



A Human Rights Approach to Youth Justice Reform
Submission to the Department of Justice and Attorney General,
Queensland

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Freedom. Respect. Equality. Dignity. **Action.**

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About the Human Rights Law Centre

The Human Rights Law Centre is an independent, non-profit, non-government organisation which protects and promotes human rights.

We contribute to the protection of human dignity, the alleviation of disadvantage, and the attainment of equality through a strategic combination of research, advocacy, litigation and education.

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1. Overview and Recommendations

1. The Human Rights Law Centre (**HRLC**) welcomes the Attorney-General's request for submissions on the Safer Street Crime Action Plan – Youth Justice (**Inquiry**). At its heart, the Inquiry is about implementing youth justice reforms to make Queensland safer. The HRLC strongly supports this objective.
2. The starting point for the Inquiry should be a recognition that very few young people in Queensland are involved in crime. According to the Consultation Paper for this Inquiry, of the 413,399 people in Queensland aged between 10 and 16, less than 1% had an offence proven in court in 2011/12.
3. Despite the relatively low rate of crime committed by young people, crime can have a devastating impact and we should do more to reduce crime.
4. The key to achieving this objective is implementing evidence-based and human rights compliant policies that focus on doing what research shows is effective in reducing crime.
5. Regrettably, many of the policies being considered by this Inquiry (and being implemented in relation to the adult criminal justice system), undermine this objective. Proposed reforms such as boot camps, criminalising bail breaches, making it easier to publish the names of young offenders, automatically transferring 18 year olds to adult prisons and allowing courts to access a person's youth criminal history when sentencing them as an adult are unlikely to reduce crime by young people and may increase the risk of reoffending.
6. These proposals raise may breach a range of human rights, including:
 - (a) the obligation to ensure the best interests of the child are a primary consideration;
 - (b) specific rights relating to young people in the criminal justice system;
 - (c) freedom from arbitrary detention and the principle that detention of young people should be a measure of last resort;
 - (d) the obligation to promote a young offender's reintegration into society; and
 - (e) the right to equality and non-discrimination.
7. The HRLC is particularly concerned that the legislation will have a disproportionate effect on young Aboriginal and Torres Strait Islander peoples and that many of the proposals are inconsistent with the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

8. Importantly, the Inquiry asks ‘what can we do to respond to the causes of crime’ and the Inquiry’s consultation paper correctly identifies key causes of youth crime such as child neglect, exposure to violence during childhood, poor education, drug and alcohol abuse and mental health problems.
9. The HRLC strongly supports measures to address the causes of youth crime. There is strong evidence that early intervention programs targeting at-risk children and youth are cost effective ways to reduce crime.¹ To make Queensland safer, the Queensland Government should invest heavily in this area and abandon plans for expensive and potentially counter-productive reforms that focus on increased criminalisation and punishment.
10. In this respect, the HRLC notes the recent inquiry by the Senate Legal and Constitutional Affairs References Committee into the value of a justice reinvestment approach to criminal justice in Australia. In its report, the Senate Committee concluded that:

It appears to the committee that given the significant failures of the current justice system, it is time to look at where and why crime occurs and to address the underlying drivers of offending and reoffending. The committee considers that justice reinvestment has a proven track record in achieving successful outcomes through both lowering incarceration rates and targeting the drivers of crime. It is a community-focussed, evidenced-based approach that provides savings, diverts offenders, addresses the causes of crime, and strengthens communities.²

The Committee concluded that justice reinvestment provides economic benefits, including through reduced incarceration costs, but also improved economic participation, decreased use of the welfare system and improved health outcomes.³

11. The HRLC submits that the Queensland Government should adopt a justice reinvestment approach in the design of appropriate and effective solutions to address youth crime in Queensland.
12. This submission does not address all of the survey questions. Rather, it focuses on how a human rights framework supports and informs approaches to youth justice and reducing youth crime and incarceration, as well as contributes to the fulfilment of Australia’s international legal obligations. This submission:
 - (a) explains the relevance and benefits of a human rights approach to youth justice reforms;
 - (b) provides an overview of relevant human rights obligations;

¹ Don Weatherburn, *Law and Order in Australia: Rhetoric and Reality* (2004) 190-197.

² Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, (2013) 114.

³ Senate Legal and Constitutional Affairs References Committee, *Value of a justice reinvestment approach to criminal justice in Australia*, (2013) 111-115.

- (c) outlines relevant recommendations made by various UN human rights bodies that relate to the reform of youth justice approaches in Queensland; and
- (d) considers, in particular, issues faced by young Aboriginal and Torres Strait Islander peoples in their interaction with the criminal justice system.

13. The HRLC makes the following recommendations:

Recommendation 1:

The Queensland Government should recognise the importance and relevance of human rights to youth justice reforms and incorporate a human rights framework into the Inquiry.

Recommendation 2:

The Queensland Government should not proceed with boot camps and should divert the resources towards more effective interventions.

If the Queensland Government proceeds with boot camps, the HRLC recommends that:

- (a) participation should be voluntary;
- (b) clear guidance should be developed on the content and operation of the camps;
- (c) the focus of the camps and related non-residential programs should be on individualised initiatives to address the causes of offending;
- (d) the evaluation of the trial camps should be independent, robust, properly resourced and should be made public.

Recommendation 3:

The Queensland Government should abandon the proposal to make it easier to publish the names of young offenders.

Recommendation 4:

The decision to impose a conviction should be left to the discretion of the Children's Court.

Recommendation 5:

The Queensland Government should abandon the proposal to make breach of bail an offence.

Recommendation 6:

The decision to transfer young offenders to an adult correctional centre once they reach 18 years of age should be left to the discretion of the court.

Recommendation 7:

The Queensland Government should focus its efforts on the protection and promotion of economic, social and cultural rights in order to address the underlying causes of crime.

Recommendation 8:

Given the direct links between violence and abuse and criminal behaviour, the Queensland Government should focus efforts on preventing violence against children and assisting those who are victims of violence and neglect.

Recommendation 9:

The Queensland Government should review its policing practices in order to minimise and avoid arbitrary, unreasonable or discriminatory interaction with the criminal justice system, particularly for marginalised and vulnerable groups including young Aboriginal and Torres Strait Islander peoples and young homeless people.

Recommendation 10:

The Queensland Government should adequately fund services to provide free legal assistance to young people and particularly young Aboriginal and Torres Strait Islander peoples.

Recommendation 11:

The Queensland Government should reinstate the court power to order youth conferencing.

2. A Human Rights Framework

2.1 Relevance of Human Rights

14. Human rights are the fundamental rights and freedoms that belong to all people. Australia is legally bound by a number of key international human rights treaties. These treaties impose legal obligations on Australia to respect, protect and fulfil the human rights set out in those treaties.
15. In a federal system like Australia, these legal obligations apply to federal, state and local governments and all branches of government and other public or governmental authorities, at whatever level – national, state or local – must act to respect, protect and fulfil human rights⁴. Accordingly, the Queensland Government has an obligation to protect human rights within the youth justice system.

2.2 Value of a Human Rights Framework

16. The experience in comparative jurisdictions, such as the United Kingdom, Canada and New Zealand, is that a human rights approach to the development by governments of laws and policies can have significant positive impacts. Some of the benefits of using a human rights approach include:
 - (a) enhanced scrutiny, transparency and accountability in government;
 - (b) more participatory and empowering policy development processes and more individualised, flexible and responsive public services;
 - (c) better public service outcomes and increased levels of ‘consumer’ satisfaction; and
 - (d) ‘new thinking’, as the core human rights principles of dignity, equality, respect, fairness and autonomy help decision-makers ‘see seemingly intractable problems in a new light’.⁵
17. There is strong evidence that the language and ideas of rights can secure positive changes not only to individual circumstances, but also to policies and procedures resulting in systemic change. Ensuring a human rights approach to the current Inquiry will assist to develop laws and policies that promote community safety, reduce crime and reoffending, guarantee the effective administration of justice and ensure that all individuals have the opportunity to participate in the community on an equal basis.

⁴ UN Human Rights Committee, *General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add13 (2004), [4]. See also art 50 of the ICCPR and art 27 of the Vienna Convention on the Law of Treaties, which provides that a state party ‘may not invoke the provisions of its internal law as justification for its failure to perform a treaty’.

⁵ See, generally, Department for Constitutional Affairs (UK), *Review of the Implementation of the Human Rights Act* (July 2006); British Institute of Human Rights, *The Human Rights Act: Changing Lives* (2007); Audit Commission (UK), *Human Rights: Improving Public Service Delivery* (October 2003).

3. Relevant Human Rights

18. Australia, and by extension Queensland, is a party to a number of international human rights treaties which create legal obligations to protect and promote the rights enshrined in those treaties. These obligations arise under the International Covenant on Civil and Political Rights (**ICCPR**), International Covenant on Economic, Social and Cultural Rights (**ICESCR**), International Convention on the Elimination of All Forms of Racial Discrimination (**CERD**), Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**), Convention on the Rights of the Child (**CRC**), and the Convention on the Rights of Persons with Disabilities (**CRPD**). This section outlines the human rights that are most relevant to the terms of this Inquiry.
19. For the purposes of this Inquiry, the primary treaty is the CRC. A number of associated international instruments are specific to the issue of youth justice and provide useful and important guidance in this area, namely:
- (a) the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules);⁶
 - (b) the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines);⁷
 - (c) the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;⁸ and
 - (d) the Vienna Guidelines for Action on Children in the Criminal Justice System.⁹

These rules represent internationally accepted minimum standards, utilised by the Committee on the Rights of the Child and other UN bodies, to measure compliance with UN human rights obligations.

⁶ Adopted by General Assembly resolution 40/33 of 29 November 1985, available at <http://www.ohchr.org/english/law/beijingrules.htm>.

⁷ Adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990, available at <http://www.ohchr.org/english/law/juvenile.htm>.

⁸ Adopted by General Assembly resolution 45/113 of 14 December 1990, available at http://www.ohchr.org/english/law/res45_113.htm.

⁹ Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>.

3.1 Best Interests of the Child

20. Article 3(1) of the CRC gives the child a right to have her or his best interests assessed and taken into account as a primary consideration in all actions or decisions that concern her or him, both in the public and the private sphere. This is one of the fundamental principles for interpreting and implementing all the rights of the child.¹⁰
21. As the UN Committee on the Rights of the Child has explained, the ‘best interests of the child’ is a right, a principle and a rule of procedure.¹¹ The best interests must be therefore be considered in all actions concerning children and young people. This obligation applies in the context of undertaking of this Inquiry and in developing policy and legislation.
22. Determining the best interests of the child requires those making a decision to be able to have both the discretion and the options to ensure the best interests of each child can be not only considered, but given effect to. It includes upholding the best interests of the child in the allocation of resources for programs and measures aimed at implementing children’s rights. Importantly it also includes combating all negative attitudes and perceptions which impede the full realisation of the right of the child to have his or her best interests assessed and taken as a primary consideration.¹²
23. The Committee on the Rights of the Child has been careful to point out that, when it comes to children in the criminal justice system, ‘traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives’.¹³
24. Elements to be taken into account when considering best interests include:
 - (a) the child’s view;
 - (b) the child’s identity, including sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality;
 - (c) preservation of family environment;
 - (d) care, protection and safety of the child;
 - (e) whether the child is in a situation of vulnerability, such as a victim of abuse, living on the streets, having a disability and so on; and
 - (f) the child’s right to health and education.¹⁴

¹⁰ UN Committee on the Rights of the Child *General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* UN Document CRC/C/GC/14 [1].

¹¹ *Ibid.*

¹² UN Committee on the Rights of the Child *General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* UN Document CRC/C/GC/14 [15].

¹³ UN Committee on the Rights of the Child *General comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* UN Document CRC/C/GC/14 [28].

¹⁴ *Ibid.*, [52]-[79].

3.2 Obligations to Young People in the Justice System

25. The CRC also imposes specific human rights obligations on Australia, and Queensland, regarding young people in the criminal justice system, including specifically:
- (a) to respect and promote the rights of a child who is detained to be segregated from adults in detention (Article 37 of the CRC);
 - (b) to respect and promote the right of an accused child to be brought to trial as quickly as possible, which goes beyond the requirement of a 'reasonable time' as required in respect of adults (Article 40);
 - (c) to treat a child convicted of a crime in a way appropriate to their age (Article 40(3)(b));
 - (d) to respect the child's privacy at all stages of the proceedings (Article 40(2)(vii)); and
 - (e) to promote the establishment of laws, procedures, authorities and institutions and measures for dealing with children without resorting to judicial proceedings (Article 40(3)(b)).

3.3 Non-Discrimination and Equality

26. The rights to non-discrimination and substantive equality are fundamental components of human rights law that are entrenched in a wide range of human rights treaties.¹⁵ Non-discrimination and equality constitute basic and general principles relating to the protection of all human rights.¹⁶
27. As discussed further below, many criminal laws have a disproportionate effect on particular groups and raise concerns regarding rights to equality and non-discrimination.

3.4 Detention a Measure of Last Resort

28. Freedom from arbitrary detention and the right to liberty and security of the person is enshrined in Article 9 of the ICCPR as well as Article 37 of the CRC which states that:

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 only be used as a measure of last resort for the shortest appropriate period of time.

Article 37 highlights the importance of programs that divert young people away from the formal criminal justice system.

¹⁵ See, for example, arts 2 and 26 of the ICCPR; art 2 of ICESCR; art 2 of CEDAW; arts 2 and 5 of CERD; art 2 of CRC and art 5 of the CRPD.

¹⁶ UN Human Rights Committee, *General Comment No. 18: Non-discrimination (Thirty-seventh session, 1989)*, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc HRI/GEN/1/Rev.6 (2003) at 146.

3.5 Participation of Affected Groups

29. Given the disproportionate impact the criminal justice system has on Aboriginal and Torres Strait Islander peoples, it is essential that Aboriginal and Torres Strait Islander peoples participate directly in the design and implementation of measures designed to address over-incarceration and the impacts of the criminal justice system. Meaningful participation is consistent with the right to self determination enshrined in Article 1 of both the ICCPR and ICESCR, as well as the UN Declaration on the Rights of Indigenous Peoples which has been endorsed by Australia. Policies targeted at addressing socio-economic disadvantage and reducing crime will only be effective if Aboriginal and Torres Strait Islander peoples are directly involved in their design and implementation.

3.6 Previous UN Recommendations on Youth Justice in Australia

In 2012, the UN Committee on the Rights of the Child noted that despite its earlier recommendations, Australia's youth justice system 'still requires substantial reforms for it to conform to international standards'. The Committee recommended that Australia 'bring the juvenile justice system fully in line with the Convention, in particular articles 37, 39 and 40, and with other relevant standards...'.¹⁷

Recommendation 1:

The Queensland Government should recognise the importance and relevance of human rights to juvenile justice reforms and incorporate a human rights framework into the Inquiry.

4. Concerns with Specific Proposals

4.1 Boot Camp

30. The HRLC supports, in principle, diversionary options to ensure young offenders are not placed in detention. This is consistent with the obligation in article 37 of the CRC which provides that detention of young people should be a last resort and should be used for the shortest possible time.
31. However, the HRLC is concerned that, without proper management, guidelines and a focus on rehabilitation, boot camps may amount to a form of punitive detention and will not be an effective measure to reduce youth crime.

¹⁷ UN Committee on the Rights of the Child, *Concluding Observations Australia* UN Doc CRC/C/AUS/CO/4 (2012) [82]-[84].

32. The best evidence around the effectiveness of boot camps suggests that they may be counter-productive and that there are better ways to reduce youth crime.

33. In 1995, the Australian Institute of Criminology stated:

In seeking better outcomes for young offenders, governments should resist any temptation to channel much needed resources through the medium of boot camps.¹⁸

34. In 2002, an Australian Institute of Criminology review of what works to reduce youth offending noted that:

At best, comparisons between control groups and boot camp graduates show no difference in recidivism rates. At worst they may have higher rates of re-entry into the justice system.¹⁹

The review concluded:

Intensive strict regimes (for example boot camps) are not effective at reducing reoffending unless they comprise a more therapeutic component and provide skills that generalise to the young person's usual environment.²⁰

35. The Queensland Government's 2013 publication *Evidence information youth boot camp program models* provides some limited information on content of the two trial boot camps. It is positive that the two trial camps are not merely residential programs, but are combined with longer term community integration and mentoring phases aimed at addressing the causes of crime.

36. However, the HRLC is concerned that the legislation currently provides minimal guidance as to the way boot camps should be run and the objectives, the content, the rights and powers of both those running the camp and the young people taking part. There is no provision ensuring that the best interests of the young people are the paramount consideration during their time at boot camp.

37. Given the absence of persuasive evidence showing that boot camps will be effective in reducing youth crime, the HRLC recommends that the Queensland Government abandon this proposal and divert the resources towards more effective interventions.

38. If the Queensland Government proceeds with boot camps, the HRLC recommends that:

- (a) participation should be voluntary;
- (b) clear guidance should be developed on the content and operation of the camps;

¹⁸ Australian Institute of Criminology, *Boot camps and justice: A contradiction in terms?* (1995) <http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dti46.pdf>

¹⁹ Australian Institute of Criminology *What works in reducing young people's involvement in crime: Review of current literature on young crime prevention*, (2002) 37

²⁰ Australian Institute of Criminology (2002) *What works in reducing young people's involvement in crime: Review of current literature on young crime prevention*, (2002) 38; on the criminogenic risks of placing young offenders in the same facility, see also Kelly Richards 'What makes juvenile offenders different from adult offenders?' in Australian Institute of Criminology *Trends and Issues in crime and criminal justice* No.409 February 2011 [6]

- (c) the focus of the camps and related non-residential programs should be on individualised initiatives to address the causes of offending;
- (d) the evaluation of the trial camps should be independent, robust, properly resourced and should be made public.

Recommendation 2:

The Queensland Government should not proceed with boot camps and should divert the resources towards more effective interventions.

If the Queensland Government proceeds with boot camps, the HRLC recommends that:

- (a) participation should be voluntary;
- (b) clear guidance should be developed on the content and operation of the camps;
- (c) the focus of the camps and related non-residential programs should be on individualised initiatives to address the causes of offending;
- (d) the evaluation of the trial camps should be independent, robust, properly resourced and should be made public.

4.2 Publishing the Names of Young People who Offend

39. The HRLC is concerned that the proposal to expand existing laws so that the names of young offenders can be made public will breach a number of human rights obligations and could lead to an increase, rather than a reduction, in reoffending.

40. Article 40(2)(vii) of the CRC provides that a child's right to privacy must be fully protected at all stages of criminal proceedings. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice also specifically provide that:

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.

41. The Committee on the Rights of the Child has already commented on Australian legislation that allows public naming of young offenders. In its Concluding Observations on Australia in 2012, it urged Australia 'to abolish legislation...which allows the publication of child offender details' commenting that this was a breach of the child's privacy.²¹

²¹ UN Committee on the Rights of the Child, *Concluding Observations Australia* UN Doc CRC/C/AUS/CO/4 (2012) [82]-[84].

42. Revealing a young offender's name is also clearly contrary to the best interests of the child principle. It can stigmatise young offenders and can have long lasting detrimental effects that can be counterproductive to goals of reducing reoffending.²² It can negatively affect education and employment opportunities and can also affect family and friends within the community who may be 'shamed by association'.
43. The policy is also likely to have a disproportionate effect on Aboriginal and Torres Strait Islander young people, who are significantly over-represented in the youth justice system.
44. The vast majority of young offenders do not go on to criminal careers and 'grow out' of crime.²³ There is little or no evidence showing that releasing the names of young offenders will reduce criminal behaviour or reoffending. In the absence of this evidence, the harm that will flow from releasing a young person's name cannot be justified as either a proportionate or necessary measure to reduce in crime.²⁴

Recommendation 3:

The Queensland Government should abandon the proposal to make it easier to publish the names of young offenders.

4.3 Accessing Youth Criminal History

45. The HRLC notes that the Queensland Government is considering allowing the courts to access a person's youth criminal history when sentencing them as an adult, so the court can see their full criminal history.
46. Currently, in broad terms, an offence committed by a young person is only admissible in an adult court if a conviction is recorded. The judge in the Children's Court has a discretion whether or not to impose a conviction and must consider the impact of recording a conviction on the young person's chances of rehabilitation and finding employment. The judge is in the best position to weigh these considerations in the individual circumstances of each particular case. Taking this discretion away means removing the ability for the court to consider what, in each case, is in the best interests of the child.

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

²³ Kelly Richards 'What makes juvenile offenders different from adult offenders?' in Australian Institute of Criminology *Trends and Issues in crime and criminal justice* No.409 February 2011.

²⁴ Standing Committee on Law and Justice, NSW Legislative Council, *The Prohibition on the Publication of Names of Children Involved in Criminal Proceedings* (2008) [3.108].

47. These current provisions are broadly consistent with human rights obligations which require the youth criminal justice system to focus on rehabilitation and the best interests of the child and should not be amended.

Recommendation 4:

The decision to impose a conviction should be left to the discretion of the Children's Court.

4.4 Criminal Offence for Breach of Bail

48. The HRLC is concerned at the fact that the Queensland Government is considering making breach of bail an offence in order 'to reduce the number of repeat young offenders'.
49. The HRLC notes that the primary purpose of bail is to ensure a person does not avoid their criminal trial. It should not be punitive in nature, nor should it be used for punitive reasons. Human rights obligations require the State to minimise, not increase, a young person's interactions with the criminal justice system. In addition, the State has a positive obligation to promote the establishment of laws, procedures, institutions and measures for dealing with children without resorting to judicial proceedings. Making breach of bail an offence would have the opposite effect.
50. Many bail breaches are minor, such as minor curfew breaches or being with the wrong family member compared to the one noted in the bail condition. Rather than criminalising minor breaches, the Queensland Government should be providing support for young people to help them comply with bail conditions and to reduce the large number of young people in detention on remand waiting to be sentenced.
51. The detention of individuals for minor bail breaches could amount to arbitrary and unnecessary detention in violation of Article 16 of the CRC and Article 9 of the ICCPR. Minor breaches do not necessarily indicate a higher chance of flight from court or higher likelihood of reoffending. However, increasing an individual's contact with the youth justice system by criminalising minor breaches is likely to increase their likelihood of reoffending.
52. More serious bail breaches can justify cancellation of bail and may constitute a criminal offence in and of themselves for which the young person can be prosecuted.
53. The HRLC is also concerned that the policy would disproportionately impact young Aboriginal and Torres Strait Islander persons. Different understandings of family and family structures, dislocation from culture and community, educational and employment disadvantages and substance abuse can all mean a greater likelihood of minor and technical breaches of bail which do not necessarily correlate to a flight risk, or a likelihood of reoffending.

Recommendation 5:

The Queensland Government should abandon the proposal to make breach of bail an offence.

4.5 Transfer at 18 years to an Adult Correctional Centre

54. Currently a court has the discretion as to whether to transfer young offenders to adult correctional centres once they reach 18 years of age. This allows courts to decide, on a case by case basis, what would be in the best interests of the individual and society, taking into account the severity of the offence, the length of the offence, the particular circumstances of the individual and the possible consequences of being sent to an adult facility. The automatic transfer of individuals once they turn 18 would remove this discretion and oversight. The HRLC is concerned that this would lead to individuals being brought into close contact with adult offenders, increasing the risks of reoffending. The HRLC is worried that automatic transfers could, in certain cases, harm a person's chances of rehabilitation and reintegration into society.
55. The HRLC notes that the object of the proposal is to reduce the overcrowding in youth detention centres. The HRLC believes that the proposed solution is neither necessary nor appropriate. The number of detainees over the age of 18 in youth justice centres is very small. Removing them automatically to adult correctional centres will not solve the problem of overcrowding.
56. There are far more effective alternative methods of reducing the number of people in youth detention, such as increasing efforts to avoid young people coming into contact with the criminal justice system in the first place and providing alternatives to detention for young offenders.
57. The Consultation Paper for this Inquiry at page 10, points out the extraordinary statistic that on average 70% of young people in detention centres are there on remand waiting to be sentenced. To reduce any overcrowding in youth detention centres, the Queensland Government should focus instead on addressing the very high numbers of young people in detention on remand, including through the use of bail supports to allow low risk young offenders to be released on bail.

Recommendation 6:

The decision to transfer young offenders to an adult correctional centre once they reach 18 years of age should be left to the discretion of the court.

5. Alternatives

5.1 Addressing Social and Economic Causes of Crime

58. In order to reduce youth crime, the HRLC strongly recommends that the Queensland Government address the underlying social and economic causes of youth crime.
59. Young people who come into contact with the criminal justice system are highly likely to experience multiple characteristics of severe disadvantage. As the Inquiry Consultation Paper notes, young offenders are likely to suffer from mental illness, have low levels of education, are exposed to violence during childhood and suffer from severe and long-term neglect and family dysfunction. There are also disproportionately high numbers of young Aboriginal and Torres Strait Islander peoples interacting with the youth justice system.
60. Various UN human rights bodies have identified concerns with Australia's response to the economic, social and cultural disadvantage that underpins youth crime.
61. The UN has recommended that there be an increase in resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons,²⁵ that Australia allocate adequate resources for mental health services and other support measures for persons with mental health problems and reduce the high rate of incarceration of people with mental diseases.²⁶
62. In regards to low education, it is still the case that a number of groups in Australia confront significant barriers to education and do not have equal access to educational opportunities, including children with disability, Aboriginal and Torres Strait Islander children, children from low income families, and children from rural and remote areas. Particularly given the extremely low completion rate of secondary, trade or tertiary education by people who end up in the criminal justice system, it is essential that all Australian governments adopt strategies and invest more significantly in education for disadvantaged groups. In 2009, the Committee on Economic, Social and Cultural Rights (**CESCR**) specifically expressed its concern with the disparities in access to the educational system for Aboriginal and Torres Strait Islander peoples.²⁷
63. CESCR has also, in the same report, noted the significant barriers to workforce participation faced particularly by Aboriginal and Torres Strait Islanders and people with disability, urging Australia to adopt special measures and programmes to address such barriers. In addition CESCR also noted the fact that 12 percent of the Australian population lives in poverty, the

²⁵ Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Mission to Australia* June 2010.

²⁶ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009),

²⁷ Committee on Economic Social and Cultural Rights *Implementation of the International Covenant on Economic, Social and Cultural Rights* 12 June 2009 E/C.12/AUS/CO/4.

rate being higher among disadvantaged and marginalised individuals groups such as indigenous peoples and persons with disabilities.²⁸

64. As the Queensland Government has noted, one of the causes of criminal behaviour is neglect and abuse of children. In 2012, the Committee on the Rights of the Child expressed grave concerns at the high levels of violence against children in Australia and recommended measures to address it.²⁹

Recommendation 7:

The Queensland Government should focus its efforts on the protection and promotion of economic, social and cultural rights in order to address the underlying causes of crime.

Recommendation 8:

Given the direct links between violence and abuse and criminal behaviour, the Queensland Government should focus efforts on preventing violence against children and assisting those who are victims of violence and neglect.

5.2 Policing Practices

65. Policing practices around Australia raise concerns in relation to the right to non-discrimination and equality before the law, the right to a fair trial and freedom from arbitrary detention. Young people, particularly young homeless people and young Aboriginal and Torres Strait Islander people are often disproportionately targeted by Police.
66. Failure to respect human rights in a policing context can often result in arbitrary, unreasonable or discriminatory interaction with the criminal justice system. It is inconsistent with the best interests of the child, it can stigmatise young people and it can be counter-productive to promoting community safety.

²⁸ UN Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Australia*, UN Doc E/C.12/AUS/CO/4 (2009), [18].

²⁹ UN Committee on the Rights of the Child, *Concluding Observations Australia* UN Doc CRC/C/AUS/CO/4 (2012) [47].

Recommendation 9:

The Queensland Government should review its policing practices in order to minimise and avoid arbitrary, unreasonable or discriminatory interaction with the criminal justice system, particularly for marginalised and vulnerable groups including young Aboriginal and Torres Strait Islander peoples and young homeless people.

5.3 Access to Justice

67. Access to justice is an essential aspect of the right to a fair hearing and equality before the law. For young people, access to adequate support and services while in the criminal justice system is crucial to ensuring their best interests are considered. Children in the criminal justice system may have a poor understanding of the mechanisms involved and lack the resources to obtain support on their own. The Queensland Government should give priority properly funding legal and other assistance to young people. Properly funded legal and other assistance will assist young people to take advantage of diversion options ensuring that detention is used as a last resort.

Recommendation 10:

The Queensland Government should adequately fund services to provide free legal assistance to young people and particularly young Aboriginal and Torres Strait Islander peoples.

5.4 Youth Conferencing

68. The HRLC notes that the Queensland Government recently removed the ability for the courts to order a youth conference between victims and offenders. While evidence about the effectiveness of youth conferencing in reducing reoffending is mixed, at worst conferencing is as effective as formal court.³⁰ Yet, there is strong evidence that victims and offenders find the conferencing process satisfying. The *Children's Court of Queensland Annual Report for 2011-2012* shows that 95 percent of participants reached an agreement in the conference and 98 percent of participants were satisfied with the results reached. Accordingly, the HRLC recommends reinstating the court power to order youth conferencing.

³⁰ NSW Bureau of Crime Statistics and Research, *Youth justice conferencing versus Children's Court: A comparison of reoffending* (2012).

Recommendation 11:

The Queensland Government should reinstate the court power to order youth conferencing.