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

By email: [youthjustice@parliament.qld.gov.au](mailto:youthjustice@parliament.qld.gov.au)

Dear Committee Secretary,

### **Re: Inquiry into Youth Justice Reform in Queensland**

Thank you for the opportunity to provide a further submission to the Youth Justice Reform in Queensland (**Inquiry**). On reflection, after considering the processes that led to legislative changes that in our view have been counter-productive, we would like to bring to the Committee's attention some additional perspectives which can bring actionable insights to the table.

In particular, we would like to bring the perspectives of an individual defence lawyer from their experience, working with adolescent clients, the perspectives derived from new research on the adolescent brain which has been supported by twenty years of innovative work with MRI technology and finally, the cross-sectoral perspectives which can go beyond the limited perspective and experience of a single agency and bring more insights, expertise and experience and more well-rounded solutions to youth justice issues.

### **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.

## Response to consultation

### *The individual lawyer's perspective*

Young people are reckless and impulsive and most young people in the cool light of day regret getting caught up in the moment and getting into trouble. There are very few who don't fall into this category. Young people are still getting there when it comes to consequential thinking (which, after all is what this adolescent development phase is for). Most young people get it when you sit them down and step out what could have happened and explain that Magistrates are going to get upset because they often get to hear about the incidents when things go really wrong. Most young people get it when you explain the impact they have had on other people. There are some children and young people with attachment disorders who physiologically cannot, but dealing with this group, falls into a specialised category.

Most young people have something positive going on in their lives that can be amplified as a bail condition to protect them and society from further misadventure. Getting a young person bail means that conditions can be put around a young person to stabilise them while the justice system and preparation of the police brief grinds along. By the time the police get the brief to court then there has been an opportunity for the young person to show progress and for supports to be built back up (for example a football coach takes the young person under their wing, bullying at school gets addressed, an overwhelmed mother with younger children to worry about too enlists an Uncle for help.)

### *Key takeaways*

- Keeping a young person away from the worse peer group that they will find in youth detention helps stop any further slide into negative peer groups.
- Getting bail with conditions that both put limits and supports around the young person means they can demonstrate to the court that they can stay out of trouble and they can also show suitability for community-based programs.
- Getting bail with well-crafted conditions supports the positives in the young person's life and find additional supports such as mentoring from a football coach, or getting mentoring and learning new skills assisting a tradesperson, or getting a values reset and mentoring from on-country programs.
- Too many young people are treated as parties (accomplices) simply for hanging out with a larger group when a small number inside that group get up to mischief. Greater consideration needs to be given for the fact that a young person has never gotten into trouble before or had no or minimal involvement beyond standing around.

### *Insights from cognitive brain science*

This section draws from the work of Professor Sarah-Jayne Blakemore FBA, Professor of Psychology, University of Cambridge; Leader of the Developmental Cognitive Neuroscience Group, and author of the prize winning *Inventing Ourselves: the Secret Life of the Teenage Brain* (2018) and the pioneering study in the US by M Gardner and L Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study* March 2012 *Developmental Psychology* 48(2):589.

The MRI evidence gathered in the last twenty or so years combined with behavioural evidence shows that adolescence is a unique and distinct period of biological and psychological development.

The adolescent goes through an extraordinary phase of reorganisation of their brain and exhibits behavioural differences that are markedly different to those shown beforehand in childhood and afterwards in adulthood. This pattern of massive change, risk taking, sensation-seeking and peer influence shows up across cultures and across other species.

It is a developmental stage that teenagers grow into and out of. It is a stage that informs the adult as the massive change in the adolescent brain settles into the final pattern that serves them as an adult for the rest of their life.

*Broadly summarising the key insights:*

- Young people are more self-conscious and more moody, but it is now known that significant changes happen in their brain, and their behaviour is unlike that of other developmental stages.
- Risk-taking is heightened during the teenage years and adolescence (true for both humans and non-human species). In other words, adolescents take risks that they would not have taken earlier as a child or will not take later as an adult.
- Peer influence peaks during adolescence. They are more influenced by their friends than at any other stage of life, much more than children are and much more than adults are.
- The combination of peer influence and risk taking together is a perfect storm.
- Dangerous driving and binge drinking are behaviours that adolescents do not tend to do on their own. It is when they are with their friends that they will experiment with these risks.

A seminal study in the US showed that an adolescent who is in an environment without distractions and which allows the ability to focus on the task showed similar risk taking to adults, but having the adolescent performing the same task with some of their peer group standing behind them led to their risk taking **trebling**. In contrast the risk taking of an adult was not affected by their peers looking over their shoulder.

What happens in the structural changes to the adolescent brain is that the amount of white matter and the amount of grey matter changes and the function of the brain changes. What changes is how the brain becomes activated when the person does a certain task, such as taking an action, making a decision, or inhibiting an inappropriate response.

### *Changes to white and grey matter in the adolescent brain*

White matter connects different parts of the brain together. White matter is increasing during adolescence. The white matter connects different brain regions and increases throughout childhood and throughout adolescence. Increases in the white matter makes the brain more speedy. It speeds up the time it takes for a signal to move from one neuron to another.

Grey matter peaks at late childhood early adolescence and then it does a slow and steady decline over adolescence. Grey matter declines in adolescence and then stabilises in adulthood. It stabilises in the 20s for many decades.

This decline in grey matter relates to important neuro developmental changes that are going on in the brain and allows the brain to develop in response to the environment, that the human or animal adolescent finds itself in.

The brain massively overproduces the synapses that it needs in childhood, so a child has massively more synapses in its brain than an adult does. The synapses are removed in adolescence by a process called synaptic pruning.

The synapses that aren't being used in a particular environment are the ones that get pruned away, they get eliminated and the synapses that are being used in a particular environment are the ones that get strengthened.

### *Positive implications*

Adolescence is a time of heightened plasticity. It is a time of opportunity for learning and rehabilitation and therapy.

### *Negative implications*

Physical changes, changes to the social environment and brain changes all happen together, and it makes the adolescent very vulnerable at that stage of life. If mental illness is going to start, it is likely to start by adolescence.

### *Key takeaways for youth justice reform*

Putting more young people than ever before on remand or in youth detention creates a perfect storm for exposure to a wider negative peer group that engages in high risk activities and encourages greater risk-taking.

If youth risk-taking was treated like COVID, then pooling risk takers together on remand is not how you would flatten the curve. Instead, putting wraparound conditions on bail orders would be far more effective.

The experience of positive benefits of mentoring and On Country programs has a match to current understandings of what it takes to reduce risk taking by an adolescent.

More emphasis, not less, should be put on learning opportunities and rehabilitation opportunities for young persons. They have inadequate access to both in youth detention and unacceptable loss of access to both types of positive activities in watchhouses.

The information about pruning of synapses to adjust to the adolescent's current environmental context should sound warning bells about a young person adjusting to watchhouse conditions or extended periods in youth detention facilities, halting progress into adulthood.

#### *The cross sectoral perspective*

The National Agreement for Closing the Gap recognised that accomplishment of goals, such as reduction of contact with the youth, justice system, and the criminal justice system interacts with other key goals and needs a cross sectoral approach, co-design, co-implementation, co-evaluation done in partnership between government and peak bodies, community-controlled organisations and other relevant agencies working together in partnership.

This will produce better more effective solutions instead of what arises when there is foreshortened consultation which is ineffective in the face of rushed changes arising from the limitations of a single agency perspective.

While there have been recent changes for some government agency to government agency cooperation, it remains within an echo chamber which fails to learn from best practice models and communities of practice developed within the sectors.

#### *Key takeaways*

Community safety would be better served by sounder evidence based initiatives. The Committee has already had submissions from a number of organisations about programs that provide benefits. Unfortunately, these get swept away when there is

the single agency proposal where there hasn't even been proper consultation. The history of the preparation and passage of provisions added onto the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022* being a case in point.

All legislative bills are now accompanied by a Human Rights Statement of Compatibility, and contained within the Explanatory Notes are statements on consistency with fundamental legislative principles.

Now that Queensland is a signatory to the National Closing the Gap Agreement, a statement of whether the Closing the Gap machinery was actually engaged should be a standard part of Explanatory Memoranda.

This will only apply to proposed legislation relevant to one or more of the 17 Closing the Gap goals and targets, but that would be a one line response if it was otherwise. We thank you for the opportunity to provide feedback on the Inquiry.

Yours faithfully,

Shane Duffy  
Chief Executive Officer