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22 December 2023

Committee Secretary
Youth Justice Reform Select Committee
Parliament House
George Street
Brisbane Qld 4000

By email: youthjustice@parliament.qld.gov.au

Dear Committee Secretary,

Re: Inquiry into Youth Justice Reform in Queensland

Thank you for the opportunity to make a submission in relation to the current Inquiry into Youth Justice Reform in Queensland (**Inquiry**). Any future government policy designed to address youth offending in Queensland must involve a multi-pronged approach with evidence-based long-game and short-game strategies anchored by a serious commitment to work towards Closing the Gap targets including, fundamentally, to reduce the overrepresentation of Aboriginal and Torres Strait children in detention. It must be based upon therapeutic intervention for children and families, harnessing the Aboriginal and Torres Strait Islander community-controlled sector to provide essential supports at the prevention and early intervention stage. It must involve diversion away from the criminal justice system and therapeutic place-based supports that are trauma-informed, culturally safe and delivered by Aboriginal and Torres Strait Islander community-controlled organisations. It must be centred around a therapeutic and health-based response, not a punitive one. In this submission, we have sought to outline the long and short-term strategies that we consider are essential if we are to be serious about turning the tide in youth offending.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

As reported in the 2021-22 Queensland Childrens Court Annual Report, Aboriginal and Torres Strait Islander youth were reported to be over 21.4 times as likely as other young people to have been in youth detention in 2021-2022.¹ It goes without saying that Aboriginal and Torres Strait Islander children are grossly overrepresented in the numbers of children incarcerated in youth detention in Queensland, and Australia more broadly.

But offending does not occur in a vacuum. It occurs in the context of an environment, and the environment for many of the children that are at high risk of having contact with the criminal justice system is one of significant vulnerability, often involving numerous compounding criminogenic factors.

¹ Queensland Childrens Court Annual Report 2021-22.

Aboriginal and Torres Strait Islander children are amongst the most vulnerable children in Australia. If you are an Aboriginal and/or Torres Strait Islander child, it is likely that:

- you will be affected by intergenerational trauma², which has been proven to affect a child's DNA (i.e., trauma is passed down, including in utero) and that can manifest in the behaviour of a child³;
- you are at a higher risk of being exposed to domestic and/or family violence, sexual abuse and/or neglect⁴;
- you are at a higher risk of having a disability and/or cognitive impairment⁵;
- you are at a higher risk of being placed in out-of-home care and being removed from your family, kin and culture⁶;
- you are at a high risk of trauma-related mental illness⁷;
- you are at a higher risk of suicide or suicidal ideations⁸;
- you are at a higher risk of receiving school suspensions or exclusions and having your schooling disrupted as a result⁹;
- you are at a higher risk of having low birthweight and, therefore, having ADHD¹⁰;
- you are at risk of engaging in substance misuse¹¹;
- you are likely to live in over-crowded housing or experience homelessness in your lifetime¹²;
- your family might have experienced generational unemployment;
- your family members including yourself might have complex health needs;
- you might have identity confusion and not understand where and how you fit in;

² Darwin L, Vervoort S, Vollert E and Blustein S, 2023. *Intergenerational trauma and mental health*. Catalogue number IMH 18, Australian Institute of Health and Welfare, Australian Government.

³ R Yehuda, A Lehrner, 'Intergenerational transmission of trauma effects: putative role of epigenetic mechanisms' (2018) Oct 17 (3) *World Psychiatry* 243-257 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6127768/>> .

⁴ G Morgan, C Butler, R French, T Creamer, L Hillan, E Ruggiero, J Parsons, G Prior, L Idagi, R Bruce, T Gray, T Jia, M Hostalek, J Gibson, B Mitchell, T Lea, K Clancy, U Barber, D Higgins, A Cahill and S Trew, 'New Ways for Our Families: Designing an Aboriginal and Torres Strait Islander cultural practice framework and system responses to address the impacts of domestic and family violence on children and young people' (ANROWS Research Report, June 2022) 9.

⁵ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework, Summary Report (2023)*, National Indigenous Australians Agency, Tier 1 – Health status and outcomes, 1.14 Disability, available at <<https://www.indigenoushpf.gov.au/measures/1-14-disability>>.

⁶ SNAICC, *Family Matters Data Snapshot 2023*, <https://www.familymatters.org.au/wp-content/uploads/2022/11/1533_2022-F.M.-Snapshot-2pp_option-1.pdf>.

⁷ Darwin L, Vervoort S, Vollert E and Blustein S, *Intergenerational Trauma and Mental Health*, Australian Institute of Health and Welfare Report (2023) vi.

⁸ Closing the Gap Information Repository, Socioeconomic Outcome Area 14, available at <<https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area14#:~:text=In%202021%2C%20the%20suicide%20age,25.1%20per%20100%20000%20people.>>>

⁹ Queensland Advocacy Incorporated and Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd with support from Minter Ellison, *The Need for an Inquiry into School Disciplinary Absences in Queensland State Schools*, Submission to the Queensland Human Commissioner (Feb 2022) 4.

¹⁰ Note 8.

¹¹ Note 7.

¹² Note 6.

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- your literacy and numeracy skills might be less than your peers; and
- you are at a higher risk of having to deal with racial profiling in policing and the remnants of systemic racism when dealing with government agencies.

Over many years we have seen the effects of short-sighted, knee-jerk tough-on-crime responses framed within one election cycle to the next including, but not limited to, unprecedented amendments to youth justice legislation to reverse the presumption of bail ('show cause' provisions), expansion of the offences to which the bail 'show cause' provisions apply and the introduction of an offence for breach of bail conditions. In our view, these measures have directly contributed to more and more children being incarcerated to the point where Queensland's youth detention centres are bursting at the seams and children are being held in police adult watch houses as an overflow solution in breach of their human rights. The evidence has shown time and time again that incarceration of children, especially of the kind with limited to no effective rehabilitation, does not work in reducing youth offending. In fact, incarceration increases trauma to the child and enables the child to associate with other offenders whilst incarcerated, which has the potential to teach the child how to be a better criminal. This does not make communities safer.

Whilst we acknowledge that there is a place for youth detention (provided there is a rehabilitative component), consistent with our advocacy position over many years, we reiterate that evidence-based, community-led prevention and early intervention initiatives that address the root causes of youth offending is the best way to address youth offending along with impactful investment in housing, employment, education and health to address the upstream drivers of offending behaviour and the related social and economic iniquities that Aboriginal and Torres Strait Islander families face.

National Agreement on Closing the Gap

It goes without saying that working towards meeting all of the targets in the National Agreement on Closing the Gap (NACTG) will significantly reduce criminogenic factors that lead to offending.

Specifically, though, we draw attention to Target 11 of the NACTG which provides as follows:

By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent.¹³

¹³ Department of the Prime Minister and Cabinet, 'National Agreement to Closing the Gap' (July 2020) 33.

The Closing the Gap Dashboard has assessed Queensland's progress against this target as having "no change" between 2018-19 to 2021-22. This is in contrast to the jurisdictions of New South Wales, Victoria, Western Australia and Tasmania which have all been assessed as having "improvement". This is truly an indictment on the Queensland government approach to youth justice and demonstrative of a crying need for a different approach¹⁴.

The Committee has been afforded the opportunity to view the Queensland government's response to youth justice with a fresh set of eyes. We respectfully submit that when analysing youth offending, the government needs to change its lens from a policing lens to a therapeutic lens. We need to do better by our children and give them a chance at becoming productive and thriving members of our community. We need to support them to overcome disadvantage and to reintegrate as productive members of society. A *safety* response is required; community safety encompasses safety of the community *and* the safety of children. These are not mutually exclusive.

Response to consultation

ToR 2(a) - Prevention and early intervention

Any effective government response to address youth offending necessitates a multi-pronged approach including long-game and short-game strategies. Long-game strategies, such as prevention and early intervention initiatives, programs and supports might require time and patience to bear their fruits, however, they have been shown time and time again to significantly improve outcomes for children, families and communities. Furthermore, we note that justice reinvestment programs, such as the Maranguka Project, have the potential to provide significant benefits to the community *and* to the public purse by diverting funds away from prisons and investing those funds in vulnerable communities where there is a high prevalence of youth offending.

For Aboriginal and Torres Strait Islander children and families, prevention and early intervention programs need to be On Country and provided by community-for-community to give them the best chance of success. Embedding On-Country programs or initiatives which support vulnerable children and families gives cultural agency to Aboriginal and Torres Strait Islander communities to guide their youth within

¹⁴ Closing the Gap Information Repository, Socioeconomic outcome area 4, available at <<https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area4>>.

the cultural safety of their community to become thriving and productive members of their respective communities.

Whilst we have seen some investment in prevention and early intervention initiatives over the years, the reality is that there needs to be a far greater investment in funding and sustaining funding to these programs. There are plenty of examples of programs run by Aboriginal and Torres Strait Islander community-controlled organisations throughout Queensland which have produced excellent outcomes for children, families and communities. Below are some examples.

Example 1	
Name of Program/Initiative	Red Dust Healing (RDH)
Description of program/initiative	Cultural healing program which directly addresses the determinants of mental, physical and spiritual wellbeing of Aboriginal people and families including addressing suicide prevention, the effects of intergenerational trauma, grief and loss, family and domestic violence, mental health and substance abuse. RDH in Townsville works in detention centres and schools with a focus on dealing with rejection and providing positive role models ¹⁵ .
Impact assessment	<ul style="list-style-type: none"> • Over 14,000 individuals have been through the program. • Over 3000 people have been through the information sessions and 1-day workshops. • In 2006, Red Dust ran their program in Cleveland YDC with 40 boys. Their progress was monitored for 2 years. None of the children returned to detention in that time and only 8 boys reoffended, on minor offences.
Example 2	
Name of Program/Initiative	On Country Program (Queensland Government program, delivered by local Aboriginal and Torres Strait Islander community-controlled organisations)
Description of program/initiative	This program is delivered for children aged 10 to 17 years of age and repeat offenders with high and complex needs. It aims to reduce rates of offending and reoffending, strengthen cultural and spiritual connections to land, sea and sky, strengthen family relationships and connections, re-engage young people with education, training and employment and refer young people and families to other local support services where appropriate ¹⁶ .

¹⁵ Jo Thompson Consulting, 'Red Dust Healing Program Evaluation – Final Report 2018'(Report, 2018), available at <https://www.thereddust.com/index.php/download_file/force/66/177>.

¹⁶ Department of Youth Justice, Employment, Small Business and Training (Web Page) <<https://desbt.qld.gov.au/youth-justice/aboriginal-torres-strait-islander/on-country>>.

<p>Impact assessment</p>	<p>Evaluation of the On Country programs was due to happen in 22-23 to determine whether strong cultural connections help reduce offending. No evaluation appears to have been released to date, however, anecdotally we have heard that these programs have made a significant impact and that, in particular, Indigenous mentorship of young people participating in the program has been very effective with young people making better decisions as they are not wanting to let their mentor down.</p>
<p>Example 3</p>	
<p>Name of Program/Initiative</p>	<p>The Maranguka Justice Reinvestment Project</p>
<p>Description of program/initiative</p>	<p>This project was a grassroots community-based initiative that aimed to redirect resources that would otherwise be spent on prisons into community to address underlying drivers of imprisonment and support vulnerable children and families with a focus on justice, employment, education, service delivery, youth engagement, drugs and alcohol, mental health, early childhood, out of home care, housing and family violence.</p> <p>The project was based in Bourke, New South Wales and was initiated by the local Aboriginal community who wanted to try something new to address what they viewed to be high levels of social disadvantage and rising crime. The community worked with Justice Reinvest NSW, auspiced by the Aboriginal Legal Service NSW/ACT. The Bourke Tribal Council, the key decision making and strategy setting body for Maranguka, took data about their community relating to justice, health and demographic indicators and developed a long-term strategy called “Growing our Kids up Safe, Smart and Strong” and created three key working groups on three distinct areas – early childhood, 9 to 18 year olds and the role of men. The project involved partnership with public and community service providers including the police, PCYC, youth services and family and domestic violence services.</p>
<p>Impact assessment</p>	<p>KPMG undertook an impact assessment of this project in 2018 and found that in the 2017 calendar year, when compared with 2016, there was a:</p> <ul style="list-style-type: none"> • 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of re-offending; • 31% increase in year 12 student retention rates; • 38% reduction in charges across the top five juvenile offence categories; • 14% reduction in bail breaches; and

	<ul style="list-style-type: none"> • 42% reduction in days spent in custody.¹⁷ <p>The gross impact of the project based on the above stats was found to be \$3.1M, with operational costs being \$600,000. Note this was only based on one year of impact and did not include ongoing impacts.¹⁸</p>
Example 4	
Name of Program/Initiative	The Lighthouse
Description of program/initiative	This is an after-hours youth diversionary service operated by the Townsville Aboriginal and Islander Health Service where children that do not have adequate adult supervision, do not feel safe at home, are in trouble or need someone to talk to can have a safe place to be, have a meal, access shower facilities, have a bed for rest, be able to engage in sport and creative programs and importantly allow a safe place for children to form cultural connections. ¹⁹ The youth are also connected with critical services such as health and accommodation services. The Lighthouse offers outreach services, crisis care and case management along with long-term follow ups on regular clients. ²⁰
Impact assessment	Between February 2017 and January 2018, 'The Lighthouse' provided a service to 190 young people, who utilised the service on multiple (2086) occasions. ²¹ Whilst KPMG-type impact assessment does not appear to have been undertaken for this service, the value of after-hours services for at risk youth has been recognised both in literature and in community time and time again. In relation to the Lighthouse project, in particular, Bob Atkinson AO wrote in his report entitled <i>Report on Youth Justice</i> (in June 2018), "Variations on this type of facility could be replicated in other communities with a similar need for pro-social activities and drop-in accommodation for adolescents at nighttime. Possible locations include Mount Isa, Cairns, Caboolture, Logan and Ipswich." ²²

ToR 2(b) – Diversion of youth offenders from the justice system

Diversion of youth offenders away from the justice system is, along with other key strategies, a fundamental part of an appropriate response to youth crime. Any

¹⁷ KPMG, 'Maranguka Justice Reinvestment Project – Impact Assessment' (November 2018) 6, available at <<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf>>.

¹⁸ Ibid.

¹⁹ Townsville Aboriginal and Islander Health Service, *The Lighthouse: Youth After Hours Diversionary Service* (Webpage) <<https://www.taihs.net.au/taihs-services/youth-services/the-lighthouse-youth-after-hours-diversionary-service/>>

²⁰ B Atkinson AO, APM, 'Report on Youth Justice' (June 2018) 89, available at <<https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>>.

²¹ Ibid 90.

²² Note 20, 90.

diversion policy is based on an understanding that children are in the process of cognitive, social and emotional development and interaction with the criminal justice system at a young age could have significant negative outcomes for that child. Diversion allows for the child's connection to family, community and kin to remain uninterrupted. It paves pathways for the child to participate in diversionary programs to address their root causes of their behaviours (which could be poverty, hunger, mental health issues, trauma, etc.). It has the potential to reduce stigma by avoiding the labelling of the child as a "criminal" or "youth offender", which is well documented in literature to impact a child's perception of themselves and how they are treated by others. Diversion programs also can provide savings to the government as, if such are widely available and effective, it will reduce recidivism and address the child's behaviour at its root cause.

For Aboriginal and Torres Strait Islander children, diversionary programs must be place-based, On Country and delivered by-community for community in order to have the best outcomes for that child. Some examples of such programs include: cultural programs and cultural camps which incorporate language, art, dance, traditional knowledge and practices under the guidance of Elders have the potential to strengthen connection to culture which, in turn, strengthens the child's sense of identity and self; mentoring programs, such as the On Country program mentioned under our response to ToR 2(a) are very effective especially when the child might not have a strong and stable family environment at home; community-led education programs and skills building to help keep the child participated in education and set them up for employment later in life; community-led health and wellbeing programs which might include healing circles or yarning circles; and young mens' groups or young girls' groups as the case might be.

Whilst Queensland has diversionary programs and pathways, as reported in the 2022 Queensland Family & Child Commission Report entitled, *Designing a Better Response to Youth Offending in Queensland: Raising the Age of Criminal Responsibility (QFCC Youth Offending Report)*, of the 39.2% of children aged 10 to 18 years of age that received police diversions in 2020, only 26.3% of those diversions were Aboriginal and Torres Strait Islander children.

As expressed by Commissioner Natalie Lewis in the QFCC Youth Offending Report:

Our children who have committed an offence are two times less likely to be afforded the opportunity to be diverted from the youth justice system. Conversely, compared to non-Indigenous young people, Aboriginal and Torres Strait Islander

young people were 27 times more likely to be held in custody on an average day.
(p5)

In our view, it is essential that:

- the community-controlled sector be developed and supported to establish widely available community-led, place based diversion programs;
- given the findings of the QFCC as outlined above, Queensland Police Service provides adequate training to police officers to ensure that there are no unconscious or conscious biases when exercising their discretion to caution and/or divert an Aboriginal and/or Torres Strait Islander child away from the criminal justice system;
- there is oversight and transparency in relation to any potential unconscious or conscious biases being applied when police officers exercise this discretion; and
- considering the cognitive, social and emotional development of children, we recommend that the age of criminal responsibility be raised to 14 years of age with no exceptions, consistent with the United Nations Committee on the Rights of the Child recommendation (2019).

Youth Justice Co-Responder model as a diversion and early intervention measure

We do not support the Youth Justice Co-Responder model which is described by the Department to be an early intervention and diversion program for youth. In our view, it does not make sense for officers from Youth Justice that are responsible for enforcing the law against youth, to also patrol the streets to engage with youth for the purpose of offering prevention/diversion supports and check that young people are complying with their bail conditions. We have found this dual role of Youth Justice officers to be very problematic in practice. Firstly, it is very difficult for Youth Justice officers with their prevention/intervention hats on to be able to build any sort of trust or rapport with youth such that they might open up to these officers to access the support that they might need. It is highly unlikely, for example, that a child would tell a Youth Justice officer that they are using drugs again if they know or feel that they might be breached.

In our practice, we have frequently seen Youth Justice's input in proceedings involving child being tantamount to a second source of information for police. For example, our legal practitioners might apply for bail and make submissions about proposed conditions and subsequently find that it is Youth Justice that has reported, for example, that the child told them that people at the house they are residing at are using drugs or some such, leading to the court to refuse bail. In our view, if the government is serious about stopping recidivism, they must instead ensure that any prevention and

early intervention initiatives and programs are delivered by Aboriginal and Torres Strait Islander community-controlled organisations that provide such services. Young Aboriginal and Torres Strait Islander individuals are much more likely to engage with such services and obtain supports that they might need in the nurturing context that is necessary for such prevention and intervention supports.

ToR 2(b) - Effective ways to stop recidivism and protect the community from offending and the opportunity for community-controlled organisations with specific reference to the role of First Nations peoples to provide support solutions and services

As outlined earlier, reducing recidivism and protecting the community will require:

- impactful investment in housing, employment, education and health (i.e., social determinants) to help build up Aboriginal and Torres Strait Islander families and communities and Close the Gap;
- addressing the specific targets in the NACTG and have these targets in mind whenever new legislation or policy is made; and
- significant additional investment in the Aboriginal and Torres Strait Islander community-controlled sector to establish and maintain funding for prevention, early intervention and diversion programs that are place-based, On Country and community-led.

Additionally, the following is also critical:

- addressing systemic issues involving the removal of children from the families, culture and kin;
- significantly reducing the placements of children in residential-care settings; and
- amendments to the blue card (and associated) legislation to remove the legislative requirement for kinship carers, and everyone under the roof of a proposed kinship carer, to need a blue card to allow for more children to be placed in community and maintain their connection to their community, culture and kin.

ToR 2(c)(i) - The efficacy of justice programs including on-country programs, education, health and housing services

Please refer to our answers to ToR 2(a) and (b) in which we have addressed this ToR.

ToR 2(c)(ii) - The efficacy of reducing people carrying weapons

Many of the recommendations outlined earlier in this submission will also positively impact the efficacy of reducing people carrying weapons, for example, prevention and early intervention programs, diversions programs to address root causes of

behaviours that lead to offending, forming/ maintaining strong family and community connections, youth outreach programs, cultural camps on Country, etc. Community education campaigns are also integral including in schools and other places that youth frequent, such as youth drop-in centres.

However, we consider it important to note that whilst we appreciate that knife crime is a serious issue and measures need to be taken to preserve public safety, we do not support measures that expand police powers to allow arbitrary searches of individuals in the absence of reasonable suspicion.

We have previously expressed, in our submission at the time, our strong opposition to the Police Powers and Responsibilities (Jack's Law) Amendment Act 2023 (**Jack's Law**) which extended the Gold Coast knife-wandering trial (**Trial**) for an additional two years and increased the scope of prescribed public areas for scanning to cover all 15 safe night precincts as well as public transport stations and infrastructure, and public transport vehicles in certain specified circumstances.

Laws that seek to limit an individual's fundamental human rights to equality before the law, freedom of movement, privacy and reputation must, in accordance with the *Human Rights Act 2019* (Qld) (**HRA**), only be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. In our view, the expansion of police powers that enable police to be able to randomly search an individual for weapons goes too far and does not meet this threshold.

Our opposition to the proposed expansion of police powers contained in Jack's Law was based upon the following arguments:

- the reasonable suspicion threshold, which is a fundamental tenet of criminal law and procedure to protect individuals from arbitrary searches by the State, should not be bypassed;
- providing police officers with discretion to choose who a good candidate is to undertake wandering, in the absence of the reasonable suspicion threshold, leaves open the potential for unconscious and conscious biases to creep in and this might involve racial profiling;
- we were aware, based on feedback provided by ATSILS' Southport office on the wandering trial that:
 - there were several instances of ATSILS' being engaged to represent individuals that were the subject of wandering by police where knives or weapons were not found on their person, however, small amounts of drugs,

- such as cannabis, were found and, instead of a caution being applied, subsequent drug related charges were imposed; and
- it appeared that individuals that were known to police as drug users, for example, were being profiled by police as candidates for wandering as a means to search them for drugs without the need for meeting the reasonable suspicion threshold.
 - The independent review of the wandering trial in Gold Coast, undertaken by Griffith University:
 - identified similar concerns regarding net-widening, i.e., the potential for police officers to use the wandering powers to search individuals for things other than knives, e.g., drugs, and then lay drug charges if drugs were, in fact, found; and
 - found that wandering was “inconsistently used across different groups in the community” and that there was “some evidence of inappropriate use of stereotypes and cultural assumptions in the use of these powers; and
 - there appears to be no evidence that stop and search powers reduce knife crime.

ToR 2(c)(iii) - The efficacy of evidence-based early intervention and prevention programs

Please refer to our response to ToR 2(a).

ToR 2(c)(iv) - The efficacy of reducing the numbers in custody on remand

According to figures from the Australian Institute of Health and Welfare, on an average day in 2021-22, almost nine in ten of all young people in detention in the Queensland were on remand with more than half on average being Aboriginal and Torres Strait Islander young people²³.

The expansion of the number of offences with a presumption against bail has directly led to more has led to more bail refusals and, therefore, time on remand. Furthermore, children are spending more time on remand in Queensland than the time they would have been liable to serve had they been put before a court expediently. As quoted in the 2023 QFCC Child Rights Report, in the financial year of 2021-22, “in 75.9 percent of all court appearances involving a child or young person on remand (with at least one proven finalisation), they were released from custody with no time remaining

²³ Australian Institute of Health and Welfare, ‘Youth Justice in Australia – 2021-22 (2023) 20.

to serve. This figure was 74.4 per cent for Aboriginal and Torres Strait Islander children and young people.”²⁴

Additionally, the introduction of a breach of bail conditions offence for young people this year, has resulted in more and more children being charged and held on remand.

In our practice, we have observed that increasing numbers of children are instructing legal practitioners to plead guilty instead of defending charges despite being provided with legal advice to defend charges based on a desire to be released from custody to avoid lengthy custodial stays on remand.

We concur with the recommendations put forward by Youth Advocacy Centre in their submission to the Inquiry regarding what urgently needs to occur to address the current crisis with respect to remand of young people in Queensland (as extracted below):

1. Increasing the capacity of the fast-track sentencing program through proper resourcing at the courts;
2. Encouraging front-line police to divert young people and issue cautions and notices to appear rather than holding children in custody;
3. Provide children’s lawyers in regional courts such as Cairns, where there is a shortage of lawyers due to co-defendants needing separate representation.²⁵

ToR 2(c)(v) - The efficacy of alternatives to detention and ToR 2(c)(vi) – The efficacy of detention and other consequences of detention

Incarcerating children does not work and creates more trauma

Consistent with our advocacy in the past, whilst we acknowledge that there is a place for youth detention (provided there is a rehabilitative component), the evidence shows that incarcerating children does not work. In fact, contact with the criminal justice system has the potential to expose a child to more trauma.

Incarceration of a child is, in and of itself, a traumatic experience. Children within the custodial environment are at risk of being traumatised or re-traumatised in a number of ways including, but not limited to, the following:

²⁴ QFCC, *Child Rights Report: Spotlight – Youth Justice in Queensland*(2023) 33, available at <kids in custody longer than their sentence>.

²⁵ Youth Advocacy Centre, Submission No 19 to the Youth Justice Reform Select Committee, *Inquiry into Youth Justice Reform in Queensland*(20 November 2023) 7-8.

- (a) exposure to the risk of being a victim of physical and/or sexual violence (or witnessing the same) perpetrated by inmates and sometimes perpetrated by staff themselves in watch houses or youth detention centres;
- (b) being subject to the use of archaic and dangerous spit hoods²⁶;
- (c) being subject to the use of excessive force against them (or witnessing the same);
- (d) receiving racist taunts or unequal treatment including, for example, the removal of their privileges (such as recreation time or television time) for otherwise minor infractions;
- (e) being subject to lockdowns which would see a child isolated in their cells for 23 hours of the day, sometimes for weeks at time, due to staff shortages in youth detention; and
- (f) being subject to solitary confinement.

Even more concerning is the fact that within the cohort of Aboriginal and/or Torres Strait Islander youth in detention, there is a significant prevalence of children with disabilities (including children with a cognitive impairment and/or Foetal Alcohol Spectrum Disorder, which significantly impairs decision making ability)²⁷. According to our understanding, there is no overarching screening assessment in place in the youth justice system to identify/diagnose disabilities of children that are in detention. These special needs children are then subject to the traumas of incarceration without adequate supports, and this severely compromises their prospects of functioning in society upon release and avoiding reoffending.

Australia has signed and ratified the United Nations Convention on the Rights of the Child (UNCRC) and, accordingly, has obligations steeped in international human rights law relating to children.

Article 3 of UNCRC states:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*²⁸

²⁶ While we understand the Queensland Police Service announced in August 2022 that they will no longer use spit hoods in watch houses, spit hoods are still able to be used in detention settings such as correctional facilities. See also: <<https://www.theguardian.com/australia-news/2022/aug/03/spit-hoods-continue-to-be-used-on-minors-while-alternatives-are-explored-queensland-government-says>>.

²⁷ Human Rights Watch (2018), *"I Needed Help, Instead I Was Punished"*, available at <<https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>>.

²⁸ Convention on the Rights of the Child, available at <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.

Furthermore, section 26(2) of the *Human Rights Act 2019* (Qld) (HRA) provides that:

(2) Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

Notwithstanding the clear obligations of governments to consider the best interests of the child when making laws and despite overwhelming evidence to show that jailing children does not reduce youth offending or make communities safer:

- Queensland continues to imprison children from the age of 10 years old contrary to the United Nations benchmark of 14 years of age as the appropriate minimum age of criminal responsibility; and
- out of all the states and territories in Australia, Queensland puts the highest number of children in prison and this number continues to increase²⁹.

The use of solitary confinement on children

We know that solitary confinement continues to be imposed on children in youth detention. Statistics tabled in Queensland parliament late last year confirmed that between July 2021 and June 2022, **84% of children placed in solitary confinement were Aboriginal and/or Torres Strait Islander, despite Aboriginal and/or Torres Strait Islander children making up 62% of the children in youth detention**³⁰.

Solitary confinement continues to be used by staff at youth detention centres as a method of behaviour control despite the evidence that shows that putting children in solitary confinement causes them harm, increases their feelings of hopelessness and increases their risk of suicide³¹. That harm is increased exponentially when considering the trauma profile that an Aboriginal and/or Torres Strait Islander child may already carry before they enter youth detention.

As expressed by the Australian Children's Commissioners and Guardians:

Children are particularly vulnerable because they are still in crucial stages of development—socially, psychologically, and neurologically. The experience of isolation can interfere with and damage these developmental processes. For children and young people with mental health problems or past experiences of

²⁹ Australia Institute of Health and Welfare. Youth Detention Population in Australia 2022.

³⁰ Question on Notice No. 774 Asked on 16 August 2022 < <https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/774-2022.pdf>>.

³¹ Mackay, Anita and Naleemudeen, Mohamed A., "The Practice of Solitary Confinement of Children in Juvenile Detention in Victoria; a Human-Rights Based Argument for Prohibition", (2020) 8(2) 132.

trauma, isolation practices can have severely damaging psychological effects. Where children and young people are at risk of suicide or self-harm, isolation is likely to increase their distress and suicidal ideation and rumination.³²

Diversion way from the criminal justice system

We support diversion of children away from the criminal justice system to therapeutic programs which are place-based, culturally safe, offer wraparound supports for the child with short-term and long-term follow ups.

We do not support “boot camp” programs. The boot camps that were put in place by the then 2013 Queensland government were military-style programs which were punitive in nature. There was no therapeutic element to the programs and they were not culturally nuanced. Additionally, though Aboriginal and Torres Strait Islander young persons were overrepresented in the cohort of young offenders and at-risk children, the local Aboriginal and Torres Strait Islander communities were not consulted in relation to those boot camps. We are hopeful that any future policy will not involve a repeat of history.

Young persons that come from disadvantaged backgrounds, which many Aboriginal and Torres Strait Islander at-risk young persons do, need therapeutic intervention, not punitive intervention. Therapeutic intervention might include cultural reconnection and spiritual healing with the support, guidance and love of the Elders of their local community. Accordingly, rather than “boot camps, we support cultural camps, which are led by Elders, or programs of a similar nature to the Red Dust Healing Program as mentioned earlier. Such cultural camps should also be used for youth prior to any contact with the criminal justice system as a preventative measure.

ToR 2(c)(vii) - The efficacy of the most suitable infrastructure used for custody, detention or residential components necessary to reduce crime

Any consideration relating to the infrastructure to be used for holding children in custody necessitates consideration of the following United Nations international human rights law instruments:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)³³;

³² Australian Children’s Commissioners and Guardians, ‘Statement on Conditions and Treatment in Youth Justice Detention’ (Statement, November 2017) 21.

³³ Adopted by General Assembly Resolution 40/33 of 29 November 1985.

- the United Nations Guidelines for the Prevention of Juvenile Delinquency (**Riyadh Guidelines**)³⁴; and
- United Nations Standard Minimum Rules for the Treatment of Prisoners (**Nelson Mandela Rules**)³⁵, which apply to juveniles (see Rule 13.3 of the Beijing Rules).

First and foremost, holding a child in any institution must be a measure of last resort and for the minimum necessary period (Rule 19.1 of the Beijing Rules).

In the event that children are to be held in custodial circumstances, the infrastructure used must meet the minimum requirements for custody at international law, including that:

- emphasis must be on the well-being of the juvenile (Rule 5.1, Beijing Rules);
- children must be kept separate from adults and detained in a separate institution or separate part thereof in an institution that holds adults (Rule 13.4, Beijing Rules);
- female and male inmates must be detained separately (Rule 11(a), Nelson Mandela Rules);
- untried children are to be kept separate from convicted prisoners (Rule 11(b), Nelson Mandela Rules);
- accommodation must meet the requirements of health with due regard to climatic conditions and cubic content of air, minimum floor space, lighting, heating and ventilation (Rule 13, Nelson Mandela Rules);
- there are windows that are large enough to enable the child to read or work by natural light and constructed such that the windows can allow fresh air (regardless of whether there is artificial ventilation) (Rule 14, Nelson Mandela Rules);
- sanitary installations are to be adequate, clean and decent (Rule 15, Nelson Mandela Rules);
- adequate bathing and shower installations are to be provided and children should be able to shower, at minimum, once a week in a temperate climate (Rule 16, Nelson Mandela Rules);
- the custodial environment must be properly maintained and “kept scrupulously clean at all times” (Rule 17, Nelson Mandela Rules);
- education, vocational training and work should be made available to the child;
- remedial, moral, spiritual, social and health and sports-based assistance that is appropriate should be provided to the child in line with the individual treatment needs of the child (Rule 4, Nelson Mandela Rules);
- children with physical, mental or other disabilities must have full and equitable access to custodial life (Rule 5.2, Nelson Mandela Rules);

³⁴ Adopted by General Assembly resolution 45/112 of 14 December 1990.

³⁵ Adopted by General Assembly resolution 70/175, annex, of December 2015.

- there should be space, relevant installations and equipment available and allocated for each child to exercise for one hour a day in the open air, including that children should receive physical and recreational training during the period of exercise (Rule 24, Nelson Mandela Rules);
- while in custody, children are to receive care, protection and all necessary individual assistance—social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality (Rule 13.5, Beijing Rules).

We are aware of numerous examples where the above standards are not being upheld. In particular, we hold significant concerns regarding the current severe shortage of staff in certain youth detention centres which has resulted in the implementation of “night-mode” where children are locked down to their cells in isolation for 23 hours per day. Additionally chronic understaffing in detention centres has resulted in children within youth detention not being able to attend classes (not due to a shortage of teachers, but a shortage of corrections staff to escort the children to their classrooms). As a result, these children, some of which have cognitive impairments and/or disabilities, have had to self-direct learning in their cells which is completely unsuitable and impairs their ability to reintegrate back into schooling once released from youth detention. We recommend that the Queensland government, as a matter of urgency, addresses the severe under-staffing of Youth Detention Centres which will, in turn should improve conditions for detainees (and staff alike).

Children in being detained in watch houses

It is our observation that there is a widespread lack of support for the Queensland government’s legislative response to the Supreme Court Decision, *Youth Empowered Towards Independence Inc v Commissioner of Queensland Police Service* [2023] QSC 174, relating to the holding of children in watch houses and, notably, the suspension of the HRA in those circumstances. This legislative response demonstrated a commitment by the government to hold children in watch houses whenever needed without human rights protections, thereby entrenching the damaging impacts and trauma associated with such. We are aware of instances where children detained in watch houses have not been separated from adults, genders have not been separated from each other, watch house officers have failed to provide clean clothes, sheets and/or soap to children, watch house officers have delayed facilitating calls to the child’s lawyer, and cleanliness issues within the watch house cells themselves, etc. We are also aware of a male child being strip searched in an undignified way in a watch house, a female child that was not separated from adults in a watch house who was flashed and propositioned by other adult inmates during her time in a watch house and

a child that slipped on phlegm on the floor of a watch house cell and injured himself. We continue to hold significant concerns regarding the welfare of these children.

We recommend that, consistent with Rule 13.2 of the Beijing Rules which states: “Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”, that children should be placed in alternative forms of accommodation, including, for example, supported bail accommodation, community based supervision, home detention, pre-trial diversion programs, group homes or residential facilities.

Furthermore, as a matter of urgency, we recommend that the Queensland government remove all suspensions of the HRA which currently are in place (all of which relate to children’s rights and, in particular, children being held in watch houses).

Conclusion

Better responses to youth justice include taking the learnings from multiple inquiries and reports and from successful programs and putting successful strategies into sustained practice in partnership with Community. Structural change achieved through the priority reform areas of the NACTG is designed to overcome fractured and siloed government agency responses, to overcome the short-term and insecure funding arrangements that plague the sector running valued and effective but short-lived community programs, and to support better decision-making made in partnership with government by community-controlled sectors with the expertise and experience to contribute to better solutions. The Joint Council on Closing the Gap is a subcommittee of the National Cabinet, with the Coalition of Peaks acting in partnership with government. Moving forward it is critical that this body is proactively consulted on any proposed youth justice. Upfront contribution to and shaping of youth justice responses undertaken in partnership between the relevant peaks and a Queensland Cabinet subcommittee of the relevant ministers would offer the breakthrough strategies so desperately needed in this area.

We thank you for the opportunity to provide feedback on the Inquiry.

Yours faithfully,

Shane Duffy
Chief Executive Officer