



The Uniting Church in Australia
QUEENSLAND SYNOD

Issues Paper Youth Justice

The Uniting Church
in Queensland

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Uniting in **Christ**
acting with **love**
living with **hope**
witnessing in **faith**
working for **justice**

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Introduction

The Uniting Church in Australia, Queensland Synod commends the Queensland Government for their commitment to positively reforming the youth justice system in this state.

It is from a position of extensive informal and formal experience in supporting and working with people in crisis, and with our deeply held views about social justice that the Uniting Church in Queensland speaks about this issue.

Significant punitive changes were made to youth justice legislation by the previous Queensland Government in 2014. Their approach was to be “tough on crime”, but the Uniting Church in Queensland’s concern has been that the changes were unjust, ineffective and damaging to children and young people in the long run.

The first step of the current Queensland Government is repealing the legislative amendments and they are “committed to building a youth justice system that adopts a balanced, evidence-based approach to reducing youth offending. This includes a focus on addressing the causes of offending, increased diversionary and early intervention responses and prioritising the rehabilitation of children and young people in contact with the criminal justice system. Evidence shows that this approach is the most effective way to reduce children and young people’s offending and involvement in the youth justice system.”¹

The Uniting Church in Queensland remains particularly concerned about the disproportionate representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system.

¹ Julie Kinross, 2016, letter to Moderator of the Uniting Church in Australia, Queensland Synod

Our Vision

The Christian story calls us to work toward communities in which everyone belongs, can contribute and is valued — communities characterised by love and justice. We believe children and young people have the right to live, develop and learn in safe and supportive environments, and the right to opportunities to enhance their life choices and quality of life.

Our vision is for a community structure which provides sufficient support to enable children, young people and their families to meet their potential. They would be encouraged and enabled to identify and build the skills and knowledge they need to participate fully in the community as responsible citizens.

Our vision is for a community where young people are recognised and valued as the key to both the present and future of our society. In that community, young people who offend would be given the maximum chance of addressing the causes of their offending behaviour so that they can go on to live crime-free lives. They would have access to caring and enabling supports when, where and how they are needed. In that community, youth justice issues would be addressed using evidence-based, developmental approaches.

The Church’s involvement

The Uniting Church in Queensland is committed to reaching out and speaking out about issues impacting vulnerable groups such as young people. In 2007, a Synod resolution was passed by consensus, speaking out about the social justice issue of seventeen-year-olds being treated as adults by the criminal law². We believe all juvenile offenders should be dealt with under a youth justice system that accommodates their developmental needs.

The Uniting Church in Queensland is actively involved in supporting young people who are at risk of being or are involved with the youth justice system, and their families. This occurs at the community level through 250 local congregations and faith communities, as well as through extensive formal service provision by our schools and agencies, UnitingCare Community and Wesley Mission Brisbane.

² Uniting Church in Australia, Queensland Synod, 2007, *Seventeen year olds in adult prisons*, Resolution of the 26th Synod, Minutes of the 26th Synod, May 2007, pp. 32-33.

Schools

The Uniting Church is involved in a number of schools across Queensland, with approximately 20,000 students. The school students come from a range of socio-economic backgrounds and social situations, some coming from remote areas of the state.

UnitingCare Community

UnitingCare Community's³ direct intersection with the youth justice system is primarily through their role in child protection. Indirectly, they have significant experience in supporting and working with children and families who are at risk. A number of the services they provide are focused on early intervention and prevention, so that children and young people can remain with their families and do not enter the child protection system.

There are instances where UnitingCare Community does come into contact with the youth justice system and these are dealt with on a case-by-case basis with the Department of Communities, Child Safety and Disability Services taking a lead role. However, by providing services and supports to children and young people to help them lead safe, healthy and productive lives, it is reasonable to expect that they would be less likely to be involved in activities that would bring them into contact with the youth justice system.

UnitingCare Community's Prison Ministry provides pastoral care to men and women in 12 adult prisons around Queensland. Some of these people had involvement with youth justice services in the past.

Wesley Mission Brisbane

Wesley Mission Brisbane (WMB) offers a wide range of practical programs for vulnerable teens and young adults, encouraging them to be the change agents in their own life, and providing them with the support they need to achieve those changes. WMB has had long-term involvement and success in programs working holistically and collaboratively with other agencies.

WMB firmly believes that punishment has little gain in relation to changing a life course. Rather, the earliest possible intervention, based on trust and relationship-building together with practical support, conducted over a timeframe that meets individual needs, is the best and most productive approach for long-term change and short-term gain in re-engaging with the community.

³ UnitingCare Community is part of UnitingCare Queensland, the health and community service provider of the Uniting Church in Queensland.

Geoff's story

Geoff is a young adult whose family has a history of incarceration and interaction with the justice system. He had been in and out of youth emergency accommodation for years. He became involved in the justice system and received a two year youth justice order.

WMB became involved, providing support to Geoff over several years, in partnership with a number of other agencies and government departments. Through this intensive support he was able to complete his youth justice order without reoffending. He received the Duke of Edinburgh Award and became a mentor for other young people. Geoff also completed a Diploma of Community Service and is now a youth worker in residential care programs. He has been successful in gaining kinship care of a family member. Geoff was involved in a supported housing program, where he was a member of the Tenant Steering Committee. He then progressed through community housing and has now secured his own private accommodation.

Thanks to intensive holistic support, Geoff has been able to change the path of his life⁴.

Facing the issues

The following issues are of particular concern to the Uniting Church in Queensland:

Over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system

It is deeply concerning that young Aboriginal and Torres Strait Islander peoples are over-represented in Queensland's youth justice system; for example, their detention rate was 24 times the rate of non-Indigenous young offenders in 2013-14.⁵

On average in 2014-15, Aboriginal and Torres Strait Islander offenders accounted for 61 per cent of young people in detention in Queensland⁶, while making up only about 7.5 per cent of all young people in Queensland aged 10-16.⁷

Offences by Aboriginal and Torres Strait Islander young people are much more likely to result in an arrest by police,

⁴ Name has been changed for privacy reasons; however details are used with permission.

⁵ Australian Institute of Health and Welfare, 2015, *Youth justice in Australia 2013-14*, Bulletin 127, April 2015, p 9.

⁶ Youth Justice Performance & Reporting, 2015, *Youth Justice annual summary statistics: 2010-11 to 2014-15, Detention data*, Department of Justice and Attorney General.

⁷ Youth Justice Performance & Reporting, 2015, *Youth Justice annual summary statistics: 2010-11 to 2014-15, Miscellaneous data*, Department of Justice and Attorney General.

Childrens Court proceedings, a youth justice supervision order being given by the courts and a sentenced detention order.⁸

Young Aboriginal and Torres Strait Islander peoples are more likely than other young people to have their first contact with the youth justice system at an earlier age and to have multiple contacts. This overrepresentation is likely to be symptomatic of the chronic social and economic disadvantage experienced by many Aboriginal and Torres Strait Islander young people, including family and community violence, child abuse and neglect, inadequate housing, poor health and low educational achievement⁹. Efforts to reduce this over-representation must address the underlying reasons for Aboriginal and Torres Strait Islander peoples offending.

Another factor contributing to the over-representation of young Aboriginal and Torres Strait Islander peoples in the youth justice system is the underlying attitudes and biases of the community in general towards Aboriginal and Torres Strait Islander peoples. They are more likely to be arrested for low-end behaviour which by itself should not warrant arrest. The Uniting Church recommends amendment to the Public Nuisance Act to reflect this.

We also note that Aboriginal and Torres Strait Islander young people make up a disproportionate number of young people on remand (unsentenced)¹⁰(61 per cent), sometimes incarcerated great distances from their communities. More humane and appropriate approaches must be investigated and implemented as a priority. This might include the proposed *on country* pilot projects developed by traditional owners in several parts of Queensland.

A young Aboriginal Christian Leader who is a volunteer supporter for Aboriginal and Torres Strait Islander children and young people caught up in the youth justice system and their families, describes a range of issues that she has to deal with regularly. One of her primary concerns is that there is insufficient housing for the young people when they leave detention – the family may not have a home and are moving around the homes of family and friends. She observes that there is a lack of culturally sensitive services right across the youth justice system; for example, there are almost no paid Aboriginal and Torres Strait Islander chaplains in detention centres and court, and drug and alcohol programs.

Another concern is that when children are removed from their family into out-of-home care or detention, they may lose touch with family, culture and country. Deliberate strategies to help children develop awareness of their cultural heritage and pride in their identity need to be developed and implemented.

The 1991 Royal Commission into Aboriginal Deaths in Custody made 339 recommendations, of which only a handful were implemented. Some of the key recommendations relevant to this conversation are:

- Recommendation #87. That all Police Services should adopt and apply the principle of arrest being the sanction of last resort in dealing with offenders.
- Recommendation #92. 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 #339. That all political leaders and their parties recognise that reconciliation between the Aboriginal and non-Aboriginal communities in Australia must be achieved if community division, discord and injustice to Aboriginal people are to be avoided. To this end the Commission recommends that political leaders use their best endeavours to ensure bi-partisan public support for the process of reconciliation and that the urgency and necessity of the process be acknowledged.

It is essential that Aboriginal and Torres Strait Islander Leaders, Elders, community organisations and young people are consulted extensively in identifying the issues and developing strategies to address them.

Detention as a last resort

The Uniting Church fully supports the Queensland Government proposal to re-establish the principle of using detention as a last resort for young people before the courts. This principle is in alignment with our international commitments to uphold the human rights of young people.

Detention has been shown to be not particularly effective in preventing recidivism and remains a very expensive option. We believe that detention is the most significant punishment courts can use, and should be reserved for situations where every other option is not possible or has failed.

Court-referred youth justice conferencing

The Government's commitment to reinstate the youth justice conferencing system is very positive. This program has positive benefits for all involved, since it brings together the child or young person who has committed a crime and the people affected by that crime. The youth justice conference provides a safe environment where the child is held accountable for their actions, they can see the harm they have caused, accept responsibility and agree on ways to make amends.

⁸ Commission for Children and Young People and Child Guardian, 2014, *Commission releases Child Guardian Report: Youth Justice System 2011-12*, <http://www.ccyprg.qld.gov.au/about/news/2014/january/Commission-releases-Child-Guardian-Report-Youth-Justice-System2011-12.html>

⁹ Australian Institute of Health and Welfare, 2012, *Indigenous young people in the juvenile justice system*, Bulletin 109, November 2012.

¹⁰ Youth Justice Performance & Reporting, 2015, *Youth Justice Pocket Stats 2014-15*, Department of Justice and Attorney General.

Benefits to victims include: victims can be directly involved in the justice process, help to negotiate an agreement for the child to make amends, tell their own story and talk directly with the child.

A child who admits their crime may be eligible for a conference, as an alternative to going to court. Referrals to youth justice conferences may come directly from the police.

The Uniting Church in Queensland supports this form of restorative justice and prefers to see youth justice conferencing as something which must be considered in each case, instead of being optional. Referrals should come both from police and the courts.

Developmental factors

It is encouraging that the Department of Justice and Attorney General recognises that “Young people’s developmental immaturity significantly impedes their capacity to rationally consider the long term consequences of their actions.”¹¹

Research has shown that the brain development of children and young people is complex and multifactorial. It is not complete, meaning the transformation of the child brain into the adult brain, until at least 24 years of age in healthy development. The developing brain is directly influenced by early environmental enrichment and social experiences and can be disrupted by trauma and chronic stress.

Most young people who come into contact with the police will not go on to be “career criminals” – they will “grow out” of offending from late adolescence.¹²

It is noted that young people who are repeat offenders are characterised by low socioeconomic status, low educational attainment, significant physical and mental health needs including dyslexia, communication disorders, autism spectrum disorder and foetal alcohol spectrum disorder, substance abuse and a history of child abuse and neglect.¹³ Australian studies highlighted that over 50 per cent of young offenders had clinically significant, but previously undetected, oral language disorders. The implications for success in schooling, coping when interviewed by police and in court are very significant.¹⁴

The Church is deeply concerned that foetal alcohol spectrum disorders are not recognised by the court system as a disability.

¹¹ Queensland Government, 2015, *Proposed reforms to the Youth Justice Act 1992 and Childrens Court Act 1992*, Issues paper, p 2.

¹² Balanced Justice, 2013, *Busting the myths...* op cit.

¹³ Balanced Justice, 2013, *Busting the myths – the facts about addressing youth offending – Part 2*, Balanced Justice project, May 2013.

¹⁴ Snow and Powell, 2012, *Youth (in)justice: Oral language competence in early life and risk for engagement in antisocial behaviour in adolescence*, Australian Institute of Criminology, Trends and issues in crime and criminal justice, No 435 April 2012.

Child maltreatment has also been linked to an increased risk of youth offending, and as at 30 June 2012, 72 per cent of children and young people in the youth justice system were known to the child protection system.¹⁵ This has significant implications for the support of young people known to government departments and the preventative programs that are needed.

We urge the Queensland Government to take the long-term view for these children and young people. We support all efforts to implement early intervention strategies for children and young people when they first come into contact with the youth justice system. In addition to this, we suggest that the best long-term results will come from addressing and recognising these developmental factors as early as possible, taking a holistic, multidisciplinary approach. The importance of providing wraparound supports to children at risk and their families as early as possible cannot be understated.

The link between child protection and the youth justice system

The Uniting Church notes that child maltreatment has also been linked to an increased risk of youth offending, and as at 30 June 2012, 72 per cent of children and young people in the youth justice system were known to the child protection system.¹¹ This has significant implications for the support of young people known to government departments and the preventative programs that are needed.

Children and young people who are homeless, involved with criminal activity, or have been abused or neglected are more likely than the general population to have experience with another of these issues.¹² In addition to this, young people with a history of abuse or neglect tend to enter the juvenile justice system at a younger age.

The Australian Law Reform Commission states: “There is a strong correlation between juvenile participation in crime and rates of reported neglect or abuse, and, in particular, between juvenile involvement in criminal activity and neglectful parenting. Research indicates that an offending child or young person is likely to have a history of abuse or neglect, and to have been in out-of-home care. In Victoria, a study of young people sentenced to imprisonment by the children’s court over a period of eight months in 2001 found that 88 per cent had been subject to an average of 4.6

¹⁵ Commission for Children and Young People and Child Guardian, 2014, *Highlights, Child Guardian Report: Youth Justice System 2011-12*, http://www.ccyprg.qld.gov.au/pdf/publications/reports/Child-Guardian-Report_Youth-Justice-System_2013/Highlights_Child_Guardian_YJ2011-12

¹¹ Commission for Children and Young People and Child Guardian, 2014, *Highlights, Child Guardian Report: Youth Justice System 2011-12*, http://www.ccyprg.qld.gov.au/pdf/publications/reports/Child-Guardian-Report_Youth-Justice-System_2013/Highlights_Child_Guardian_YJ2011-12

¹² AIHW, 2012, *Children and young people at risk of social exclusion: Links between homelessness, child protection and juvenile justice*, <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542238>, accessed 20 January 2016.

notifications to the child protection agency. Almost one-third had been the subject of six or more notifications, and 86 per cent had been in out-of-home care. Over half of these had had five or more care placements.”^[3]

In the face of such evidence, early intervention strategies must be a high priority for children who experience homelessness and/or abuse and neglect.

Removing the breach of bail offence

The Uniting Church is pleased that the offence of breach of bail has been included in the Youth Justice and Other Legislation Amendment Bill 2015¹⁶ which was introduced into parliament in December 2015.

Under the 2014 changes to the youth justice system, a child offender was to be treated the same as an adult offender in that breach of bail would become an offence. This does not take into account the developmental factors affecting children, nor the challenges in their lives over which they have no control and can make no choices, for example issues related to where they live.

Balanced Justice notes that some bail conditions are particularly difficult for young people and can “set them up to fail”; it is unrealistic to tell a young person not to associate with their friends or go to a certain place where young people meet.¹⁷ Bail conditions should be reasonable and take into account the young person’s situation, as well as protecting the community.

Seventeen-year-olds in adult prisons

Queensland is the only state in Australia where 17-year-olds are treated as adults in the criminal justice system. This means that they are dealt with in adult courts and imprisoned in adult jails. It is baffling that young people aged 17 are treated as adults in the criminal justice system, yet they are not considered adults in other ways, for example, registering to vote and the Age of Majority.

The Government has committed to ceasing the automatic transfer of 17-year-olds in youth detention to adult prisons, if they still have at least six months to run on their custodial sentence. They are exploring alternative transfer mechanisms for 18-year-olds; this would maintain the safety and security of detention centres by only accommodating young people of appropriate ages. It is a complex issue.

^[3] Australian Law Reform Commission, 2010, *Family Violence – A National Legal Response (ALRC Report 114)*; 20. *Family Violence, Child Protection and the Criminal Law: Child protection and juvenile justice*, <https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>, accessed 20 January 2016.

¹⁶ Queensland Government, 2015, *Youth Justice and Other Legislation Amendment Bill 2015*, accessed 13 January 2016, <http://www.legislation.qld.gov.au/Bills/55PDF/2015/YouthJusticeOLAB15.pdf>

¹⁷ Balanced Justice, 2013, *Detention and Bail for Children*, Balanced Justice Project, April 2013.

The characteristics of juvenile offending are different from adult offending in several ways and for a variety of reasons, including the immaturity of the brain and the prevalence of risk-taking behaviours, disability and mental illness¹⁸ as noted above.

The practice of incarcerating 17-year-olds in adult prisons continues to be a breach of our international obligations under the United Nations Convention on the Rights of the Child. Since 1992 Queensland Governments have acknowledged that, in theory, 17-year-olds should not be in adult prison. The policy platform of the current government includes bringing 17-year-olds into the youth justice system. We recognise that it will be a costly and complex matter, however the Uniting Church will continue to encourage the Government to address this significant human rights violation.

Limiting access to juvenile criminal history

The Uniting Church is relieved that the proposed changes to legislation will again prevent courts accessing a person’s juvenile criminal history when sentencing them as an adult. It will mean that only those convictions which are recorded can be referred to in adult courts. Convictions are recorded by judges in cases where the young person’s crime is extremely serious, or the offender has a significant offending history. In more minor matters a reprimand or good behaviour order is likely to be made, which will not be made available to the adult court. When an adult appears before the court with even one conviction recorded, the magistrate or judge knows there is a significant offending history.

These amendments will support the rehabilitation focus of the Childrens Court, increasing the young person’s chance of leading a meaningful life and making a positive contribution to the community as a mature citizen.

Closing Childrens Courts — banning “Naming and shaming”

It is encouraging that the Government has committed to children’s law matters being held in closed court. Proposed amendments will relate only to the lower Childrens Court. The challenge will be to also increase the level of transparency of the judicial process and enhance the position of victims.

It is a relief that the practice of “naming and shaming” for young repeat offenders will again be an offence.

Balanced Justice stated that “Naming and shaming young people involved in the justice system is likely to undermine their chances of rehabilitation. It ignores fundamental, widely accepted principles contained in international law, and the evidence which shows that it can actually lead to increased

¹⁸ Kelly Richards, 2011, *What makes juvenile offenders different from adult offenders?*, Australian Institute of Criminology, Australian Government, Trends and Issues in crime and criminal justice, No 409, February 2011.

levels of offending.”¹⁹ The proposed legislative amendments will provide an appropriate balance of holding offenders to account for their actions, while protecting vulnerable young people and encouraging rehabilitation.

Closing boot camps

The Uniting Church is relieved that boot camps will no longer operate as a mode of detention/rehabilitation for young offenders. The Government’s 2015 review of the trial of the youth boot camps found no concrete evidence that they were effective.²⁰

The concept of boot camps is based on the notion of taking individual responsibility for crime and anti-social behaviour. However, the notion of self-knowing/awareness is a function of the mature adult brain, and not that of a young person’s brain. Therefore the very concept of boot camps for young offenders runs contrary to the way the young person’s brain works.

Rev Kaye Ronalds, past moderator of the Uniting Church in Queensland notes: “It would be my personal observation, as a long-term army reserve chaplain, that the kind of positive transformation that occurs for some young members of society who join the military is achieved by the combination of strongly held boundaries, working together in training and an extensive network of pastoral care within and beyond the chain of command.”

The policies we seek

The Uniting Church in Queensland seeks a collaborative approach to youth justice issues, where established research evidence and long-established experience in successfully helping young people are recognised and valued. Our greatest concern is for the children and young people themselves; that they might have every opportunity to grow and develop, to become mature and responsible citizens. Most of these children and young people experience a complex range of risk factors which has resulted in their contact with the youth justice system. These risk factors must be addressed as early as possible, if we wish them to live lives free of crime and thus create a safer community.

Ongoing and meaningful collaboration will be critical in creating a youth justice system that genuinely reduces the involvement of children and young people in the justice system rather than entrenching them within it.

A priority must be to develop a clear understanding of the purpose of the youth justice system. Is it to punish young people and their families, or to rehabilitate them? Another must be to consider how to reduce the over-representation

of Aboriginal and Torres Strait Islander young people in the criminal justice system.

We propose a Government-hosted cross-portfolio, cross-sectoral workshop to inform youth justice policy reform, using approaches that are specifically designed for working with complex issues, multiple stakeholders and differing perspectives. The workshop proposal is co-sponsored by the Anglican Church Southern Queensland, the Uniting Church Queensland Synod and Queensland Churches Together (representing 16 Queensland churches and Christian communities) and is supported by members of the Balanced Justice coalition.²¹

Representation at the workshop should be as broad as possible, specifically including significant representation by Aboriginal and Torres Strait Islander Leaders, Elders, organisations and young people who have direct experience of the youth justice system.

Conclusion

The Uniting Church in Queensland is greatly encouraged by the commitment of Queensland Government to positively reforming the youth justice system. We urge the Government to bring together all stakeholders so that an in-depth, shared understanding of the issues may be developed, priorities may be agreed for action and people/organisations identified to work collaboratively to progress these strategies.

The Uniting Church in Queensland is keen to consult and work closely with the Queensland Government in addressing the needs of young people who have become, or are at risk of becoming, involved in the youth justice system.

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²¹ Balanced Justice, <http://www.balancedjustice.org/>, accessed 19 January 2016.

¹⁹ Balanced Justice, 2013, *'Naming and shaming' young offenders*, www.balancedjustice.org/uploads/1/3/1/0/13108841/final_-_naming_and_shaming_young_offenders.pdf, accessed 13 November 2013, p 2.

²⁰ Queensland Government, 2015, *Final Report for the evaluation of Queensland's youth boot camps*, July 2015.