

Submission

to

**Legal Affairs and Community Safety
Committee (Qld)**

***Inquiry into the Youth Justice and Other
Legislation Amendment Bill 2014***

February 2014

Contents

Introduction 3

Recommendations 3

Human rights landscape in Queensland 4

Sentencing principles 6

Publication of identifying information and open court 9

17 year olds in adult prisons12

Diversion and early intervention14

Concluding remarks17

Introduction

1. The Anti-Discrimination Commission Queensland (Commission) is an independent statutory authority established under the Queensland *Anti-Discrimination Act 1991*.
2. The functions of the Commission include promoting an understanding, acceptance and public discussion of human rights in Queensland. 'Human rights' is defined by reference to the seven core international human rights instruments, which include the *Convention on the Rights of the Child*.
3. This submission incorporates the Commission's submission to the Department of Justice and Attorney-General made in June 2013,¹ focusing on aspects of the proposed reforms that potentially impact human rights principles.

Recommendations

4. In this submission, the Commission makes the following recommendations:
 - I. That the Committee recommend the removal of clauses 9, 12, 34(1), 34(10) and 34(13) of the Bill so as to retain the principle of detention as a last resort in the *Youth Justice Act 1992*, and in the *Penalties and Sentences Act 1992*.
 - II. That the Committee recommend the removal of clauses 13, 21, 22 and 23 and the amendment of clause 31 of the Bill so as to retain the existing limitations on publishing identifying information of youths and how youth justice proceedings are conducted.
 - III. That the Committee recommend:
 - (a) the removal of clause 20 of the Bill:
 - (b) that 17 year-olds be removed from adult prisons;
and
 - (c) the making of a regulation under section 6 of the

¹ Published on the Commission's website www.adcq.qld.gov.au

Youth Justice Act 1992 fixing a day after which for the purposes of the Act a child will be a person who has not turned 18 years.

- IV. That the Committee recommend consultation with researchers and practitioners with expertise in the field of juvenile justice in the development of evidence-based policies and strategies, in order to intervene early and prevent young people offending in the first place, or to prevent them from continuing to offend.

Human rights landscape in Queensland

5. As a member of the United Nations, Australia has committed to promoting respect for and observance of human rights, and acting to achieve those ends. Australia has agreed to respect, protect and ensure the human rights recognised in the *Universal Declaration of Human Rights*, adopted by the United Nations in 1948.
6. Australia has also ratified seven core international human rights treaties. The international human rights instruments relevant to the Committee's inquiry, include:
- the *Universal Declaration of Human Rights* – where it is proclaimed that childhood is entitled to special care and assistance;
 - the *International Covenant on Civil and Political Rights*² – in particular articles 23 and 24 where it is provided that the family is the natural and fundamental group unit of society entitled to protection, and that every child shall have the right to such measures of protection as are required by his status as a minor;
 - the *International Covenant on Economic, Social and Cultural Rights*³ – in particular article 10 where it is recognised that the widest

² Ratified, and entered into force for Australia in November 1980 except for Article 41 which came into force for Australia in January 1993

³ Ratified, and entered into force for Australia in March 1976

possible protection and assistance should be accorded to the family, and that special measures of protection and assistance should be taken on behalf of all children and young persons; and

- the *Convention on the Rights of the Child*⁴ – where a child is defined to mean every human being below the age of 18 years, and where various rights and protections of the child are set out.

7. As to the ratification of international agreements, the High Court has said:

Ratification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted standards apply by courts and administrative authorities in dealing with basis human rights affecting the family and children. Rather, ratification of a convention is a positive statement by the executive government of this country to the world and to the Australian people that the executive government and its agencies will act in accordance with the Convention.⁵

8. In Queensland, the *Anti-Discrimination Act 1991* was enacted to extend the Commonwealth human rights legislation. The Preamble states that the Parliament considers that:⁶

- everyone should be equal before and under the law and have the right to equal protection and equal benefit of the law without discrimination; and
- the protection of fragile freedoms is best effected by legislation that reflects the aspirations and needs of contemporary society; and
- the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

9. With the constitutional division of powers between the Commonwealth and the States, obligations under the international human rights instruments to incorporate the objectives and principles of the various rights and freedoms into legislation, will fall, to some extent, on the States. All Queensland legislation ought be consistent with and reflect the human rights principles, rights and responsibilities under the international human rights instruments.

⁴ Ratified subject to a reservation to Article 37(3) regarding separate imprisonment, and entered into force for Australia in January 1991

⁵ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 291

⁶ *Anti-Discrimination Act 1991*, Preamble paragraph 6

Sentencing principles

10. The Bill overhauls sentencing principles by removing imprisonment or detention as a last resort in the criminal justice system for youths as well as adults. Not only is the principle removed from the legislation, the Bill further provides that the court must not have regard to any statutory or common law principle that detention or imprisonment should be imposed only as a last resort.
11. This principle is embodied in common law as well as international human rights law.
12. Article 37 of the *Convention on the Rights of the Child* (CROC) states, (emphasis in paragraph (b) added):⁷

Article 37

State Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. **The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;**
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

⁷ Australia's reservation to the CROC states:

'Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37 (c).'

13. The current criminal justice system acknowledges that young offenders should receive different treatment from adults. The *Charter of youth justice principles* under the *Youth Justice Act 1992* include the requirement that 'if a child commits an offence, the child should be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicate that a proceeding for the offence should be started'.⁸
14. Sentencing principles for youths are set out in section 150 of the *Youth Justice Act 1992*, and special considerations are identified in section 150(2). The special considerations include that:
- ...
- (b) a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community; and
- ...
- (e) a detention order should be imposed only as a last resort and for the shortest appropriate period.
15. The Bill amends the sentencing principles for youths by removing paragraph (e) above from section 150(2), removing section 208 (which provides that detention must be the only appropriate sentence), and inserting a new provision into the sentencing principles that requires courts to disregard common law and statutory principles that detention should be imposed only as a last resort.
16. The principle of arrest and detention as a last resort has long been recognised as best practice policy. Over 20 years ago the recommendations of the Royal Commission into Aboriginal Deaths in Custody included:
- That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort (recommendation 92).
 - That State and Territory Governments examine the range of non-custodial sentencing options available in each jurisdiction with a view to ensuring that an appropriate range of such options is available (recommendation 109).
 - That in reviewing options for non-custodial sentences governments should consult with Aboriginal communities and groups, especially

⁸ *Youth Justice Act 1992*, section 3, Schedule 1 Charter of youth justice principles, paragraph 5

with representatives of Aboriginal Legal Services and with Aboriginal employees with relevant experience in government departments (recommendation 111).

- That adequate resources be made available to provide support by way of personnel and infrastructure so as to ensure that non-custodial sentencing options which are made available by legislation are capable of implementation in practice. It is particularly important that such support be provided in rural and remote areas of significant Aboriginal population (recommendation 112).
17. The work, findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody remain relevant today.
 18. The Explanatory Notes state that ‘the intended effect of the amendments to sentencing principles is to hold young offenders to account for their actions ... and to give the courts greater scope to impose sentences which properly reflect the severity of the offending for which the sentences are being imposed, deter future offending and protect the community from the impact of youth offending.’⁹
 19. Research consistently shows that detention is the least effective option to reduce re-offending, and studies indicate that youth detention is an effective pathway to adult offending.¹⁰
 20. The Australian Institute of Criminology says it is widely recognised that responses such as incarceration foster further criminality. Canadian studies referred to by the Institute found that juvenile detention exerts the strongest criminogenic effect, and the researchers recommend early prevention strategies, the reduction of judicial stigma and the limitation of interventions that concentrate juvenile offenders together.¹¹
 21. Detention is also a costly option. A higher rate of detention of youths would be a greater cost to the community, not just in dollar terms, but also in terms of recidivism.

⁹ Explanatory Notes, pages 5 to 6

¹⁰ See for example the research and studies referred to in: Appendix A to the Australian Institute of Criminology 2007 report *Recidivism in Australian: findings and future*; Balanced Justice factsheet *Busting the myths – the facts about addressing youth offending – Part 2*

¹¹ K Richards, ‘What makes juvenile offenders different from adult offenders?’ *Trends & issues in crime and criminal justice* No. 409, February 2011 pp.6-7

22. Having a broader range of options for sentencing young offenders could best be achieved by implementing a range of diversionary options after carefully considering research and evidence based findings. Removing the principle of detention as a last resort is not only inconsistent with our international human rights obligations under the *CROC*, it is unlikely to achieve the objective of reducing further offending by youths.

Recommendation I: That the Committee recommend the removal of clauses 9, 12, 34(1), 34(10) and 34(13) of the Bill so as to retain the principle of detention as a last resort in the *Youth Justice Act 1992*, and in the *Penalties and Sentences Act 1992*.

Publication of identifying information and open court

23. The Bill amends the *Youth Justice Act 1992* and the *Childrens Court Act 2000* to allow the identity of repeat offenders to be published and to require proceedings involving a child with a previous conviction to be held in public.
24. The Explanatory Notes state that these amendments are to hold children with previous convictions 'properly' accountable for their actions, and suggest they are real deterrents which discourage young offenders from persisting in a course of criminal behaviour.¹²
25. Article 40(1) and (2) of the *CROC* states (emphasis added):

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

¹² Explanatory Notes, page 13

- (b) **Every child alleged as or accused of having infringed the penal law has at least the following guarantees:**
- (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) **To have his or her privacy fully respected at all stages of the proceedings.**

26. The United Nations *Standard Minimum Rules for the Administration of Juvenile Justice 1985* (the Beijing Rules) represent internationally accepted standards. The Beijing Rules state (inter alia):

8. Protection of privacy

- 8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.
- 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Commentary

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as "delinquent" or "criminal".

Rule 8 also stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media

of information about the case (for example the names of young offenders, alleged or convicted). The interest of the individual should be protected and upheld, at least in principle. (The general contents of rule 8 are further specified in rule 21.)

...

21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

Commentary

The rule attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender. (See also rule 8.) "Other duly authorized persons" would generally include, among others, researchers.

27. Of particular note is the commentary to rules 8 and 21 of the Beijing Rules: 'Young person are particularly susceptible to stigmatisation ... evidence of the detrimental effects ... resulting from the permanent identification of young persons as "delinquent" or "criminal" ... adverse effects that may result from the publication in the mass media of information about the case ...'. The Beijing Rules were adopted in November 1985. Since then 'mass media' has changed: it is much quicker and permanent, and now includes various forms of social media.

28. Since the 1960s it has been considered that young people who are labelled 'criminal' by the criminal justice system are likely to live up to the label and become committed career criminals, producing a self-fulfilling prophecy. Consequently, avoiding labelling and stigmatisation is a key principle of juvenile justice intervention in Australia.¹³

29. Reports indicate that repeat offenders are a small group.¹⁴ Researchers say that these young people tend to have low socioeconomic status, low educational attainment, significant physical and mental health needs,

¹³ Richards, *Trends & issues in crime and criminal justice*, p. 6

¹⁴ See footnotes 23 to 25, paragraph 44

substance abuse and a history of childhood abuse and neglect.¹⁵ 'Naming and shaming' these youths will further stereotype people from low socioeconomic areas. Where they are Indigenous or from other ethnic groups, 'naming and shaming' will reinforce negative racial stereotyping which will have a divisive effect on our community.

Recommendation II: That the Committee recommend the removal of clauses 13, 21, 22 and 23 and the amendment of clause 31 of the Bill so as to retain the existing limitations on publishing identifying information of youths and how youth justice proceedings are conducted.

17 year olds in adult prisons

30. The Bill provides for children in detention to be automatically transferred to an adult prison when they turn 17 years if there is at least 6 months left of their sentence. Where 17 year olds are convicted of an offence and sentenced to detention for 6 months or more, the sentence will automatically be taken to be sentence of imprisonment in an adult prison.
31. Queensland is the only State in Australia where 17-year-olds are treated as adults in the criminal justice system. In Queensland, a child is defined under the *Youth Justice Act 1992* as a person who has not turned 17 years of age.¹⁶ The Act contemplates that the age would be increased to 18 years as section 6 allows for this to happen by a regulation of the Governor in Council, and by virtue of the definition of 'child'.
32. Article 37(c) of the *CROC* requires that children in detention are separated from adults unless it is considered in the child's best interest not to do so. Australia's reservation to article 37(c) does not envisage children being detained in adult prisons as a matter of legislative policy. The reservation is qualified in that it concerns the preservation of family contact and the geography and demography of Australia. The reservation states:

¹⁵ Balanced Justice '*Naming and shaming*' young offenders, factsheet, Balanced Justice Project, 3 April 2013

¹⁶ Schedule 4 Dictionary

Australia accepts the general principles of article 37. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is unable to comply with the obligation imposed by article 37(c).¹⁷

33. In a recent decision, the UK High Court has held that the treatment of 17-year-olds as adults when arrested and detained is inconsistent with the *CROC* and with the views of the United Nations Committee on the Rights of the Child. The laws that permitted police to treat a 17 year old as an adult whilst in custody were held to be incompatible with the *CROC* and international law.¹⁸

In the introductory part of the reasons, the Court said:

There is a leaden irony in the title to these proceedings. As a 17 year-old, the claimant ... required the assistance of his mother or another adult to challenge [the code] which denied him the unqualified right to the assistance of his mother.

34. In the UK case referred to above, the Court noted that the failure of the UK to extend protection to 17-year-olds in detention had not escaped the attention of the United Nations Committee on the Rights of the Child, which had recommended that State Parties change their laws with a view to achieving a non-discriminatory full application of their Juvenile Justice Rules to all persons under the age of 18 years.
35. The same has been said of Queensland's laws. In its Concluding Observations in 2005 the Committee expressed concern that in Queensland, children aged 17 in conflict with the law may be tried as adults in particular cases. The Committee recommended that the system of juvenile justice be brought fully into line with the *CROC*, in particular articles 37, 40 and 39, and other United Nations standards in the field of juvenile justice. In particular the

¹⁷ The UN Committee on the Rights of the Child has criticised the reservation, saying 'it is unnecessary since there appears to be no contradiction between the logic behind it and the provisions of article 37(c)'. The Committee's view (in both the 2005 and 2012 concluding remarks) is 'that the concerns expressed in [the reservation] are well addressed by article 37(c), which provides that every child deprived of liberty shall be separated from adults unless it is considered in the best interests of the child not to do so, and that the child shall have the right to maintain contact with his or her family'.

¹⁸ *The Queen on the Application of HC (a child, by his litigation friend CC) v The Secretary of State for the Home Department & Ors* [2013] EWHC 982 (Admin)

Committee recommended the removal of children who are 17 years old from the adult justice system in Queensland, and that all necessary measures be taken 'to ensure that persons under 18 who are in conflict with the law are only deprived of liberty as a last resort and detained separately from adults, unless it is considered in the children's best interest not to do so'.¹⁹

36. In the 2012 Concluding Observations the Committee noted with regret that the previous recommendations had not been accepted and again expressed concern that all 17 year-old child offenders continue to be tried under the criminal justice system in Queensland. The Committee again recommended that the juvenile justice system be brought fully in line with the *CROC* and other relevant standards, and reiterated its previous recommendation to remove children who are 17 years old from the adult justice system in Queensland.²⁰

37. The Commission urges the Queensland Government to remove 17 year-olds from adult prisons, and to make the regulation under the *Youth Justice Act 1992* to change the definition of child to a person who has not turned 18 years.

Recommendation III: That the Committee recommend:

- (a) the removal of clause 20 of the Bill;
- (b) that 17 year-olds be removed from adult prisons; and
- (c) the making of a regulation under section 6 of the *Youth Justice Act 1992* fixing a day after which for the purposes of the Act a child will be a person who has not turned 18 years.

Diversion and early intervention

38. The *CROC* requires a range of options for dealing with young offenders. Article 40 recognises the rights of every child accused or convicted of infringing a penal law to be treated so as to promote their sense of dignity and

¹⁹ *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 20 October 2005, CRC/C/15Add.268

²⁰ *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 28 August 2012, CRC/C/AUS/CO/4

worth, taking into account the child's age, and to promote reintegration and the child assuming a constructive role in society. Article 40(3) & (4) provides:

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically to children alleged as, accused or, or recognised as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resort to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to their circumstances and the offence.

39. The 'getting tough on crime' approach of increasing imprisonment has proven not to work as a means of reducing crime. As we noted in our submission in 2011 about standard non-parole periods, Keith Hamburger AM describes this philosophy as 'punishing crime away', and exemplifies the futility of addressing long term crime prevention with an emphasis on punishment by reference to South Carolina in the USA. In 1993 the population of South Carolina was similar to that of Queensland at the time; however the prison population was 20,000 compared to Queensland's prison population of 2,230. The South Carolina response to crime rates, sentencing and imprisonment was to 'get tougher', and by 2006 the American median imprisonment rate at risen by over 50 per cent without reduction in crime rates.²¹

40. Current youth justice diversionary measures include conferencing systems. This type of restorative justice approach can be effective in giving victims of crime a sense of justice being done. Also included are warnings and cautions.

41. A recent article challenges the three assumptions on which current juvenile justice policy in Australia is premised: firstly, that contact with the court system

²¹ Keith Hamburger AM, *Restorative Justice: Victims and Offenders: In the Context of Developing a National Approach to a Best Practice Response to Social Breakdown and Crime in Australia* (September 2006)

increases the risk of re-offending; secondly, that restorative justice is more effective in reducing the risk of re-offending; and thirdly, that left to their own devices most juveniles grow out of crime.²² In discussing possible reforms, the authors say ‘it is important to remember that reducing juvenile re-offending is not a policy objective to be pursued at any cost’. They recommend assessing risk of re-offending to determine the level of intervention, such as warning, caution or conference where the offending is minor and no significant risk; and more substantial intervention such as placement on an appropriate rehabilitation program where the seriousness of the offending or the risk of re-offending is high. The authors say that in order to do this effectively there needs to be an effective screening or ‘triage’ tool, as well as a suite of effective and adequately resourced programs so that all those in need of treatment and support actually receive it.

42. Rehabilitation programs designed to address causes of offending are an example of a justice reinvestment approach which the authors above say have all been shown to be cost-effective responses to juvenile re-offending.
43. The research, and analysis of research, in the article *Three Dogmas of Juvenile Justice* highlights the need to address the underlying causes of juvenile offending in order to prevent or minimise offending occurring in the first place, before the juvenile comes into contact with the justice system.
44. The Attorney-General is reported to have identified that a smaller number of offenders are committing more offences.²³ This observation is consistent with those of Professor Anna Stewart, who says research shows that a small number of young people are responsible for the majority of youth crime.²⁴ The Explanatory Notes state that proportionally fewer young people are offending,

²² *Three Dogmas of Juvenile Justice*, Don Weatherburn, Andrew McGrath and Lorana Bartels, 35 U.N.S.W.L.J. 780 2012

²³ The Courier Mail (and The Australian) 12 December 2012, *Judge Michael Shanahan says locking up juvenile criminals in detention doesn't work*; Attorney-General's Introductory Speech for the Bill, 11 February 2014

²⁴ Professor Anna Stewart, School of Criminology and Criminal Justice, Griffith University. See presentation to the Youth Advocacy Centre Public Forum, 29 May 2013, Youth Advocacy Centre Inc. <http://www.yac.net.au/youth-justice-a-balanced-approach/>

and those who are offending are doing so more often and are committing more serious offences.²⁵

45. A study of individuals born in 1990, who had committed an offence in Queensland, identified postal areas which generated chronic offenders.²⁶ This type of research can be valuable in assisting to determine the nature of diversionary programs and early intervention strategies, and in developing and targeting the implementation of those strategies.
46. Developing and implementing a range of both diversionary and early intervention strategies would be consistent with the principles of *Convention* that the best interests of the child should be of primary consideration in all actions by administrative or legislative bodies, including the police and the executive arms of government.

Recommendation IV: That the Committee recommend consultation with researchers and practitioners with expertise in the field of juvenile justice in the development of evidence-based policies and strategies, in order to intervene early and prevent young people offending in the first place, or to prevent them from continuing to offend.

Concluding remarks

47. The purpose of the amendments appears to be to punish young offenders and to provide a greater deterrence to initial and further offending. The Explanatory Notes do not refer to any evidence that these measures will be effective. The justification for the measures appearing in the Explanatory Notes is the results of an online survey. The qualifications or expertise of the participants to that survey are not indicated in the Explanatory Notes. Addressing juvenile offending is a challenge for any government and the Commission welcomes open debate and consultation on such important issues for our community. Ensuring relevant research and studies are made accessible to the general community, and making policy based upon expert

²⁵ Explanatory Notes, page 1

²⁶ 'Targeting crime prevention to reduce offending: Identifying communities that generate chronic and costly offenders', Troy Allard, April Chrzanowski and Anna Stewart, *Trends & issues in crime and criminal justice*, No. 445 September 2012, Australian Institute of Criminology

evidence and research on what is successful in deterrence and preventing re-offending, is the approach endorsed by the Commission..

48. The Commission urges the Committee to recommend an evidence-based approach to policy making, and to recommend the publication of the submissions provided to the Department of Justice and Attorney-General in response to its discussion paper *Safer Streets Action Plan – Youth*.