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15th April 2025

Mr Martin Hunt MP
Chair
Justice, Integrity and Community Safety Committee
Parliament House
Cnr George and Alice Streets
BRISBANE QLD 4000

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

Dear Chair,

Re: Making Queensland Safer (Adult Crime, Adult Time) Amendment Bill 2025

Thank you for the opportunity to provide comments on the second round of amendments associated with the 'Adult Crime Adult Time' changes. We have strong concerns about movement away from evidence-based approaches to more experimental approaches which in every likelihood will result in at best counterproductive, and at worst seriously deleterious consequences. The particular concern we hold about adding this new tranche of changes is the indiscriminate impacts that including them is likely to have.

We also know there is no particular magic in increasing the numbers of children held in overwhelmed youth detention centres and watch houses. In 2024 Queensland already had the highest number of children in detention on an average night than any other jurisdiction in Australia[1] and figures collected in the March quarter of 2023 showed

[1] As quoted in the Justice Reform Initiative's Children Imprisonment Overview (April 2024), available at <https://assets.nationbuilder.com/justicereforminitiative/pages/410/attachments/original/1713851456/JRI_Children_Imprisonment_Overview_April24.pdf?1713851456>, page 5. Queensland

Queensland held the record as having the highest percentage of children in detention on remand at 92% compared with all other jurisdictions in Australia[2]. At the end of the day what should be prioritised is what actually builds a safer community.

We are concerned that detention is being treated as some sort of cure-all. It falls in the "If the only solution is a hammer then every problem looks like a nail" school of thinking. There are very limited circumstances when detention is appropriate, used more widely than that, detention simply drives repeat returns to detention – that is, higher offending rates and less safe communities. In other jurisdictions, there are moves to call a timeout on overuse of incarceration, and we should too. The key is to address the underlying causes of offending behaviour (health, housing, education, employment etc).

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 (including, child protection and domestic violence) 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.

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held 310 children compared with 200 for NSW, 108 for Victoria, 99 for Western Australia, 52 for the Northern Territory, 27 for South Australia, 19 for the ACT and 14 for Tasmania.

[2] Note 2, page 18.

Introductory comments

We have three main concerns with these proposed amendments; first that the additional offences will have a much more disproportionate effect than the existing offences; second that better alternatives exist and are not being more fully explored; and finally that the conditions that the children are held in in both the detention centres and the watch houses mean that there should be a moratorium on any changes that are going to further overload places of detention.

Broader range of circumstances under the additional offences and the interplay with charging practices

We anticipate that the addition of the new charges will amplify the problems with ACAT that we highlighted in our first submission.

The new tranche of charges encompass a wider mix of circumstances than the original charges included on the ACAT scheme. To pull out just two examples, straight off the top of the list, going armed so as to cause fear and making threats offences, there can be a variety of circumstances in which those offences are charged.

Going armed so as to cause fear is a classic example. As noted by His Honour Judge McPherson in *R v Bennett* [2001] 2 Qd R 174; [1998] QCA 393, talking about the origins of the offence "*the statute was originally passed to deter armoured knights errant from riding about the country armed in a manner that was apt to terrify people. It is a description not readily applicable to Mr Jack Bennet of Gidyea Street, Barcaldine*.") Despite the not readily applicable nature of the offence, it is charged more frequently than would be expected. Using adult examples, this charge has been brought against an alcoholic with a wine bottle(*) in one hand walking wobbly past a bowls club, an inebriated patron outside a casino who fell backwards across a tree root when abused by a passing group of young men and while sprawling on the ground pulled at an irrigation peg (*) to protect himself, and a stone cold sober auntie who used a zimmerframe (*) to cross the room to tell off two teenage girls who were fighting. The asterisked items were the items the accused was alleged to be armed with.

Although the vilification element is meant to be the distinguishing feature, it is not hard to imagine a scenario where trading insults accompanied by these actions immediately puts it in ACAT territory with a lengthy wait while submissions are made on the charges and the charges are reviewed (see Director of Public Prosecutions Guidelines).

Similarly making threats encompasses a wide variety of situations. This charge has been preferred against a young child left in an empty room with a whiteboard for the better part of a day while child safety officials met with the parents in the next-door room. At the end of the day one of the officers saw that the child had scribbled "I will kill you" on the board, the child showed no aggression and did not make any verbal threats yet was charged with making threats.

Of course, there will be factual circumstances at both ends of the spectrum, our point is there will always be a wide spectrum, such that automatic rules set in legislation will operate indiscriminately and unfairly a lot of the time, it would be the same as setting a computer to apply the one response over and over again, this is why discretions are left in the hands of human (in this case judges) to prevent inappropriate application of automatic rules which render unfairness and disproportionate responses.

Finding more effective alternatives

The explanatory notes suggest that there are no alternatives however go on to describe the New South Wales model, which we would submit is a perfectly serviceable alternative.

> *"In New South Wales, the Children's Court must commit children's serious indictable offences to a higher court to be dealt with 'according to law' under the Crimes (Sentencing Procedure) Act 1999. Children's serious indictable offences are limited to the most serious offences and include offences, for example that are punishable by up to 25 years imprisonment or life imprisonment. The Children's Court has discretion when dealing with a child charged with an indictable offence to commit that child to a higher court to be dealt with 'according to law' under the Crimes (Sentencing Procedure) Act 1999 and must consider a range of factors including the nature and seriousness of the offence. Even where a child is dealt with according to law, mandatory and minimum sentences do not apply and neither do standard non-parole periods.*

The advantage of the New South Wales scheme is that discretions still remain with the courts to prevent absurd or unfair outcomes.

With the current proposed amendments and the ACAT scheme, it is impossible to anticipate all the unexpected consequences that could flow from these ACAT changes except to predict that the unexpected will happen. The most persistent law of all,

Murphy's law, will prove itself true that anything that could go wrong with these amendments will go wrong. One particular cohort we are concerned about are children with FASD. Adult laws expect adults to understand and anticipate what they are getting into; that assumption is largely wrong for children hanging around with persistent offenders, and especially children disadvantaged by cognitive disability and FASD.

The need for better solutions and a moratorium on the new changes

There is a need to find better solutions to ones that only increase the numbers of children held in detention. The experts in the upstream and downstream services can bring valuable insights to achieving real community safety. Detention centres are notorious for producing one result - a 91% chance of a return visit. Meanwhile multiple community initiatives with which are kicking goals and achieving good results struggle to get support and funding and disappear after a couple of years.

The current overload of child detainees which is spilling over into watch houses and overwhelming the detention centres means that a moratorium should be held on any further changes until this disastrous situation is rectified.

Following the evidence for alternatives to lengthier detention.

Prior to these changes, children faced serious consequences for serious offending, serving effectively 50% of the adult tariff (10 years to a 15 year old has a much bigger impact on their life trajectory than 20 years to a 30 year old) with 80% to serve.

Rehabilitation and reintegration are very important for working effectively with young offenders to bring offending to an end. The evidence shows that apprehension and short terms of detention rather than long terms of detention are the most effective circuit breakers in the most serious of youth offending.

The insights from Australian Justice Reinvestment programs which focus on multiple circuit breakers for youth and the approach of the Scottish justice reinvestment model to look at all the failed points of intervention as the best method of addressing community safety show the benefits of an evidence led approach with more focussed interventions. In particular, the Scottish tracked back from a particularly serious offence with a look at the prior contacts with systems and failure of interventions to properly understand the root causes and the fundamental responses needed. A similar

review here would inform where the problems are occurring and where the best responses would be.

These approaches were built in co-design and with inputs from a far wider range of service delivery providers. The youth justice system cannot be treated as an island disconnected from upstream measures and downstream measures. It is connected to Family and Domestic Violence systems, it is connected to child safety systems and health and disability systems. These systems need to be addressed together.

There is an opportunity to work with the peak bodies in partnership to bring in the missing expertise, insights and experiences needed to build the broader approach.

Conclusion

We have had the advantage of reading the submission of QATSICPP and broadly agree with their arguments. Consideration of changes to the justice system tend to be inward looking and the value that QATSICPP and others bring to the table is the broader context of upstream influences and downstream impacts to the justice system. Add to that an urgent focus on community corrections and on community programs; such will start to create the options to relieve the pressure on a broken system, help drive down the anticipated numbers caused by even greater use of detention and offer more effective protections from future offending (and thus safer communities – surely, the end goal).

ATSILS and QATSICPP are engaged with the Government in the Closing the Gap processes and remain ready, willing and able to engage on these issues with the Government to achieve better outcomes.

Yours faithfully,

Shane Duffy
Chief Executive Officer