

**Submission by
YOUTH ADVOCACY CENTRE INC
In relation to the
REVIEW OF YOUTH JUSTICE**

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“Childhood is a difficult time...The realities of childhood put to shame the half-true notions in some children’s books. These offer a gilded world unshadowed by the least suggestion of conflict or pain, a world manufactured by those who cannot – or don’t care to – remember the truth of their own childhood. Their expunged vision has no relation to the way real children live.”

Maurice Sendack
Caldecott Medal Acceptance Speech (1963)

“Young people today are unbearable, without moderation... Our world is reaching a critical stage. Children no longer listen to their parents. More and more children are committing crimes and if urgent steps are not taken, the end of the world as we know it, is fast approaching.”

Hesiod, Greek poet
8th Century BC.

INTRODUCTION

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.

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 have clearly been shown not to work. This must be so if public money is to be spent appropriately and effectively.

It is therefore important to understand “the problem”, the extent of the “the problem”, the reasons giving rise to “the problem” before attempting to find solutions for it and what would constitute “successfully” dealing with “the problem”. As a result, YAC finds that it must reiterate some of the information which was provided in its submission on the Boot Camp trial as the context for its responses to the specific questions since many of the proposals being raised run counter to the research and established evidence referred to in that submission.

Youth justice: a short history

Childhood and adolescence are modern concepts. Today we accept that childhood is a *unique and crucial period of human life* and that the development of the child is a gradual physical and mental process¹.

In seventeenth century England children were simply viewed as “mini adults” – they were expected to work as hard and for the same hours as adults. Aberrant behaviour was therefore treated no differently and punishments were often severe.

The eighteenth century saw the beginning of an ongoing debate over the nature of childhood and its importance in an individual’s life. However, change in the reality of children’s lives was slow. In the early nineteenth century, 80% of workers in English cotton mills were children. Between 1812 and 1817, 349 convicts under 17 were transported to Australia. On one day in 1815, five children between 8 and 12 were hanged for petty larceny (theft) in London.

Adolescence was not identified as a particular stage of development until the late nineteenth century. Around the same time, child psychology became a recognised science, thus giving greater legitimacy to the concept of childhood. By the turn of the twentieth century adolescents were considered to be vulnerable and in need of adult guidance, training and control.

Therefore, in keeping with the accepted societal norms of how children were regarded, when Australia was first settled by the English in 1788 the law treated child offenders no differently to adult offenders. They went to the same courts and received the same sentences including hard labour and corporal and capital punishment. Children as young as six are known to have been sent to prison².

The only concession under English law and therefore Australian colonial law, was the *doli incapax* rule. Children under the age of seven were deemed incapable of committing an offence. For children aged seven but not yet 14, there was a presumption that they were incapable of breaking the law but this was rebuttable by prosecution evidence showing that they knew the act was wrong. How well this limited protection worked in practice is unclear as accurate information about birth dates was not readily available in the nineteenth century and it would seem at times the rules were not followed³.

The way in which the law changed in its application to children alleged to have broken the law reflects the way in which childhood is socially constructed and the way in which the concept of childhood has been expanded to include adolescence.

¹ Clarke-Stewart, A., Friedman, S., & Koch, J. (1985). *Child development: A topical approach*. New York: Wiley.

² Cunneen C and White R (2007) *Juvenile justice: youth and crime in Australia*.

³ Ibid.

In the 1880s in some states legislation was enacted to allow children charged with very serious offences to be tried summarily. In Queensland this was for all offences other than homicide. The establishment of a separate and specialist children's court first occurred in South Australia in 1890 and 1907 in Queensland:

We have to endeavour to distinguish between a legal function and a fatherly correction. The offences of nearly all children do not call for legal punishment but for correction administered in a fatherly manner and it is a grave mistake when we confound one of these with the other.⁴

Initially the aim was to: allow for minor offences by children to be dealt with speedily; remove the stigma children suffered when appearing in an adult court; eliminate the procedures which treated young offenders as criminals and "reclaim erring children."

In the early 1900s there was a paradigm shift from punishment to prevention and guidance. During this time until the 1960s there was a commitment to the welfare model with a focus on the individual child as influenced by the experiences and circumstances in their lives.

Over time, there has been a significant amount of research in relation to both child and youth development and also youth offending behaviour. It is widely acknowledged today, both in Australia and internationally, that juveniles should be subject to a system of criminal justice that is separate from the adult system which recognises their inexperience and immaturity. The United Nations' *Standard Minimum Rules for the Administration of Juvenile Justice* (the 'Beijing Rules') stress the importance of nations establishing a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights⁵.

The existence of separate juvenile justice systems is based on the recognition that children warrant different treatment to adults involved in criminal proceedings. Children, due to the continuing development of the frontal lobes that does not culminate until the early to mid-twenties, exhibit behavioural and emotional deficits compared to adults. They have less capacity for forward planning, delaying gratification and for regulating impulse. Impulsivity is a commonly observed element in juvenile offending and raises questions as to the culpability of juveniles in relation to criminal behaviour.⁶

Thus, preventing criminality commences from birth and is affected by the positive and negative experiences a child has. We can now physically see the damage which has been done to the brain or where the brain has not developed properly as the result of negative experiences in the first 25 years of life. This critical information, together with study and research by speech therapists and pathologists about the importance of oral language in a child's development, tells us that the role of health and education in this arena cannot be overstated.

It also means that those young people who are becoming entrenched in the system will not respond to a primarily punitive regime and that, as a community, we need to move beyond retribution if we want a safer community and to spend public monies to good effect.

⁴ A Queensland member of Parliament when the Children's Bill was debated on the introduction of the court.

⁵ Richards K: *What makes juvenile offenders different from adult offenders?* Trends & Issues in Crime and Criminal Justice no. 409.

⁶ *The prohibition of the publication of names of children involved in criminal proceedings* / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2006 (Report; no. 35).

Crime and youth offending in Queensland – an overview

Responding to youth offending over the years has sought to manage “the complexity of the objectives of juvenile justice which have oscillated between, and have attempted to reconcile, two apparently conflicting agendas, that is, to punish young people for offending behaviour while at the same time acknowledging the implication of their particular age status and attending to their welfare needs”⁷. The introduction of the *Juvenile Justice Act in 1992* in Queensland saw a move back to a more justice oriented model and since then a more punitive approach to crime prevention.

The Government Discussion Paper: *Safer Streets Crime Action Plan – Youth Justice* (the Discussion Paper) comments that “there is widespread community concern about crime in Queensland and communities are seeking more effective responses to youth crime in particular” and “the Queensland community has been vocal in expressing concern that young people are getting a slap on the wrist for the crimes they commit.” It is unfortunate that there has been no information campaign which addresses these misconceptions but instead government sees the need to respond to largely unwarranted concerns.

YAC has previously provided detail in relation to the following points:

- Concern with young people’s behaviour is an enduring mythology with examples going back in time to Shakespeare and even Socrates
- There is no crime wave – youth related or generally. Crime generally is decreasing - as is the number of youth offenders
- Young people themselves are victims of crime: young people under 18 are at least as likely to be the victims of a crime as a perpetrator
- Most young people are not offending: in 2011-12 only about 1.5% of the total population of 10-16 year old Queenslanders appeared in court
- 10-16 year olds are the minority of offenders in contact with the criminal law
- Young people are more likely than adults to come to the attention of police
- Most young people who come into contact with the police before 18 will not go on to be “career criminals” – their contact will be shortly lived and relatively minor and they will “grow out” of offending from late adolescence.
- Property offences are the most commonly committed offences by 10–17 year olds in Queensland and the rate of property offences committed by young people has fallen 21.6% over the past decade
- Compared with adults, young people tend to commit offences that are:
 - attention-seeking, public and gregarious
 - episodic, unplanned and opportunistic⁸
- Young people are already dealt with seriously as the sentencing regime below indicates: there is very little difference between the adult and child sentences other than the length of them, but even the length can be significant:

Child ⁹	Adult ¹⁰
Reprimand	Absolute or Conditional Discharge
Good Behaviour Bond	Recognisances
Fine	Fine
Probation Order	Probation Order
Community Service Order	Community Service Order
Conditional Release Order	Suspended Sentence
Intensive Supervision Order	Intensive Correction
Detention	Imprisonment
Detention up to life – means will most likely be transferred to adult jail	Imprisonment - indefinite

⁷ Alder, C and Wundersitz, J (1994). *New Directions in Juvenile Justice Reform in Australia* In C. Alder and J. Wundersitz (eds.), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Canberra: Australian Institute of Criminology. Pp 15-44.

⁸ Cunneen C and White R (2007) *Juvenile justice: youth and crime in Australia*.

⁹ *Youth Justice Act 1992*.

¹⁰ *Penalties and Sentences Act 1992*.

	Child	Adult
Robbery in company with violence	10 years <i>or</i>	Life
Arson	Life* if: there was violence against a person <i>and</i> Court considers particularly heinous	
Grievous bodily harm	7 years	14 years
Receiving stolen goods		

*Life in Queensland means the whole of one's life

- Once a person reaches 17 in Queensland, they are dealt with in an adult court and go to an adult prison

Child/adolescent development and its relationship to offending

In recent years, due to improvements in technology, we now know a great deal more about the brain and how it develops and how this affects offending behaviour both transient and persistent. This information, accepted internationally, is not only relevant, but fundamental to understanding why some young people become persistent offenders and why the cohort of young offenders has a clearly identifiable set of characteristics. In summary¹¹:

- The human brain is undeveloped at birth – human interactions grow brain connections
- Experiences can change the brain throughout life, but experiences in the first three years of life organise the brain as the brain undergoes a rapid growth of connections and networks during this time
- Experiences make the decision about which neurones survive and how they connect with each other – they “wire” the brain with ongoing repetition (positive or negative) strengthening how the wiring is occurring
- **The developing brain is therefore directly influenced by early environmental enrichment and social experiences (positive or negative) and the type of experiences an infant has is crucial**
- The brain of the young person (adolescent) is remodelling (growing new connections & pruning out others) from the ‘child’ brain and transforming into the ‘adult brain’ – a process that takes until at least 24 years of age in **healthy** development
- The emotional part of the adolescent brain has more intense responses in day to day firing than in an adult because emotional regulation is still developing
- The middle & lower brain regions are driven by testosterone and sexual urges and surges in neurotransmitters (dopamine) drive thrill seeking behaviour in adolescence in order to obtain rapid rewards
- Remodelling of the young person’s brain should develop the functions for a successful adult life which would include learning self-regulation (such as in pausing before acting) and developing empathy and morality (a concern for others/the greater good) and not simply acting on automatic fight/flight responses which are part of the “reptilian” part of the human brain.
- The re-modelling process will only happen positively if the young person has had appropriate experiences in the early years and then in adolescence so the brain develops in a “healthy” way.
- **The ‘teen’ brain is not the same as the ‘adult’ brain – but adults tend to appeal to the mature prefrontal functions that do not yet exist.** Adults around young people need to be **authoritative** and set realistic boundaries that are understandable and respected, but **not authoritarian**¹².

¹¹ Based on a presentation by Professor Elisabeth Hoehn at the Balanced Youth Justice Forum, Brisbane, 29 May 2013: see Appendix A for a copy of her presentation and that of the other speakers.

¹² For more discussion on parenting styles, see Appendix B

RESPONSE TO SAFER STREETS

GENERAL COMMENTS

It seems that the group which is being targeted by the youth justice review and reform proposals is the small group of recidivist offenders, particularly those who are returning to detention more than once. The Attorney has noted that 30% of those in detention are repeat offenders.

A recent report notes¹³:

... profiles of young people in detention show that a high proportion of detainees have been victims of abuse, trauma, and neglect, with high rates of drug and alcohol abuse, child protection involvement and school exclusion. Mental health issues and intellectual disability are also prominent. Particular attention is given to the need for a wider focus on the environments in which children develop and this brings in factors such as family, school, community and society. Evidence gathered in the present project shows that children who come into the system at an earlier age are associated with higher rates of offending and longer criminal careers. Also, Aboriginal children are over-represented in youth justice systems across all states and territories in Australia.

The Discussion Paper itself states:

With approximately 70% of young people in the youth justice system known to the child protection system, improving responses to child protection should assist in diverting young people from the justice system.

and

Young people entrenched in the justice system and those who are at high risk of becoming entrenched often have a range of things happening in their lives that influence their criminal behaviour.

These young people have often experienced:

- child abuse and neglect;
- exposure to domestic or family violence;
- severe and long-term family dysfunction in their childhood years; and
- homelessness.

These experiences often lead to:

- drug and alcohol misuse;
- poor mental and physical health;
- inter-generational poverty and unemployment; and
- low levels of education.

All the evidence shows that when a young person experiences these things without receiving any help, committing crimes is often the next step in life.

Noting that this is the case, it is unclear why the responses put forward in relation to this cohort of young people are increasingly punitive when the evidence indicates that rehabilitative and therapeutic approach would achieve better outcomes and avoid further involvement in the criminal justice system which is, of itself, criminogenic.

In any event, using recidivism as a measure of the performance of juvenile justice agencies in particular can be problematic, as:

- juveniles have a different offending profile from adults. As a result of a range of factors, juveniles tend to come to police attention more often than adults. The characteristics of juvenile offending may therefore impact on measures of juvenile recidivism;

¹³ Richmond Jesuit Social Services (2013) *Thinking Outside: Alternatives to remand for children: Profiles of children in the youth justice system*.

- offending peaks during adolescence. Recidivism measures of juveniles are therefore calculated for periods when there may be an increase in offending irrespective of the intervention of the criminal justice system¹⁴.

Further, the proposals seem to indicate a distrust of, and even a lack of respect for, experienced judicial officers. Unfortunately, while elements in the media put out sensationalist and simplistic reports about offences and offenders, then people will make judgements about “what sentence an offender should have got” when they have not, unlike the judicial officer, heard all the evidence about the offence and other relevant material for sentencing, to make an informed judgement. It is not the role of the judiciary to pander to populist opinion: it is its job to objectively weigh up all the information and make a balanced decision.

Additionally, people need to know that punitive sentencing or raising maximum penalties does **not** reduce offending or make our community safer – if this was the case, then the extreme threat of transportation to the other side of the world 200 years ago would have had a more salutary effect on offending behaviour in England and Australia.

SPECIFIC COMMENTS

Questions from Discussion Paper:

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

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

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

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

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

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

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

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

What types of programs should be available inside detention centres?

All of the above questions are really asking the same question: “**What works in preventing (re)offending?**”

There is an increasing amount of research and evidence about the effectiveness of early intervention and prevention measures to prevent offending behaviour developing to being with.

For those young people who are only on the edge of the youth justice system with nothing to indicate a risk of ongoing involvement, the youth justice process is sufficient as it is.

For the small group of persistent offenders who have significant issues to address in their lives, only by addressing these issues will we “get young people back on track”. Simply returning them after court to the place where they were before court, without any support or opportunities available for them and their families to address the issues which are influencing their behaviour and choices, is most likely to end in their re-offending.

Clearly Aboriginal and Torres Strait Islander children and their families need particular, culturally appropriate support. Their over-representation adds credence to the research findings that those most at risk of persistent offending behaviour are those of low socioeconomic status, with low educational attainment and significant physical and mental health needs. They also have histories of substance abuse, child abuse and

¹⁴ Technical and background paper: Measuring juvenile recidivism in Australia; Technical and Background Paper no. 44 Kelly Richards
No. 80

neglect. These are factors which summarise the life experience of too many of Australia's Indigenous peoples.

Also of concern are those young offenders who are in care and for whom the State has a great responsibility. Having removed them from their families, it must ensure that their risk of offending is reduced through effective case management and the provision of a greater level of care. A number of these young people are, in fact, actively criminalised by calling the police and laying charges for conduct arising in situations which most families would manage themselves.

The link between homelessness and interaction with the justice system is well proven:

There are complex links between homelessness and reoffending, where each can be a cause and a result of the other. Over 75% of homelessness services in England support clients who are prison leavers. In turn, ex-prisoners who are homeless upon release are more likely to re-offend than those who have stable accommodation¹⁵.

Family breakdown and domestic and family violence are two of the primary reasons young women seek support from specialist homelessness services. Family breakdown is also one of the primary reasons young men report for seeking support from services.¹⁶

Impacts on young people who are homeless include untreated trauma and isolation from key stabilising supports in their lives, such as family, school and other community networks. Prevention and early intervention in relation to a young person's homelessness experience minimises their isolation from their key supports and consequently reduces their risk of further homelessness and contact with the youth justice system.

Below is a summary of the key points already made to the Government in relation to answering the question "what works?" in recent submissions by YAC, such as the submission on Boot Camps:

- Offending behaviour in relation to young people must be considered in the context of child and youth development: early adolescence through to early adulthood is a peak period for brain development and consequently a period of increased risk¹⁷
- For the majority of those who come to the attention of the police or courts and who do not become persistent offenders, the current sentencing regime is clearly sufficient
- *The statistics seem to demonstrate that there are a small number of persistent offenders who are charged with multiple offences*¹⁸ (the President of the Queensland Children's Court)
- The small group of repeat offenders (a sub group of the 1.5% who appear in court in a given year) tends to have low socioeconomic status, low educational attainment, significant physical and mental health needs, substance abuse and a history of childhood abuse and neglect
- Do what has been shown to work: *In developing a program, practitioners should therefore start with a recognized theory about the causes of crime and then proceed to design an intervention to target the factors identified in that theory* (Andrews & Bonta, 1998)¹⁹
- Research consistently shows that prisons are ineffective in rehabilitating offenders and preventing re-offending: imprisonment is therefore a poor use of public money, particularly as the building, maintaining and staffing of detention centres or prisons is very costly
- The Texas (USA) based group Right on Crime puts forward *The Conservative case for reform: Fighting Crime, Prioritizing Victims, and Protecting Taxpayers*²⁰: Cost-effective interventions that leverage the

¹⁵ Homeless Link (UK) *Better Together: Preventing Reoffending and Homelessness* (Summary) Sept 2011

¹⁶ Homelessness Australia *Creating a framework for ending homelessness* www.homelessnessaustralia.org.au

¹⁷ AIHW *Young Australians: their health and wellbeing 2011* Chapter 25, Young people and crime

¹⁸ Ibid

¹⁹ Casey S. Article *Understanding Young Offenders: Developmental Criminology* The Open Criminology Journal, 2011, Volume 4

²⁰ <http://www.rightoncrime.com/priority-issues/juvenile-justice/>

strengths of families and communities to reform troubled youths are critical to a successful juvenile justice system

- Begin early: antisocial behaviour invariably begins during primary school years and tends to be associated with exclusion - from school itself, but also within the school
- Keeping young people at school can prevent and reduce criminal and anti-social behaviour.
- Diagnose and support those with disabilities: a 2005 NSW study found 88% of young people in custody reported symptoms consistent with mild, moderate or severe psychiatric disorders²¹
- “The science from a number of fields shows that parents’ own experiences in their lives strongly influence how they react and parent. Our positive and nurturing experiences influence our parenting, but our negative and painful experiences affect us as well ...[and]... can cause us to react in ways that don’t really make sense, so that we end up parenting in ways that we aren’t really happy with. For this reason, it’s important that parents do all they can to understand themselves (self knowledge)”²² Parents are important in:
 - the development of language skills, particularly in the early years. Language skills are critical in being able to manage socially but also in being able to develop literacy skills and therefore are important for longer term success at school
 - early brain development and socio-emotional and cognitive development which can be severely affected by inadequate or harmful parenting. While the majority of abused and neglected children do not offend, a significant number of children who do offend have had abusive, neglectful or inadequate parentings
 - monitoring and limit setting which have been linked to managing antisocial/offending behaviour, substance abuse and sexual risk taking by adolescents²³
 - offering an appropriate balance of nurture and demands of their child which maximizes the possibility of the child growing up:
 - with the courage to persevere when they face obstacles
 - able to control their impulses
 - being accountable to themselves and others
 - with the drive to work toward goals that are both personally and socially desirable
 - with an understanding of right and wrong
 - with the tendency to choose right over wrong.²⁴

The most effective approach ...

...would be to reduce the likelihood of a child or young person ever developing anti-social or offending behaviour patterns by:

- 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
- responding more appropriately where young people are the victims of abuse and neglect.

For those already in the system, providing therapeutic support, assisting their development of life skills and ensuring that they receive an education will be most effective.

The least effective approach...

... is to put them into a youth detention centre which is known to be criminogenic:

Detention acts as a corrupting influence on these children, many of whom go on to re-offend.

²¹ AIC (2011) *What makes juvenile offenders different from adult offenders* Trends and Issues in crime and criminal justice No 409

²² Dr. Tina Payne Bryson, psychotherapist and co-author (with Dan Siegel) of *THE WHOLE-BRAIN CHILD* (Random House Delacorte, 2011)

²³ Australian Institute of Family Studies (AIFS) (2011) *What works with Adolescents – family connections and involvement in interventions for adolescent problem behaviour* Family Matters No.88

²⁴ *What’s Your Parenting Style and How Does it Affect Your Child?* Barrie Morganstein, Ph.D.

...or a military style boot camp as these have been clearly shown to have no long term effects on repeat offending:

The traditional boot camp for young offenders was arguably the least successful sentence in the Western world – it made them fitter, faster, but they were still burglars, just harder to catch.

Judge Andrew Becroft, New Zealand, 2009.

Boot Camps

YAC refers to its submission to the Attorney and to the Legal Affairs and Community Safety Committee with respect to the establishment of Boot Camps. As noted, there is no evidence that a “military style” boot camp will be successful.

Clearly, the best approach would be to reduce the likelihood of a child or young person developing anti-social or offending behavioural patterns. There is evidence that the most cost-effective responses would include 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 more appropriately to young people who are the victims of abuse and neglect.

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.

An early intervention camp may be useful if it works with young people **and** their families in relation to these issues. Working only with young people assumes that they alone are “the problem” and, as the evidence shows, this is not the case, whatever parents may like to think.

It is not possible for anyone to pass comment on the Early Intervention Youth Boot Camp at this point. It is too early to say whether the particular model being used on the Gold Coast is a “good way to get young people back on track”: it will need to run for a time and undergo a rigorous evaluation so that we **know**, that is, we have some evidence to indicate, whether it is a “good way” or not.

Youth Justice Review

The Discussion Paper states:

As part of the Government’s Six Month Action Plan (January to June 2013) the Government has committed to a review of the Youth Justice Act 1992. The review will examine:

- *expanding the existing naming laws so that the names of repeat young offenders can be made public;*
- *making breach of bail an offence to reduce the number of repeat young offenders;*
- *allowing courts access to a person’s juvenile criminal history when sentencing them as an adult, so the court can see their full criminal history.*

It then asks a question regarding what other areas are in need of review without offering any explanation as to why the matters above are being proposed. Indeed, the Discussion Paper fails to consider any of the fundamental issues - such as why we have a youth justice system in the first place and what should be the purpose of that system. The vast majority of the public will not have come into contact with the youth justice system and most will have limited understanding of the criminal legal system. The paper would have been a great deal more useful if it had set out why the proposals might be needed along with their positive and negative implications. Further, unless a person has a working knowledge of the legislation, they would not be able to advise “what other areas should be reviewed”.

YAC has provided a submission to the Department on these matters and considers that none of the proposals have merit and are unlikely to influence young people’s offending behaviour. Amendments to the legislation are not likely to have an effect on offending behaviour – apart from the reinstatement of youth justice conferencing as a court ordered option.

YAC refers to the papers at Appendix A, presentations by experts in the area of youth justice at a forum at Parliament House on 29 May 2013. Knowing and understanding this information is critical for those undertaking the Youth Justice Review.

Sentencing

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

As noted above, YAC would support the reinstatement of youth justice conferencing as a court ordered option and refers to its submission to the Legal Affairs and Community Safety Committee last year when the legislation was being considered. YAC notes that the government members on the Committee recommended that this be retained.

What is important is that the courts have the option to order any interventions which will help to foster a young person's desistance from crime. It has been found that the more restrictive and intensive an intervention, the greater its negative impact, with juvenile detention being found to have the strongest criminogenic effect – that is, increasing a young person's involvement in crime, rather than their ability to desist. Further research has indicated that the younger a child is when first detained, the more likely it is that they will come back into custody. We refer you to YAC's Boot Camp submission and to the previous comments made at page 9 of this submission summarising "what works".

None of the research proposes that there needs to be additional sentencing options. Better and more strategic use could be made of those community based orders which are currently in place if they and youth justice staff were better resourced.

Responding to causes of crime

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

The government departments responsible for Health, Education, Housing and Communities must work better together in relation to families and young people, particularly in the early years and the transition to adolescence. This is where interventions are most likely to be successful in preventing the onset of offending behaviour. Attempts to "de-silo" government departments have not been very successful to date.

Government must deal with non-government services as partners in service delivery rather than a cheap way of delivering its services. Government and non-government agencies need to be more aware of who is doing what so that appropriate referrals can be made to the right service at the right time. They also need to work **with and for** the young person if the best results are to be achieved.

Managing demand for Youth Justice services

Question: How could the legal system be improved so young people charged with a crime are dealt with quicker (sic)?

It is important that young people's matters are addressed in a timely manner as they need to be able to connect the consequence to the action and the more time that passes, the more difficult that may be. Greater diversion from the legal system would probably assist this. The more quickly the prosecution compiles its briefs of evidence and provides them to the defence, the more quickly instructions can be taken and matters resolved. Greater specialisation of magistrates would also assist: the greater the skill and experience of the judicial officer in the Childrens Court jurisdiction, the more expeditiously (and appropriately) matters can be dealt with in court itself. A well-resourced Childrens Court Services branch of the Department would ensure that the role of Youth Justice Services in relation to the court process can happen in a timely manner in Brisbane and can provide training for those undertaking similar roles in the courts outside Brisbane City for the regional courts.

It is noted that a media release by the Attorney General of 31 May 2013 advised that there had been an improvement in service delivery in relation to the Childrens Court (Criminal Law) – 105% clearance rate (and successful Youth Justice community supervision orders – 78% (Original estimate - 76%)).

Early intervention and diversion

As noted previously, and in line with the presentation of Professor Elisabeth Hoehn at Appendix A, the most effective way to avoid having recidivist offenders is to ensure that children grow up in safe and secure homes and therefore Housing, Health and Education Departments in particular have a key role to play. Crime must be considered first and foremost as a **social** issue rather than a purely legal issue.

Government (re)investment

Building, maintaining and staffing of detention centres or prisons is very costly. It costs the taxpayer approximately \$237,980 per year to imprison one young person (in Australia)²⁵ and detention does not prevent them from re-offending – the evidence indicates it does the reverse. If government is serious about spending public money in the most efficient manner and which is most likely to achieve the desired outcome – less offending and safer communities – then the literature is clear: to prevent young people from offending in the first place or to break the cycle of offending for those who are offending, shift the investment from detention to early intervention and prevention.

There have been a number of studies conducted both in Australia and internationally that document the offending trajectory of chronic young offenders from the youth justice system into the adult prison system, as well as studies that document the total cost of crime to society caused by chronic offenders. For example, a longitudinal study conducted in 2005, followed the trajectories of 5476 young people aged 10-18 who appeared in the children’s court for the first time in 1995. This study tracked the criminal histories of the young people for eight years.²⁶ They concluded that there was a direct relationship between age of first offence, and number of re-offences. That is the younger the offender was when they committed their first offence, the higher their average of re-appearances was.²⁷ Such studies clearly illustrate that the current investment focusing on detection rather than prevention is not effective in improving the outcomes for young people or the community.

There is a body of research (with the key studies in this area being carried out in the United States) that compares the total cost of crime to society caused by a chronic offender with the costs of investing in early intervention and prevention programs, a limited portion of which has attempted to determine the total cost of crime committed by an offender over their life course, tracing the offending trajectories of young people from the juvenile justice system into the adult criminal justice system.

Costs include:

- Tangible costs include things such as the cost to replace or repair stolen or damaged property, medical expenses and lost wages from being unable to work, the cost of increasing home security measures or taking lessons in self-defence.²⁸
- Intangible costs include costs to the victim such as reduced quality of life, pain and suffering, or fear of being re-victimised. These costs also include the cost of lifestyle change for example, no longer going out at night (due to feeling unsafe), or having to pay for cabs or other forms of transport as

²⁵ AIHW Young Australians: their health and wellbeing 2011 Chapter 25, Young people and crime (AIHW 2011)

²⁶ Chen, Shuling, Tania, Matruggio, Don Weatherburn and Jiu hao, Hua. 2005. “The transition from juvenile to adult criminal careers.” *Crime and Justice Bulletin, New South Wales Bureau of Crime Statistics and Research*. 86:1-12.

²⁷ Chen, Shuling, Tania, Matruggio, Don Weatherburn and Jiu hao, Hua. 2005. “The transition from juvenile to adult criminal careers.” *Crime and Justice Bulletin, New South Wales Bureau of Crime Statistics and Research*. 86:1-12.

²⁸ Cohen, M., and A. Piquero,. 2009. “New Evidence on the Monetary Value of Saving High Risk Youth.” *Journal of Qualitative Criminology*. 25: 25-49.

people feel that it is unsafe to walk.²⁹ Social costs such as increased insurance premiums, or costs incurred to participate in the justice system (for example acting as a witness or jury member) are also considered.

- The justice system associated costs (police, corrections, lawyers and judicial staff, court infrastructure etc) incurred by life course offenders.³⁰

A 2010 study followed the offending trajectories of 27,160 individuals who were born in 1958 for a twenty year period.³¹ This was one of the first studies to combine literature on offender trajectories and costs of crime. In accordance with other literature in this area, this study also found that this cohort was made up of three kinds of offenders, early onset offenders, late onset offenders and chronic offenders.³² It was found that the offences committed by the chronic offenders became more serious as the offender aged; which can be contrasted with the other two groups where the severity of their offending peaked in adolescence and became less serious as the study went on. As a result, the chronic offenders, despite being the smallest group in the studied cohort impose far greater costs on society; with the total cost of crime being imposed on society by the entire cohort for the 20 year period being \$2 billion (US dollars)(NOT including justice system costs).³³

Such studies demonstrate that continuing to focus on detention and incarceration is not an economically sound investment: it does not break the cycle of offending with costs incurred across society.

Cost benefit analyses have clearly established that a focus on community corrections and offender rehabilitation can reduce the number of young people that become involved in criminal behaviour, and can dramatically reduce the social cost of crime. Each case study below comprises a cost benefit analysis of various community corrections programs or early intervention programs for young people, the effectiveness of which is compared to juvenile detention or traditional probation and parole treatment.

Case study 1

This study looked at whether community interventions assisted in reducing recidivism rates of young people. It involved 293 participants who were assigned to one of three groups; group one received intensive community supervision and monitoring, group two received intensive outpatient counselling and cognitive behavioural therapy, and the third group received the standard probation and parole treatment.³⁴ This treatment was implemented over a period of 6 months, and had a twelve month follow up. It was found that those in the treatment groups produced less than 1/3 of the expenditure of subsequent court referrals or time in detention and that for every dollar that was invested in this community corrections program, \$2 was given back to society in the form of reduced criminal justice expenditure.³⁵

Case study 2

This study involves an early intervention program in the lives of young people through the Chicago Child-Parent Centres which are located in Chicago public schools in the poorest neighbourhoods and provides educational and family support to children aged three to nine. The aim of Centres is to promote educational achievement, school retention and low levels of delinquency. The program has three stages of intervention,

²⁹ Cohen, M., and A. Piquero,. 2009. "New Evidence on the Monetary Value of Saving High Risk Youth." *Journal of Qualitative Criminology*. 25: 25-49.

³⁰ Welsh, Brandon., Rolf. Lober., Bradley, Stevens., Magda, Stouthamer- Loeber., Mark, Cohen., and David, Farrington. 2008. "Costs of Juvenile Crime in Urban Areas: a Longitudinal Perspective. *Youth Violence and Juvenile Justice* 6:3-27. Welsh, Brandon., and David Farrington. 2011. "The Benefits and Costs of Early Prevention Compared with Imprisonment. *The Prison Journal* 91: 120S-137S.

³¹ Cohen, Mark., Alex, Piquero and Wesley Jennings. 2010. "Studying the Costs of Crime across Offender Trajectories." *Criminology and Public Policy*. 9(2):279-305.

³² Cohen, Mark., Alex, Piquero and Wesley Jennings. 2010. "Studying the Costs of Crime across Offender Trajectories." *Criminology and Public Policy*. 9(2):279-305.

³³ Cohen, Mark., Alex, Piquero and Wesley Jennings. 2010. "Studying the Costs of Crime across Offender Trajectories." *Criminology and Public Policy*. 9(2):279-305.

³⁴ Allen, R. 2007. 'Justice Reinvestment a New Approach to Crime and Justice. *Prison Service Journal*. 176: 3-8.

³⁵ Dossetor, K. 2011. 'Cost-benefit analysis and its application to crime prevention and criminal justice research. *Australian Institute of Criminology*. 42:1-57.

preschool age, school age and extended intervention, and as a result the program deals with children up until they attain the age of 21.³⁶

This study compared groups of children who received intervention from the Centre and were of preschool age between 1983 and 1986 and those who did not, with a fifteen year follow up. The program involved early intervention and family support services for children between the ages of three and nine years. The children who participated in this study fell into the three categories, of preschool age, school age or extensive intervention. It should be noted that the intervention lasted for varying periods depending on what age the child was when first coming into contact with the program, and whether they fell into the extensive intervention category. The result was that those who participated in the program had a higher rate of school retention and a lower rate of youth arrest, in comparison to those children who did not have any early intervention. It was concluded that for every dollar spent on preschool age children participating in the Centre, society received a benefit of \$7.14. Like the previous study this was also a saving in criminal justice expenditure.³⁷

Case Study 3

The third case study is the renowned Perry Preschool project, which was an early intervention program at the Perry Elementary School in Michigan for children born between 1958 and 1962. Intervention began when the participants were three years of age, lasting for two years. The intervention consisted of a 2.5 hour preschool program operating each weekday during the school year, which was supplemented by weekly home visits from teachers, and group meetings between teachers and parents. The program was aimed at disadvantaged children, living in adverse circumstances. After the intervention period was complete, follow up interviews were conducted with the participants when they were 15, 19, 27 and 40 years of age, with 90% of the sample still participating in the 40 year age bracket.

The program emphasised educational attainment, which included both college and vocational training, and cost approximately \$17,759 per child. A cost benefit analysis concluded that for every dollar that was invested society received a return of \$7-\$12. Further, the cost benefit analysis considers the effect the program had on reducing the cost of crime. It was concluded that males the cost of crime committed by males who participated in the program was half of the total cost of crime committed by males who did not participate.³⁸

Such analyses indicate that despite early intervention programs being more expensive in the short term, they will increase the long term economic benefits for society by reducing crime and therefore crime-related costs. Further, they demonstrate that young people who receive the intervention experience increased educational achievement, employment and total wages earned, resulting in an overall benefit to the life outcomes for young people who receive the intervention and therefore also a positive benefit to the community more generally as a result.

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

The people best placed to deliver these services are those with the appropriate experience and track record in working with young people and achieving good outcomes with them.

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

Investment should be in line with what the research and evidence shows is likely to lead to the outcomes required of reducing offending behaviour.

³⁶ Dossetor, K. 2011. 'Cost-benefit analysis and its application to crime prevention and criminal justice research. *Australian Institute of Criminology*. 42:1-57.

³⁷ Dossetor, K. 2011. 'Cost-benefit analysis and its application to crime prevention and criminal justice research. *Australian Institute of Criminology*. 42:1-57.

³⁸ Belfield, Clive R. 2006. "The High/Scope Perry Preschool Program". *The Journal of human resources* , 41(1): 162.

Improving detention centre services

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

It is unclear why this question is being asked. As noted previously: “The ‘teen’ brain is not the same as the ‘adult’ brain – but adults tend to appeal to the mature prefrontal functions that do not yet exist. Adults around young people need to be **authoritative** and set realistic boundaries that are understandable and respected, but **not authoritarian**.³⁹” Clearly actions such as solitary confinement or corporal punishment are not acceptable. The detention centre staff should already have a behaviour management policy which is clearly articulated to young people. The staff must be skilled professionals, capable of working with young people, particularly those with behavioural issues. As a result of their professional background – psychologist, social worker, etc. – they would know how to set boundaries and limits and address breaches in a way which improves behaviour in the short and longer term. No doubt this would include equivalents of being “grounded” which would be responses within many family homes but all responses should be commensurate with the behaviour and privileges should not arbitrarily be taken away.

The response may also involve programs which help young people with, for example, anger management which may result in poor behaviour. For some young people change will also be quite difficult, so allowance must be made where a young person improves their behaviour but then makes a mistake. Making it too difficult will just result in young people giving up because it is too hard. As noted previously, this will be about assisting young people to appropriately “re-wire” their brains at this critical developmental time.

Question: Would it be appropriate for young people in detention to be granted a leave of absence, or in some cases early release, i.e. to attend work? What might need to be considered to make this a viable option?

Question: What types of programs should be available on release from detention?

Whether a leave of absence would be appropriate would be a question of looking at all the circumstances of a particular young person, but in principle, if a young person is complying with the rules in the detention centre and there is an opportunity for them to take up something which is likely to improve their ability to stay away from offending and improve their life skills or education, it is hard to see why that would not be beneficial for the young person and the community generally and why it could not be allowed.

A greater range of support services and resources for young people and their families when exiting detention should be available which are designed to assist young people reintegrate into the community and provide follow up. This must include accommodation options where the young person has nowhere safe and appropriate to go to. These programs require a brokerage component to ensure transitions back into the community are resourced and developed appropriately. It is YAC’s contention that the transition from care package and associated resources under the Child Protection system should be extended to include young people who are being released from detention.

Reintegration activities are an integral part of a young person’s rehabilitation leading up to their release from custody. If young people in custody, especially those detained for long periods do not receive gradual and consistent exposure to life outside detention, then they are likely to experience prolonged effects of institutionalisation once released. In a nation-wide survey of the United States justice system, key elements of pre/post release services were identified including assessment and planning, continuum of care accommodation options, high frequency support services, drug and alcohol prevention and development of community resources. Queensland has a post release program for young people who are exiting detention, however it is not community based which means that young people’s connection upon release remains, to a large degree, with the youth justice system.

³⁹ See Appendix B

In 2000 YAC undertook a 12 month pilot project, The Detention Centre Family Worker (DCFW), which was designed as an intensive and specialised family therapy support service for young people leaving detention and their families. The project provided strategies for post-detention placement and recognised that any constructive change in family dynamics will positively benefit the young person's reintegration and therefore decrease the risk of re-offending. Unfortunately this pilot project did not receive recurrent funding. YAC caseworkers can only provide a limited service to young people exiting detention with current resources and the formalised referral processes within youth detention also restrict the support which can be given. The YAC experience of the DCFW project provided some indication of the components of an effective post-release support program. These components include:

- Involvement of the community both prior to release and post release
- Consistency of personal support contact with community support
- Flexible support that is based on the needs of the young person
- Support and capacity building of the significant people in a young person's life
- Therapeutic supports which build the young person's resilience.

CONCLUSION

The review of the youth justice system and the legislation is an opportunity to ensure that addressing youth offending aligns with the research and evidence so that public monies are spent to best effect. This may run counter to populist opinion, generally formed on the less-than-balanced information provided by a sensationalist media, but good policy must be based on objective evidence of the potential for a response to address the issue at hand. There is a great deal of evidence in relation to how to best respond to offending and offenders, as this submission has demonstrated. YAC urges the government to act on this evidence for the benefit of all concerned.

APPENDIX A

Papers from Forum “Youth Justice – a Balanced Approach”

29 May 2013

Dr Kelly Richards – Crime and Justice Research Centre, QUT

Professor Anna Stewart – School of Criminology and Criminal Justice, Griffith University

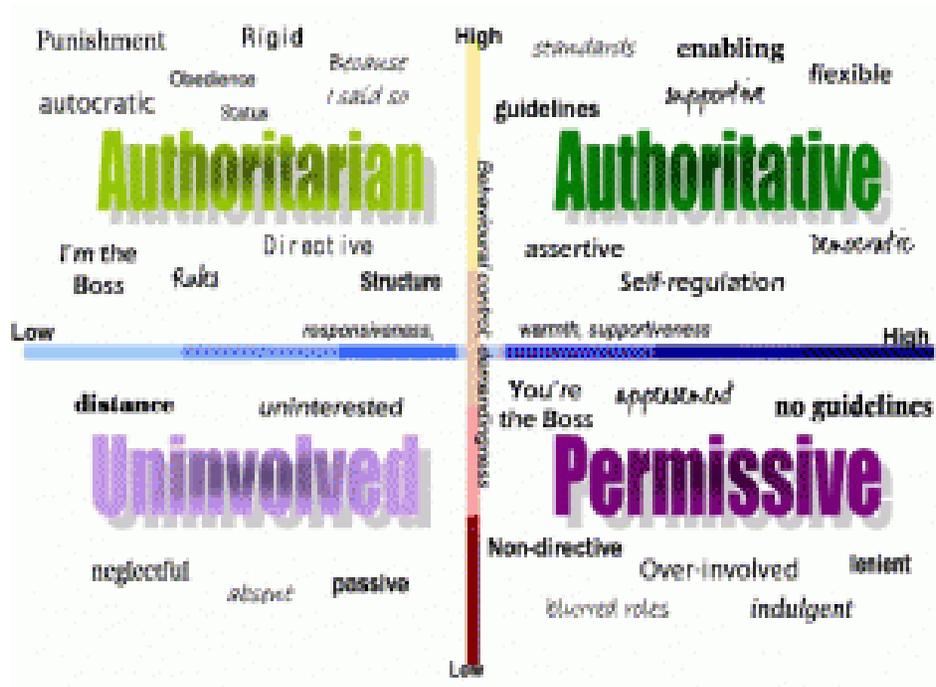
Dr Elisabeth Hoehn – Psychiatrist, Children’s Health, Queensland Health and Hospital Service

Ms Debra Wardle – Barrister at Law

Mr Ben Schokman - Director of International Human Rights Advocacy, Human Rights Law Centre

APPENDIX B

PARENTING STYLES⁴⁰



<p>The Authoritarian Parent:</p> <ul style="list-style-type: none"> attempts to shape, control, and evaluate the behavior and attitudes of the child in accordance with a set standard of conduct, usually an absolute standard. values obedience and favors punitive, forceful measures to curb self-will at points where the child's actions or beliefs conflict with what she thinks is right conduct. does not encourage verbal give and take, believing that the child should accept her word for what is right. 	<p>The Authoritative Parent:</p> <ul style="list-style-type: none"> attempts to direct the child's activities by using reason as well as power to achieve her objectives. encourages verbal give-and-take and shares with the child the reasoning behind her policy. recognizes her own rights as an adult, but also recognizes the child's individual interests and special ways. affirms the child's present qualities, but also sets standards for future conduct.
<p>The Uninvolved Parent:</p> <ul style="list-style-type: none"> don't discipline, nurture, or respect their children. are generally uninvolved and disinterested in parenting, interacting only minimally with their child. their lack of interest may be due to their own immaturity, significant psychological issues, or problems with substance abuse. 	<p>The Permissive Parent:</p> <ul style="list-style-type: none"> behaves in a non-punitive, acceptant, and affirmative manner. consults with the child about policy decisions and gives explanations for family rules, but makes few demands. allows the child to regulate his own activities and avoids the exercise of control. presents herself as a resource for the child to use as he wishes, but is not actively responsible for shaping or altering his behavior.

⁴⁰ What's Your Parenting Style and How Does it Affect Your Child? Barrie Morganstein, Clinical Psychologist, at <http://southeastpsych.com/Staff/Morganstein/Presentations/Parenting.pdf>.