22/11/12.

LEGAL AFFAIRS AND COMMUNITY SAFETY COMMITTEE

Report No. 18 on the

Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 1 November 2012 the Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 (the Bill) was introduced to Parliament.

The Bill was subsequently referred to the Legal Affairs and Community Safety Committee (the Committee) with a report back date of 22 November 2012.

On 22 November 2012, the Committee tabled Report No.18 in relation to the Bill (the Report).

The Queensland Government response to the Report's recommendations on matters raised by the Committee and key fundamental legislative principles is provided below.

RESPONSE TO RECOMMENDATIONS:

Recommendation 1 –

The Attorney-General and Minister for Justice limit the use of omnibus bills and ensure that substantive policy issues which are deserving of their own consideration by the Legislative Assembly be brought forward in stand-alone bills.

Queensland Government response:

The Queensland Government notes this recommendation.

Recommendation 2 –

The Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012 be passed.

Queensland Government response:

The Queensland Government thanks the Committee for its timely consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

Recommendation 3 –

The Attorney-General and Minister for Justice ensure that clear public policies are developed and appropriate guidance is provided to boot camp centre providers in relation to recognising the cultural needs of each child participating in a boot camp program.

Queensland Government response:

There are a number of protections contained in the Bill to support the individual cultural needs of each child participating in the boot camp program. In the first instance the boot camp program that the chief executive approves must have regard to the cultural needs of the child in accordance with the new section 226E. In addition, policies relating to the boot camp program will be provided to the public by way of the Department's website noted in the new section 226E(5).

The tender process undertaken for the selection of the boot camp providers explicitly required submissions to articulate their approach to and experience in meeting cultural need in the delivery of programs. Cultural competency of the residential component of the boot camp program will be achieved by:

- culturally inclusive systems, policies, practices and interventions
- having a culturally diverse work group that has attended necessary training and has been
- assessed as being culturally competent
- including cultural activities in weekly activity schedules
- seeking cultural information and advice from people within each young person's cultural group
- involving culturally significant people (e.g. elders) in residential activities
- accessing indigenous agencies to deliver required services (e.g. medical, mental health)

Program staff will also routinely seek both formal and informal feedback from young people and their families regarding aspects of the residential component including its cultural competency. This feedback will be used to inform program development and service improvement.

The successful boot camp centre provider has a demonstrated capability in this critical area. As part of the monitoring and evaluation, specific attention will be focussed upon whether the program adequately meets the cultural needs of each participating child.

Recommendation 4 –

The Attorney-General and Minister for Justice in his response to the Committee's report, outline the process to be followed upon a request for access to a lawyer and how complaints about a response to the provision of access can be made by a young person.

Queensland Government response:

In accordance with the requirements under the new section 282H of the Bill, the boot camp centre provider must ensure that a child participating in the residential phase of the boot camp program, is given help to access a lawyer if that child requests a lawyer. The service provider agreement which is currently being negotiated with the provider in Cairns will contain a provision ensuring that the boot camp centre provider contact either a particular lawyer that the child requests or the chief executive who will make necessary arrangements. This is a process with which the Department is familiar as it is currently in place for children in Youth Detention Centres.

It is imperative to note that the request for access to a lawyer by a child in a boot camp centre must be given help which is reasonable in the circumstances. In

circumstances where, for example a child is on a wilderness adventure trip for three days, the service provider will provide assistance to the child to gain access to a lawyer at the earliest opportunity such a request will not be immediately available in these circumstances.

In addition to ensuring that a lawyer has access to the child in a boot camp centre, the Bill provides for safeguards to protect the confidentiality of any meeting and correspondence between the lawyer and the child.

The Commission for Children and Young People and Child Guardian (CCYPCG) will have access to the boot camp centre, through the Community Visitor program, to ensure that children are provided with access to lawyers. A child may make a complaint to a community visitor which will then be managed through the CCYPCG. The child may also make a complaint directly to the chief executive at which time the chief executive must advise the child how the matter will be dealt with. The Department are establishing a process which is based upon the current complaints procedures employed for children held in Youth Detention Centres.

The Department is of the view that these new sections and the supporting administrative processes which will be established by the Department in conjunction with the CCYPCG and the boot camp centre provider are sufficient to ensure that a child will be provided with access to a lawyer when requested and afforded confidentiality and privacy.

Recommendation 5 –

The Attorney-General and Minister for Justice, in his response to the Committee's report, set out for the benefit of the Legislative Assembly, details on the philosophy and empirical evidence to support the policy proposal to provide a boot camp order as an option before detention.

Queensland Government response:

Research has shown that a share of young offenders sentenced to detention will re-offend after being released to the community suggesting that serving a detention order does not act as a deterrent to future offending for some young offenders.[1]

The boot camp order provides a consequence for young people's offending as well as providing access to the boot camp program. This program aims to address the factors associated with young people's involvement in crime and was developed with reference to existing literature and in consultation with key stakeholders and criminal justice experts.

Evaluations of traditional or military style boot camps have shown positive, short-term attitudinal change among offenders, however, their impact on offending behaviour is mixed. Some studies have reported lower rates of subsequent offending among participants, while others have shown no difference[2] or even increased likelihood of subsequent offending[3]. Evaluations of wilderness or reform style boot

---

[1] Payne, J., 2007, Research and Public Policy Services No 80, 'Recidivism in Australia: Findings and future research' Australian Institute of Criminology, Canberra.

[2] Correia M 1997. 'Boot Camps, Exercise and Delinquency: An analytical Critique of the Use of Physical Exercise to Facilitate Decreases in Delinquent Behaviour,' Journal of Contemporary Criminal Justice, vol 13, no 2, pp 94-113.

[3] Farrington D P & Welsh B C 2005. 'Randomized experiments in criminology: What have we learned in the last two decades?' Journal of Experimental Criminology, vol 1, no 1, 9-38.

camps show reduced subsequent offending among participants.[4] These types of boot camps emphasise setting challenging tasks to promote experiential learning and the need to specifically address the causes of crime. Research has also shown that young people need to be provided with adequate aftercare after they have completed the boot camp programs to support their community integration.[5]

The boot camp program model is consistent with the features of wilderness or reform style boot camps, rather than military style boot camps.

Recommendation 6 –

The Attorney-General and Minister for Justice in his response to the Committee's report, confirm:
(a) how the post-trial evaluation will be funded;
(b) the evaluation method to be used and whether it conforms with the Criminal Justice Evaluation Framework: Guidelines for Evaluating Criminal Justice Programs Initiatives; and
(c) the results of the evaluation will be provided to the Legislative Assembly.

Queensland Government response:

(a) Post-trial evaluation funding
The post-trial evaluation will be progressed by Criminal Justice Research within the Department of the Premier and Cabinet (DPC), with the support of Youth Justice Services within the Department of Justice and Attorney-General. The costs of the evaluation will be met drawing upon existing resources.

(b) Evaluation Method
The evaluation methodology is currently being finalised, in consultation with the boot camp centre provider which was announced on 15 November and other stakeholders. It will conform with the Criminal Justice Evaluation Framework: Guidelines for Evaluating Criminal Justice Programs Initiatives.

A high level evaluation framework which is in a draft form comprises a process and outcome evaluation for the boot camp model. A more detailed framework that includes the final sampling strategy and data measures will be developed prior to the commencement of the trial after consultation with the selected providers and other stakeholders.

The process evaluation will examine whether the program was implemented and operated as planned. It will establish the extent to which the program:

- was appropriately implemented
- reached those young people and families who would most benefit.

Interviews will be held with key stakeholders, service providers, children and families to assess implementation and service provider data will be used to analyse processes.

The outcome evaluation will compare outcomes for program participants across the following categories:

---

[4] Wilson & Lipsey (2000), cited in Cameron M & MacDougall C 2000. Crime prevention through sport and physical activity. Trends & Issues in Crime and Criminal Justice, no 165, Canberra: Australian Institute of Criminology.

[5] Wilson D B, MacKenzie D L & Mitchell F N 2008. Effects of Correctional Boot Camps on Offending, Campbell Systematic Reviews 2003:1.

- self (eg., offending, health and engagement in education/employment)
- family (eg., strengthening family relationships, improving communication, supervision and discipline)
- community (eg., cultural identity and connection to community).

Pre and post measures relevant to the categories of change will be administered to all the young people who participate in the trial. Administrative data will also be drawn upon for the intervention groups and controls (e.g., Queensland Health, Department of Education, Training and Employment, Queensland Police Service).

(c) Result of the Evaluation
The results of the evaluation will be provided to Cabinet in early 2015. In addition, a progress report will be provided to Cabinet in early 2014, to provide an interim assessment of implementation.

Recommendation 7 –

The Bill be amended to include appropriate sunset provisions to ensure that no further boot camp orders can be made after the expiration of the trial period, until appropriate evaluation is conducted and the results considered by the Legislative Assembly.

Queensland Government response:

The Queensland Government notes this recommendation but does not support the inclusion of a sunset clause.

An interim evaluation report will be provided to Cabinet in early 2014. If this evaluation report indicates that the boot camp order is not or is not likely to achieve Government objectives, the inclusion of a sunset clause will be given further consideration.

Recommendation 8 –

The Attorney-General and Minister for Justice, in his response to the Committee's report, provide the details of any cost-benefit analysis carried out by his Department on both the direct and indirect savings that will result from removing court referred youth justice conferencing.

Queensland Government response:

The removal of court referred youth justice conferencing is expected to save more than $11.2m over the next two full financial years.

The option for the Queensland Police Service to refer offences to a youth justice conference will continue to be available. As such the conferencing program will remain a successful diversionary and early intervention program. It is expected that the referral of children to conference at the earliest point in their offending trajectory will prevent further and later offending, thereby reducing later costs.

While the exact impact will not be immediately measurable, the Department of Justice and Attorney- General will be managing periodic reviews of the numbers of referrals to conference by police to monitor an expected increase in early diversion before a young person is charged with an offence. In addition, periodic reviews of the levels of community based orders will be managed in order to determine any changes in court sentencing practices.

Finally, cost savings will also be monitored to ensure that the decision is an effective fiscal measure.

Recommendation 9 –

That court referred youth justice be retained as an option available to the courts, and the provisions in the Bill seeking to remove court referred youth justice conferencing be removed.

Queensland Government response:

The Queensland Government does not support this recommendation. The removal of court referred youth justice conferencing will provide considerable savings to the Government as well as shifting the focus of the program to an early diversion and intervention model to support children at the earliest point in the offending trajectory.

Recommendation 10 –

The Attorney-General and Minister for Justice, in his response to the Committee's Report, clarify the intended operation of proposed 106C and address each of the matters above under 'unintended consequences of the amendments' to allay the concerns of stakeholders that the provision will cause inadvertent mischief to persons involved in the sex industry.

Queensland Government response:

Alternative Working Locations / Paucity of Available Accommodation resulting in higher levels of unsociable conduct

The Committee states that a number of submissions have raised the issue of the consequences the amendments will have in terms of the available locations where sex workers can work - that is, whether sex workers will be forced onto the streets or underground due to lack of available accommodation. It was submitted that this may in turn lead to a poorly managed and potentially unlawful sex industry that will cause nuisance to the public and extra work for law enforcement agencies.

The Government is not aware of any evidence to suggest that the exemption in section 106C will result in a paucity of accommodation for sex workers to rent for sex work or that the industry and community will suffer the significant adverse impacts identified above.

The exemption in section 106C simply gives accommodation providers a choice about whether to allow sex workers to operate their business from the motel, hotel or other accommodation.

The accommodation industry is a diverse industry and it could be expected that there will continue to be accommodation providers willing to meet the demand for every market.

It should also be noted that there is no protection against discrimination on the basis of "lawful sexual activity" in any other Australian jurisdiction, apart from Victoria (which has an exemption for accommodation used for prostitution purposes) and Tasmania. The exemption will give Queensland accommodation providers the same choices available to accommodation providers in those jurisdictions.

Higher Charges or Other Benefits

The Committee noted that several submissions raised the concern that s106C may permit accommodation providers to charge higher fees to a sex worker or their clients or may suggest to a sex worker that they will not be evicted if they provide a free sex service to the accommodation provider.

The exemption in section 106C will not override criminal law or consumer laws. For example, conduct which may constitute an offence under Chapter 22A of the Criminal Code (which provides for prostitution related offences) still applies, and consumer laws that protect consumers from exploitative and unfair treatment still apply.

The exemption simply places clear limits on what conduct will constitute unlawful discrimination under the *Anti-Discrimination Act 1991* (ADA).

The effect is that if a person who intended to use accommodation for sex work sought to make a complaint under the ADA that they had been discriminated against in any of the ways set out in Chapter 2 Part 4 of the ADA, the accommodation provider would be able to rely on the exemption in s106C as a defence.

Chapter 2 Part 4 of the ADA prohibits discrimination in various ways in the accommodation and disposition of land area– for example, failing to accept an application for accommodation (s82(a)), denying or limiting access to any benefit associated with the accommodation (s83(b)), evicting a person from accommodation (s83(c)) or treating the other person unfavourably in any way in connection with the accommodation.

The exemption is drafted to cover all the different types of conduct that may constitute discrimination under Part 4 so that there are no loopholes and to give certainty to the extent of the exemption.

Accommodation providers policing all patrons' behaviour

The Committee noted that a number of submissions raised the concern that accommodation providers may begin policing the behaviour, work patterns and sexualities of their patrons and make rash judgements about the nature of their patrons' business in their establishment.

The Government considers there is no evidence that the exemption in section 106C would cause accommodation providers to act against their own commercial interests in the treatment of guests.

The accommodation industry, like all service industries, is reliant on reputation and word-of-mouth recommendation. It is highly unlikely (as a result of the introduction of the exemption in section 106C) that accommodation providers would engage in any behaviour that may cause unnecessary offence to paying guests.

Mistaken Identity Issue

The Committee noted that a number of submissions raised the issue of women who are not sex workers being mistaken for sex workers and denied accommodation.

The new exemption in section 106C requires that a person must hold a reasonable belief that the other person intends to use the accommodation in connection with that person's or another person's work as a sex worker. "Reasonable belief" is a well known concept at law and what is reasonable will depend on the circumstances.

The publicity surrounding the "mistaken identity" case in Rockhampton in 2011 highlights the fact that there are adverse consequences for accommodation providers who make such errors. It would be anticipated that accommodation providers would be cognisant of this and of the commercial impact of causing unjustified offence to a paying guest.

As noted above, anti-discrimination legislation in other Australian jurisdictions does not contain the same prohibitions on discrimination on the basis of "lawful sexual activity" as the ADA and accommodation providers have been operating in those jurisdictions, apparently without creating any widespread concern about targeting of female guests as prostitutes. There is no reason to anticipate that Queensland will suffer any adverse consequences that have not been evident in other jurisdictions.

Denying Accommodation for sex workers who may wish to stay privately

The Committee noted that a number of submissions raised the issue of a sex worker being denied accommodation when on holidays.

Section 106C allows discrimination in the provision of accommodation only if the accommodation provider reasonably believes that the accommodation is being used, or intended to be used, in connection with a person's work as a sex worker. Whether a belief is reasonable will depend on the circumstances.

The new section 106C does not allow discrimination against a person merely because that person is a sex worker and renting accommodation for a purpose not related to sex work.

Denying Accommodation to individuals who may wish to engage a sex worker

The Committee noted that a concern was raised that section 106C would permit accommodation providers to deny accommodation to individuals who may want to engage a sex worker or evict such persons once the accommodation provider formed a reasonable belief that the individual intended to, or had, engaged a sex worker.

Section 106C would justify refusal of accommodation to a sex worker, a sex worker's procurer or a sex worker's customer if the accommodation provider reasonably believed the accommodation was intended to be used for sex work. The section is drafted broadly to ensure that the intent of the exemption cannot be subverted by allowing people, other than the sex worker themselves, to obtain accommodation for prostitution purposes.

Recommendation 11 –
That both the Queensland Police Service and the Prostitution Licencing Authority actively monitor any increase in unlawful sexual activity in the sex industry, and the numbers of nuisance complaints arising from the public in relation to the practice of unlawful sex work occurring in public places.

Queensland Government response:

The Attorney-General will write to the Minister for Police and Community Safety and the Chairperson of the Prostitution Licensing Authority requesting that they consider the Committee's recommendation and keep him informed him of their response.

Recommendation 12 –

Both components of the Bill amending the *Anti-Discrimination Act 1991* relating to: accommodation used in connection with work as a sex worker; and eligibility requirements for the provision of assistance, services or support - be passed without amendment.

Queensland Government response:

The Queensland Government thanks the Committee for its timely consideration of the amendments and appreciates the Committee's recommendation that the amendments be passed without amendment.

Recommendation 13 –

The components of the Bill amending the *Fiscal Repair Amendment Act 2012* be passed without amendment.

Queensland Government response:

The Queensland Government thanks the Committee for its timely consideration of the Bill and appreciates the Committee's recommendation that the Bill be passed.

Recommendation 14 –

The Attorney-General and Minister for Justice, in his response to the Committee's Report address the matters raised by the Committee relating to consistency with the fundamental legislative principles as they apply to the amendments to the *Youth Justice Act 1992.*

Queensland Government response:

The Queensland Government notes that the Committee gave detailed consideration to the application of fundamental legislative principles to the Bill. In particular the Committee's report brings to the attention of the House aspects of the Bill that may: impact on the rights and liberties of individuals potentially affected by the Bill; and whether the Bill had sufficient regard to the safeguards around the delegation of an administrative power.

The Committee noted that the proposed removal of court referred youth justice conferencing and section 163(4) in particular, is likely to have a significant adverse impact on a child's future as this removes an option for a court not to record a conviction. The removal of section 163(4) does not remove the option for a court not to record a conviction against a finding of guilt as proposed by the Committee as this discretion is provided for more generally under section 183 of the *Youth Justice Act 1992.*

The Committee expressed concern that the combined effect of the new sections 246A(7) and 246A(8) is that a child will be subject to a boot camp order beyond the intended six month maximum for the purposes of breach proceedings. These provisions replicate those contained in sections 246 (5) and 246(6) which relate to the court's power upon a breach of a conditional release order. These subsections are interpreted by the courts and the Department of Justice and Attorney-General in such a way that the order is only enlivened for the purpose of the breach proceedings at the time the matter is heard in court. That is, the order is not enforceable from the time of expiry of the order to the time that the breach matter is heard in court. As such, at no

time will a child be required to continue to participate in a boot camp program past expiry of the program period or the order, whichever is the later.

The proposed section 282F(4) of the Bill states that it is a reasonable excuse of the boot camp centre employee not to report harm to a participant if reporting that matter might tend to incriminate the employee. This provision reflects the common law privilege against self incrimination. It is not considered then that this proposed provision does not have sufficient regard for the rights and liberties of children participating in the boot camp program.

While the Committee raises concerns that amendment to Schedule 2 of the *Youth Justice Act 1992* to allow the making of regulations for standards, management, control and supervision of boot camp orders is not an appropriate delegation of powers given that the boot camp order is closer in nature to that of a detention order than a community based order. The Government draws the attend of the Committee to the fact that standards, management, control and supervision of youth detention centres are currently contained in the Youth Justice Regulation 2003 and not the *Youth Justice Act 1992*. It is not considered therefore, that the delegation of these powers is inappropriate in the circumstances.

Finally, although it is acknowledged that orders which apply retrospectively must be strongly justified, the Government draws the attention of the Committee to the effect of application of the boot camp order. In the first instance, it is not a mandatory order but rather an order which is a discretionary sentencing option available to the court at the time of sentence after commencement of the relevant provisions of the Bill. Further, and more importantly, it is not considered that the boot camp order applies or impacts upon a child retrospectively as the order cannot be made until after commencement of the relevant provisions of the Bill and will only require a child to comply with the requirements order after it is made by the court.

The Queensland Government thanks the Committee for its consideration of the application of fundamental legislative principles to the Bill.