YOUTH CRIME AND OFFENDING IN QUEENSLAND

Consideration of specific issues raised in relation to the review of youth justice

NAMING AND SHAMING OF YOUTH OFFENDERS

The evidence and research would not support any of the options with respect to "naming and shaming". Indeed, the evidence indicates that it is likely that such an action will only undermine efforts to reduce youth offending. The existing protections in the *Youth Justice Act 1992* provide an appropriate balance of holding offenders to account for their actions, while protecting vulnerable young people and encouraging rehabilitation.

The closed court and prohibition on identification of young people appearing in court are important differences to the adult court in many jurisdictions.

Open v closed court

It is noted that the more serious offences alleged to have been committed by young people are already heard in open court in the District or Supreme Courts or the Childrens Court of Queensland. Hence, a distinction already exists whereby those in this situation are not (even before any finding of guilt) protected from public view. It is argued that there is no evidence to support a change in this situation.

Opening up the Childrens Court more generally may in fact result in other young people (friends or otherwise) sitting in court with the unintended consequence that this may actually been seen as a positive: act as a form of "rite of passage" or provide an "audience" for some young people and thereby undermine the stated aim of the policy.

The information provided to a court is often sensitive and relates not only to the young person but their parents and families. The legislation provides that parents may be directed to attend court when their child's matter is being heard and Magistrates are generally keen to ensure that they are present. Parents are less likely to participate or participate fully or openly if there are a number of strangers, or more likely and probably worse in regional areas and smaller communities, their neighbours and other parents from the young person's school, etc.

Sometimes another young person will be the victim of an offence and an open court will mean that this young person will also have to deal with people being present who have really no specific interest in the case.

Publication

Since most young people who come into contact with the police before 18 will not go on to be "career criminals" and a significant proportion of those brought to court will appear only once, or twice, there can be no sensible reason to name these offenders and risk the outcomes associated with labelling. Naming of first time offenders cannot happen.

It is also unclear how naming those in the small cohort of repeat offenders, characterised by low socioeconomic status, low educational attainment, significant physical and mental health needs, substance

abuse and a history of childhood abuse and neglect, will be of any benefit to the young person or the community or community safety.

The situation will also become complicated when a young offender is in care. Under the *Child Protection Act 2000* it is an offence to identify a child in care. Bearing in mind why children are taken into care and the current issue of criminalisation of these young people for minor offences which parents would generally manage within the home, it would be quite unacceptable for them to be able to be named because of any offending behaviour. It would then conversely be unfair if young people who were not in care were named even though there may be extenuating circumstances in their personal situations which are leading to their offending behaviour. As noted previously, the Childrens Court Annual Report notes " 70 per cent of young people in the youth justice system are known to the child protection system". It also begs the question as to how well the government is addressing the needs of young people in care.

The likely detrimental outcomes arising from any disclosure of the juveniles' identities have been summarised as including:

- a misuse of the concept of shaming (originally based in restorative justice and reintegrative processes away from the court)
- the potential for vigilante action
- a false sense of community protection
- the possibility of interfering with any rehabilitative efforts[1].

Recent research has centred on the more positive forms of shaming, which are believed to be a part of restorative justice practices, such as "youth accountability conferences. These programs utilise the positive, transformative power of shaming, while avoiding the negative effects of public stigmatisation"[2].

Unfortunately, the Queensland courts' ability to utilise such a process as a sentencing option was removed last year when the youth justice conferencing provisions of the *Youth Justice Act 1992* were repealed.

In its submission to the NSW Legislative Council Standing Committee on Law and Justice *Inquiry into the prohibition on the publication of names of children involved in criminal proceedings* (2007) the Federation of Parents and Citizens Associations of New South Wales (the Federation) noted that:

> Adding public naming of young offenders does not enhance the level of justice, it only increases the punishment. Public naming of minors unreasonably hinders the rehabilitation process and violates international standards of civil rights protection for children.

The Federation also observed that following the Northern Territory (the only jurisdiction in Australia where the naming of child offenders is permitted) would not be successful in deterring youth crime in NSW:

> [It] allows the media to publish recklessly and by the time matters reach the courtroom, guilt has already been assigned by the general public. Once labelled, children are stuck with that image for life.

The Federation also expressed concern for the siblings of young offenders and their victims because releasing the identity of the offender can often lead to assuming "guilt by association." It made reference to a case in the Northern Territory when a 13 year old boy was arrested for shoplifting. A picture of the young boy and his sister was published on the front page of their local newspaper. Three years after that photo was published, she still encountered people who asked, "Oh, aren't you that girl that got caught shoplifting that was in the paper?[3]

The NSW Committee's report stated

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[1] Chappell D and Lincoln R. (2007) "Abandoning identity protection for juvenile offenders" Current Issues in Criminal Justice, 18 (3), 481-487

[2] Ibid

[3] Naming and Shaming Juvenile Offenders." The Law Report. 3 October 2006.

> High profile crimes involving juveniles, such as the recent attack on a Sydney school, often lead to a call for the 'naming and shaming' of offenders. Whatever short-term purpose such a response might serve, it is ultimately shortsighted since it is likely to stigmatise the offender and impact negatively on their rehabilitation, increasing the likelihood of reoffending.
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> Juvenile offenders can be punished and encouraged to take responsibility for their actions without being publicly named. Judicial sentences for juveniles can and do reflect community outrage, denouncement of the crime and acknowledgement of the harm caused to victims…..
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> …… the weight of evidence presented to the Committee clearly indicates support for the current prohibition, and in fact warrants its extension to cover the period prior to the official commencement of criminal proceedings and the inclusion of any child with a reasonable likelihood of becoming involved in criminal proceedings.

In a recent article, a criminology professor asks[4]:

> But where is the evidence to suggest that the public identification of juveniles who are involved in criminal proceedings will have a positive effect on their subsequent behaviour? Where is the evidence that such naming will be of benefit to communities or even to victims of crime?
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> The short answer: there is precious little.
>
> While apparently politically appealing, cries to openly name and shame are ill-informed.

Recent research conducted in relation to the Northern Territory naming and shaming regime presents anecdotal evidence that 'naming and shaming' can have the opposite effect with child offenders, with children acting as though they need to live up to their tarnished reputations. Children and young people are unlikely to understand the consequences that may result from being publicly named for criminal offending[5]. Russell Goldflam from the Criminal Lawyers Association of the Northern Territory agreed with these findings, observing that some children may even welcome the publicity as a 'badge of honour' and value the immediate gratification of belonging to an 'outside group', cementing the anti-social behaviour rather than helping the child move away from such behaviour[6].

Professors Lincoln and Chappell also found:

- Naming is detrimental to the young person. It may result in harassment and/or disruption to their educational prospects
- For many being named simply brought greater police attention not only to themselves but to their families and communities as well
- Of particular concern, were Indigenous youth – so grossly over-represented in the juvenile justice system, who were similarly over-represented in those singled out for public identification
- There was evidence that the naming of these young people meant that sporting scholarships were jeopardised, employment prospects were diminished, and even the capacity for their families to obtain housing was badly affected.

Therefore publicly identifying a child offender has the potential to jeopardise the rehabilitation of that child. It may give them a bad name which they cannot rid themselves of – irrespective of whether they are trying to "turn over a new leaf" - so that people exclude them and make assumptions about how they will behave in the future. This can affect, for example, their job prospects and ability to positively engage with their community generally. Inability to get a job or otherwise be involved in positive activities is a risk factor for

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[4] Robyn Lincoln, Assistant Professor, Criminology 22 August 2012 The Conversation: *Naming and shaming young offenders: reactionary politicians are missing the point*

[5] Chappell D and Lincoln R, *Naming and Shaming of Indigenous Youth in the Justice System: An Exploratory Study of the Impact in the Northern Territory : Project Report* (21 May 2012)

[6] Robyn Lincoln, Assistant Professor, Criminology 22 August 2012 The Conversation: *Naming and shaming young offenders: reactionary politicians are missing the point*

further offending, which does not make the community safer or reduce crime. Consequently, it is widely recognised that young people who offend should not be stigmatised and labelled by publicly naming them.

Research has shown significant detrimental effects resulting from young people being labelled as 'delinquent' or 'criminal'. These detrimental effects can continue far beyond the time when the information about the young person is first published, particularly in a world where it can be published online.

It has been argued that:

> naming and shaming through the media is a form of disciplinary punishment, social surveillance and control which may be experienced more sharply in regional Australia given that historically public shaming has been most potent in smaller communities. We raise the question does this form of media power offend the principle of equality, as media coverage of criminal matters is highly uneven and accords more closely with news values and media production requirements than considerations of justice or sentencing principles[7].

In Britain, since 2003, local authorities and police have been permitted to 'name and shame' children who have been placed on an 'anti-social behaviour order' (ASB Order). As a result, personal details of young offenders, such as their portraits, names and the requirements of their ASB Order have been published.

The United Kingdom Government has now announced it will abandon ASB Orders as they have been found to be ineffective in addressing the behaviour complained of and actually contribute to the criminalising of young people.

It is likely that the young person's family may be more affected from a "shame" perspective by open courts and identification of their children, particularly in smaller communities. This may be particularly true for younger siblings to whom labelling is transferred on the basis of the behaviour of their brother or sister.

The Courier Mail recently reported that the Department of Housing was trying to evict a mother from her public housing home after her son was charged with a series of neighbourhood burglaries. The department was seeking an eviction order against the mother, who has lived in the same southside Brisbane house for 18 years, because of complaints about her 14 year old son's "objectionable behaviour"[8]. Naming and shaming has the potential for more of this type of action with all that will entail in terms of impact on the family.

International obligations to protect the interests of children

The United *Nations Convention on the Rights of the Child* (the UNCRC) and the United Nations *Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules) refer specifically to a young person's right to privacy at all stages of juvenile justice proceedings. Rule 8.1 of the Beijing Rules notes that this is 'in order to avoid harm being caused to her or him by undue publicity or by the process of labelling'.

The UNCRC was ratified by Australia in December 1990: consequently, any federal, state or territory legislation, policy or practice that is inconsistent with the UNCRC places Australia in breach of its international obligations and could have consequences at the international level. In addition, the Beijing Rules represent internationally accepted minimum standards, and although these are not necessarily binding on Australia at international law, failure by Australia to adhere to these rules may result in international scrutiny.

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[7] Hess K and Waller L, School of Communication & Creative Arts, Deakin University *Naming and shaming: Media justice for summary offenders in a regional community?*

[8] Kay Dibben, The Courier-Mail 28 March 2013 *Department of Housing seeks to evict mum following teen son's string of neighbourhood burglaries*

ADMISSIBILITY OF CHILDHOOD EVIDENCE

Again, one of the points of difference between adult and young offenders is that young people do not automatically acquire a criminal record as adults usually do. This is in recognition that young people are inexperienced and may make poor choices and also that a number of them have issues which tend to put them at greater risk of offending and while they are still children at law (unless they happen to be 17) there may be opportunities to change this behaviour. Hence a distinction is made between simple findings of guilt and the ability to record a conviction in the youth justice system.

There is a history of careful and detailed judicial consideration around the recording of convictions due to their potential impact. The courts have considered the research around young people's offending behaviour and the opportunity to, and long term rationality of, a young person being able to lead a meaningful life and positively contribute the community.

The adult courts are already effectively able to deduce whether young adults have a criminal history of significance. Aside from minor matters where a reprimand is given or good behaviour order made, it is for the judicial officer in the Childrens Court to decide whether a conviction be recorded or not. If it is recorded, it can be made available to the adult court. If not, it cannot be. The Childrens Court Magistrate or Judge makes a decision on the facts and the young person's previous history in deciding whether to impose a conviction or not. This is entirely appropriate.

If a young adult appears before the court, the Magistrate or Judge will know, if the young person has even one conviction recorded, that there is likely to have been a significant offending history. If the offending is sufficiently serious or repeated, a conviction will be there.

BREACH OF BAIL

In its submission to the NSW Law Reform Commission's Review *of the law of bail* (2011), the NSW Commission for Young People noted that:

> It appears that children and young people are often unable to comply with the *Bail Act 1978* (NSW) because of their individual circumstances and are refused bail, for example where they have a lack of stable accommodation and/or other supports in the community. As a result, a range of bail conditions of a welfare nature, such as requiring a child or young person to reside with a specific person, adhering to curfews and not associating with particular individuals, are imposed. Such conditions are often more onerous than the bail conditions imposed on adults and fail to recognise the capacity of children and young people, in the context of their families and communities, to meet such requirements. As a consequence, children and young people are 'breached' for failing to meet bail conditions and further punished for these breaches of conditions, rather than for committing any new criminal offences.
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> There is no evidence to demonstrate that monitoring, arresting and detaining children and young people for breaches of their bail conditions reduces re-offending.
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> As children and young people may be refused bail because of a lack of stable accommodation or other supports under the *Bail Act 1978*, the Commission strongly supports the need for bail accommodation and community based alternatives, such as bail supervision programs, that seek to support children and young people on bail.

The (NSW) Public Interest Advocacy Centre (PIAC) acknowledged that:

> [T]he decision whether to grant bail triggers a number of competing considerations. These include striking an appropriate balance between, on one hand, the right to liberty and the presumption of innocence, and on the other hand, the protection of the community and the risk of re-offending.

It went on to say:

> The purpose of bail is to ensure the attendance at court of a person charged with a criminal offence while recognising international human right principles of the right to liberty and presumption of innocence that underpin the justice system. Further, given that bail is not to be used as a punitive measure, the objects should reflect the fact that a person who has not been convicted of an offence should not be imprisoned unless there is a good reason to do so.
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> PIAC further submits that an overarching principle that should apply to bail determinations in respect of young people is that detention should be a measure of last resort and for the shortest possible period of time……..specifically in the case of young people, bail laws should promote rehabilitation, reintegration into society and should not disrupt a young person's schooling, employment or ability to contribute positively to society.
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> Recent studies have shown that up to 71 per cent of the juveniles on remand are detained for breaching their bail conditions, for reasons such as not complying with their curfew, not residing in the place directed, not being in the company of the directed parent or guardian, or being in the company of someone listed on a non-association order. These breaches are often relatively minor, such as being 10 minutes late for curfew, or being with a different family member rather than the parent specified in the bail condition. These can be described as 'technical breaches', a term describing circumstances in which a young person is arrested for a breach of a bail condition which in itself is not a new offence, and does not harm the young person, another person or the community.

The proposal that breach of bail become an offence seems to be based on the notion that a judicial officer should be aware of any breach of bail when sentencing for a subsequent offence committed while on bail or for future requests for bail.

It is not necessary to create a further offence to achieve this outcome: this could be achieved by providing that a proven breach of bail is noted on a criminal history which can be disclosed to the court.

As noted previously in this submission, as well as in the Discussion Paper, young repeat offenders often face a number of challenges in their lives which put them at greater risk of (re-) offending. By virtue of their youth and that the law generally, aside from the criminal law, does not recognise that children are independent before the age of 18, there are many influences which affect their lives and life situations over which they have no control and can make no choices.

An example of this is the issue of where a young person lives. Young people under 18 have difficulties in being able to rent in their own right. Sometimes the family home is not a safe or viable place for the young person to be or the family relationships are in disarray and this may lead them to leave. Their access to a legitimate income is also significantly reduced compared to an 18 year old and therefore being able to pay rent and other life necessities, including food and travel, becomes problematic.

If a young person is out of home for whatever reason and has no money, then involvement in offending behaviour becomes a potential consequence. This could be as simple as evading a fare on public transport. They do not have the life skills or experience to know where they should go to seek help and often assume that no-one would be interested in helping them anyway.

Similarly, even if a young person is on bail and at home, if the family is not able to support them adequately in terms, for example, of ensuring that they meet any bail conditions or making sure they have the resources to get to court, then they have limited ability or capacity to manage that situation and may well find themselves in breach of bail..

Some bail conditions are particularly onerous for young people and can "set them up to fail". To tell a young person they cannot associate with any of their friends, for example, or not to go to a certain place where young people meet is unrealistic. Young people are social beings and to isolate them for maybe weeks at a

time is going to invite a breach of the condition – certainly without any other support being provided to the young person. Even if the young person does not contact their friends, it is likely their friends will try to contact them and a breach is likely to occur.

Judicial officers who regularly deal with youth justice matters are cognisant of the realities of such situations and the life circumstances of young people and will even make a judgement whether to issue a warrant immediately or not. Making breach of bail an offence will only add to a criminal history, it will not in itself prevent a young person from re-offending.

TRANSFER OF 18 YR OLDS TO ADULT CORRECTIONAL CENTRES

YAC does not support automatic transfer at 18. The current system is appropriate and adequate. The Discussion Paper advises that:

> Over the past year these detention centres have been full on a regular basis. On average 70% of young people in the detention centres are held there on remand waiting to be sentenced by a court and only approximately 10% ever receive a sentence of detention. This places significant pressure on the youth justice system, and is a great burden in terms of resources.
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> One option to manage demand on youth detention centres is to automatically transfer young offenders to adult prison when they turn 18.

On the Department's own figures only 3 young people aged 18 or over were in a youth detention centre in 2010-11. It is therefore unclear why this is even under discussion. The more significant discussion is how to reduce the large number of young people being placed in detention on remand – a situation that making breach of bail an offence is unlikely to alleviate.

The detention centres are able to take a young person from the age of 10. It should be the case that young people in detention are managed with reference to their age: clearly a 10 year old should not be placed directly with 16 and 17 year olds: the younger children must, for their own safety and to minimise the already significant risk of further criminalisation of these young children by being held in a criminal peer environment, be placed in separate areas to 15/16 year olds and over. Hence any 18 year olds would be with the older group.

When a court makes a transfer order at time of sentence, the judicial officer has clearly made a judgement, in line with the criteria in the legislation, about that young person and their offence which leads it to state that the young person must go to the adult jail.

Where it has not made such an order, it is equally clear that the court has decided that the decision would be more appropriately made at a later time and that therefore there may be more benefit in the young person remaining in the detention centre.

A key reason for the young person to remain would be for them to be able to continue to access supports which may improve their ability not to re-offend when they leave detention which will not be available to them in the adult prison system.

The young person may have been a model inmate and been progressing well. A move to adult prison may undermine any positive work which has been done since Corrective Services' policy and practice is not to assess the young person but follow their usual process of placing a new prisoner into high security, classifying them by way of offence. If the young person will only be there for up to six months, they will not transition from their initial security classification as classifications are only reviewed every six months. In any event, the adult prison does not have equivalent services and supports which the young person would have been accessing.

DETENTION AS A LAST RESORT

It is absolutely unacceptable that the principle of detention as a last resort be removed.

Firstly, this would place Queensland clearly in breach of international commitments.

Further, it would also risk criminalising young people by involving them in the detention system earlier than is necessary and thereby undermine the stated aim of the proposed amendments. By using the most significant punishment early, the court has effectively played its "trump card" and there is nowhere else to go after this other than to keep locking the young person up for longer and longer.

Removal of detention as a last resort would also undermine the stated need to reduce the number of young people in detention in the Discussion Paper. The Paper states that "removal may allow courts to consider a broader range of options when sentencing young offenders". What these options could be is not explained. The only clear option resulting from removal of the principle would seem to be that young people could be sentenced to detention earlier. As noted in previous discussion in this response, detention has not been shown to be effective in preventing recidivism and detention is expensive. Young people, particularly young women, completing a detention sentence have been identified at greater risk of homelessness[9].

IN CONCLUSION

There is no research or evidence to support the reform proposals above. If these proposals are implemented in any way, there will be effectively be no youth justice system in Queensland and the community will be no safer as a result – indeed, the results are likely to be the reverse. This is likely lead to a greater drain on the public purse which will be difficult to justify since the evidence advises against taking up the proposals.

Youth Advocacy Centre Inc

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For further information, see http://www.yac.net.au/youth-justice-a-balanced-approach/

[9] Australian Institute of Health and Welfare 2012. Children and young people at risk of social exclusion: links between homelessness, child protection and juvenile justice. Data linkage series no. 13 Cat. no. CSI 13. Canberra: AIHW