

# The youth justice system in Qld

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# Children and the law

- In keeping with the then 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: same courts, same sentences – including corporal and capital punishment
- The eighteenth century saw the beginning of an ongoing debate over the nature of childhood and its importance in an individual's life
- 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
- Changes in the legal process in relation to children alleged to have broken the law reflects the development of these social constructs

# Children's Courts

- The establishment of a separate and specialist children's court first occurred in South Australia in 1890 and 1907 in Queensland
- Now widely acknowledged, 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 – also now confirmed by what we know about child and youth development

# But nothing happens to young offenders.....?

A recognition that children are different to adults does not mean:

- young people are not fully subjected to the criminal justice system
- Young people are not dealt with for the offences they commit

The significant difference to adults would be the use of cautioning as a diversionary measure. Originally developed by police, since 1992 has been enshrined in legislation.

Otherwise, the youth justice system significantly mirrors the adult process with limited allowance for age and immaturity.

# The law in Qld

Children : 10-16 yrs

Adults : 17 yrs and over

## Offences:

Criminal Code  
*Summary Offences Act 2005*

## Police:

*Police Powers and Responsibilities Act 2000 (PPRA)*

BUT – some special provisions with respect to children

## Court:

*Youth Justice Act 1992 (YJA)*

*Penalties and Sentences Act 1992*

Once a person reaches 17, they are dealt with in an adult court: Qld is the only place in Australia where this happens

# Differences for children alleged to have offended

## Criminal Code:

- Cannot be prosecuted for breaking the law under 10
- If 10 but not yet 14, prosecution must also prove that the child had the capacity to know what they were doing was wrong

## PPRA:

- Must have an independent person present when questioned, fingerprinted etc

## YJA:

- Must consider cautioning
- Must consider other ways rather than arrest and charge
- Breach of bail is not an offence for a child (failure to comply with conditions may still lead to bail being revoked)
- Parents/guardians must be advised and generally attend court
- Involvement of DoC
- Closed court (but not for more serious matters which are dealt with in open District or Supreme Courts) / not identify
- Greater ability for Magistrate to deal with matters
- Can go before a Children's Court Judge rather than District or Supreme Court
- Sentencing – main difference is that sentences are shorter
- Convictions and criminal history

# Court process

- Only one specialist Children's Court and Magistrate in Qld in Brisbane, otherwise, same court and same Magistrate as adults
- Court process in terms of pleading guilty and sentence or pleading not guilty and holding a trial is exactly the same

# Sentencing

<b>CHILD - YJA</b>	<b>ADULT - PPRA</b>
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

# Detention

- Magistrate can sentence up to 1 year in detention and a Judge up to 5 years.
- If an adult can be imprisoned for 14 years or more, children can also be detained for significant periods of time:

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

# Detention

- Two youth detention centres in Qld – one at Wacol (118 beds) and one at Cleveland, Townsville (96 beds).
- They are prisons for young people – run by Youth Justice Services rather than Corrective Services which is responsible for adult prisons
- Around two thirds of young people in detention will be there waiting for their case to be dealt with – that is, they are not there on sentence: a conflict with the notion of innocent until proven guilty

# Prison

- YP can be transferred to an adult prison by the sentencing judge/magistrate if the young person is over 16 and will still be detained when they reach 18; or
- Dept of Justice and Attorney General - or the young person - can apply for a transfer to prison at any time after the yp reaches 18

# Why is a conviction important?

- Yp do not automatically acquire a criminal record like adults usually do
- As next slide shows – usually magistrate/judge has a discretion whether to record a conviction which is then part of a yp's criminal history which follows them when they turn 17.
- Not only can an adult court be told about recorded convictions, but will have to be disclosed for employment or travel which may have a significant impact on yp's future prospects – especially at times when jobs are scarce – potential future problems

# Convictions and Criminal History

- Findings of guilt v convictions

<u>Sentence</u>	<u>Conviction</u>
Reprimand	Cannot record
Good Behaviour Bond	Cannot record
Fine	Discretion
Probation Order	Discretion
Community Service Order	Discretion
Conditional Release Order	Discretion
Intensive Supervision Order	Discretion
Detention	Discretion

# Aboriginal and Torres Strait Islander yj and the justice system

- Indigenous yj are seriously over-represented in the jy system
- YJA makes reference to them and their families:
  - **Objectives** include: to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to rehabilitate and reintegrate
  - **Charter of YJ Principles** includes: If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.
  - If a caution is to be administered to a child who is a member of an Aboriginal or Torres Strait Islander community, police officer must see if there is a respected person of the community who is able to administer the caution
  - A respected member of the community may be able to participate in a youth justice conference
  - In relation to bail and sentence – any advice from the community justice group about cultural issues or other relevant matter
- It is arguable that this is a minimal response by the yj system and process and further emphasises the need for early intervention and prevention measures

# CALD young people and the yj system

- No specific mention but:
  - **Charter of YJ Principles:** A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, **cultural and religious beliefs and practices**. And programs and services Programs and services established under this Act for children should be culturally appropriate
  - CSO - to avoid, if practicable, conflicts with the **religious and cultural beliefs and practices** of the child or the child's parent
  - In approving a boot camp program or in detention centre the chief executive must have regard to the child's **cultural**, developmental, educational, emotional, health, intellectual, physical and social needs