce the numbers of young people on remand, some jurisdictions have placed statutory restrictions on the length of time a young person can spend in custody while on remand. Another approach is to limit the circumstances where the young person can be remanded. In Victoria, legislation provides that bail must not be refused on the sole ground that the young person does not have accommodation. A further strategy employed in New South Wales is a formal system of reviewing remand that requires regular reporting to the court for young people detained for trial and appeal. The court can also give directions to expedite prosecution of the trial or appeal as it sees fit.

A 2008 report by Professor Paul Mazerolle and Dr Jennifer Sanderson on the youth remand system in Queensland,¹¹⁵ identifies some of the problems with the way remand is used in Queensland and sheds some light on why remand rates are so high.

The Report revealed that:

- 57% of all remand hearings during the survey period resulted in a decision to detain the defendant
- the profile of young people on remand seems to be linked to social disadvantage, including dysfunctional familial context, Indigenous background, involvement in child protection system
- there is a serious lack of supervised accommodation services suitable for accommodating 'difficult' young people and young people from Indigenous backgrounds
- conditional bail programs are generally good initiatives, but there are simply not enough of them
- poor coordination between the (former) Department of Child Safety and Department of Communities regarding service provision and information exchange is a problem contributing to poor remand outcomes for young people
- delays in court processing is an issue contributing to longer remand periods
- a lack of quality in legal representation may be a factor contributing to failed bail applications
- some services assist young people in accessing bail, but provide little or no support for them to meet their bail conditions while on bail, and
- bail support programs not sufficiently taking into account the time of day and week that young people are most likely to offend and breach bail and tailor services to meet this end.

Addressing these issues will assist in reducing the youth remand population.

¹¹⁵ Mazerolle, P., & Sanderson, J., (2008) *Understanding Remand in the Juvenile Justice System in Queensland*, Griffith University.

It is also essential for legal practitioners to be able to challenge decisions and ensure bail criteria are properly applied. To enable them to do this, practitioners should receive induction and on-going training to enable them to deal with pre-trial issues in police stations, courts or secure establishments so that they can appropriately target young people, check and challenge decisions and ensure that legislative criteria are properly applied. The Commission is of the view that all remands in custody should be reviewed, as a minimum, before subsequent remand hearings. Practitioners undertaking remand reviews should be familiar with the process to ensure that the grounds for denial of bail are thoroughly examined, any new information is taken into consideration, and all available options are explored to identify how best to address objections to bail and present an alternative.

In the Commission's view, the only legitimate reason for detaining children, before or after trial, must be that they pose a serious risk to others or themselves and there are no other alternatives but to refuse bail. Supports and services should be in place to support and assist young people in all other circumstances. In cases where a young person does pose a serious risk to others, the use of custody should be constantly reviewed and other alternatives of close supervision considered.

Reducing the over-representation of Aboriginal & Torres Strait Islander young people in the youth justice system

Aboriginal and Torres Strait Islander young people are consistently over-represented at all levels of Queensland's youth justice system.¹¹⁶ Although Aboriginal and Torres Strait Islander young people represent only 6% of young people in Queensland, they comprise around 40% of young people in Queensland's Courts,¹¹⁷ and 50% of young people under youth justice supervision.¹¹⁸ Youth detention rates for Indigenous young people are 25 times higher than rates for non-Indigenous young people.¹¹⁹

In Queensland, the average daily number of young people in youth detention was 125.5, of which 75.5 were Indigenous.¹²⁰

This over-representation continues in spite of the Queensland Aboriginal and Torres Strait Islander Justice Agreement, which was signed in 2000 and aimed to reduce the

¹¹⁶ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

¹¹⁷ Children's Court of Queensland, 2007. *Children's Court of Queensland 14th Annual Report 2006-2007*. Brisbane. Author.

¹¹⁸ Australian Institute of Health and Welfare, 2008

¹¹⁹ Richards, K., & Lyneham, M. (in press). *Juveniles in Detention in Australia: 1981-2008*. Canberra: Australian Institute of Criminology.

¹²⁰ Department of Communities, unpublished data.

rate of Aboriginal and Torres Strait Islander people coming into contact with the Queensland criminal justice system, to at least the same rate as other Queenslanders by 2011.¹²¹

As highlighted in the Commission's report *Views of Young People in Detention Centres, Queensland, 2009*, several factors are present that may be contributing to the rate of Aboriginal and Torres Strait Islander people's offending, including:

- exposure to high levels of social disadvantage in some communities, such as unemployment, poverty, poor educational outcomes, overcrowding, alcohol and drug abuse, and violence.¹²² The Queensland Commission's Views Survey found that 16% of the young people surveyed reported being homeless before entering detention and 17% were in the care of the Department of Child Safety (now Department of Communities, Child Safety Services)¹²³
- lack of access to quality legal representation, bail support and diversionary programs, and culturally appropriate rehabilitation programs,¹²⁴ and
- Queensland research conducted by Griffith University in 2005 on youth offending pathways, found that Aboriginal and Torres Strait Islander children who experienced substantiated physical, sexual or emotional abuse or neglect were more likely than non-Indigenous children to have contact with the youth justice system.¹²⁵

Including 17 year olds in the youth justice system would provide greater opportunities for rehabilitation for Indigenous young people through community-based orders and programs, which would more effectively address the social welfare needs of young Indigenous people than adult prisons.

A 2009 Australian Institute of Criminology Report¹²⁶ found that Indigenous youths appear to be treated differently by police in Australia with a far higher proportion of non-

¹²¹ The agreement was developed through a partnership between Queensland Government justice-related agencies and the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB) that represents the Aboriginal and Torres Strait Islander communities of Queensland. The justice-related agencies are: the Department of the Premier and Cabinet; the Department of Aboriginal and Torres Strait Islander Policy and Development; the Department of Justice and Attorney-General; the Queensland Police Service; Department of Corrective Services; and Families, Youth and Community Care Queensland. It was signed on 19 December 2000. The stated overarching outcome of the Agreement is a 50% reduction in the rate of Aboriginal and Torres Strait Islander peoples incarcerated in the Queensland criminal justice system by the year 2011.

¹²² As referenced in *Views of Young People in Detention Centres, Queensland, 2009* - Walker, J., & McDonald, D. (1995). *The Over-Representation of Indigenous People in Custody in Australia*. Trends and Issues in Crime and Criminal Justice no. 47. Canberra: Australian Institute of Criminology. Weatherburn, D., Snowball, L., & Hunter, B. (2006). *The Economic and Social Factors Underpinning Indigenous Contact with the Justice System: Results from the 2002 NATSISS Survey*. Contemporary Issues in Crime and Justice no. 104. Sydney: New South Wales Bureau of Crime Statistics and Research.

¹²³ Commission for Children and Young People and Child Guardian. (2009). *Views of Young People in Detention Centres, Queensland, 2009*. Brisbane: Author.

¹²⁴ As referenced in *Views of Young People in Detention Centres, Queensland, 2009* - Law Reform Commission of Western Australia, 2005

¹²⁵ Stewart A., Dennison S., Hurren E., (2005). *Juvenile Offending Trajectories: Pathways from Child Maltreatment to Juvenile Offending, and Police Cautioning in Queensland*. School of Criminology and Criminal Justice, Griffith University.

¹²⁶ Richards, K., (2009). *Juveniles' contact with the criminal justice system in Australia*, Australian Institute of Criminology

Indigenous youths being processed via police warnings than their Indigenous counterparts. Conversely, a far higher proportion of Indigenous youths were transferred to court than their non-Indigenous counterparts.¹²⁷ Understanding issues like this and taking preventative steps to address them, will be critical in reducing the overrepresentation of this group of young people.

The Queensland Crime and Misconduct Commission's (CMC) recent report, *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*,¹²⁸ contends that the task of reducing crime and violence in Queensland's Indigenous communities is central to reducing Indigenous over-representation in the justice system.

The report highlights the importance of timely diversion and a sustainable youth justice conferencing program, and recommends improving the availability and effectiveness of youth justice conferencing, as currently, youth justice services are limited and youth justice conferencing is provided about six-monthly on a 'fly-in, fly-out' basis. Analysis of Queensland Police Service crime report data for the four Western Cape York locations also showed that police are quite frequently using notices to appear as an alternative to arrest and detention of young people in the watch-house and that cautions are being used to a lesser extent.

The report also indicates that there is an 'obvious and continuing gap' in crime prevention strategies operating outside the criminal justice system, specifically, developmental or early childhood interventions aimed at targeting risk and protective factors early in an individual's life so as to prevent criminal offending later in life. It highlights the research evidence about the effectiveness of such programs in seeking to prevent crime outside of the criminal justice system, as often, by the time children in these communities reach school age, it is in a sense 'too late' to start exerting a powerful positive influence. One of the recommended actions is for the Queensland Government and Aboriginal and Torres Strait Islander Services to ensure that an appropriate mix of crime prevention strategies outside the criminal justice system is implemented in each of Queensland's Indigenous communities, with a particular focus on the implementation of evidence-based early intervention strategies.

The Commission recognises the critical role that education plays in this context. There is evidence that quality preventative programs put in place at the earliest stage can make a

¹²⁷ The Report found that 48% of Indigenous juveniles were transferred to court compared to 21% of non-Indigenous juveniles, and 32% of non-Indigenous juveniles received warnings, compared to 18% of Indigenous juveniles.

¹²⁸ Queensland Crime and Misconduct Commission. (2009). *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*, November 2009. Author.

real difference, particularly if the programs are easy to access and offer services simultaneously for children and their parents.¹²⁹ The economic and social benefits of high quality early childhood education and care are now well documented, both in terms of the benefits to children and their families and in the longer term, society as a whole.¹³⁰

It will be important to support new and innovative approaches to youth justice across government, which have been developed in collaboration with Indigenous people and with a strong focus on integration and holistic responses. Throughout these processes, support must be provided to Indigenous parents and communities to assist them in providing leadership to ensure the optimum development of their children and young people.

The role that Indigenous families and communities play in reducing the involvement of Indigenous young people and young adults in the justice system is critical. Strong and functioning families and communities that provide leadership and responsibility for good parenting, school attendance and activities for children and young people are the greatest points of leverage.

It is important that parents, schools and communities have high expectations of Indigenous children, and expect them to succeed. Dr Chris Sarra, a leading figure in Indigenous school reform, claims that an underlying philosophy of high expectations for success is crucial to achieving better outcomes for children and young people. His "Strong and Smart" program at Cherbourg State School in Queensland, where he was principal, led to a 94% cut in absenteeism and significant improvements in literacy and numeracy. Dr Sarra describes his experience when he first arrived at the Cherbourg State School:

On my arrival there in 1998 the school was in dismal chaos, and nobody was questioning why it was like this. It was as if there was a mindset that convinced people that this is how Aboriginal schools should be. The first 12 months were extremely difficult because the key players at the school accepted the appalling degree of under-achievement and poor student behaviour. They tried to explain that this was the best we could expect from our children, given their cultural and social complexities. This made a very convenient smokescreen for an under-

¹²⁹ As referenced in the Queensland Commission for Children and Young People and Child Guardian's submission to the Senate Education, Employment and Workplace Relations Committee in September 2009 regarding the Senate Inquiry into the Provision of Child Care: *The Implications of Poverty on Children's Readiness to Learn*, 2009. Focusing Paper prepared for the Australian Research Alliance for Children and Youth.

¹³⁰ As referenced in the Queensland Commission for Children and Young People and Child Guardian's submission to the Senate Education, Employment and Workplace Relations Committee in September 2009 regarding the Senate Inquiry into the Provision of Child Care: Department of Education, Employment and Workplace Relations. 2009. 'Social Inclusion: Social Inclusion and Early Childhood Development'.

performing school and laid the blame on the children and the community. As an Aboriginal person, I was disgusted at having to tolerate such poor student performance and outcomes, and indeed such poor school performance. I set about changing that by getting rid of most of the teachers and getting in a new team that would actually believe we could make the children in our school stronger and smarter. We also convinced the children that they could be stronger and smarter, by making them feel great about being Aboriginal. Importantly, we got them to understand that they can be successful, and they can still be Aboriginal.¹³¹

It is also important that Indigenous young people are not perceived as a subset of young people and that no sanctions apply to them. As North Queensland Aboriginal Leader Noel Pearson suggests:

...the challenge for public education for indigenous Australians, and might I say, for lower class Australians generally - the challenge is for Australian governments to get serious about creating no excuses schools, that is, schools that never surrender to the idea that socioeconomic disadvantage is destiny.¹³²

Over the last few years, Queensland Government agencies have further intensified efforts to improve outcomes for Aboriginal and Torres Strait Islander peoples, with innovative and tailored initiatives such as the Department of Education and Training's Closing the Gap Education Strategy, the Family Responsibilities Commission operating in the four Cape York Welfare Reforms communities of Hope Vale, Aurukun, Mossman Gorge and Coen, Australia's first whole-of-government Reconciliation Action Plan, and the alcohol reforms in Aboriginal and Torres Strait Islander communities.

It will be essential to build upon and add to these existing initiatives and continue to foster collaborative relationships between the Queensland Government and Aboriginal and Torres Strait Islander communities.

Redressing the over-representation of Indigenous young people in the youth justice system will require strategic approaches to prevention and early intervention across the continuum of child and youth development, as well as engaging Aboriginal and Torres Strait Islander communities in working with government agencies and non-government

¹³¹ Aboriginal children are expected to do poorly at school. Teacher Chris Sarra blasts away the prejudice, *New Internationalist*, Issue 364, February 2004

¹³² Transcript of 7.30 Report interview with Noel Pearson, 1 October 2009, Australian Broadcasting Corporation, regarding his essay entitled Radical Hope, urging a serious lift in the quality of bi-cultural education and a longer school day.

organisations to re-direct vulnerable young people on negative pathways to a better future.

In the Commission's view, strategic, evidence-based approaches to crime prevention must not only be focused on young people in the youth justice system, but also extend to early protective factors, including:

- building on existing efforts to improve relationships and collaboration between Indigenous communities and the police
- fortifying youth justice systems' focus on crime prevention, effective diversions, intensive interventions for serious and persistent offenders and rehabilitation
- providing intensive intervention programs, which have been demonstrated to be effective in stemming further offending, to young offenders who are at high risk of becoming persistent and serious offenders
- providing long-term investment to continue the development of culturally appropriate maternal health and early years interventions, which focus on risk and protective factors early in life, to prevent crime in Indigenous communities, and
- regularly consulting with Aboriginal and Torres Strait Islander young people in the youth justice system.

The Commission recently contributed to a joint Australian Children's Commission and Guardian's submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs regarding its inquiry into the high levels of involvement of Indigenous youths and young adults in the justice system. The full submission can be found on the Commission's website: <http://www.ccyipcq.qld.gov.au/about/submissions.html>.

Recommendations

The Commission makes the following recommendations to the Queensland Government to address the issue of 17 year olds detained in adult prisons and excluded from the youth justice system:

- 6. That before 1 March 2011, a time-specific commitment be made to:**
 - a. transfer 17 year olds from adult prisons to youth detention, and**
 - b. make the necessary legislative amendments to ensure that all young people under the age of 18 years fall within the jurisdiction of the *Youth Justice Act 1992* and have access to the *Charter of Youth Justice Principles*.**
- 7. That bail be made available for all 17 year olds awaiting the outcomes of their matters before the courts, unless they pose a serious risk to others or themselves, and that all 17 year olds with criminal charges have full access to legal representatives.**
- 8. That systems be put in place in youth detention centres to enable the separation of more serious and/or dangerous detainees from the more vulnerable detention centre population.**
- 9. That options be explored to determine the most effective way for 17 year olds to be transferred to the youth justice system as part of a continuum of interventions and supports across the years of young people's development.**
- 10. That if 17 year olds cannot be removed from adult prisons immediately, the Commission for Children and Young People and Child Guardian be provided with access to all 17 year olds in adult prisons to monitor their safety, wellbeing and experiences to further inform the government's policy position on this specific issue.**

Conclusion

In the Commission's view, the pressing need to remove 17 year old young people from adult prisons and the criminal justice system must be the first step in a broader strategic approach to improve outcomes for these high risk and vulnerable young people and the community. Transferring 17 year olds to the youth justice system needs to coincide with evidence-based approaches to reduce the numbers of young people in detention and find more effective ways to stem young people's trajectories to re-offending and further disadvantage.

It will be important that this work take place alongside investment in crime prevention and early intervention outside of the criminal justice system.

Ultimately, a commitment needs to be made to transfer 17 year olds into the youth justice system by a specified time. In the interim, options need to be explored to determine the most effective way to achieve this transition as part of a continuum of supports and interventions that address risk factors for children and young people across the years of their development.

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<http://www.ccypcg.qld.gov.au/resources/publications/papers-published-articles.html>

Appendix

Queensland criminal proceedings & sentencing of 17 year olds

In Queensland, a child is defined under the *Youth Justice Act 1992* as a person who has not turned 17 years of age.¹³³ Section 6 of the *Youth Justice Act 1992* allows the Governor in Council to extend the definition to include persons under 18 years by enacting a regulation to this effect; however, this power has never been exercised. A person will be treated as a child under the *Youth Justice Act 1992* if they commit an offence as a child¹³⁴ (a child offence), and are found guilty before they turn 18 years¹³⁵.

A person will be sentenced as an adult if he/she commits a child offence, but proceedings do not commence until after the person turns 18.¹³⁶ In all cases where a person is sentenced as an adult for a child offence, the sentencing court must consider the fact that the person was a child at the time of the offence and the sentence that might have been imposed upon them as a child.¹³⁷ If proceedings commence against the person while a child and they turn 18 before the end of the proceedings, the matter will continue on the basis that they are a child, but if found guilty, the person will be sentenced as an adult. However, in either of these cases, if the court is satisfied that the delay in proceedings is the fault of the prosecution, then the person will be treated as a child.¹³⁸

An offender must be sentenced as an adult if a proceeding for a child offence is commenced and a court has been unable to sentence the person until after they turn 18 because the person has escaped, failed to appear without reasonable excuse, or failed to return from a leave of absence during a detention sentence.¹³⁹ If a person turns 18 during a child offence proceeding and is subject to a proceeding or sentenced for an adult offence, the court may treat the offence as an adult offence. If the person is found guilty of the child offence, they must be sentenced as an adult.¹⁴⁰

Orders made in relation to a child (childhood orders) continue to apply after the person becomes an adult. Generally, other proceedings arising under the order, including breaches of the order as an adult, must proceed as if the person is a child.¹⁴¹ The Court has a discretion to convert a childhood order to a corresponding adult order if a

¹³³ Section 4, Schedule 4 of the *Youth Justice Act 1992*, 'child' means (a) a person who has not turned 17 years; or (b) after a day fixed under section 6—a person who has not turned 18 years.

¹³⁴ Sections 132 & 134 *Youth Justice Act 1992*.

¹³⁵ Section 140 *Youth Justice Act 1992*.

¹³⁶ Section 140(1) *Youth Justice Act 1992*.

¹³⁷ Section 144 *Youth Justice Act 1992*.

¹³⁸ Section 140(4) *Youth Justice Act 1992*.

¹³⁹ Section 140(3) *Youth Justice Act 1992*.

¹⁴⁰ Section 141 *Youth Justice Act 1992*.

¹⁴¹ Section 144 *Youth Justice Act 1992*.

proceeding arises out of a childhood order against a person who is 17 and that person is subject to an adult proceeding or sentence order.¹⁴² Upon conversion, the person will be subject to all of the terms and conditions of the corresponding adult order and the *Penalties and Sentences Act 1992* applies. Any contravention of a corresponding adult order that occurred prior to conversion will not be an offence, but any subsequent breach of the adult order will be.¹⁴³

¹⁴² Section 143 *Youth Justice Act 1992*

¹⁴³ Section 143 *Youth Justice Act 1992*, s.123 *Penalties and Sentences Act 1992*.