

Independent Review of Youth Detention

DISCUSSION PAPER

October 2016



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MAKE A SUBMISSION

Your feedback and submissions on issues raised in this paper will be considered by the Review.

Submissions close **WEDNESDAY 26 OCTOBER 2016**. All comments are welcome, however the Review would appreciate responses in relation to the issues raised in this Discussion Paper.

- EMAIL a written submission to: enquiries@youthdetentionreview.qld.gov.au
- POST a written submission to: 'Confidential', Youth Detention Review, GPO Box 149, Brisbane QLD 4001.



Background – terms of reference

Pursuant to the *Commission of Inquiry Act 1950 (Qld)* and Commissions of Inquiry Order (No. 1) 2016, the Youth Detention and Young Prisoner Review (the Review) is to conduct an independent inquiry into:

“3.(a) the operations of the Cleveland Youth Detention Centre and the Brisbane Youth Detention Centre with respect to the following matters—

- i. a review of the specific allegations of the mistreatment of young people made by former staff members and young people (formerly in youth detention in Queensland) in:
 - A. the Australian Broadcasting Corporation’s 7:30 and Lateline programs broadcast on Thursday 18 August 2016; and
 - B. other public commentary (including the report by Amnesty International) in relation to those allegations;
 - ii. a review of the policies and practices currently operating within Queensland’s youth detention centres in relation to the use of force, separation, restraints, reporting, monitoring, and complaint and investigation mechanisms for alleged incidents;
 - iii. a review of the effectiveness of existing oversight mechanisms which operate in respect of the allegations referred to in paragraph 3(a)(i) above
 - iv. with respect to incidents reported under any of the existing oversight mechanisms referred to in paragraph 3(a)(iii) above, since 1 January 2011 (reported incidents), a review of any specific allegations that the reported incidents were not appropriately investigated or that any action taken as a result of the investigation failed to address the mistreatment of young people in detention in Queensland;
 - v. a review of the effectiveness of current programs and services delivered in Queensland’s youth detention centres that relate to assisting young people to address the causational issues behind their offending behaviour; and
 - vi. a review of the current cultural programs and services delivered in Queensland’s youth detention centres and their effectiveness in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention; and
- b. the operations of Queensland prisons with respect to the following matters—
- i. a review of the specific allegations of the mistreatment of a 17-year-old prisoner in the Brisbane Correctional Centre made in a report in *The Courier-Mail* on 29 August 2016; and
 - ii. a review of the policies and practices currently operating for 17-year-old prisoners within prisons in relation to the use of force, separation, restraints, reporting, monitoring, and complaint and investigation mechanisms for alleged incidents.”



The Review

Ms Kathryn McMillan QC and Professor Megan Davis have been appointed to conduct the independent review. Ms McMillan has been appointed as the chairperson.

In conducting the review, Ms McMillan QC and Professor Davis will:

1. examine and have regard to best practice in youth justice and youth detention operating nationally and internationally, particularly regarding the most effective ways to manage young people in institutional settings; and
2. seek input from interested stakeholders and relevant experts, including those with knowledge and experience of youth justice, organisations working with young offenders, victims' organisations and academic researchers.

A report, including the findings and any recommendations, will be provided to the Attorney-General and Minister for Justice by 30 November 2016.

Submissions

Recently, there have been reported instances of young people detained in youth detention centres in Queensland and 17-year-old prisoners incarcerated in Queensland prisons being subject to mistreatment. Understandably, these reports have given rise to community concern regarding the operation and management of youth detention centres and the management of 17-year-old prisoners in Queensland prisons. This review has been established in response to those concerns.

The purpose of youth detention is to safely and securely detain young people who are refused bail, remanded in custody or sentenced to detention, in a manner that recognises that they are vulnerable young people.

Broadly speaking, the purpose of youth detention and imprisonment is to promote the safety of the community, the safety and wellbeing of people deprived of their liberty and reduce the likelihood of these people re-offending following their release from detention.

As part of the review's terms of reference, the review team seeks submissions and feedback from interested parties on the following issues:

1. The operation and management of Queensland youth detention centres.
2. The operation and management of Queensland prisons with respect to 17-year-old prisoners.
3. Oversight of Queensland youth detention centres.
4. Oversight of Queensland prisons with respect to 17-year-old prisoners.
5. Interim measures required for transfer of 17-year-olds from prison to youth detention.
6. Programs and services delivered in youth detention centres including addressing causational issues behind their offending behaviour.
7. Current cultural programs and services and their effectiveness in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention.
8. A comparative assessment of the current policies, practices and programs relating to the terms of reference in youth detention centres in Queensland and other Australian jurisdictions.
9. Best practice or international models of youth detention.

1. OPERATION AND MANAGEMENT OF QUEENSLAND YOUTH DETENTION CENTRES

Young people in detention are subjected to a range of rules as a means to maintain security, good order and safety within the centres and as a result, may be expected to comply with reasonable instructions. Failure to comply with these instructions and rules can be defined as ‘misbehaviour’ which may result in a variety of consequences. The implementation of consequences needs to address the behaviour, respect the child’s dignity and take account of a variety of factors that may influence the child’s behaviour such as age and maturity level, cultural background or beliefs and any known trauma or individual vulnerabilities.¹

The fundamental rights and entitlements of a young person in detention should not be revoked for disciplinary purposes.

Current juvenile detention policy classifies different levels of ‘misbehaviour’. The level of classification informs the authorised response. The legislation dictates that responses to the misbehaviour of young people within detention must not involve any of the following:

- physical abuse, emotional abuse or sustained verbal abuse;
- deprivation of sleep, food, visitors or bedding items;
- withholding mail sent to or from the young person;
- withholding access to phones or other means of communication;
- exclusion from cultural, education or vocational programs;
- medication or deprivation of medication; and
- any other response that infringes upon a young person’s fundamental rights and entitlements.

In situations where a child, person or property need to be protected as a result of a child’s misbehaviour there are authorised responses ranging from use of force; separation and use of approved restraints permitted in limited circumstances. Recent media reports allege that young people in youth detention centres in Queensland have been subjected to mistreatment.

The review team seeks submissions and feedback on the **operation and management of youth detention centres**, including but not limited to:

- a. Staffing levels (i.e. staff to detainees ratios).
- b. Staff training.
- c. Risk assessment procedures and use.
- d. Behaviour management procedures and use.
- e. The use of approved restraints and separation of detainees.

¹ *Youth Justice Regulation Act (2003) s3*



2. OPERATION AND MANAGEMENT OF QUEENSLAND PRISONS WITH RESPECT TO 17-YEAR-OLD PRISONERS

The Queensland Government has recently announced that 17-year-old prisoners will be transitioned from prisons to youth detention centres within 12 months. Recent media reports allege mistreatment of 17-year-old prisoners within Queensland prisons.

The review team seeks submissions and feedback on the **operation and management of Queensland prisons (limited to 17-year-old prisoners)** including, but not limited to:

- a. Staffing levels (i.e. staff-to-prisoner ratios).
- b. Staff training including training on 17-year-old prisoners.
- c. Risk assessment and the use of force.
- d. Use of approved restraints.
- e. Use of isolation or separation.

3. OVERSIGHT OF QUEENSLAND YOUTH DETENTION CENTRES

Queensland youth detention centres are subject to a range of internal and external oversight mechanisms.

Internal oversight includes quarterly inspections by the Youth Detention Inspectorate² of Queensland's youth detention centres to ensure that the Director-General's responsibilities for the safety and wellbeing of detained children, and the security and management of each centre, are appropriately maintained. The criteria for each inspection is derived from the Youth Detention Expectations document, which encompasses Queensland legislation and relevant United Nations conventions to which Australia is a signatory.³ Executive summaries of the reports are publicly available.

External agencies such as the Crime and Corruption Commission, the Office of the Queensland Ombudsman and the Queensland Family and Child Commission are involved in oversight of young people in detention.

The review team seeks submissions and feedback on the **existing mechanisms of oversight, and whether such mechanisms are adequate**, including but not limited to:

- a. Identification of the entities with oversight roles and functions.
- b. The effectiveness of these oversight roles and functions.⁴
- c. The oversight roles and functions that ought to exist.
- d. What complaint management and investigation functions operate.
- e. The effectiveness of these complaint management and investigation functions.
- f. The complaint management and investigation functions that ought to operate.

² Situated within the Ethical Standards Unit of the Department of Justice and Attorney-General

³ DJAG, Youth Detention Expectations document: <https://publications.qld.gov.au/dataset/6942b295-59ce-443a-8d14-cef88aa58a45/resource/6ffbebe7-8996-4b6d-8d6e-9cbeb125fc00/download/youthdetentioninspeexpectations.pdf>

⁴ Such as: knowledge of the range of options available to progress complaints or concerns; access to complaint entities; and utility of report recommendations from various oversight entities

4. OVERSIGHT OF QUEENSLAND PRISONS, LIMITED TO MANAGEMENT OF 17 YEAR OLD PRISONERS

17-year-old prisoners will be transitioned from prisons to detention centres within the next 12 months, however, recent media reports allege previous mistreatment of a 17-year-old prisoner and raise concerns about the mechanisms that are in place relating to incident management, complaints, and oversight.

The review team seeks submissions and feedback on the following issues **in relation to the management of 17-year-old prisoners in Queensland prisons:**

- a. The entities that have prison oversight roles and functions.
- b. The effectiveness of these oversight roles and functions.
- c. The oversight roles and functions that ought to exist.
- d. What complaint management and investigation functions operate in prisons.
- e. The effectiveness of these complaint management and investigation functions.
- f. The complaint management and investigation functions that ought to operate in prisons.

5. INTERIM MEASURES – TRANSFER OF 17-YEAR-OLD PRISONERS IN QUEENSLAND TO YOUTH DETENTION CENTRES

The review team is interested **in any interim measures required pending the transfer of 17-year-olds from prison to youth detention:**

- a. The interim measures in place to manage 17-year-old offenders being treated pursuant to youth justice legislation and principles.
- b. The changes (if any) that are being made in youth detention centres to accommodate 17-year-old offenders.
- c. The projections as to the operation and management of youth detention centres regarding the placement of 17-year-old offenders in to youth detention centres:
 - i. including any staffing or resourcing projections.
- d. The projections regarding costings, for example, transport arrangements. (Currently youth justice transport arrangements are undertaken by QPS - will the change to youth justice for 17-year-old prisoners impact on current transport arrangements.)
- e. The projections as to the operation and management of prisons regarding the placement of 17-year-old offenders in to youth detention centres.
- f. The policy changes that have been made, or are being made, to accommodate the placement of 17-year-old offenders in to youth detention centres.
- g. Any capital works required at youth detention centres to accommodate 17-year-old offenders.
- h. Plans that are in place to accommodate any required capital works.

Although there is no requirement in the terms of reference to include a review of causal or cultural programs for young prisoners (17-year-olds in adult prisons) such considerations may be included as part of the review of interim measures to be implemented prior to the transition of young prisoners to youth detention centres.



As such the review team is interested in submissions and feedback on the following, but not limited to:

- i. What programs are available to assist 17-year-old prisoners to identify causes for their offending behaviour.
- j. Are available programs effective and what programs to assist 17-year-old prisoners to identify causes for their offending behaviour ought to be available.
- k. What challenges are there regarding programs and services for 17-year-old prisoners to identify and address causes of offending behaviour (including but not limited to: accessibility, resourcing or funding).
- l. What programs are available to assist 17-year-old prisoners to explore cultural issues.
- m. The effectiveness of available cultural programs.
- n. What challenges are there regarding programs and services for 17-year-old prisoners to explore cultural issues (including but not limited to: accessibility, resourcing or funding).
- o. Which programs ought to be available to assist 17-year-old prisoners to explore cultural issues.

6. PROGRAMS AND SERVICES DELIVERED IN YOUTH DETENTION CENTRES INCLUDING ADDRESSING CAUSATIONAL ISSUES UNDERLYING OFFENDING BEHAVIOUR

The review team seeks submissions and feedback on the following:

- a. What programs are available to assist young people subject to detention to identify causes of their offending behaviour.
- b. Are available programs effective.
- c. What challenges are there regarding youth detention programs and services (including but not limited to: accessibility, resourcing or funding).
- d. What programs to assist young people subject to detention to identify causes for their offending behaviour ought to be available.

7. CURRENT CULTURAL PROGRAMS AND SERVICES AND THEIR EFFECTIVENESS IN ADDRESSING THE SPECIFIC NEEDS OF ABORIGINAL AND TORRES STRAIT ISLANDER YOUNG PEOPLE IN YOUTH DETENTION

The review team seeks submissions and feedback on the following:

- a. The cultural programs and services available to assist young people subject to detention.
- b. The available cultural programs effective in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention.
- c. What challenges are there regarding cultural programs and services in youth detention (including but not limited to: accessibility, resourcing or funding).
- d. The cultural programs and services that ought to be available to assist Aboriginal and Torres Strait Islander young people subject to detention.

8. ANY INFORMATION ON CURRENT POLICIES, PRACTICES AND PROGRAMS RELATING TO THE TERMS OF REFERENCE IN YOUTH DETENTION CENTRES IN QUEENSLAND AND OTHER AUSTRALIAN JURISDICTIONS

Please provide submissions and feedback.

9. ANY INFORMATION RELATING TO NATIONAL AND INTERNATIONAL MODELS OF SERVICE DELIVERY RESPONDING TO YOUNG PEOPLE AND OFFENDING BEHAVIOUR MANAGEMENT THAT MAY BE RELEVANT TO THE REVIEW.

Please provide submissions and feedback.

It would greatly assist the Review if submissions were responsive to the issues outlined above, however, please raise any other matters that may be of concern to you that you consider relevant to the Review terms of reference.

Making a submission

All comments and submissions to the Review must be made in writing.

In providing comments or a submission, please identify the question you are responding to and, if practicable, please provide reasons and supporting details for your responses.

Please provide any comment or submission by close of business, Wednesday 26 October 2016.

Privacy statement

For the purposes of the *Information Privacy Act 2009*, by making a submission you are consenting to the use and disclosure of any personal information you provide, as outlined in this privacy statement.

Any personal information in your comments or submissions may be collected by the Department of Justice and Attorney-General (DJAG) for the purposes of the Review.

Members of the Review may contact you for further clarification about the issues you raise, and your submissions or comments may be provided to other government and non-government agencies as part of the consultation process.

Submissions provided to the Review in relation the issues raised in this paper may be published. Please note that submissions may be subject to disclosure under the *Right to Information Act 2009*, and access to applications for submissions, including those marked confidential, will be determined in accordance with that Act.

Submissions may also be provided in due course to a parliamentary committee considering matters relating to the Review.

If you have any questions regarding the collection of your personal information by DJAG, please visit <http://justice.qld.gov.au/corporate/right-to-information-and-privacy>