



AUSTRALIAN  
LAWYERS  
FOR  
HUMAN RIGHTS

PO Box A147  
Sydney South NSW 1235  
DX 585 Sydney  
[alhr@alhrasnau](mailto:alhr@alhrasnau)  
[www.alhrasnau](http://www.alhrasnau)

30 June 2013

Assistant Director-General, Youth Justice  
Department of Justice and Attorney-General  
GPO Box 149  
BRISBANE QLD 4001

By e-mail: [youthjusticeblueprint@justice.qld.gov.au](mailto:youthjusticeblueprint@justice.qld.gov.au)

Dear Sir / Madam

### Comments on the 'Safer Streets Crime Action Plan – Youth Justice'

- 1 Australian Lawyers for Human Rights (**ALHR**) is pleased to make the following comments on the *Safer Streets Crime Actions Plan – Youth Justice* released by the Queensland Government in April 2013.
- 2 ALHR was established in 1993, and is a network of Australian lawyers and law students active in practising and promoting awareness of international human rights. ALHR has a national membership of over 2600 people, with National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

#### Summary

- 3 The plan aims to make Queensland safer by addressing community concerns and delivering a more effective approach to crime. These are valid concerns, and our recommendations toward those objectives are detailed in [49] below. The key points of this submission addresses concerns about the Government's new approach:
  - a. This approach is inconsistent with various human rights obligations under international instruments;
  - b. The ineffectiveness for mandatory sentencing of juveniles;
  - c. The tough on crime approach is ineffective in reducing rates of recidivism;
  - d. The naming of young offenders will not assist rehabilitation and reduce crime; and
  - e. A more responsible and cost effective approach would be the introduction of early intervention programs and the re-introduction of restorative justice approaches.

**Why juvenile offenders are different**

- 4 ALHR supports a different treatment of punishment of juveniles and adult offenders. In *R v Elliott*, Kirby J noted that the reasons for differences in sentencing of children and adults were well explained in psychologist's report relied upon by the New Zealand Court of Appeal:

“It is widely accepted that adolescents do not possess either the same developmental level of cognitive or psychological maturity as adults (Steinberg & Scott, 2003). Adolescents' decision-making capacities are immature and their autonomy constrained. Their ability to make good decisions is mitigated by stressful, unstructured settings and the influence of others. They are more vulnerable than adults to the influence of coercive circumstances such as provocation, duress and threat and are more likely to make riskier decisions when in groups. (Moffitt, 1993). Also, because adolescents are more impulsive than adults, it may take less of a threat to provoke an aggressive response from an adolescent.”<sup>1</sup>

**Obligations under International Human Rights Instruments**

- 5 International human rights instruments create obligations upon Australia and establish standards in relation to criminal youth justice. ALHR, along with other organisations, support the application of such a human rights framework to the issue of juvenile justice.<sup>2</sup>
- 6 Protections for children are contained in the *Convention of the Rights of the Child* and *International Covenant on Civil and Political Rights*, both of which have been ratified by Australia. Other internationally accepted minimum human rights standards are contained in United Nations General Assembly resolutions.<sup>3</sup> These protections and standards include:
- a. In all actions concerning children, whether undertaken by courts of law or legislative bodies, the best interests of the child shall be a primary consideration.<sup>4</sup>
  - b. In adjudication processes the “well-being of the juvenile shall be the guiding factor in the consideration of her or his case.”<sup>5</sup>
  - c. Recognition of “the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”<sup>6</sup>
  - d. 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.<sup>7</sup>
  - e. Alleged juvenile offenders shall have their “privacy fully respected at all stages of the proceedings.”<sup>8</sup>
  - f. “Awareness that, in the predominant opinion of experts, labeling a young person as ‘deviant’, ‘delinquent’ or ‘predelinquent’ often contributes to the development of a consistent pattern of undesirable behavior by young persons.”<sup>9</sup>

---

<sup>1</sup> *R v Elliott* (2006) NSWLR 1, per Kirby J at 27.

<sup>2</sup> Refer for example to the Queensland Law Society policy paper, “Children and young people's issues” [www.qls.com.au/files/43e88d12-60ca-4284-8d6d-a0f600adf046/Childrens-Law-policy-positions-paper.pdf](http://www.qls.com.au/files/43e88d12-60ca-4284-8d6d-a0f600adf046/Childrens-Law-policy-positions-paper.pdf) p5.

<sup>3</sup> For example United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules) and United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

<sup>4</sup> CROC Art 3(1).

<sup>5</sup> Beijing Rules 17.1(d).

<sup>6</sup> CROC Art 40(1).

<sup>7</sup> Beijing Rules Art 21.1.

<sup>8</sup> CROC Art 40(2).

<sup>9</sup> Riyadh 5(f).

- 7 These standards are applicable to Queensland because *all* government officials and processes are required, under international and Australian law, to act consistently with human rights.
- a. At international law, a country's internal laws and actions, including those of State Governments, must comply with the nation's treaty obligations.<sup>10</sup> The *Universal Declaration of Human Rights* applies human rights norms to 'every organ of society',<sup>11</sup> and under the treaty on racial discrimination, Australia must ensure all public authorities and institutions do not act in a racially discriminatory manner.<sup>12</sup>
  - b. There are a range of Commonwealth laws and policies regarding States compliance with various human rights standards which have been recognized in Australian domestic law, such as the *Racial Discrimination Act 1975* (Cwth), *National Framework for Protecting Australia's Children 2009–2020*; and the recent appointment of a National Children's Commissioner.
  - c. Australia has been specifically directed, by the Committee which oversees the *Convention on the Rights of the Child*, to avoid mandatory detention of children and for Queensland to modify its treatment of 17 year olds as adults:

**[Australia should] bring the juvenile justice system fully in line with the Convention, ... and with other relevant standards**, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System; and the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice. ...[T]he Committee reiterates its previous recommendations to:

- (a) Consider raising the minimum age of criminal responsibility to an internationally acceptable level;

...

- (c) **Take measures with a view to abrogating mandatory sentencing in the criminal law** system of Western Australia; and, consider refraining from the enactment of a similar law in its state of Victoria;

- (d) **Remove children who are 17 years old from the adult justice system in Queensland**<sup>13</sup>

ALHR strongly recommends that Queensland uphold human rights standards when introducing new approaches to criminal youth justice.

## Effective Sentencing Options

### **The ineffectiveness of mandatory detention**

- 8 ALHR continues to advocate for reform to the *Youth Justice Act 1992* (Qld), particularly concerning the imprisonment of seventeen (17) year olds in adult maximum-security facilities.

<sup>10</sup> The Vienna Convention on the Law of Treaties, to which Australia is a signatory, prohibits a country from claiming that its internal law justifies failure to perform a treaty: art 27 (Vienna, 23 May 1969) *Australian Treaty Series* 1974 No 2.

<sup>11</sup> '[E]very individual and every organ of society ... shall strive to promote respect for these rights and freedoms and ... to secure their universal and effective recognition and observance', Preamble to the UDHR which was passed by consensus by the UN General Assembly in 1948 (emphasis added). The UDHR is binding on all members of the UN, through their acceptance of the UN Charter, and is in any event part of customary international law: International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and the developing international legal obligations of companies*, Geneva, 2002, p59

<sup>12</sup> ICERD, articles 2.1(a) & 6. The CERD Committee has further stated explained, 'Although the Commonwealth government is responsible for ratifying international human rights instruments, the implementation of their provisions requires the active participation of the states and territories...', *CERD Concluding Observations on Australia*, UN Doc: A/49/18, para 542.

<sup>13</sup> Committee on the Rights of the Child, *Concluding Observations: Australia*, UN doc CRC/C/AUS/CO/4 (28 August 2012), para [84] - emphasis added.

Throughout all Australian jurisdictions, mandatory detention is considered the last sentencing option for juvenile offenders.<sup>14</sup> Queensland is the only state in Australia to recognise seventeen (17) year olds as adults for the purposes of adjudicating criminal guilt.<sup>15</sup>

- 9 ALHR strongly submits that mandatory detention is completely ineffective at achieving justice for the community. The criminal justice system in part, aims to prevent crime<sup>16</sup> and one of the cornerstones of prevention is rehabilitation. It has been shown that incarceration without appropriate rehabilitative or learning support is simply not enough to prevent recidivism.<sup>17</sup> It is ALHR's submission that mandatory detention does not assist in the goals of rehabilitation, nor is it an effective deterrent.

### **Rehabilitation**

- 10 The importance of rehabilitation is generally recognised in the legislation of the States and Territories of Australia, although not always *explicitly* associated as the primary aim of detention. For instance, the *Youth Justice Act 1992* (Qld) refers to rehabilitation in terms of providing juveniles 'the opportunity to develop in responsible, beneficial and socially acceptable ways'.<sup>18</sup> Jointly, the Australian Law Reform Commission and the Human Rights and Equal Opportunity Commission in 1997 recommended that all legislation should 'state the aim of detention is rehabilitation for juvenile offenders.'<sup>19</sup> This is a recommendation not yet addressed by Queensland.

### **Prisons a "breeding ground" for crime**

- 11 Prisons have often been described as 'universities of crime' as the environment nurtures criminality<sup>20</sup>, whereby offenders are provided the opportunity to educate each other on criminal activity, skills, strategies and networks.<sup>21</sup> This is of greater concern when considering juveniles, who are immature and impressionable.<sup>22</sup> By sentencing juveniles to detention, the courts are at risk of worsening and confirming their antisocial behaviour.<sup>23</sup>

### **Juveniles are vulnerable and impressionable**

- 12 A contributing reason behind establishing separate juvenile and adult criminal justice systems was this element of impressionability.<sup>24</sup> ALHR submits that the imprisonment of seventeen (17) year olds in adult maximum-security facilities undermines this preventative structure and raises the question of our states actual motives behind the sentencing process, as we are the only state in Australia recognising 17 year olds as adults.

<sup>14</sup> Kelly Richards, 'Trends In Juvenile Detention In Australia' (2011) 416 *Trends & Issues In Crime and Criminal Justice* 1; *Youth Justice Act 1992* (Qld) sch 1 cl 17.

<sup>15</sup> *Youth Justice Act 1992* (Qld) s 4.

<sup>16</sup> Don Weatherburn, Andrew McGrath and Lorana Bartels, 'Three Dogmas of Juvenile Justice' (2012) 35(3) *UNSW Law Journal* 806.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Youth Justice Act 1992* (Qld) sch 1 cl 8(b).

<sup>19</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report No 84 (1998) [20.18] nn 3146.

<sup>20</sup> Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & Issues In Crime and Criminal Justice* 6.

<sup>21</sup> *Ibid.*

<sup>22</sup> Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & Issues In Crime and Criminal Justice* 6-7.

<sup>23</sup> Uberto Gatti, Richard E. Tremblay, and Frank Vitaro, 'Latrogenic Effect of Juvenile Justice' (2009) 50(8) *The Journal of Child Psychology and Psychiatry* 991-998, 991-992.

<sup>24</sup> Uberto Gatti, Richard E. Tremblay, and Frank Vitaro, 'Latrogenic Effect of Juvenile Justice' (2009) 50(8) *The Journal of Child Psychology and Psychiatry* 991-998, 996.

- 13 Furthermore, the personal risks associated with placing seventeen (17) year olds in adult prisons must also be acknowledged. Young prisoners, particularly those under the age of eighteen, are extremely vulnerable to physical and sexual assault within the confines of prison.<sup>25</sup> The State has an obligation for the welfare of its youth, especially when under their supervision in prison. Children and in particular wayward youth are extremely vulnerable members of society therefore any time spent in custody, let alone in an adult facility, simply cannot have a positive influence on their lives.<sup>26</sup>

### **Detention rather than imprisonment**

- 14 Rates of offending generally peak at late adolescence and decline in early adulthood.<sup>27</sup> The interaction juveniles have with the juvenile justice system may be critical to the final outcome, as juveniles are yet to become entrenched in the criminal justice system and are yet to fully develop neurologically. Interventions can have a strong and effective impact on them and encourage the juvenile to stop and 'grow out' of their offending behaviour.<sup>28</sup> In contrast, there is the overwhelming potential that by sentencing juveniles to detention, the courts are placing impressionable juveniles in a negative, criminogenic environment, away from their family and support systems.

### **Diversion**

- 15 Diversion is an important tool in effecting this type of change, and ALHR strongly submits that the benefits associated with considering *alternate means* of punishment will have a greater long-term positive impact both on the individuals and our community.
- 16 Mandatory detention is ineffective for juveniles and the community. Detention is a short-term approach that may be popular with voters, but have minimal long-term gains, which is in contrast to diversionary programs that involve a long-term approach (often requiring more resources). These programs provide greater, sustained success at reducing juvenile reoffending, which is more beneficial for our community. Following through with these steps will prevent the risks associated with recidivism and fostering a contempt for the law and its processes.

### **Naming of Young Offenders**

- 17 The review of the Youth Justice Act will examine expanding the existing naming laws so that names of young repeat offenders can be made public. These possible changes include changing the current presumption against the naming of juvenile offenders, identification of child offenders for minor matters,<sup>29</sup> and the naming of serious juvenile offenders where they are released as adults.<sup>30</sup>
- 18 The Government's purported concerns are to reduce recidivism, assist with rehabilitation and reduce crime. ALHR supports these goals however contends that the current proposals by the Government will not, in fact, lead to these outcomes.

<sup>25</sup> Abram, K.M., Teplin, L.A., Charles, D.R., Longworth, S.L., McClelland, G.M., & Dulcan, M.K. (2004). Post-traumatic Stress Disorder and trauma in youth in juvenile detention. *Archives of General Psychiatry*, 61, 403-410.

<sup>26</sup> Terry Hutchinson, 'When a Child is Not a Child' (2006) 30 *Criminal Law Journal* 1-8

<sup>27</sup> Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & Issues In Crime and Criminal Justice* 2.

<sup>28</sup> Kelly Richards, 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & Issues In Crime and Criminal Justice* 5.

<sup>29</sup> Name and shame all child offenders, says Attorney-General Jarrod Bleijie, Courier Mail, July 14, 2012, <http://www.news.com.au/national-news/queensland/getting-kids-back-on-track/story-fndo4ckr-1226425740039>.

<sup>30</sup> Michael Thompson's killer walks free, Paul de Jersey calls for serious juvenile offenders to be named, *The Courier-Mail*, October 22, 2010, <http://www.couriermail.com.au/news/queensland/michael-thompsons-killer-walks-free-paul-de-jersey-calls-for-serious-juvenile-offenders-to-be-named/story-e6freoof-1225941980968>

- 19 It is argued below that 'naming and shaming' as a punitive response to juvenile crime will tend to increase rather than reduce recidivism, and that a greater reliance upon restorative and re-integrative justice will tend to reduce juvenile offending.

### **Detriment Caused to Offender by Naming**

- 20 The naming of offenders is recognised as having a harmful psychological affect on the offender.<sup>31</sup>
- 21 Publication of juvenile offender's details can result in destroying a young person's employment prospects, adversely affect self-esteem and seemingly help create the catalysts for re-offending.<sup>32</sup>
- 22 The President of the Human Rights and Equal Opportunity Commission, John von Doussa AO QC stated in 2006:

"In practice, the consequences of 'naming and shaming' juvenile offenders are often far worse than the punishment imposed by the court. Naming young offenders can jeopardise their prospects of future employment, inflict psychological damage, and lead to verbal or physical abuse. In short, 'naming and shaming' juvenile offenders can deal a knock-out blow to the prospect of rehabilitation."<sup>33</sup>

- 23 Lack of job opportunities and marginalisation are contributing factors for offending and re-offending.<sup>34</sup> Naylor has argued: "Key factors in reducing most types of recidivism are accommodation and employment. Employment brings income and structure, but also a connection to society, self-esteem, and a community of peers reinforcing 'legitimate' norms and values."<sup>35</sup>

### **Naming and Rehabilitation**

- 24 In *R v SBU*, the Queensland Court of Appeal held that the community has an interest in the rehabilitation of juveniles, which may be prejudiced by allowing the publication of identifying information, even where the crime is a serious or violent crime, such as murder.<sup>36</sup>
- 25 The Charter of Youth Justice Principles recognises the importance of rehabilitation and diversion of juveniles from the court system.<sup>37</sup> Chief Justice de Jersey has said: "once youth offenders were on the court's radar, rehabilitation was paramount. Rehabilitation is even more important for juvenile offenders, because the lack of discipline is not entrenched".<sup>38</sup>

<sup>31</sup> *MCT v McKinney & Ors* [2006] NTCA 10, [20].

<sup>32</sup> Law Report, Naming and Shaming Juvenile Offenders, 2006.

<sup>33</sup> von Doussa J, President of the Human Rights and Equal Opportunity Commission, 'An update on the work of the Human Rights and Equal Opportunity Commission'.

<sup>34</sup> Cunneen C & White R, *Juvenile Justice: Youth Crime in Australia*, Oxford University Press, Melbourne, 4<sup>th</sup> Ed p72-3, 118, 125, 134.

<sup>35</sup> Naylor, B, "Do Not Pass Go: The Impact of Criminal Record Checks on Employment in Australia" (2005) 30(4) *Alternative Law Journal* 174, pp 174-5.

<sup>36</sup> *R v SBU* (2012) 1 Qd R 250, 261.

<sup>37</sup> Schedule 1, Youth Justice Act 1998.

<sup>38</sup> "Chief Justice Paul de Jersey's advice to Cairns: Fight indigenous and youth crime by creating more jobs", September 15, 2011, The Cairns Post

[http://www.cairns.com.au/article/2011/09/15/182411\\_local-news.html](http://www.cairns.com.au/article/2011/09/15/182411_local-news.html)

### **Naming shifts the focus from environmental factors to the individual**

- 26 Stigmatisation focuses on an individual and distracts from environmental factors that that may be underlying cause of the crime. Rather than assisting with rehabilitation or benefiting Queensland's justice system, naming will "give the public someone to blame".<sup>39</sup>
- 27 This, of course, can result in potentially dangerous reactions by the public, such as vigilantism. Whilst one might suggest that vigilantism is not a common occurrence in today's society, which may be largely due to the protections afforded to protect the identification of those involved. Without these protections, negative reactions such as vigilantism may become a serious problem for society and the Government to address.

### **Naming and deterrence**

- 28 Young people typically have "little understanding of the protection they currently enjoy. Therefore, taking it away offers no disincentive for juvenile offenders."<sup>40</sup>
- 29 The Queensland Council of Civil Liberties has argued that rather than rehabilitating young offenders, naming and shaming would result in some repeat offenders wearing the publicity as a badge of honour.<sup>41</sup> The Queensland Law Society similarly argues that: "Naming can become a badge of honour or a rite of passage for disenfranchised children and young people, and can give them a sense of identity, purpose and achievement that can reinforce harmful behavior."<sup>42</sup>
- 30 ALHR contends that naming offenders may result in re-offending rather than deterrence, due to the notion that "mud sticks". This theory may well lead offenders into not attempting rehabilitation due to the fact that, in their eyes, the damage done to themselves and their character, caused by their being named, is irreparable.

### **Naming vs Reintegrative Shaming**

- 31 Available research suggests that positive rehabilitating outcomes is more effective than naming.<sup>43</sup> 'Reintegrative shaming' is defined as "disapproval dispensed within an ongoing relationship with the offender based on respect, shaming which focuses on the evil of the deed rather than on the offender as an irremediably evil person".<sup>44</sup>
- 32 Youth Justice Conferencing is a form of reintegrative shaming that encourages the offender to take responsibility for their actions and to understand the consequences of their actions, and "face their victims in order to make amends."<sup>45</sup> Outcomes typically include an apology and reparation, and may include measures for reintegration into the community. The outcomes are

<sup>39</sup> Ian Dearden, Queensland Council of Civil Liberties, cited in Queensland Parliamentary Library Research Brief No 2002/22, p9.

<sup>40</sup> Ms Mari Wilson, Policy Officer for the Federation of Parents and Citizens Associations, cited in "The prohibition on the publication of names of children in criminal proceedings" report by the NSW Legislative Council Standing Committee on Law and Justice, p35.

<sup>41</sup> "Law & Order Vote Catching 'Depressing'", Queensland Council of Civil Liberties Media Release, 1 March 2009, [http://www.qccl.org.au/documents/Media\\_TOG\\_1Mar09\\_Juvenile\\_Offenders.pdf](http://www.qccl.org.au/documents/Media_TOG_1Mar09_Juvenile_Offenders.pdf); Note also N Dixon "Naming Juvenile Offenders: Juvenile Justice Amendment Bill 2002 (Qld)", Research Brief No 2002/22, Queensland Parliamentary Library, [3.3.1].

<sup>42</sup> Queensland Law Society policy paper, "Children and young people's issues" [www.qls.com.au/files/43e88d12-60ca-4284-8d6d-a0f600adf046/Childrens-Law-policy-positions-paper.pdf](http://www.qls.com.au/files/43e88d12-60ca-4284-8d6d-a0f600adf046/Childrens-Law-policy-positions-paper.pdf) p5

<sup>43</sup> Ibid.

<sup>44</sup> Shame and Modernity, British Journal of Criminology, Braithwaite p1.

<sup>45</sup> Lincoln R & Otto S, "To name and shame or not", The National Legal Eagle 2007 Vol 13(1) Article 2 p5, available at <http://epublications.bond.edu.au/nle/vol13/iss1/2>.

generally considered to be successful participants including victims<sup>46</sup> and ALHR supports this alternative.

### **Other unintended consequences of naming**

- 33 The publication of the offender's details may very well result in the unintended compromising of the anonymity of the victim. This outcome would be in direct conflict with the long-held aim of concealing identities of victims of, in particular, sexual offences.
- 34 Naming sexual offenders can be a false dawn and create a sense of security in the community that should never have been compromised in the first place. "Community notification also rests upon the idea of the predatory stranger but rape is more often a domestic crime rather than one committed by those unknown to the victims. For example, in Australia in 1994 there was an 80:20 ratio of known versus stranger rapes, yet the media misrepresents this fact."<sup>47</sup>

## **Early Intervention and Diversion**

### **Considering environmental factors and restoring positive social norms**

- 35 The Youth Justice Action Plan identifies the following as being principle causes for youth crime:
- a. Drug and alcohol abuse
  - b. Mental health problems
  - c. Low educational achievements
  - d. Exposure to violence during childhood
  - e. Severe and long term neglect and family dysfunction
- 36 Chief Justice de Jersey said "a lack of regular employment was a predominant feature in indigenous and juvenile offending, along with dysfunctional home lives."<sup>48</sup>
- 37 It has been argued that the most cost effective way to stop young people offending and re-offending "is to intervene before a young person enters a life of crime."<sup>49</sup> The Safer Streets Crime Action Plan gives recognition to a number of environmental factors and states that government agencies have responsibility "for providing services to assist in reducing homelessness and drug and alcohol misuse, increase education and employment outcomes and protect children from neglect and abuse."<sup>50</sup>

<sup>46</sup> Childrens Court of Queensland Annual Report 2011–12, p29-30.

<sup>47</sup> Lincoln R & Otto S, "To name and shame or not", The National Legal Eagle 2007 Vol 13(1) Article 2 p 5, available at <http://epublications.bond.edu.au/nle/vol13/iss1/2>.

<sup>48</sup> "Chief Justice Paul de Jersey's advice to Cairns: Fight indigenous and youth crime by creating more jobs", September 15, 2011, The Cairns Post  
[http://www.cairns.com.au/article/2011/09/15/182411\\_local-news.html](http://www.cairns.com.au/article/2011/09/15/182411_local-news.html).

<sup>49</sup> Safer Streets Crime Action Plan – Youth Justice, Department of Justice and Attorney-General. p11.

<sup>50</sup> Safer Streets Crime Action Plan – Youth Justice, Department of Justice and Attorney-General. P 11.



**Early Intervention Programs**

- 38 Australian Lawyers for Human Rights advocate for a shift from retributive justice to a restorative or rehabilitative justice model. The need for a rehabilitative justice model is well founded and the criticisms of the 'heavy handed' justice model are informative.<sup>51</sup>
- 39 Australian Lawyers for Human Rights warns against the overuse of the Risk Factors Prevention Paradigm (RFP), a policy mechanism which oversimplifies key risk factors without addressing individual risk and vulnerability. The RFP correctly affirms the role of biological, psychological and social factors in the emergence of criminality. However, there is no framework in the RFP model which addresses the integration of the diverse factors and differentiation of their diversity in centrality and significance for the individual.
- 40 Programs, such as the Griffith University and Mission Australia Pathways to Prevention program, address the cumulative individual factors in addition to the recognisable general risk factors of vulnerable communities, are a worthwhile investment and alternative to screening out at-risk potential youth offenders.
- 41 The central focus of the Pathways programs is the promotion of youth well being through the central feature of 'a developmental pathway.' The pathway refers to how the sequences of events, experiences and opportunities can contribute to changes both within and around the youth over time. The program is one that sets out to modify the ways in which children and youth develop within the community's systems to strengthen relationships and key environmental factors that are the leading causes of youths' introduction into the justice system.
- 42 The Pathways to Prevention program is designed to integrate into society's services and key support networks. The program relies on the cultural and social changes within education and childcare institutions to instigate an effective model for developmental change in order to successfully address the key vulnerabilities and risk factors associated with youth entering into the justice system.
- 43 The early intervention and diversion Action Plan/policy as detailed in the Government's paper is largely reactive. The mechanisms noted refer to the police and to the Early Intervention Youth Boot Camp scheme. Youth who are interfacing with the police or are in a Boot Camp are at the periphery of the Justice System.

**Cape York Welfare Reform program**

- 44 The Cape York Welfare Reform (CYWR) trial is an example of a program which was designed to restore positive social norms, re-establish local Indigenous authority, enable children to achieve their full potential, support engagement in the real economy, and move individuals and families from welfare housing to home ownership. The trial operates in Aurukun, Hope Vale, Coen and Mossman Gorge having commenced in July 2008 and is due to cease in December 2013.
- 45 The key components of the trial include:
- a. The Family Responsibilities Commission (FRC), which operates to restore local Indigenous authority and restore positive social norms through attaching behavioural obligations to receipt of welfare payments.<sup>52</sup>

---

<sup>51</sup> Gordan Bazemore, 'The Expansion of Punishment and the Restriction of Justice: Loss of Limits in the Implementation of Retributive Policy' (2007) 74 *Social Research Quarterly* 651.

<sup>52</sup> Alan France, Kate Freiberg and Ross Homel, 'Beyond Risk Factors: Towards a Holistic Prevention Paradigm for Children and Young People' (2010) 10 *British Journal of Social Work* 1.

- b. FRC local Indigenous Commissioners hold conferences with local people who:
    - fail to enrol and send children to school;
    - come to the attention of the Department of Communities for a child safety matter;
    - are convicted of an offence in the Magistrates Court; or
    - fail to remedy a breach of a tenancy arrangement.<sup>53</sup>
  - c. Decisions made at the conference are made with the best interests of the client and their family in mind and can include a range of responses from taking no action, reprimanding the client, encouraging the client to enter into a Family Responsibilities Agreement, directing the client to relevant community support services or the client on a Conditional Income Management Order.<sup>54</sup>
- 46 The Cape York Welfare Reform Evaluation 2012 acknowledged the long-term nature of a program to rebuild social norms. Significant findings included: increased school attendance, improved money management, reduced crime rate in Aurukun, perceptions that children are happier, healthier and more active, and positive self reported perceptions that life is on the way up for most people.<sup>55</sup>
- 47 ALHR recommends a similar program for the following reasons:
- a. encourage education of youths particularly those from indigenous backgrounds;
  - b. encourages positive behavior changes;
  - c. high prospects of reduced recidivism; and
  - d. the positive long-term outcomes including healthier, happier more active children.

## **Conclusion**

- 48 Australian Lawyers for Human Rights proposes a restorative justice approach to addressing Youth Crime. Based on the evidence outlined above Australian Lawyers for Human Rights does not support an approach which is likely to exacerbate the situation long term and fail to address the societal problems associated with youth offending.
- 49 ALHR advocates the following approach for the Queensland Government to combat youth crime:
- a. The reintroduction of youth justice conferencing as proposed by the Queensland Government in May;
  - b. The use of community based service orders as opposed to detention;
  - c. Increasing the age of an adult offender to 18 years in line with the other states and territories in Australia;
  - d. Recognising that young offenders require a different approach and abandoning the proposals for naming offender and mandatory imprisonment proposals.
- 50 We would like to make this letter available through our website. This is a standard practice for all our work, wherever possible. If you do not want this letter to be made publically available, please can you advise us within 10 business days of receipt of this letter.

---

<sup>53</sup> Ibid.

<sup>54</sup> Annual Report 2011-2012 Family Responsibilities Commission, page 16.

<sup>55</sup> Annual Report 2011-2012 Family Responsibilities Commission, page 60.

If you have any questions in relation to this submission, please contact ALHR's President, John Southalan by e-mail: [john@southalan.net](mailto:john@southalan.net)

Yours faithfully



John Southalan

**President**

Australian Lawyers for Human Rights

Contributors: Greg Brown, Priyanka Gupta, Lauren Holm, Chantel McNaught, Christina Mann, Ruth Kennedy, Thomas Serafin, Ashkan Tai.