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4th March 2025

Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary,

Re: Youth Justice (Monitoring Devices) Amendment Bill 2025

Thank you for the opportunity to provide comments on the Youth Justice (Monitoring Devices) Amendment Bill 2025 (**Bill**) which proposes to amend the *Youth Justice Act 1992* (**YJ Act**) to extend the electronic monitoring (**EM**) trial for youth for an additional year to 30 April 2026, effectively giving the trial a 5-year duration. We do not support the proposed extension of the EM trial. Whilst we acknowledge that, when viewed in isolation, EM has the potential to have benefits as an alternative to incarceration of a child and the potential to reduce the numbers of children in custody on remand, which is an important priority, in practice, there are a number of obstacles which undermine the effectiveness of EM including: the impacts of housing instability which many at risk youth face, the impact of the breach of bail conditions offence; compromised effectiveness in rural, remote and regional communities; compromised effectiveness on children living with a disability/disabilities and/or those with a mental health condition or cognitive impairment/s; and the impacts of stigmatisation and marginalisation on at risk children. Moreover, the evidence does not support EM as being effective as a tool. In this submission, we have outlined our reasons for not supporting the proposed extension of the EM trial and listed a number of alternative recommendations which, in our view, will be much more effective in reducing offending in the long term.

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.

ATSILS is also a member of QATSIC (the Queensland and Torres Strait Islander Coalition) and a member of the Coalition of Peaks. Both coalitions were formed to work in partnership with all three levels of government under the National Agreement for Closing the Gap.

Introductory comments

We would like to work with the government on evidence-based solutions to youth offending that work.

It is well established that children that are safe and supported have better outcomes and are less likely to be at risk of being in contact with the criminal justice system. Addressing the root causes of offending through place-based early prevention and intervention programs developed by-community-for-community along with providing

wraparound supports for children that are at risk children or children that are already in contact with the criminal justice system is fundamental to making a meaningful and lasting difference to youth offending.

We note the government's obligations under the National Agreement on Closing the Gap (**NACTG**) and, specifically, the Priority Reforms enshrined therein including, but not limited to: Formal Partnerships and Shared Decision-Making; Building the Community-Controlled Sector; and Transforming Government Organisations.

Furthermore, we draw attention to the following socio-economic outcomes which, in our view, are relevant to the subject matter of the Bill and which promote better outcomes for children:

- Target 11 – Young people are not overrepresented in the criminal justice system
- Target 12 – Children are not overrepresented in the child protection system
- Target 2 – Children are born healthy and strong
- Target 3 – Children are engaged in high quality, culturally appropriate early childhood education in their early years
- Target 4 – Children thrive in their early years
- Target 5 – Students achieve their full learning potential
- Target 6 – Students reach their full potential through further education pathways
- Target 7 – Youth are engaged in employment or education
- Target 13 – Families and households are safe
- Target 14 – People enjoy high levels of social and emotional wellbeing
- Target 15 – People maintain a distinctive cultural, spiritual and economic relationship with their land and waters.

Comments on the Bill

We do not support the proposed extension of the EM trial for an additional year for a number of reasons including that: the evidence does not establish that EM is effective; there are a number of obstacles that impact EM which significantly undermine its effectiveness; and there are negative implications that impact a child the subject of an EM condition which have the potential to be counterintuitive to reducing recidivism and/or breaches of bail and which are at odds with the objective of making communities safer. We have outlined some of these obstacles and negative implications below.

Housing instability – The success of EM is predicated upon the child having stability of housing, amongst other things. Many at risk youth experience instability in housing and

homelessness. This in and of itself might result in the child being deemed not to be suitable for an EM condition. For those that are deemed suitable and then go on to experience housing insecurity, it might be very difficult, if not impossible, to comply with curfew requirements and other relevant monitoring conditions. It might also significantly hinder a child's ability to keep the EM device charged. This can result in scenarios where children that do not have the ability to secure stable housing are penalised for the same through breach of their monitoring conditions. Further, the EM framework does not appear to consider that young people are less in control of their environment, including housing, than adults.

Insufficient evidence to support the use of EM as a tool for children - The Explanatory Notes to the Bill state that the justification for extension of the EM trial is "to allow time for a comprehensive review to be completed to inform government decisions about electronic monitoring for child offenders"¹.

The EM trial commenced in May 2021. In our view, sufficient time has elapsed, and sufficient resources have already been attributed to reviewing the effectiveness of the trial. We reference, in particular, the November 2022 Report on the review of the EM Trial published by the Department of Youth Justice² and, more recently, the QPS' own figures as expressed in their Briefing Paper that was provided to the Youth Justice Reform Select Committee (**QPS Briefing Paper**) as part of the November 2023 Inquiry into Youth Justice Reform in Queensland, in which QPS stated that "approximately one third of court ordered young people have breached their bail undertaking whilst the subject of an EMD [Electronic Monitoring Device]"³. In our view, this demonstrates that EM is not an effective tool.

The matter of low uptake of EM has been used as a justification for the previous extension of the EM trial by the former government. We wish to reiterate our views that the low uptake of EM for youth might be attributed to a myriad of reasons including that courts see such as an unnecessary imposition on a child or where other options suffice - for example, where the court considers that the condition is not

¹ Explanatory Notes, p2.

² Department of Youth Justice (Qld), *Electronic Monitoring Trial*, Report, (November 2022), available at: <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/68a197c8-7fe0-45b8-b240-1a8fac94eb30/17460_electronic-monitoring-trial-evaluation.pdf?ETag=182058e21479a534e08b008c9f15a8ac>.

³ Queensland Police Service (Qld), *Youth Justice Reform Select Committee - The Queensland Police Service Departmental Briefing for the Inquiry into Youth Justice Reform in Queensland*, Report, (2023), p19, available at: https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/20231113%20QPS%20Briefing_%20YCSC_%20Inquiry%20into%20Youth%20Justice%20reforms.pdf.

necessary to mitigate the risk, or that there are relevant factors relating to the child's age, maturity level, cognitive ability/developmental needs, disability, home environment, that would involve undue management or supervision of the child should the condition be imposed. We note that the Magistrates Bail Benchbook at page 66 states that before a court can impose a monitoring condition on bail, the court must order the chief executive to complete a Suitability Assessment Report (SAR) which involves, amongst other things, consideration of whether the child has access to a mobile phone, a power source to keep it charged and the ability to understand compliance conditions. These might themselves be barriers to uptake of EM, especially for at-risk youth that might be living in poverty, homelessness and/or have a cognitive or other impairment.

In addition, EM devices do not change a child's lack of maturity, nor will it speed up their brain development. It will not necessarily address impulsivity, engaging in risky behaviour, influence by peer pressure, nor a failure to adequately think about consequences before taking a particular course of action, etc. This can only occur via providing wraparound supports to the child to help address their needs and help them develop strategies for behaving in socially responsible ways.

The breach of bail offence and potential for punitive outcomes - With the breach of bail conditions offence being re-introduced in Queensland, strict compliance with EM conditions exposes a child to the risk of being charged for even minor breaches, which could see them subject to a term of imprisonment, further entrenching the child in the criminal justice system. Additionally, such might expose the child to greater penalty than what they might have received if they were granted bail without an EM condition or if they were detained in custody on remand. Therefore, the effect of EM can be punitive on the child and entrench the child in criminal pathways.

Compromised effectiveness in rural, remote, or regional areas - Those living in rural, remote, or regional areas might experience limited network connectivity which can make EM devices unreliable. Inadvertent breaches could occur. For example, a person who is living on Country might inadvertently breach EM conditions by moving into geographical areas that have no GPS coverage for cultural practices or for any other legitimate purpose.

The effectiveness of EM on children living with a disability/disabilities or mental health issues/concerns is very limited - A significant proportion of our clients that seek representation for criminal law matters suffer from mental health issues/concerns and/or have cognitive or other impairments/disabilities. Many have Foetal Alcohol Spectrum Disorder (FASD). It can be very challenging for an individual experiencing

such challenges to be able to sufficiently comprehend and/or comply with EM requirements. Inadvertent breaches might occur for reasons that they should not be penalised for.

Stigmatisation and marginalisation - Stigmatisation and/or marginalisation of individuals wearing a GPS tracking ankle bracelet is a reality, and in the case of children, it can be argued to be even more significant given their crucial age for development and growth at this stage of their life. Having a GPS monitoring device strapped to their ankle can have negative impacts on their mental health, self-worth, self-image and potentially embed an identity linked with criminality, even though they have not yet been found guilty of any relevant charge. It also discourages some children from attending school out of shame. Further, EM devices have the potential to isolate a child by undermining their anonymity which is inconsistent with the fundamental right of the child to be presumed innocent until proven guilty of any relevant charge.

Intersectionality generally - The impact of EM is exponentially exacerbated for children that experience intersectional disadvantage. Take the example of a child living with FASD who is experiencing housing insecurity and lives in a rural, remote, or regional area.

Counter-intuitive impacts - In some instances, in particular, for at-risk youth, we have observed that EM devices might be seen as an initiation or a badge of honour and, therefore, the use of EM devices has the potential to be counterintuitive to reducing recidivism and instead has the potential to embed criminal pathways for a child.

Recommended alternative solutions

We strongly recommend that, in lieu of extending the EM trial, the government consider the following solutions which, in our view, will have a much more marked impact on youth offending and compliance with bail conditions:

- bail conditions need to be drafted more carefully with consideration of a level of flexibility, especially considering the particular situation of the individual involved including, relevantly, impacts of intersectionality, cultural practices, etc. so that individuals are not set up to fail;
- a network of bail supported accommodation throughout the State and other community-based alternatives for children on remand (for Aboriginal and Torres Strait Islander children, it is strongly recommended that these services be delivered by local community-controlled organisations for their best chances of success);
- there is a need for more holistic place-based supports/integrated services delivered by community-controlled organisations that address key needs of the child as required, for example, to address hunger, housing stability, homelessness,

substance use/misuse, family disfunction, health (including mental health) and education (this would involve ensuring that such organisations are funded and that funding is maintained, to avoid the funding insecurity that we have seen in the past where great initiatives are halted in their tracks due to being de-funded);

- there needs to be ongoing training for police officers, courts/judicial officers, youth detention and correctional staff about the challenges faced by intersectional populations; and
- there must be a strong focus on prevention and early intervention initiatives that are aimed at addressing the root causes of offending and long-lasting investment and considered policy to improve social determinants including housing, health, employment and education, consistent with the government's obligations under the National Agreement on Closing the Gap.

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

Yours faithfully,

Shane Duffy
Chief Executive Officer