IS THE CHILDRENS COURT WORKING?

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I INTRODUCTION

This subject is as much about public perception (whether you agree with it or not) as it is about issues, facts and proposals because often the former informs the latter.

In light of community expectations and perceptions, this paper explores:

- whether reprimands and good behaviour orders are an adequate sentencing option for certain types of juvenile offending
- increased sentencing options for Childrens Court Magistrates and Judges
- expanding the categories of applicants for a sentence review
- simplification of the parental responsibility provisions of the *Youth Justice Act 1992* (Qld).

II PUBLIC PERCEPTION

Juvenile crime on the Gold Coast is a serious and, many say, increasing problem.

Offences include public drunkenness and nuisance, affray, assaults of varying levels of severity, breaking, entering and stealing, wilful damage (often at schools and recreational and sporting clubs), robberies of mobile phones and wallets of persons walking along the street, unlawful use of motor vehicles which are often burnt in a misguided attempt to destroy evidence, multiple offences on buses and stabbings.

Often drugs and alcohol are involved and often the offenders are school students. Many offences occur at night. It is well recognised that 'there are many young people in the community in contact with the justice system who are disengaged from school, using alcohol and often drugs and engaging in often high risk behaviour'.

This paper was presented to the Gold Coast District Law Association at Southport on 20 March 2013 and is primarily directed at certain aspects of the criminal jurisdiction of the Children's Court of Queensland. This is a transcript of a speech delivered to the Law Council of Australia Discussion Forum, Canberra, 22 July 2011.

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Much publicity has been given to this type of offending.

In the past few years for example:

- Children aged 15 and 16 were part of a large group of drunken youths who rioted at Burleigh Heads on a Saturday afternoon hurling bottles and debris at lifesavers and police.
- At the same time another large group of youths were behaving in a similar way at Snapper Rocks and an hour later a further brawl erupted at Coolangatta.
- People were assaulted, police were attacked and punched and had beer cans thrown at them and injuries were caused.
- Six youths, estimated to be between 14 and 17 but not in school uniform, attacked a bus driver at about 5pm on a Monday. They harassed the driver and then spat on him and grabbed the steering wheel of the bus. Other passengers were on the bus at the time.
- Two 14 year old girls scratched a bus driver's face during a school run.
- A bus was attacked by up to 30 teenagers armed with bats and iron bars at around midnight on a Sunday. Star pickets and rocks were used. About 15 passengers were on the bus. The attack was unprovoked. Windows and doors were broken.
- Four buses were ambushed by teenagers on one afternoon. In one case 3 youths aged between 13 and 16 were allowed on the bus without paying fares. A 16 year old girl misbehaved and when asked by the driver to leave the bus spat in his face twice. When the driver tried to herd her off the bus she attacked him and kneed him in the groin.
- In April 2012 a bus driver who feared for his safety abandoned his bus because he was unable to cope with unruly students; he claimed they set off a fire extinguisher and chanted at him.
- In May 2012 a bus driver claimed he was punched by a year 11 Helensvale State High School student.
- At about 6pm on Wednesday 15 August 2012 at Burleigh Heads a 16 year old verbally abused a bus driver who then stopped the bus and left the vehicle. The teenager followed the driver and punched him in the face.
- On 13 September 2012 two sisters aged 15 and 16 were charged with robbing a Southport convenience store just before 11.30 am that day. The sisters were reported as 'defiant when arrested by police, the older sister saying she was "going to be on the news" as she walked past waiting cameras. She also said "I bashed an Asian and I robbed a shop with my sister because we were hungry"'.

- On 15 September 2012 at Oxenford a 15 year old boy at a party was punched and stabbed when a group of older teens armed with knives tried to gate crash the party.
- On 18 September 2012 near Helensvale State High School, four male teenagers attacked a Surfside bus driver bashing him in the face and smashing his glasses before pelting the bus with rocks. The ages of three of the teenagers was 13, 14 and 16. The age of the fourth has not been given. The boys were soon caught by police and placed in a police vehicle where they were observed clearly enjoying the attention and making rude gestures to onlookers.
- At about 11pm on 5 December 2012 at Nobby Beach a 63 year old bus driver was assaulted by an exiting passenger. A 15 year old boy has been charged as a result.

The *Courier-Mail* reported on 17 July 2012 that, 'around one in 12 Gold Coast teenagers have been caught rorting the public transport system by insisting on travelling free'. They obviously know how to abuse the system; they abuse the 'no child left behind policy'.

On 24 November 2012 the *Gold Coast Bulletin* reported that Surfside drivers had considered boycotting Helensvale State High School after a further assault on a driver. The paper said, 'a transport source is aware of 22 serious incidents on coast bus runs in the past 18 months, ranging from drivers being verbally abused to spat upon or assaulted'.

Bond University researchers have determined that less than 10 per cent of incidents are reported because bus drivers claim the process is too time consuming, are worried about possible backlash from management and also do not want to 'cause a fuss', according to a report in the *Gold Coast Bulletin* on 25 February 2013; they said 'hot spots' are Surfers Paradise, Mermaid Beach and areas along the Gold Coast Highway late on weekends. The same report referred to 'anecdotal evidence' by Surfside head of operations that the Gold Coast had 'the highest rate of assaults in the country'. The Transport Workers Union passenger transport coordinator said, according to the report, 'many drivers are still in fear of going to work...There are drivers out there being assaulted all the time'.

On 4 March 2013 the Queensland Transport Minister announced new guidelines under which school students harassing, bullying, pushing and shoving other passengers or verbally abusing the bus driver can be banned from bus travel for up to 10 days. Fighting, damaging the bus or throwing objects that can be harmful to other people will result in a ban of up to 10 weeks. Permanent bans, along with potential civil action and police prosecution

will apply in the case of highly dangerous offences such as physically attacking other passengers or the driver or threatening passengers with a weapon. The Minister said 'The wild behaviour of some students abusing bus safety rules would no longer be tolerated'.[1]

III The Sentencing Response

When apprehended and dealt with by a Childrens Court magistrate the children are often photographed walking from Court smiling and laughing, usually after having received a reprimand or a good behaviour order as a sentencing response for the offending.

A letter writer to the *Courier-Mail* on 23 August 2012 wrote 'Disenfranchised youths who "do the crime" also know the system well enough to know that they will never "do the time" and have little or no respect for either themselves or their communities'.

An emotive *Gold Coast Bulletin* chat room comment on 30 November 2012 was to the following effect:

> No wonder we have these feral kids running around doing what they want. It's called lack of discipline and respect.

A letter writer to the *Courier-Mail* on 18 December 2012 complained that victim's rights and the protection of the community 'from thugs' does not appear to have been a 'priority' for Magistrates. The writer also said:

> If any person thinks the system in place is effective then you are detached from reality, to put it mildly.

Letter writers to the *Courier-Mail* on 1 March 2013 said it was time for the juvenile justice system to get serious about violent and repeat young offenders and that:

> it is all about a lack of respect – for their parents, teachers, police, judiciary and the general population of law abiding citizens; children have been allowed to grow up lacking respect for properly constituted authority.

In July 2012 in the precincts of the Southport Magistrates Court a senior Southport solicitor was, without cause, abused by the mother of a child waiting to be dealt with in the Childrens Court and then unlawfully assaulted by the child's aunt. This behaviour perhaps highlights the problem. If parents have no respect for others it is unlikely their children will.

1 *Gold Coast Bulletin*, 4 March 2013.

On 20 August 2012 the Attorney-General and Minister for Justice announced that the Gold Coast had been identified as one of the regions in Queensland needing more intensive programs for youth offenders. In a media release on 29 November 2012 the Attorney-General and Minister for Justice announced trials of 'a sentenced youth boot camp in Cairns and an early intervention youth boot camp on the Gold Coast'. Boot camp orders for Cairns and surrounding areas took effect from 31 January 2013. Such an order (which is for a period between 3 and 6 months) aims to divert young offenders from detention and requires the offender to participate in a boot camp program (which includes community supervision and mentoring) and spend one month at the boot camp centre.[2] The Gold Coast trial (which will be voluntary and is not a sentence) is expected to start soon. The Gold Coast camp is called the Isurava Youth Boot Camp and is intended as an early intervention camp focussed on young people at risk of long term offending and who have not had contact with Youth Justice. It will provide an opportunity to support young people before they become entrenched in the criminal justice system and will address issues known to be associated with involvement in crime. Participation in the program is voluntary and the involvement of the young person's family is critical. Referrals to the program can be made by government and non-government agencies including police, education, health and child safety services. The program will run for a maximum of three months depending on the young person and their family's needs.[3]

The Health Minister was reported in the *Courier-Mail* on 25 July 2012 saying drunken children as young as 12 are showing up at hospital emergency departments. He warned that this is part of a concerning 'growth in yobboism'. The Attorney-General and Minister for Justice was reported in the *Courier-Mail* of 12 December 2012 referring to ' a generation of arrogant young offenders'.[4]

Alcohol, peer pressure and a lack of parental supervision are invariably raised as explanations for this type of behaviour. Parents have been implored by other parents to set a better example for their children. But the violence continues.

2 Youth Justice Services, Department of Justice and Attorney-General, Fact sheet, 26 February 2013. For a critique of boot camps, see Prof Richard Hill (Griffith University, School of Social Work and Human Service) 'Boot Camps for Queensland' (2013) 122 *Arena Magazine* 10.

3 Queensland Government, Youth Justice 'Youth Boot Camps', Fact sheet.

4 The Community Services Minister under the previous Labor government is reported in the *Courier-Mail* on 28 October 2011 saying 200 delinquents commit a quarter of Queensland's youth crime. She said many 10–16 year old offenders had troubled family backgrounds and did not go to school and it was important to 'get them back on track'. In the same report the opposition Justice spokesman (now the Attorney-General and Minister for Justice) said detention should be the focus, with a program of rehabilitation once offenders were released.

The *Courier-Mail* reported in January 2012 that girls aged 10 to 14 were responsible for a 44 per cent spike in assaults in 2009. The *Courier-Mail* reported in the following terms:

> Queensland's fastest-growing group of violent offenders are likely to be let off with a scolding as punishment for their crimes. In 2008–2009 more than 500 of 750 girls who appeared before the court were given a reprimand. Only 11 were sentenced to detention. Another 15 girls were given immediate conditional release and 109 were ordered to do community service.

A report released by the Australian Bureau of Statistics on 28 February 2013 for the 12 months to 30 June 2012 shows 15–19 year olds committed the most crime of any age group, with most of the offences being stealing and public order offences such as being drunk in a public place or trespassing. The Queensland Chief Justice said:

> "That the highest offending was among 15–19 year olds is the result of a number of factors – the persuasiveness of the drug culture; peer pressure; reduction in traditional family influence; generational unemployment and under employment. It may also suggest a lack of respect for traditional centres of authority, including the courts.5

A writer in the *Gold Coast Bulletin* chat room on 29 December 2012 said:

> Time for the laws to be changed to accommodate these young thugs that think they can get away with stealing and violent crimes against innocent people. If they are old enough to commit a crime they are old enough to do the time. Zero tolerance and no excuses for them. It's time the victims get justice and judges stop pandering to these criminals.

A letter writer to the *Courier-Mail* on 4 March 2013 said:

> The Australian justice system needs a multi-pronged approach against juvenile criminals...The justice system is too soft on juvenile offenders. The problem is (that) the justice system is too lenient. There are plenty of criminals who get caught but are not being punished because they are kids. If we were stricter on our juvenile criminals there would be a lot less crime committed by our youth.

IV A Modified Sentencing Approach

Clearly intervention programs rather than reprimands are required in many of these cases. Reprimands are clearly not working.

In a paper presented to the annual meeting of the South Pacific Council of Youth and Childrens Courts held in Brisbane on 19–22 August 2012, Professor Ross Homel of Griffith University referred to the importance

5 *Courier-Mail*, 1 March 2013.

of preventing further offending and getting in early in the pathway to bad behaviour, not necessarily early in life. Probation orders can be conditioned upon participation in programs targeting chronic, violent or substance abusing juvenile offenders aged 12–17. There are also other programs designed to address known causes of delinquency.6 Time is required to achieve change to behavioural issues. No remedial time is involved in a reprimand or good behaviour order.

It is recognised by those involved in juvenile justice that there is a 'need to intervene as early as possible with young people who are identified at high risk of offending'.[7] In the case of such juveniles a reprimand or a good behaviour order is hardly the required intervention. The Queensland Attorney-General was reported in the *Courier-Mail*, 14–15 July 2012, as saying 'We need to get in early and get them back on track'. He also said juveniles 'have to take responsibility for their actions'.

The President of the Childrens Court has emphasised the need to 'fashion a sentence which gives the child a chance to turn around'.[8] He also re-stated the need for 'a whole picture approach including consideration of problems at home, parental support and a child's problems with education'.[9]

The Childrens Court alone is unable to achieve behavioural change. Much needs to be done to engender an environment which discourages offending in the first place, including parental responsibility and respect for others. These

6 In this respect it is disappointing that the Queensland Government seems to have decided not to review funding to *Get Set For Work*, a service which has 'been in operation for many years, helping young people to transition from school to work'. Its outcomes were (according to Professor Richard Hill) 'demonstrably positive and the program helped kids to avoid unemployment, poverty, isolation and homelessness': Hill, above n 2, 10. See also report in *Courier-Mail*, 1 August 2012. In a similar vein, *Boystown* has reportedly said that Queensland Government funding cuts will hurt more than 400 troubled youths because it will have no funds to run job placement schemes after the Government axed the *Skilling Queenslanders for Work* program. Funding has also been discontinued for a Toowoomba community organisation for at-risk teenagers on the Darling Downs who disengage from the school system (see 'Cumulative List of Funding and Staffing Cuts...', compiled by the Youth Affairs Network Queensland referred to by Hill, above n 2). These programs can be important in diverting at risk young people from offending behaviour.

7 Judge Shanahan, President Childrens Court, Brisbane, 21 June 2012.

8 *Courier-Mail*, 12 December 2012.

9 On 27 February 2013, the NSW Attorney-General announced an early intervention scheme for juveniles designed to respond to the underlying causes of crime so as to prevent juveniles becoming entrenched in criminal behaviour. The scheme is intended to commence in June and 'case workers will offer intensive support to children as young as 10, linking families with services that can respond to causes of crime including substance abuse, educational disengagement, literacy and numeracy problems, anger issues, mental illness and family dysfunction'. The Attorney-General said the scheme was aimed at 'improving community safety by breaking the cycle of offending ... turning young people away from crime and getting them back on track'. The scheme is designed to reduce the offending rate of young people considered at risk of criminal behavior: Attorney-General, New South Wales, *Media Release*, 27 February 2013; and *The Australian* 27 February 2013, 3.

are recurring themes in juvenile justice and in public perception. A direct involvement with an adverse peer group, for example, is often due to a lack of parental responsibility in the first place. A bus driver rang local ABC radio on 4 March 2013 telling the presenter 'kids walk on, don't pay and show no respect'.

The Queensland Police Service has also recently indicated that 'the vast majority of juvenile offenders, particularly repeat offenders, are males aged between 14 and 15'. An examination of their criminal histories would probably indicate that when first dealt with by a Childrens Court Magistrate they received a reprimand or a good behaviour order.

As an example, in mid-December 2009, an 11 year old boy appeared before a Childrens Court magistrate on a charge of breaking and entering and stealing. He was reprimanded. Six weeks later he committed an offence of entering premises and stealing and four weeks after than an offence of unlawful wounding. For the rest of that year and in January of the following year he committed 14 further offences of unlawful wounding, entering premises and stealing, entering motor vehicles and unlawful use of a motor vehicle. He was aged 11 and 12 at the time. As a 13 year old he appeared before me charged with robbery with personal violence and 34 other serious offences. Things may have been different if the first sentencing response for a very serious offence had not been a reprimand.

The Queensland community in general, and the Gold Coast Community in particular, regularly express concern at what are perceived to be lenient sentences imposed on juveniles.

A survey conducted by the Gold Coast Bulletin in mid-2012 to which there were 1825 respondents indicated that 89 per cent of respondents, or 1624 people, thought sentences should not be discounted for young violent offenders based on their age. The fact is though that juveniles are and will remain subject to a more benign sentencing regime than adults and there are compelling reasons why this should be so.

In the *Adelaide Advertiser* of 14 November 2012, Mr John White, President of the Law Society of South Australia is reported urging people to remember that, despite the gravity of their crimes, young offenders were still children. He said

> Our society recognises that children take time to grow into the full responsibilities of adulthood, and make that time as 18 years of age (17 in Queensland). The fact we recognise that children are not fully responsible citizens, prior to the age of

> 18, has to be a factor in the way we treat their crimes.

This is not to say though that normal sentencing rules should be thrown out the window merely because the offender is a juvenile. Juvenile offending, like adult offending, requires a sentencing response which takes into account responsibility (because no offending should be regarded as responsibility free), the circumstances of the offence, the offender and the victim along with the community's interest that an appropriate sentence be imposed taking these factors into account. Too often in the case of juveniles the complaint is that too much weight appears to be placed on the personal circumstances of the offender; at least that is the perception of the community and to this extent the public sees a real disconnect with community mores and standards. Those circumstances are of course clearly relevant but not at the expense of completely or substantially disregarding other relevant considerations including the need for a sentence to have a general deterrent effect. Those considerations should 'not be allowed to overwhelm appropriate reflection of the nature of the offending'.[10] Mr White similarly said, '[t]he fact that someone is a youth cannot override the need to protect the community'.

An online survey conducted by the *Gold Coast Bulletin* on 10 July 2012 reported that 74 per cent of respondents did not feel safe walking at night on the Gold Coast.

In a weekly opinion piece in the *Gold Coast Bulletin* on 18 July 2012, Col McClelland, a journalist with the *Bulletin*, reflected community views when he said:

> juvenile crime is reaching epidemic proportions …. Courts have, time and time again, let the community down by taking the soft options. It's time for new weapons to be deployed.

The Childrens Court of Queensland deals with juveniles charged with offences and consists of specially appointed magistrates and District Court judges. Not all District Court judges and magistrates are appointed to the Childrens Court. Juveniles are children who have not turned 17 when they commit the offence.

Those District Court judges appointed as Childrens Court judges must have a particular interest and expertise in jurisdiction over matters relating to children. Curiously magistrates appointed as Childrens Court magistrates are not required to have like interest and expertise and therein may also lie part of the problem.

10 *R v Svensson ex parte A-G* [2002] QCA 472 (de Jersey CJ).

Summary offences are dealt with by a Childrens Court magistrate. These include public drunkenness and nuisance. Indictable offences must commence before a Childrens Court magistrate as a committal proceeding but in all cases other than offences carrying as a maximum sentence for an adult, imprisonment for life or 14 years, after all the prosecution evidence has been led and the Court is of the opinion that the evidence is sufficient to put the child on trial for the offence the child may elect to have the proceeding continue as a committal proceeding or to have the committal discontinued and the further hearing conducted summarily by the Court.

Generally many indictable offences end up being dealt with summarily by a Childrens Court magistrate.

Sentences which may be imposed on a child are, in ascending severity, a reprimand, a good behaviour order for a period not longer than one year, a fine (though generally there is no capacity to pay), probation, community service, an intensive supervision order for not more than six months but only if the child is under 13 years and detention with or without a conditional release order.

A juvenile who offends during the period of a good behaviour order is not liable to any penalty for breaching the order other than that the Court dealing with the new offence/s may have regard to the breach of the good behaviour order when determining sentence for the new offence/s.

A Childrens Court magistrate cannot make a probation order that lasts longer than 1 year. A Childrens Court judge can make one lasting up to two years, but for very serious offences including offences carrying a life sentence and most offences of a type that, if committed by an adult would make the adult liable to imprisonment for 14 years or more, a probation order up to three years can be ordered.

Most juveniles who appear before a Childrens Court judge have previously appeared before a Childrens Court magistrate and have a criminal history involving the commission of indictable offences dealt with summarily by a magistrate. Many of the offences are for behaviour of the type I have already referred to. There are also offences of resisting and assaulting police, going armed in public, affray, threatening violence, stealing, unlawful wounding, common assault, assault occasioning bodily harm, assaulting elderly people, unlawful use of a motor vehicle, dangerous and unlicensed driving, entering or being in premises with intent to steal or committing an indictable offence

therein, wilful damage to cars and schools and graffiti offences. More often than not the initial sentencing response of the Childrens Court magistrate is a reprimand (as highlighted by the *Courier-Mail*) or a good behaviour order following which, as I said earlier, we often see the child smiling and laughing and sometimes also giving the finger as he or she leaves Court. A reprimand or a good behaviour order may be appropriate for shoplifting but generally not for serious offences of the type just mentioned.

There is a clear trajectory from youth crime to adult offending. A report published by the Australian Institute of Criminology and Griffith University in September 2012 found that one in four persons born in Queensland in 1990 had contact with the justice system between the ages of 10 and 20. Each member of that cohort is statistically on track for an adult life of crime. The *Courier-Mail* reported on 19 September 2012 that 'the Child Protection Inquiry has repeatedly highlighted the trajectory from youth crime into the adult prison system'.

In the context of recent public discussion about whether juvenile offenders should be routinely named or identified, the father of a young man murdered by three youths including two juveniles was reported in the *CourierMail* and the *Gold Coast Bulletin* on 16 July 2012 as saying:

> Kids do make mistakes. I do agree with protection for some of them but there are times when they need to be named publicly. You only have to go to juvenile courts to see these guys and girls go in and know they're going to walk out. They go there and laugh, joke and carry on, they have no respect for the court system.

The same report in the *Courier-Mail* quoted the Attorney-General referring to 'repeat offenders who repeatedly go before our courts, snub the law and snub the community'. He also highlighted as a major problem young criminality especially youth recidivism.

On the 19 July 2012 the Commissioner for Children and Young People and Child Guardian wrote in the *Courier-Mail:*

> offences recorded against young people have been increasing … (They) seriously need to be encouraged to reengage with societal norms … The key to reducing youth crime is to make sure each young person has access to the best support from an early age[.]

She also referred to 'poor adult role models' as a factor contributing to juvenile crime and that is clearly so.

Neither a reprimand nor a good behaviour order is likely to assist the

child offender to re-engage with societal norms or provide needed support. A holistic approach dealing with causes is required but something more can be done as a sentencing response so that the juvenile can be encouraged not to re-offend. In this respect though, even when a Childrens Court magistrate makes a probation order it is often only for six months which is hardly enough time for it to commence working and it is not accompanied by any requirement that community service also be performed.

In 2008–2009, 5013 juveniles were dealt with by magistrates. Of these, 1777 (or 35.44 per cent) received a reprimand and 961 (or 19.17 per cent) a good behaviour bond.[11] The respective figures for 2009–2010 were: 5374, 1998 (or 37.17 per cent) and 1093 (or 20.33 per cent), and for 2010–2011 they were 5015, 1864 (or 37.16 per cent) and 888 (or 17.70 per cent).[12]

In 2008–2009, therefore, 54.61 per cent received a reprimand or good behaviour bond. For 2009–2010, the figure is 57.50 per cent. For 2010–11, it is 54.86 per cent. I would be prepared to bet that not all were for minor offences such as shoplifting.

It would be interesting to know how many ofthese juveniles re-offended; I suspect that many did judging from criminal histories I have seen.

In a recent appeal before me the transcript recorded the magistrate saying, 'I acknowledge that normally we go up the scale'. This should not mean that sentencing must always start at the bottom of the scale but too often for serious offending that's where it starts. Reprimands and good behaviour orders are at the bottom of the scale.

The sentencing mindset seems to be that for a first or second instance of this type of offending sentencing should start at the bottom of the range. I cannot agree that that is a sufficient sentencing response or one which is acceptable to the community for this type of offending. In my view, such a sentencing response does nothing whatsoever to discourage or deter further offending, let alone punish the offender for the offence/s then before the court. What is at least required, in my view, is substantial probation and community service with a view hopefully to re-directing juvenile offenders away from offending behaviour, drugs and alcohol and adverse peer group relationships. Conditions are able to be imposed or probation orders in relation to these influencing factors.

11 *Childrens Court of Queensland Annual Report 2009–2010*, 15.
12 *Childrens Court of Queensland Annual Report 2010–2011*, 17.

V Sentence Review Applications

Sentences imposed by a Childrens Court magistrate can be reviewed by a Childrens Court judge. This review process is not the same as an appeal but the result can be. It is a simple process.

The *Youth Justice Act 1992* (Qld) provides that a Childrens Court judge may on application review a sentence order made by a Childrens Court magistrate.

For present purposes an application for review may be made by the child or the Chief Executive of the Department on behalf of the child (if the sentence is considered excessive) or the complainant or arresting officer (if the sentence is considered inadequate). The complainant in these matters is invariably a police officer not the victim.

On reviewing a sentence order the Childrens Court judge may confirm or vary the order.

I have been a judge at Southport since January 2007 and have not done one sentence review nor am I aware that any have been done by other judges at Southport. In fact the Southport registry advises they can't recall when the last one was filed at Southport ' if at all'. Figures provided to me for sentence review applications filed in Queensland in 2010–11 and 2011–12 are as follows:

Place where application filed	2011–11	2011–12
Brisbane	34	62
Cairns	4	2
Beenleigh	1	4
Toowoomba	1	3
Townsville	1	2
Ipswich	1	–
Mount Isa	1	–
Stanthorpe	1	–
Total	44	73

I am not sure of the reason for the increase.

I am reasonably confident that most if not all of these applications are by juveniles arguing that sentences are excessive. In all of the 44 published sentence review decisions for 2011–12, the applications were by juveniles.

These figures do not of course mean that in all cases where the juvenile was reprimanded or placed on a good behaviour order the victim was satisfied.

Why might there be none in the case of sentences perceived to be inadequate? Perhaps the police do not know that they can apply or they are, for some reason, not interested in applying or there is some rule which says they shouldn't apply. I don't know. Maybe the baton should be passed to victims.

At the moment victims cannot apply for a sentence review. The offender can but the person offended against can't.

Victims do though have some, but not many, rights.

The *Victims of Crimes Assistance Act 2009* (Qld) requires the Police Service to give a victim timely information about 'available legal help' whatever that means. The Police Service need only do this to the extent that giving the information is relevant to the Police Service's function or it is otherwise reasonable and practicable for the Police Service to give the information. 'Legal help' would not at the moment encompass advice to a victim about a sentence review application because a victim can't make such an application.

The Police Service (and the DPP if it prosecutes a child before a Childrens Court magistrate) is, by the Act, required to give to the victim ' details about relevant Court processes' but only if it is reasonably practicable to do so and only if asked by the victim. ' Relevant court processes' would, I consider, include the right of the police complainant or arresting officer to apply for sentence review if dissatisfied with the sentence imposed by a Childrens Court magistrate in which case the victim could make a submission (oral or written) to the police officer about that matter. The *Youth Justice Act 1992* allows the judge reviewing the sentence to have regard to further submissions and evidence by way of affidavit or otherwise. This could only happen if the victim asked for it and the victim could only do that if he/she knew they could ask. Most, if not all, victims do not know and are not told they can do this.

What can be done to influence parents to exercise greater control over their children with a view to preventing or minimising criminal behaviour?

VI Parental responsibility

Channel 7's *Today Tonight* program on 21 February 2013 commissioned Newspoll to survey whether a curfew should be imposed on children aged under-16. The program highlighted a lack of parental responsibility and groups of teenagers wandering streets at night and said 28 per cent of all crime committed was by children aged 10–19. I am not sure if these figures are correct but the public probably considers they are – 68 per cent of respondents supported a curfew. Authorities considered it impossible to enforce and I agree given the current resources. The program also conducted its own poll on the question 'Should parents pay if their children aged 15 and below are caught on the street after 10.00 pm ?'. Results at 10.00 am, 22 February 2013 were:

Yes	152	(85%)
No	26	(15%)

The *Youth Justice Act 1992* provides that if it appears to a Childrens Court in the case of a child found guilty of a personal or property offence that:

> (a) compensation for the offence should be paid to anyone; and
>
> (b) a parent of a child may have contributed to the fact the offence happened by not adequately supervising the child; and
>
> (c) it is reasonable that the parent should be ordered to pay compensation for the offence.

the court may on its own initiative or on the prosecution's application call on a parent of a child to show cause why the parent should not pay the compensation.[13]

The process then to go through can be quite complicated and involved and one in which the victim is given no part. There is also a discretion in the prosecution as to whether the prosecution takes part in such proceedings commenced by the court's own initiative. Also, the court is to make its decision as to parental responsibility on the basis of proof beyond reasonable doubt and not balance of probabilities. Clearly parental responsibility is not a one size fits all situation and the process involved recognises this; it is capable of accommodating parents who do not, for example, have the cognitive ability to manage their own lives let alone bear responsibility for crimes committed by their children.

13 See *R v CB and KE* [2005] Q ChC 1.

VII Suggested Changes

Can the juvenile justice system be improved? I think it can be made to work better with the potential to minimise child offending, deter further offending and influence behavioural change.

The way this could occur would involve the following relatively simple steps:

1 Amend the *Childrens Court of Queensland Act 1992* to require Childrens Court magistrates to have a particular interest and expertise in matters relating to children.

2 Amend the *Youth Justice Act 1992*:
   (a) to remove a reprimand and a good behaviour order as a sentencing option for offences of the type I have mentioned;
   (b) to allow a juvenile who offends during the period of a good behaviour order to be re-sentenced for the original offence;
   (c) to enable a Childrens Court magistrate to make a probation order of up to two years;
   (d) to provide for a conditional release program to be longer than three months, say up to 12 months;
   (e) to provide for wholly or partly suspended detention orders with consequences for breach identical to suspended imprisonment for adults;
   (f) to provide for combined detention and probation orders of a duration longer than the current six months detention and 12 months probation; and
   (g) to add victims to the list of those who can apply for a sentence review.

3. Amend the *Victims of Crimes Assistance Act 2009* to require police to inform victims of their right to apply for a sentence review.

4. Simplify the parental responsibility provisions of the *Youth Justice Act 1992* by:
   (a) deeming the commission of an offence by a child between specified times at night to have been contributed to by the failure of a parent to adequately supervise the child unless the parent can prove to the contrary;
   (b) requiring the prosecution to appear and assist or intervene as a party in show cause proceedings commenced by the court's own initiative; and
   (c) changing the burden of proof for parental responsibility from beyond reasonable doubt to balance of probabilities.

An annual conference of Childrens Court judges and magistrates to discuss matters relating to the Childrens Court should be held. The AIJA Conference on Youth Justice held in Brisbane from 23–25 August 2012 discussed important youth justice issues but the emphasis was on offenders with little, if any, consideration given to victims.

Answer to the question

My answer to the question posed at the outset is this – not to the satisfaction of the community, but with some changes it could make a far more meaningful contribution to the resolution of juvenile justice issues.