

**SUBMISSION BY  
YOUTH ADVOCACY CENTRE INC  
TO THE  
LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE  
IN RELATION TO THE  
YOUTH JUSTICE (BOOT CAMP ORDERS) AND OTHER LEGISLATION  
AMENDMENT BILL 2012**

**NOVEMBER 2012**



The Youth Advocacy Centre (YAC) thanks the Committee for notifying it of the Bill and advising of the opportunity to provide comment to the Committee.

YAC has been operating for over 30 years and offers free, legal services, youth support and family support assistance and services to young people 10 years and over who are in, or are at risk of being in, the youth justice system or the child protection system, and who live in or around Brisbane. It provides support on a limited basis to those under 10 years of age and to young people outside of Brisbane via telephone, website and publications.

All services offered are voluntary and confidential. This means that YAC staff only work with a young person if they want to work with YAC staff and no contact is made with anyone (eg families, teachers, police, other adults) without the young person's permission (unless there is a risk of serious, immediate harm to the young person or someone else).

In any dealings with a young person, YAC is guided by the Convention on the Rights of the Child, in particular:

- the right of young people to be treated equally irrespective of “colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”;
- the right of a young person to have an opinion and to be heard in all matters affecting the young person; and
- the best interests principle to include consideration of the views of the young person.

YAC’s comments on the Bill relate to proposed amendments to the *Youth Justice Act 1992*. YAC is in complete agreement that the “revolving door” of offending and court which some young people find themselves caught in needs to be addressed. It is the very reason for the multidisciplinary service model which YAC has utilised from its inception. However, any response to youth offending behaviour should be based on evidence of what has been found to work – or is showing promise of positive outcomes – and should avoid those responses which clearly do not work. In commenting on the Bill currently before Parliament, YAC also includes material which it contributed to the “Boot Camp” debate as it is important in understanding “the problem” which is to be addressed (Part A).

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## Part A: Background

### Crime and youth offending in Queensland – an overview

Fear of crime is a strong a motivator in the community – even though people are not aware what the crime data really show. This is often a reaction to media reports which tend to focus on the worst of crimes (particularly if they involve young people) as being most newsworthy.

An analysis of Queensland Police Service data published by the Brisbane Times on 2 March 2012 indicates that “crime rates [in Queensland] over the last ten years or so have largely been on a downward trend. *Reported offences against the person and offences against property have come down while figures suggest that some types of “other offences” have become more prevalent. While politicians may make legitimate points about spikes in specific locations or particular types of offence, the chances of Queenslanders becoming victims of crime has been decreasing when population is taken into account.*

Concern with young people’s behaviour is an enduring mythology:

- *The image...depicting the ‘typical’ teenager as aggressive, insolent and bored with everything except popular music and ‘teenagerdom’ has remained remarkably constant over time<sup>1</sup>.*
- *Public concern about juvenile delinquency as a social problem is not a contemporary phenomenon. Images of the “predatory delinquent” have formed an historical dialect in Australia for most of the [twentieth] century<sup>2</sup>.*
- *There is a public perception that children are responsible for a substantial proportion of crime committed in the community. This perception is often reported in the media and is frequently supported by police statements. The Criminal Justice Commission Discussion Paper goes on to say that **the statistics did not support** these perceptions<sup>3</sup>.*

The *Children’s Court of Queensland Annual Report for 2010-11* indicated:

- *An overall decrease of 8.6% in the number of young people coming before the courts in 2010-11 compared with 2009-10.*
- *A substantial decrease (12.9%) in the number of charges laid against young people*

It concluded that the data did not support the contention of media articles at the time that juvenile crime was on the increase.

### Young offenders

There are around 490,000 10-17 year olds in Queensland of whom over 30,000 are Aboriginal or Torres Strait Islander young people<sup>4</sup>. It is the case in Queensland, alone of all the States and Territories (and in breach of Australia’s commitments under the United Nations Convention on the Rights of the Child) that 17 year olds are not part of the youth justice system but are dealt with in the adult court. It can, however, be assumed that there are over 400,000 10-16 year olds in the State.

Contrary again to popular belief, juveniles are the minority of offenders in contact with police. Offending peaks at around 18 or 19 years of age<sup>5</sup>.

From the *Children’s Court of Queensland’s Annual Report for 2010-11* and the *Snapshot 2011: Children and Young People in Queensland*<sup>6</sup>, we can glean that:

- There was a decrease in the number of 10-16 year olds coming before courts of 8.6% in 2010-11 (6,547)<sup>7</sup> and a decrease in the number of charges by 12.9% to 19,077

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<sup>1</sup>Peterson C 1984

<sup>2</sup>Courier Mail 1995

<sup>3</sup>CJC 1992

<sup>4</sup>AIHW 2011 1

<sup>5</sup>AIC 2011 No 409

<sup>6</sup>CCYPCG 2011

- 75.6% of offenders were male
- 58.1% were aged 15-16 years with offending being at its highest for young women at age 15.
- Property offences were the offences most commonly committed by 10-17 year olds but over the last decade property offences by young people have generally declined
- Good order offences and drug offences steadily increased with age, outnumbering property offences for 17 year olds
- The majority of victims of youth offenders were under 20 years old (60.2% of those where age recorded) with only 4.6% of victims being over 50 years of age.

Assuming that the number of 6,547 represents distinct offenders, as opposed to offenders coming back on more than one occasion then, at the most, only some 1.6% of Queensland's 10-16 year olds were brought before the courts in 2010-11.

An encounter with the youth justice system during a person's youth is not unusual: for most this will be infrequent, short lived and relatively minor<sup>8 9</sup>. The data indicate that adolescence is the peak period for being victimised and offending. Many of these young people will never come to court, their offending being addressed by a police caution. A significant proportion of those brought to court will have one, perhaps two, interactions and then not appear again.

However, a small number, a subset of the 1.6%, have more serious interactions with the criminal justice system and is the group most vulnerable to continued and more serious offending and therefore where intervention is required<sup>10</sup>.

### **The profile of young repeat offenders**

Offending behaviour in relation to young people must also be considered in the context of child and youth development. Research has shown that early brain development and socio-emotional and cognitive development can be severely affected by inadequate or harmful parenting. Early adolescence through to early adulthood, is another peak period for brain development and consequently a period of increased risk<sup>11</sup>.

Adolescents have developing and immature cognitive capacities. In early adolescence, those parts of the brain that deal with reward processing are more easily aroused but those that deal with harm avoidance and self-regulation are still comparatively immature<sup>12</sup>. At age 16 the adolescent brain, and therefore judgement making and impulse control, is still evolving<sup>13</sup>.

As a result, the data show a 200% increase in morbidity and mortality rates (accidents, suicides, eating disorders, substance abuse) during adolescence which is related to difficulties in controlling behaviour and emotion, especially in young males<sup>14</sup>. This level of immaturity supports the proposition that 17 year olds should be in the youth justice system.

The small group of repeat offenders represents a particularly disadvantaged population having low socioeconomic status, low educational attainment, significant physical and mental health needs, substance abuse and a history of childhood abuse and neglect<sup>15</sup>.

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<sup>7</sup> At the Queensland Law Society launch of the QLS Children's Policy positions, the President of the Childrens Court of Queensland, His Honour Judge Michael Shanahan noted that there had also been a 7% decrease in offenders coming to court in 2011-12.

<sup>8</sup> AIHW 2011 2d

<sup>9</sup> AIC 2011No 409

<sup>10</sup> AIHW 2011 2d

<sup>11</sup> Ibid

<sup>12</sup> AIFS 2011 Family Matters No 88

<sup>13</sup> Levin MA 2012 [NB: Mr Levin is Director Center for Effective Justice, Texas Public Policy Foundation, Senior Policy Advisor, Right on Crime]

<sup>14</sup> AIC 2011 No 409

<sup>15</sup> AIHW 2011 2d

Antisocial behaviour invariably begins during primary school years and tends to be associated with exclusion (both from school but also within a school environment) which then alienates the young person from exposure to pro-social values and role models<sup>16</sup>. The research indicates that children and young people who are not in school are at high risk of delinquency<sup>17</sup>.

Young Aboriginal and Torres Strait Islander people are over-represented in the youth justice system, as they are in the adult system. Between 7 and 11 March 2011, for example, 47% of those in detention were Indigenous although only making up around 6.3% of the state population of 10-17 year olds.

Research has also identified that 17% of young people in detention in Australia had an IQ of less than 70 and that this is particularly an issue for Indigenous young people. Young people with intellectual disability are at a significantly higher risk of re-offending. A 2005 NSW study found 88% of young people in custody reported symptoms consistent with mild, moderate or severe psychiatric disorders<sup>18</sup>.

### **The importance of parents and parenting**

Research has demonstrated a clear relationship between the health and wellbeing of young people and the environment they grow up in<sup>19</sup>. Families with high ability levels of for social interaction, communication, decision making, problem solving and maintaining relationships will be highly functional and resilient. Such families have a positive influence on pro-social behaviour and attitudes and school success as well as reducing the risk of substance abuse and offending<sup>20</sup>.

Contrary to popular beliefs around the diminishing role of parents in late adolescence/early adulthood, the role of parents continues to be important in an adolescent's life. There is evidence that the emotional and psychological support provided to children by parents in a warm and communicative manner plays a significant role in adolescence. Additionally, parental monitoring and limit setting have been linked to managing antisocial/offending behaviour, substance abuse and sexual risk taking in adolescence<sup>21</sup>.

Conversely, while in general the majority of abused and neglected children do not offend, a large number of children who do offend have experienced abusive, neglectful or inadequate parenting. Young people who have been abused or neglected often exhibit reduced social skills, poor school performance, impaired language ability, and mental health issues<sup>22</sup>.

Research has identified a number of factors that place children and young people at higher risk of abuse and neglect, including family stressors such as financial difficulties; social isolation; domestic violence; mental health problems; disability; alcohol and substance abuse; and a lack of safe and affordable housing<sup>23</sup>.

The parental role is also important in the development of language skills, particularly in the early years. The extent of oral communication between child and parent and the quality of that conversation is important. The ability to communicate has been found to play a key role in social capabilities and underlines the overlap between child maltreatment and poor language development. Research indicates:

- a link between low socio economic status and oral language competence in the early years, particularly for boys
- a link between offending patterns/severity and oral language impairment

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<sup>16</sup> AIC 2012 No 435

<sup>17</sup> AIC 2003

<sup>18</sup> AIC 2011 No 409

<sup>19</sup> AIHW2011 2c

<sup>20</sup> AIHW2011 2a

<sup>21</sup> AIFS 2011 Family Matters No 88

<sup>22</sup> AIFS 2011 Family Matters No 89

<sup>23</sup> Ibid

- poor language ability in the early years increases the risk of anti-social behaviour at 14 years of age.<sup>24</sup>

The longitudinal, Queensland-based *Pathways to Prevention Project*<sup>25</sup> has focussed on promoting strong oral language skills in young children as a strategy to reduce anti-social behaviour later in the child's life. Language skills are also critical to being able to develop literacy skills and therefore also have an effect on longer term success at school. Keeping young people at school can prevent and reduce delinquency and crime.

If there are risk factors within the family that have influenced or are influencing adolescents and their behaviours, then logically the family should be part of any intervention to address adolescent problems. It can be difficult to engage parents in a therapeutic process particularly if they do not consider they have had a role in relation in the development of the behaviour as well as having a role in addressing it – they want the young person “fixed”, thus putting the entire burden on their child. There seems to be little information available as to how parents can be helped to see their own role in how their child's problems have emerged<sup>26</sup>.

Parental health and disability can also have an impact on children and young people and their behaviour as this may contribute to poor parenting skills and emotional support and developmental delays. A young person living with a parent with mental health problems may also be at increased risk of social, psychological and physical health problems and may experience violence and abuse<sup>27</sup>.

### **The interface between the care and protection and youth justice systems**

It is noted that, in his statement to the current Commission of Inquiry into Child Protection, the Assistant Director-General (Youth Justice), has noted that 69% of young people in the Youth Justice system as at June 2011 were known to the Child Protection system.

Research has shown, and it is certainly YAC's experience, that abused or neglected, acting out adolescents are less likely to be viewed sympathetically by the community than younger children and are more likely to run away, become homeless, engage in illegal and survival activities which bring them to the attention of the police rather than child protection services. These young people have been described as moving from being ‘troubled’ to ‘troublesome’<sup>28</sup>. This may lead to interventions which criminalise rather than assist them.

In particular, it has been found that:

- Placement in out of home care doubles the risk of post placement offending particularly if this occurs during adolescence and involves a group home
- Multiple placements or placement instability together with changes of school, particularly if that involves exclusion, are linked to an increased risk of difficult behaviour and later offending
- for females, any placement, irrespective of instability, increased their risk of offending<sup>29</sup>.

In Queensland, as in some other jurisdictions, young people in care may be at greater risk of criminalisation for wilful damage and assault as a result of charges being brought by those caring for young people in situations which would usually be dealt with within the family.

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<sup>24</sup> AIC 2012 No 435

<sup>25</sup> <http://www.griffith.edu.au/criminology-law/key-centre-ethics-law-justice-governance/research/prevention-developmental-pathways/the-pathways-to-prevention-project>

<sup>26</sup> AIFS 2011 Family Matters No 88

<sup>27</sup> AIHW 2011 2b

<sup>28</sup> AIFS 2011 Family Matters No 89

<sup>29</sup> Ibid

## The current response to repeat offending

### *The youth justice sentencing regime*

It is important to understand that young people are subject to the Criminal Code and other legislation as anyone else in Queensland (unless the legislation specifically excludes young people, which is rare – indeed, there are examples of young people being treated more harshly than adults: see the penalties for drinking in a public place in the *Liquor Act 1992*).

The *Youth Justice Act 1992* puts in place the regime for young people alleged to have transgressed the law. It recognises that young people are still maturing, that they make mistakes of judgment that we have all made as young people, and that it is better for a young person to learn from these mistakes. Therefore philosophy behind sentencing a young person is to stop the offending behaviour. However, for repeat offenders there is a clear punishment component.

The sentencing principles are set out in s.150 of the Act. Some of these principles are that:

- A child’s age is a mitigating factor in determining whether or not to impose a penalty, and the nature of the penalty imposed.
- A non-custodial order is better than detention in promoting a child’s ability to reintegrate into the community.
- The rehabilitation of a child is greatly assisted by the child’s family and opportunities to engage in educational programmes and employment.
- Detention should only be imposed as a last resort, and for the shortest possible period. If a Detention Order is being considered, the court must order a Pre-Sentence Report. This is prepared by the Department of Communities and provides the court with information on the circumstances of the offences, the young person’s attitude to the offences, information from parents or carers of the young person, the young person’s circumstances, and it recommends the type of Order that the young person would be suitable for.

However, the sentencing regime in the Childrens Court mirrors that in the adult court to a large degree and it can in no way be alleged that “nothing happens” to young people.

Children		Adults	
<i>Juvenile Justice Act 1992</i>		<i>Penalties and Sentences Act 1992</i>	
Reprimand	S.175(1)(a)	Absolute or Conditional Discharge	S. 19
Good Behaviour Bond	S.175(1)(b)	Recognisances	S. 22-23
Fine	S.175(1)(c)	Fine	S. 44-51
Probation Order	S.175(1)(d)	Probation Order	S. 90-99
<b>Youth Justice Conference</b>			
Community Service Order	S.176(1)(e)	Community Service Order	S.100-108
Conditional Release Order	S.175(4)	Suspended Sentence	S. 143-151
Intensive Supervision Order	S.176(3)(f)	Intensive Correction	S.111- 119
Detention	S.175(1)(g)	Detention	S. 152-161
Serious offences – increased maximums for orders	S.176(1)(a)		
Detention up to life	S.176(3)(b)	Detention - indefinite	S.162-179

The table below indicates that the court has the ability to sentence young people to quite lengthy sentences if the circumstances of the offence would warrant this:

<b>SERIOUS OFFENCE</b> (one which if committed by an adult would make the adult liable to imprisonment for 14 years or more) Max sentence for a child		<b>OTHER</b> Max sentence for a child	
<b>Robbery in company with violence</b>	Life*	<b>Receiving</b>	14 years
<b>Arson</b>	Life*	<b>Assault Occasioning Actual Bodily Harm (simplicitor)</b>	7 years
<b>Maintaining Sexual Relationship with Child under 16</b>	14 years	<b>Stealing (simplicitor)</b>	5 years
<b>Grievous Bodily Harm</b>	14 years	<b>Unlawful Use of Motor Vehicle</b>	7 years
		<b>Wilful Damage</b>	7 years

\* If sentenced to life, this means **the rest of the child's natural life**

Once a young person starts to re-appear in the youth justice and the court system, they commence moving through a series of supervised orders – Probation Order, Community Service Order (CSO), Intensive Supervision Order (ISO), Community Release Order (CRO), and Supervised Release Order (SRO). As at 30 June 2010 there were 1531 distinct young people on supervised orders<sup>30</sup>:

60.3% - probation	31.4% - CSO	
0.2% - ISO	3.0% - CRO	2.5% - SRO

Together with the young people in detention, these are the young people who might be the target of a “boot camp” style intervention.

Data for 2009-10 indicate that some 205 young people were sentenced to detention in that financial year although some 847 spent time in either Brisbane Youth Detention Centre (BYDC) or the Cleveland Youth Detention Centre (CYDC) in Townsville. (It is noted that at any given time some 75% of those in YDCs are likely to be there on remand – awaiting finalisation of their case. Often this is due to the lack of a stable address in the community and is a particular issue for those young people in care.)

#### *Diversion from the system*

There are currently a number of opportunities during the youth justice process to divert young people out of the system. In particular, the police and the courts have the authority to send young people to youth justice conferencing<sup>31</sup>:

- referrals can be made **by a police officer**, thereby diverting the young person from the traditional court process.
- a **court** can decide to refer a matter to conference **as an alternative** to sentencing.
- a **court** can also decide to refer a matter to a conference **prior to sentencing** a young person, and then use the young person's participation in a conference to assist them in reaching an appropriate sentence order.

(It is regrettable that the ability of a court to refer to conferencing is to be removed. YAC has witnessed a number of very positive outcomes from this.)

#### **What responses stand the best chance of working?**

##### *Prevention and early intervention*

The most effective approach would be to reduce the likelihood of a child or young person developing anti-social or offending behaviour patterns. There is evidence that supporting families who are struggling; providing parents with support and parenting programs from the early years into adolescence; supporting the development of good oral language and social skills; and responding

<sup>30</sup> CCYPCG 2011

<sup>31</sup> Youth Justice Act 1992 (Qld)

more appropriately to young people who are the victims of abuse and neglect would be the most cost-effective responses.

It would therefore seem appropriate to identify those families where there is a risk of intergenerational poverty, poor parenting or abuse and neglect for early support to break the cycle.

Projects with pre-schoolers and their families has been a significant part of the *Pathways to Prevention* project involving the Key Centre for Ethics, Law, Justice and Governance at Griffith University (led by Professor Ross Homel) and Mission Australia<sup>32</sup>. It combined the Preschool Intervention Program (PIP) focused on children and delivered through state preschools with services for families (the Family Independence Program, or FIP). As the project is Queensland based, it is particularly important to be aware of its findings. The preschool intervention was found to be effective in improving children's communication skills and reducing their difficult behaviour, over and above the effect of the regular preschool curriculum with better outcomes when the two programs were combined than when either was delivered on its own<sup>33</sup>.

#### *Intervention program*

For those young people who are already enmeshed in the criminal justice system, however, the question to be answered at this point is - what should an intensive intervention look like?

Australian Institute of Criminology publications have confirmed that young people need “properly resourced programs which increase their educational and vocational skills; which teach problem solving, anger management and relationship expertise and enhance self-esteem...”

The Texas (USA) based group *Right on Crime: The Conservative case for reform: Fighting Crime, Prioritizing Victims, and Protecting Taxpayers*<sup>34</sup> response (the “Conservative Solution”) includes improved flexibility in funding, so funds currently used to keep young people in large state youth lockups can be utilised on less costly community-based programs which are supported by research. It cites the following as effective community-based models: multisystemic therapy, victim-offender mediation, mentoring, vocational programs, and group homes [based on a Missouri model which is showing good results].

There is an emerging body of evidence that suggests that family based interventions are potentially effective for a range of problems in adolescence: this could possibly involve other adults who are currently playing, or could play, a significant role in the young people’s life if family is unavailable<sup>35</sup>.

The Australian Institute of Criminology’s report for the ACT Government ***What works in reducing young people’s involvement in crime?*** *A review of current literature on youth crime prevention* notes:

- one size does not fit all – programs need to target an individual’s needs and finding the right program is important if it is to be as effective as possible
- need to be comprehensive and use different interventions targeted at a number of risk factors facing the young people, not just one, that is, a holistic response
- responses should:
  - work across the range of social settings not just one area of influence – family, school, peers and the community. Schools can provide a constructive and positive setting for programs with curricula emphasising pro-social and academic skills

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<sup>32</sup> <http://www.griffith.edu.au/criminology-law/key-centre-ethics-law-justice-governance/research/prevention-developmental-pathways/the-pathways-to-prevention-project>

<sup>33</sup> AIC 2009

<sup>34</sup> <http://www.rightoncrime.com/priority-issues/juvenile-justice/>

<sup>35</sup> AIFS (2011) No 88

- alter the way a young person thinks and acts – offending is linked to deficiencies in thought processes, poor problem solving and decision making abilities: social competence programs should form an integral part of all programs to reduce and prevent offending
- have skill based components to increase oral language competence and educational attainment to improve employment prospects and thereby reintegrate into mainstream society
- retain students in a learning environment
- be culturally appropriate or specific
- mentoring programs can have promising results in the short term but there are limited evaluations
- recreational programs tend to have a short term effect as their effectiveness seems to be in relation to occupying young people’s time. To remain effective once the program has finished, the young person will need to take it up back in the community.

Programs must have:

- clear aims and objectives
- well trained, committed, enthusiastic staff with ownership of the program
- program integrity
- be targeted to the results of at risk/needs assessment of young people
- targeted at those with the highest risk of future offending
- sufficient in length and intensity to impact on the behaviour – more intensive interventions appear to be more effective for younger offenders and community based “small dose” weekly interventions over longer periods of time are promising.

## **PART B: Comments in relation to the Bill**

### **1. Introduction of a Boot Camp Order as an option instead of detention for young offenders**

YAC acknowledges that the Attorney-General and the Department of Justice and Attorney-General have consulted with stakeholders around this issue.

YAC further acknowledges that a number of comments made by it and others have been taken up – attending the program is to be voluntary and there is an early intervention trial (not the subject of this legislation) as well as the program for those at risk of being sentenced to detention. It is noted that the Bill provides that in approving a program for a child, the chief executive must have regard to matters such as the child’s cultural, developmental, educational, emotional, health, intellectual, physical and social needs.

It is also noted that the legislation also makes provision for young people entering the residential component to be provided with information about their Boot Camp program in a way that is appropriate to them; that there is to be a complaints mechanism; young people are to be allowed to see their lawyer and all communications with the lawyer are confidential; and the residential sites will be subject to the community visitor program of the Commission for Children and Young People.

However, YAC remains concerned at the tone of the Explanatory Notes to the Bill. For example, they state:

*Community concern regarding youth offending has been escalating and there is an expectation that young people are held accountable for their crimes. Detention is not effective in reducing future offending or changing offending behaviour of the small number of young people who are responsible for the majority of the offences.*

As noted in the Background material – there is no evidence that crime and youth crime is “escalating”. The material also indicates that there is a regime which does hold young people accountable for their offending behaviour – from ten years of age. Therefore community concern in relation to youth offending needs to be allayed and good information provided about how the youth justice system works.

The key objective of the boot camp program is said to be “to instil discipline, respect and values into young people entrenched in the youth justice system to divert them from further offending and support them to make constructive life choices.

The discussion in the Background section of this submission indicates that repeat offenders are not simply “bad children” who “just need pulling into line” but that they are products of their life experiences and environments. The response therefore must extend to family and community if the Boot Camp Order is to be successful.

The research undertaken by the Department of Justice and Attorney-General came to similar conclusions to YAC about how “boot camps” will need to be structured to be cost-effective and achieve the outcomes sought:

- there has been a significant amount of research into, and evaluations of, correctional forms of boot camp based on basic military training which overwhelmingly indicate that this type of intervention does not provide any enduring impact, does not reduce recidivism (some studies even conclude it may contribute to recidivism) and is no cheaper than detention<sup>36</sup>;
- the evidence in relation to adventure program or wilderness programs tends to be neutral and there is potential for problems as a result of bringing together a group of young people all with offending and anti-social behaviours<sup>37</sup>;
- the key message seems to be that to be effective in any way programs must have therapeutic components which teach and develop skills which can be used in the young person’s usual environment when they return to it. Importantly, lack of aftercare or support when the young person returns to their usual social space may well undermine any positive outcomes which have been achieved<sup>38</sup>.

The youth justice orders currently available (including detention) could also, in fact, be “tailored to meet the specific needs of each child with a view to preventing young people entering the ‘revolving door’ of custodial placements”. It does not necessarily require an entire new order to do this, but it would require an injection of resources and activities – improved access to counselling, substance abuse programs, community reparation, family support and support to re-engage with learning or employment, anger management - to enable youth justice staff to implement such a plan. A whole new order is not really the issue – simply an ability to make the current orders more effective. It would also ensure the therapeutic intervention was available along the continuum of orders, not just at the point of entry into detention, which might address the offending behaviour earlier and therefore be more cost-effective.

Whether the current trials “work” will depend on the agencies who are the successful tenderers and the programs they put in place and the capability and experience of the staff they employ – that is, the devil will be in the detail of the programs which is not in the legislation. Thus “success” or “failure” may well not depend on young people’s participation but the program and those running it. The evaluation methodology will need to be very robust.

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<sup>36</sup> For example: 2008, Wilson DB, MacKenzie DL, Mitchell FN *Effects of correctional boot camps on offending*; AIC Trends and Issues in crime and criminal justice *Boot Camps and Justice: A Contradiction in Terms?* No. 46 July 1994; AIC Crime Reduction Matters *Wilderness programs and boot camps – are they effective?* No. 4 April 2006.

<sup>37</sup> Ibid

<sup>38</sup> NCCPP and AIC

It is to be hoped that the successful tenderers have not been chosen on price alone but also their proven ability to work with challenging young people and their families and communities and achieve positive outcomes for the short **and** long term.

YAC notes the following specific issues:

- Physical activity is good for everyone’s health and wellbeing. However, YAC has concerns about comments in the Explanatory Notes in relation to “strenuous physical activities”. This has a tone of the “militaristic” style of Boot Camp which has not been found to be effective and to model behaviours which are not desirable, certainly in a community and family context. Young people with drug and alcohol issues, for example, may well not be able to undertake “strenuous” physical activity but could still benefit from many other aspects of the program.
- Young people who have at any time had a finding of guilt for a disqualifying offence being automatically denied an opportunity to participate: YAC is pleased to see that offences such as robbery are not an automatic disqualifier - the facts of these cases<sup>39</sup> may indicate that a young person is still quite suitable for the program. However it is unfortunate that offences of incest; indecent treatment of a child under 16, unlawful carnal knowledge of a child under 16 and sexual assault are an automatic disqualifier. The circumstances of these offences should be considered before making such a decision. Adolescence is a time of sexual experimentation and sexual activity does not of itself indicate that the young person is not safe to be around other young people. For example, a 16 year old having sexual relations with his 15 year old girlfriend puts him at risk of a sexual offence although there is no evidence of force since a 15 year old cannot consent under the Criminal Code.
- Clause 19 - revised section 151: “a statement about whether the chief executive has obtained the agreement of a parent of the child to participate in the program”. It should be made clear that failure by a parent to do this should not jeopardise the ability of a child to participate in the program if the child has agreed to do so. If the child is able to be held accountable for their actions, they must also be able to agree to participate – or not – irrespective of their parents views.
- Clause 27 – s. 226 (D): it is unclear why there is a requirement that the young person report in person to the chief executive on the day of the order. All other orders require that the young person report within 1 business day. Depending on the time of day when the order is made and where the young person has to go to report , it may be more appropriate that this also be within 1 business day.

## **2. Removal of the option of court referred youth justice conferencing.**

The Explanatory Notes provide no explanation for the removal of court referred youth justice conferencing save to say that it follows announcements in the State Budget.

YAC has seen many positive outcomes from conferences, mostly court referred conferences at the sentencing stage. The following material currently appears on the Department of Justice and Attorney-General’s website and is noted as having been last reviewed on 23 August 2012.

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<sup>39</sup> For example: a robbery with violence can be a 12 year old with a stick telling another 12 year old to hand over a chocolate bar or he will hit him. Similarly, a 16 year old having sexual relations with his 15 year old girlfriend puts him at risk of a sexual offence although there is no evidence of force since a 15 year old cannot consent under the Criminal Code. These are real scenarios in YAC’s experience.

## **Youth Justice conferencing**

A youth justice conference is a meeting facilitated by a convenor. A conference brings the young person and their family together with the victim (if they wish to attend) as well as a police officer. The aim of a youth justice conference is for the victim, the young person and their family to come up with an agreement about how the young person can begin to repair the harm caused by the offence.

When a young person admits to an offence the police may make a conference referral instead of sending the matter to court. In some cases, a court will request that a youth justice conference takes place. A conference convenor helps everyone talk through what happened and how everyone has been affected.

The purpose of the conference is to:

- provide a safe, supportive environment to talk about what happened and to work out what the young person should do to put things right
- hold the young person accountable for their actions
- find ways to help repair the damage or harm that has been caused to the victim of the offence
- involve the victim, the young person's family and the young person themselves in making decisions about what should happen to repair the harm that has been caused.

### **Accountability**

To ensure that the young person is held accountable for their offending behaviour. This gives them the opportunity to:

- accept responsibility (admit the offence/s)
- understand the consequences (hear the harm caused)
- make amends (apology, restitution, or other action).

### **Reparation**

To provide an opportunity for both the victim and young person to determine a mutually acceptable response to repairing the material, psychological and social damage caused by the crime.

### **Reintegration**

To strengthen the social and personal connections the young person has with their family or community of care and with the wider community, and to provide an opportunity for healing and reintegration for the victim.

### **Reduce recidivism**

To reduce re-offending through an approach incorporating principles of accountability, restitution, and reintegration.

### **Family responsibility**

To enable the family of the young person to participate in the process of deciding an appropriate response to offending behaviour and supporting them in the implementation of that response.

### **Victim participation**

To provide the victim of criminal offences with an opportunity to be part of the process of dealing with those offences.

### **Community involvement**

To encourage greater community participation in providing support for young people and victims of crime.

### **Diversion**

To divert young people from further involvement in the criminal justice system.

### **Cultural appropriateness**

To provide a process for dealing with offending behaviour that is appropriate to the young person's age, maturity, and cultural background.

### **Youth justice conferencing benefits**

Youth justice conferencing has positive benefits for all involved and has received consistently high satisfaction ratings from all participants, including victims.

Conferencing provides an opportunity for the **young person** to:

- admit the offence and accept responsibility for their offending behaviour
- understand in a real and tangible way the consequences of their actions on others
- repair some of the harm caused by their offending behaviour and feel proud of their efforts to put things right.

It also provides an opportunity for the young person's family and community to be heard and to be involved in decision-making about the offending behaviour.

Conferencing provides an opportunity for the **victim** to:

- participate in the process of working out how the young person should make up for causing the harm and damage
- negotiate an agreement to repair the harm. This could include an apology, replacing or paying for the damage, or performing voluntary work for the victim or wider community
- be involved in the justice process
- tell their story directly to the person who caused them harm
- seek answers to the questions that they may have about the crime and why they were the subject of the offence.

### **Youth justice conferencing family and community involvement**

Families are the foundation of communities — they shape lives and steer children into adulthood. Youth justice conferencing helps to strengthen and empower families through their involvement in the decision-making about a young person's offending behaviour.

The conferencing process allows families to:

- take an active role in deciding an appropriate response to offending behaviour and support them to implement that response
- support a young person's compliance with an agreement, which serves to encourage the development of positive relationships within the family
- find out how the young person is feeling and about issues associated with the young person's offending behaviour
- gain greater insight into the impact of the young person's behaviour.

One parent stated, I thought it did a lot of good. At first I felt extremely uncomfortable, but after hearing everyone else's side of the story I realised how these poor people must feel. It's made me realise how I have got to have my son do things, for example sport, because this doing nothing and roaming the streets will just get him nowhere in life.

<http://www.justice.qld.gov.au/youth-justice/youth-justice-conferencing>

In light of this information, it is hard to see what the justification could be for removing court referred conferencing. If it is purely economic, it is suggested that this is short-sighted as the longer term gains would well outweigh any short term savings.

It is acknowledged that police referred conferencing remains available, but it may not always be appropriate for a conference to happen at that time for a variety of reasons, in particular because police would tend to conference more minor matters rather than take them to court.

It is important that conferencing remains available at the sentencing stage as the court may consider that, despite the matters being relatively serious (that is, they have been brought to a court rather than diverted earlier), a conference may achieve positive outcomes for all concerned. This is not a criticism of police and does not mean that the police should have referred to a conference in the early stages. The court decision is made on the basis of all the information which is before the court.

This is not an unusual situation. The police, for example, are able to refer people to drug diversion but if the person offends again and the police prosecute, the court also still has the option of a drug

diversion order. Again, this is with a view to having the person change their behaviour and thereby prevent ongoing involvement in the justice system.

Below are two examples of court referred conferences which indicate the impact that conferences can have.

*Earlier this year a YAC client was ordered to attend a Youth Justice conference before sentence. The offence involved a robbery where our client had purported to have a gun and robbed a pizza delivery person. Our client has spent some time in pre-sentence custody.*

*It transpired that our client and the complainant were known to each other through the complainant's sibling though neither appreciated this at the time of the robbery but were each made shortly after our client was charged. Taking into account our client's criminal history and the nature of the offence it is unlikely that the police would have referred the matter for conference as it was only appropriate to refer the matter as part of the pre-sentence process.*

*No physical injury had been caused to the complainant. Our client due to his immaturity had limited appreciation of the psychological harm of his actions prior to the conference. The complainant spoke at the conference of the compounded trauma of this event and other unfortunate events that had happened to him about the time. The complainant's family spoke at the conference about the effect the event had upon him,*

*Our client gained understanding of the impact of his behaviour not only on the complainant but his family, the business the complainant worked for as well his own mother who very distressed at the conference. The complainant accepted our client's emotional apology at the end of the conference and indicated he was no longer concerned about the possibility of seeing him and what his own reaction maybe.*

*Our client who had been living out of home for the preceding twelve months moved back in with his mother shortly after the conference. The Judge took all this into account at sentence recognised the need for on-going supervision and imposed a probation order as well as a community service order to enable our client to contribute something back to the community.*

This second example quotes from a letter from a school principal in relation to a conference involving a YAC client:

*Recently I attended a Youth Justice Conference where a young man had to face up to his crime to the victim and those present. It was a highly emotional and powerful meeting. The outcome was an exceedingly remorseful young man who made significant commitments to make amends for his actions and a plan to get his life back on track.*

*Without this intervention it is highly probable that the young man in question would have continued on a destructive pathway and become a burden on our society for many years to come. There would be more damages, more victims who require counselling and compensation; there would be more police and court costs and the very real possibility of prison for this young man. This one meeting may have prevented all these costs and turned this young man into a productive contributor to our society. A veritable financial windfall for our state!*

### **In summary**

YAC would note that youth offending is not out of control – and never has been – and the community should be assured about this.

For the very small group of young people who become recidivist offenders, without addressing the issues which lead to this behaviour, we cannot hope to reduce their offending. While this includes

helping young people to understand the rules of our society, it must also give them the skills, abilities and opportunities to do this and to be able to contribute positively.

YAC will follow the boot camp trial with interest. It is considered unfortunate that the term “Boot Camp” is to be retained for the early intervention trial which is intended to prevent young people becoming involved in the justice system. As a voluntary program, the name may well discourage the involvement of the very people it needs to appeal to.

YAC would urge that the court referred youth justice conferencing should be retained since its aims and outcomes well align with what the government is trying to achieve in the youth justice arena.

**Youth Advocacy Centre**

**November 2012**

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