

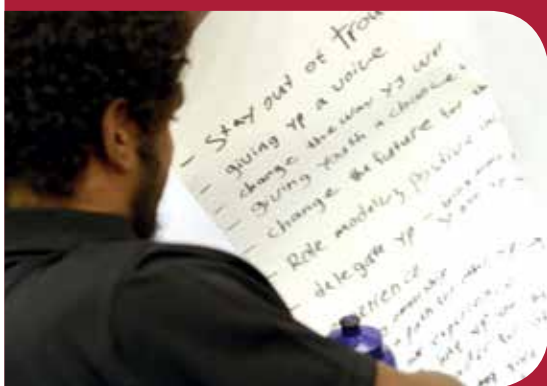
# Report on Youth Justice

from Bob Atkinson AO, APM, Special Advisor  
to Di Farmer MP, Minister for Child Safety,  
Youth and Women and Minister for  
Prevention of Domestic and Family Violence

Version 2



8 June 2018





8 June 2018

Honourable Di Farmer MP  
Minister for Child Safety, Youth and Women and  
Minister for the Prevention of Domestic and Family Violence  
GPO Box 806  
BRISBANE QLD 4001

Dear Minister

Herewith is a report that constitutes my advice commissioned in February 2018, in partial completion of the terms of reference, namely, to provide advice on:

1. progress of the Government's youth justice reforms and next steps;
2. other measures to reduce recidivism; and
3. recommendations for youth detention from the Royal Commission into Institutional Responses to Child Sexual Abuse.

This report is focussed exclusively on youth justice issues, inclusive of the progress on youth justice reforms concerning the transition of 17 year olds in the youth justice system.

The Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse in relation to 'Contemporary Detention Centres' (Volume 15) will be responded to separately.

I acknowledge the support of your staff and of the Director-General, Michael Hogan, for his ongoing support, advice and assistance.

I was also assisted by Ms Rebecca Keys, Ms Toni Craig and Ms Elle Joncour. Their commitment, competence and professionalism were invaluable. This report is our collective effort.

We received further assistance from a number of key personnel in the Department of Child Safety, Youth and Women including valuable administrative support from Ms Helen Matthews, Ms Tanja Morch, Ms Kirryn Lewis, Ms Nikki Eden and Ms Tenaya Yorston.

In addressing the terms of reference we engaged with a wide range of individuals, departments and organisations who gave generously of their time, views and knowledge. For that we are very grateful.

I thank you for your appointment of myself as the 'Special Advisor'. It was a privilege to have been involved in the activity associated with the production of this report.

Yours sincerely



Bob Atkinson AO, APM



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and Minister for Prevention of Domestic and Family Violence

Version 2 of this report contains corrections and additions to names and titles in the Attachment A and B stakeholder and committee engagement list. No changes have been made to the report itself.

### **Published June 2018**

Youth Justice Taskforce  
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Queensland Government  
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## Acknowledgements

Thank you to all the people who gave so generously of their time in sharing their expertise, experiences, data and information as interested individuals and representatives of organisations. Your passion and expertise about how to deal with youth offending was both energising and informative.

I am appreciative of the opportunity afforded by the Minister to undertake this work. It would not have been possible however without the support of the Department of Child Safety, Youth and Women's Director-General, Michael Hogan, many others within the Department who assisted us and the wide range of individuals, departments and organisations who gave generously of their time, views and knowledge. For that I am very grateful.

The programme and completion of this report would not have been possible without the work and contribution of Ms Rebecca Keys, Ms Toni Craig and Ms Elle Joncour. This report is our collective effort.

We also received assistance from a number of other key personnel in the Department of Child Safety, Youth and Women including valuable administrative support from Ms Helen Matthews, Ms Tanja Morch, Ms Kirryn Lewis, Ms Nikki Eden and Ms Tenaya Yorston.

## Executive –Summary

On 12 February 2018, Mr Robert (Bob) Atkinson was appointed as a Special Advisor to the Honourable Di Farmer MP, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, to examine and report on a range of youth justice matters by 8 June 2018. He was assisted in preparing this report by Ms Rebecca Keys, Ms Toni Craig and Ms Elle Joncour. The timeframe allowed a methodology of broad consultation, targeted visits and desk top research.

The terms of reference were to advise on:

1. progress of the Government’s youth justice reforms and next steps
2. other measures to reduce recidivism, and
3. recommendations for youth detention from the Royal Commission into Institutional Responses to Child Sexual Abuse.

This report addresses the first two terms of reference. The third is the subject of a separate report.

Our key finding and recommendation is that the Queensland Government adopt as its policy position for youth justice, four objectives that we have called the ‘Four Pillars’ framed or ‘bookended’ by two fundamental principles – that public safety is paramount and that community confidence is essential.

The ‘Four Pillars’ are:

1. Intervene Early
2. Keep children out of court
3. Keep children out of custody, and
4. Reduce reoffending.

There is significant evidence and research that supports this approach. Existing legislation, policy and the views of many stakeholders are also supportive of it. Currently however, there are times when elements of the ‘system’ are counterproductive to the ‘Four Pillars’. This is

not intentional nor is it the fault of any of the individuals, departments or organisations that make their separate contributions to the youth justice system. A whole of government policy position that aligns with the Four Pillars would go a significant way to ensuring all agencies with a stake in addressing youth offending are directing their efforts towards a shared vision and outcomes.

In this report we have endeavoured to discuss ways to improve the youth justice system and, where relevant, have made specific recommendations to support these. There are practices currently in place that we believe should be continued, built on or extended and newer approaches that once validated will provide real substance to the implementation of the four pillars.

We set out the rationale and basis of the ‘Four Pillars’ approach. This is followed by a set of related topics presented as individual papers. Each topic discussed is the subject of one or more recommendations.

While these topic papers are related they have been presented so they can be read as a standalone document. As a result there is some unavoidable but relatively minor repetition.

In total there are 31 papers and 77 recommendations.

The issues underpinning youth offending and the ability of ‘the system’ to respond are many and complex. There is no quick fix and no single solution. Therefore a long term, holistic suite of solutions is required. The report articulates many of the causes of offending, such as family dysfunction, children experiencing abuse, neglect, poor attendance resulting in poor educational attainment, mental health problems and neurological disabilities. The report identifies initiatives and improvements that could make a difference to these causal factors alongside better coordination and better collaboration and a place-based approach.



Among our recommended responses those that can potentially be commenced within the next six to 12 months are:

- coordinated, multi-government agency approaches to high-risk children and families including sharing information, co-location, coordinated case management and shared goals;
- services delivered by government and non-government agencies being available at times of need (e.g., night-time and weekends)
- a focus on attendance at school and vocational training
- increased options for police to divert child offenders from prosecution
- increased options for courts to divert children from detention centres
- increased options for children to remain in the community rather than be remanded in custody
- greater specialisation in the children's criminal jurisdiction, and
- a trial of 'Protected Admissions' involving a wide range of stakeholders but primarily Youth Justice within the Department of Child Safety, Youth and Women (DCSYW), the Queensland Police Service (QPS), the Crime and Corruption Commission (CCC), the Department of Justice and Attorney-General (DJAG), Legal Aid Queensland (LAQ) and the Aboriginal and Torres Strait Islander Legal Service (ATSILS), the intent being for engagement in dialogue to enable a police diversion rather than prosecution.

We are supportive of specific measurable goals and in some cases, targets, in particular:

- reducing the number of children on remand in detention
- reducing the number of children entering detention for the first time by half (from 516 in 2016-17), and
- reducing the disproportionate representation of Aboriginal and Torres Strait Islander children in the youth justice system, particularly those in detention.

In addition, we would like to see youth justice put on a national agenda with key priorities of raising the minimum age of criminal responsibility and reducing the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system.

We acknowledge the work that is already being done by the Department of Child Safety, Youth and Women (DCSYW) to progress these themes in a number of areas where we have made recommendations. We also acknowledge the significant workload of the Department in managing the machinery of government changes and numerous other related reports and recommendations in the areas of Child Safety, Youth Justice and Domestic Violence.

Whilst we consulted widely it has not been viable to consult further in terms of our report and recommendations. The next stage, following receipt of this report by the Minister, could be to provide it to the Queensland Government Departments and other entities referred to in it for the opportunity to provide a response.

A number of our recommendations involve potential changes to resourcing, either by securing additional funding or re-prioritising existing resources or funding. It was not within our scope to conduct economic modelling in that regard but given the cost of youth detention centres we are of the view that our recommendations are likely to be potentially beneficial both economically and practically.

## Recommendations

### Four Pillars

1. That the Four Pillars model be adopted as the Government's Youth Justice Policy:
  - a. Intervene early
  - b. Keep children out of court
  - c. Keep children out of custody
  - d. Reduce reoffending.

### Prevention and Early Intervention

2. That a Youth Justice strategy include collaborative crime prevention and early intervention initiatives in high-risk communities.
3. That a systematic response be developed for cases where indicators identify a need for early intervention.
4. That schools become focal points for early intervention for children in need of targeted support, with key agencies working collaboratively to proactively identify, assess and work with families, communities and non-government organisations.
5. That the Government consider appropriate alcohol and drug assessment, and interventions for families and children as part of early intervention.

### Education, Vocational Training and Employment

6. That the Government consider adopting a collaborative model between the Department of Education, Department of Child Safety Youth and Women, and the Childrens Court, based on the Victorian Education Justice Initiative (EJI).
7. That consideration be given to using the Youth Engagement Charter as a platform for further work in education and employment pathways when engaging with high-risk children involved in the youth justice system.
8. That targeted resourcing be provided for schools with a high occurrence of children with problem behaviours so that teachers

can retain their focus on education while specialist behaviour management staff can focus on those aspects.

9. That alternative and flexible schooling options and pathways into them are available for children in the youth justice system and those at high risk of mainstream school disengagement.
10. That supported transition back to school following a period in detention is delivered in partnership between the Department of Education, Department of Child Safety, Youth and Women, Department of Aboriginal and Torres Strait Islander Policy and local community organisations.
11. That the importance of vocational training, job readiness and employment is recognised and reflected in responses to criminal offending, in particular for older children who are involved in the criminal justice system.

### Health and Wellbeing

12. That the capacity to conduct full physical health, mental health, disability and educational assessments of children at all levels of the youth justice system, together with referral to related treatment and programs be progressed to the greatest extent possible.
13. That training in the impact of trauma on neurological development, and the risk of impairment be adopted for key staff working in the youth justice system, notably frontline police, teachers, judiciary and legal practitioners, as well as Youth Justice staff and non-government service providers.

### Substance Abuse

14. That the Government consider extending drug diversion to drugs other than cannabis for minor drug offences committed by children.
15. That the Government consider a range of evidence-based treatment options for children in the youth justice system with substance abuse issues.

### Minor Offending

16. That members of the Queensland Police Service be supported in exercising discretion not to prosecute and be provided with as wide a range of options as possible in that regard.
17. That pathways for police to refer to non-government service providers for the purposes of diversion be enhanced.

### Protected Admissions and Enhanced Diversions

18. That the Government support a trial of a 'Protected Admissions' and enhanced diversions scheme in a suitable location, which, if successful, could be progressively introduced in other locations across the State.

### Bail

19. That the Government maintain the existing Supervised Bail Accommodation services in Townsville, Logan and Carbrook and consider extending the referral pathways to include:
  - a. children leaving detention
  - b. children on bail and ordered by the court to reside as a condition of bail
  - c. children subject to police bail
  - d. children on supervised orders who have nowhere suitable to live.
20. That a referral pathway similar to the Bail Assistance Line (BAL) in NSW be considered.
21. That child criminal matters be returned to court regularly to test readiness to proceed and, where a child is in custody, whether bail is appropriate.
22. That further measures be put in place to ensure bail conditions do not place unrealistic expectations on children in light of their circumstances, whilst ensuring community safety.
23. That, to the greatest extent possible, bail support services are available to keep children in the community, instead of remanded in custody.

### Remand in Custody

24. That goals be set to progressively reduce the proportion of children on remand in custody, with annual targets and key milestones.
25. That measures be put in place to ensure all children on remand in custody have access to rehabilitative programs to address the criminogenic factors relating to their offending including, where indicated, continuation of the program on release from custody.

### Restorative Justice

26. That restorative justice conferencing continue to be promoted for use in a wide range of child offending matters.
27. That Youth Justice staff, police and courts are supported with the requisite knowledge, skills, training and resources to facilitate referral of a wide range of offences to restorative justice conferencing.
28. That the Government consider adopting other forms of restorative justice for application in Queensland, including Family Group Conferencing and Family-Led Decision-Making, with specific consideration of their relevance and suitability to deal more effectively with Aboriginal and Torres Strait Islander children who commit offences.

### Court Orders and Sentencing Options

29. That the capacity for mental health and disability assessments to assist the courts be enlarged to the greatest extent possible, including availability and timeliness.
30. That the Government consider legislation and facilities to make available to the courts, therapeutic and forensic orders for children with mental health, substance use or disability issues related to their criminal offending.
31. That the range and content of current court orders and sentence options under the Youth Justice Act 1992 be reviewed and consideration be given to a wider range of options being available for children's courts.

## Detention

32. That the Government adopt a goal of reducing by half the number of children entering detention for the first time (516 in 2016-2017), by 2019-2020.
33. Noting the negative consequences of detention, that detention be used for serious offenders where public safety is a factor.
34. That consideration be given for more use of detention options in alternative community settings for example community detention, leave of absence, community service, and for court-ordered periods at on-country residential programs, remand fostering and professional foster care.
35. Should the construction of additional detention centre infrastructure be required, that consideration be given to designing facilities that are different from the current large-scale institutions. They should ideally be small in size, built in multiple locations across Queensland and potentially specialised and therapeutic in focus, to meet the circumstances of different cohorts of children, for example girls, serious and high-risk offenders, or offenders with challenging behaviours.
36. That flexibility with detention and remand orders be adopted so that children can spend time outside of a detention centre during periods of custody to maintain positive connections to home and country and to support their transition and reintegration back into the community.

## Electronic Monitoring Devices

37. That the Government examine the use of electronic monitoring together with community or home detention as an alternative to detention in a youth detention centre.

## BYDC and CYDC Human Resource Management

38. That the Department of Child Safety, Youth and Women continue to progress a long-term comprehensive workforce plan that embraces professionalisation and best practice for youth detention centre staff.

## Stand-alone Specialist Childrens Court

39. That the Government consider establishing a standalone Childrens Court for all youth justice and child protection matters based on the model that currently exists in New South Wales.
40. Allowing for resource implications, that more full-time Childrens Court magistrates be appointed over time to work exclusively in the Childrens Court jurisdiction.
41. That the President of the Childrens Court be able to perform that role and provide the associated leadership and management in a full-time capacity.
42. In recognition of the benefits of greater specialisation, that consideration be given to extending the summary jurisdiction in the Childrens Court to enable specialist children's magistrates to deal with more serious offences.

## Stand-alone Child Legislation

43. That the Government consider stand-alone child criminal justice legislation that potentially incorporates bail and police powers and responsibilities relating to a child. That consideration also be given to including in the stand-alone children's criminal legislation, provisions relating to court proceedings for children, the role and functions of the Childrens Court and the role of key agencies in the youth justice system.
44. If the Four Pillars are adopted as Government policy that consideration be given to adopting them as principles and objectives in legislation that impacts on preventing and responding to youth offending. This potentially includes the current *Youth Justice Act 1992*, the *Bail Act 1980*, the *Police Powers and Responsibilities Act 2000*, as well as legislation governing courts, child safety, education, health, housing, and other service provision.

## Legal Representation in the Children's Criminal Jurisdiction

45. That lawyers who practice in the children's criminal jurisdiction undertake specialist training and accreditation, potentially developed and delivered jointly by LAQ and ATSILS.
46. If the Four Pillars are adopted as Government policy, that:
  - a. the Legal Aid funding model for children's criminal matters be reviewed to examine if it can better support early finalisation of matters and non-court outcomes for children who come into contact with the criminal justice system;
  - b. local area protocols be established between QPS, ATSILS, LAQ and Youth Justice with a view to diverting more children from court, custody and the criminal justice system;
  - c. LAQ and ATSILS collaborate on implementing the four pillars in their criminal justice practices.

## Multi-agency, Coordinated Approaches

47. That the Government consider implementing collaborative approaches similar to Townsville Stronger Communities Action Group (TSCAG) in other towns and communities experiencing child offending and community concern.

## Place-based Approaches

48. That the Government consider adopting place-based approaches that address both the causes of offending as well as responses to offending in Queensland towns and communities with high levels of concern about youth offending.

## Information Sharing

49. That the Department of Child Safety, Youth and Women in conjunction with other key agencies examine ways to maximise sharing information about children in the youth justice system to facilitate decision-making and positive outcomes for children.

## Non-Government Services and Programs

50. That systems for identifying effective referral services are enhanced to the greatest extent possible to ensure these services are known and available to key agency staff in the locations in which they work.
51. That referral pathways are optimised for police, Youth Justice, courts and relevant Government agencies to facilitate referrals of children to non-government and other support services.

## After-Hours Services

52. That the Government trial key agency and government-funded after-hours service provision in conjunction with police in locations where high levels of need is identified.
53. That the Government consider re-allocating funding to after-hours services where high levels of need are identified.
54. That the necessary industrial and contractual arrangements be investigated to enable and support after-hours service provision by key Government agencies and NGOs.
55. That after-hours youth facilities modelled on 'The Lighthouse' in Townsville be considered for other high-risk youth offending locations in Queensland where there are limited safe, suitable activities and locations for teenagers at night time.
56. That policies, procedures and practices of key agencies be enhanced to support discussions between police, relevant key agencies and NGOs to progress the intent of the four pillars.

## Community Champions

57. That the Government consider appointing Community Champions in locations in Queensland where there are high levels of community concern about youth offending.

## Driver License and Vehicle Support Programs

58. That consideration be given (in partnerships, including with the Departments of Transport

and Main Roads, the Motor Accident Insurance Commission, and the Department of Employment, Small Business and Training) to a program for 16-17 year olds in the youth justice system that would assist in obtaining a driver's license and potential employment in a motor vehicle or transport-related field.

### Technology to Reduce Car Theft (UUMV) and Traffic Offending

59. That Government continue to support the development and use of technological solutions to prevent car theft.
60. That Government seek to put the use of technological solutions to prevent car theft on a national agenda.

### Role of Key Agency Group and Regional Cross-Agency Coordination

61. That an oversight body of key agencies continue to lead a whole of government youth justice strategy.
62. That Government consider strengthening regional departmental leadership and accountability for key agencies concerned with youth justice. This could potentially include:
  - Department of Child Safety, Youth and Women (DCSYW)
  - Queensland Police Service (QPS)
  - Department of Housing and Public Works (DHPW)
  - Department of Education (DoE)
  - Queensland Health (QH)
  - Department of Communities, Disability Services and Seniors (DCSS)
  - Department of Justice and Attorney-General (DJAG).

### Measuring Success

63. As part of a youth justice strategy, that the Government adopt goals related to key priorities, including the amount and frequency of representation of Aboriginal and Torres Strait Islander children in the youth justice system, educational engagement of children in the youth justice system, the proportion of children in detention who are remanded in custody, and recidivism.
64. That success of a reformed and integrated youth justice system be measured using a combination of different measures of offending and reoffending and other outcomes concerning the key factors impacting on offending, such as improvements in education, mental health and family functioning, as well as factors that are important to communities, such as feeling safe and secure, less frequent offending, less harmful offending, and community confidence.
65. That differential harm measures, such as the crime harm index and the offending magnitude measure, are tested and applied to assist police, courts, and youth justice service providers to make better decisions about what is working to reduce youth offending and reoffending.

### Media

66. That the Government adopt a coordinated Statewide media strategy to promote and support the Four Pillars policy position.

### Research, Evaluation and Knowledge Dissemination

67. That the Government:
  - a. develop, support and contribute to youth justice and youth crime prevention research agendas for Queensland and Australia and that these align with strategic priorities and guide further research conducted by academics and other external researchers

- b. explore opportunities for partnering with Universities
- c. develop research and evaluation capability of Government staff and a scholarship program for those who wish to advance the evidence base alongside developing their own professional knowledge and skills
- d. explore opportunities for youth-justice-specific conferences
- e. publish research and evaluation findings in a variety of formats suitable for different audiences.

### Minimum Age of Criminal Responsibility (MACR)

- 68. That the Government support in principle raising the MACR to 12 years subject to:
  - a. national agreement and implementation by State and Territory governments
  - b. a comprehensive impact analysis
  - c. establishment of needs based programs and diversions for 8-11 year old children engaged in offending behaviour.
- 69. That the Government advocate for consideration of raising the MACR to 12 years as part of a national agenda for all states and territories for implementation as a uniform approach.
- 70. In the interim, that the Government consider legislating so that 10-11 year olds should not be remanded in custody or sentenced to detention except for a very serious offence.

### Aboriginal and Torres Strait Islander Over-representation

- 71. That the Government set long-term goals for Aboriginal and Torres Strait Islander children to be no more highly represented than non-Indigenous children in the criminal justice system, the priority being that the rate of incarceration of Aboriginal and Torres Strait

Islander children be no higher than that of non-Indigenous children.

- 72. That the Government set annual targets for progress towards long-term goals for reducing the over-representation of Aboriginal and Torres Strait Islander children at multiple points in the criminal justice system, including:
  - a. children charged with offences
  - b. children under community-based supervision
  - c. children remanded in custody, and
  - d. children subject to detention.
- 73. That the Government consider a program of community consultation in Aboriginal and Torres Strait Islander communities experiencing high levels of concern about youth offending to encourage local solutions to youth offending.
- 74. That DCSYW and other criminal justice agencies set targets for Aboriginal and Torres Strait Islander representation and report annually against these targets.
- 75. That staff of key agencies who engage with child offenders undertake cultural competency training and development.

### A Vision for the Future and a National Agenda: 20-20-38

- 76. That the Queensland Government endeavour to have youth offending put on a national agenda, preferably under the COAG regime.
- 77. That consideration be given to putting the issue of the disproportionate representation of Aboriginal and Torres Strait Islander children in the criminal justice system on a national level to develop an effective, nationally agreed bipartisan strategy with a set of nationally agreed goals.

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## Introduction and Background

Until 12 February 2018, Queensland remained the only jurisdiction in Australia where the age of adulthood in terms of entering the criminal justice system was 17 years. In November 2016, the Queensland Government passed legislation to change the age of adult criminal responsibility to 18 years. The legislation commenced on 12 February 2018.

This change afforded an opportunity to review the way in which Queensland deals with young offenders, with a focus on keeping communities safe and building pathways to help young offenders change their ways and achieve better life outcomes.

Youth Justice Services, as part of the Department of Justice and Attorney-General, in collaboration with key agencies, commenced a plan of action for the inclusion of 17 year olds in the youth justice system. A key feature of the plan was that the numbers of children in detention would not increase with the addition of 17 year olds. This would be achieved at key touchpoints in the system by adopting new initiatives and approaches, including:

- supervised bail accommodation services (SBAs) to house children who would otherwise be on remand in youth detention centres
- an increased use of diversions away from court by police
- reducing delay in children's court proceedings by providing additional court and prosecution resources.

Following the Machinery of Government changes after the 2017 election, Youth Justice was relocated to the new Department of Child Safety, Youth and Women (DCSYW). It became apparent that whilst much of the preparation for the change in the age of adult criminal responsibility to 18 years was in place, there was less certainty about the immediate impact of these measures to keep Detention Centre numbers at their current levels. As a result, the Government decided to defer the transfer of 17 year olds already in adult prisons into youth detention centres and to enable 17 year olds who were charged before 12 February 2018 to be held in adult prisons. 17 year olds charged after 12 February 2018 were to be dealt with in the youth justice system.

The transition of 17 year olds out of the adult criminal justice system also provided an opportunity to look critically at the Queensland youth justice system as a whole and identify enhancements to strategic direction, policy, regulatory frameworks, relationships, programs, practices, services and facilities.

## Terms of Reference and Review Methodology

To ensure the Government's focus on keeping communities safe and reducing youth offending remained on track, former Queensland Police Commissioner, and former Commissioner on the Royal Commission into Institutional Responses to Child Sexual Abuse, Bob Atkinson, was appointed as a Special Advisor to the Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence.

Bob Atkinson was appointed on 12 February 2018 to provide immediate and ongoing advice to the Minister on the following, with final advice to be provided by 8 June 2018:

1. progress of the Government's youth justice reforms and next steps
2. other measures to reduce recidivism
3. recommendations for youth detention from the Royal Commission into Institutional Responses to Child Sexual Abuse.

Mr Atkinson was supported by the Department of Child Safety, Youth and Women (DCSYW) staff members, Rebecca Keys, Toni Craig and Elle Joncour.

This report presents key findings and recommendations and a framework for the future for progressive improvement of the way in which Queensland prevents and responds to child offending to ensure our communities are safe and all children have hope and opportunities for the future.

The conclusions drawn in this report are informed by:

1. discussions individually and in groups with key stakeholders and experts in Brisbane and during visits to Mt Isa, Townsville Maryborough, Ipswich, Toowoomba and Sydney. (A list of stakeholders is at **Attachment A**.)

2. consultation with committees, including:
  - a. 17 year old Transition Key Agency Group
  - b. 17 year old Transition Project Board
  - c. 17 year old Transition Stakeholder Advisory Group
  - d. Childrens Court Committee
  - e. Youth Justice First Nations Action Board.

(The list of members of these committees is at **Attachment B**.)

3. consideration of recent relevant reports, notably from:
  - a. the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017)
  - b. the Independent Review of Youth Detention in Queensland (2016)
  - c. the Victorian Government's Youth Justice Review and Strategy, *Meeting Needs and Reducing Offending* (2017)
  - d. the Parliamentary Inquiry into Youth Justice Centres in Victoria (2018)
  - e. the Custodial Youth Justice Options Paper prepared for the Tasmanian Government (2016)
  - f. the Australian Law Reform Commission's report, *Pathways to Justice* (2018).
4. consideration of other academic and research literature contained in the Reference List
5. background literature and government documentation on youth justice practice and youth justice reforms in Queensland
6. ongoing liaison with the Minister and the Director-General of the Department of Child Safety, Youth and Women.

## Current approach to youth justice

The youth justice system in Queensland has many stakeholders responsible for delivering different elements of the system, often in partnership with each other. From when a child first has contact with the police, there are many parties who may become involved, including court staff, the judiciary, legal practitioners, case workers, youth workers, education professionals, health professionals, youth support persons and agencies, and non-government service providers, each playing a key role.

### *Queensland Police Service (QPS)*

The Queensland Police Service (QPS) are the first responders when a child commits an offence. Police may also continue to be involved, for example, in a restorative justice conference, enforcing bail conditions, or as prosecutors in court. Police play an important role in community policing and crime prevention as well as diverting children from court and the criminal justice system through their use of diversionary powers such as informal warnings, cautions and police referred restorative justice processes.

### *Youth Justice Services*

Youth Justice Services in Queensland is part of the Department of Child Safety, Youth and Women (DCSYW), having recently moved to this agency following Machinery of Government changes that took effect in November 2017.

Prior to this, Youth Justice Services was part of the Department of Justice and Attorney-General (DJAG). DCSYW is responsible for the development of youth justice policy, performance reporting, research and evaluation, funding and contract management of outsourced services, and the development and delivery of programs, practice standards and services for young people subject to statutory court orders through three main programs: Restorative Justice, Youth Justice Service Centres and youth detention centres.

Services are primarily tertiary in nature and are delivered predominantly as part of court orders, although the Department's restorative justice and graffiti removal order programs also provide

an avenue for police and courts to divert young people to specialised programs. A concerted effort toward the development and delivery of evidence-based programs and services is apparent with the commencement of Standardised Program Evaluation Protocol (SPEP) and outcome-based procurement and performance management processes for outsourced services. Queensland is the only state in Australia using this internationally endorsed best practice approach to program design and delivery.

Other innovations include Transition to Success, redesigning and recommissioning outsourced services and commencing several initiatives as part of the transition of 17 year olds into the youth justice system. Other improvements have been made with respect to Aboriginal and Torres Strait Islander children, utilising expertise from Aboriginal and Torres Strait Islander staff to scrutinise and improve services through a First Nations Action Board. Notwithstanding the changes and improvements, the youth justice system remains challenged by several key trends and issues:

- continuing and increasing over-representation of Aboriginal and Torres Strait Islander children committing offences, being remanded in custody, and being sentenced to both community-based orders and detention
- decreasing overall rates of crime but an increase in the severity of offences, and the concentration of offences among a small group of young people
- a remand rate that is the highest of all states and territories in Australia, and
- rates of custody that exceed the capacity of current detention centres.

The move of Youth Justice Services into the DCSYW portfolio provides a strong platform for the continuous growth of the relationship and collaboration with Child Safety Services. This should enable greater information sharing, and enhanced partnerships and responses to the needs of families at risk as well as joint clients. Additionally, the new portfolio provides a key opportunity for addressing domestic violence both as a risk factor

for youth offending, and in preventing children from becoming victims or perpetrators of domestic violence.

### *Queensland Courts*

When a child is charged with an offence, they will appear in court as early as possible. Queensland courts play an integral role in the youth justice system, charged with ensuring children receive just, timely, and meaningful outcomes in response to their offending. Courts must balance a number of factors when a child appears before them charged with an offence, including harm caused to a victim, opportunities for rehabilitation and their age. The Queensland court system is essential to achieving positive outcomes for both children and the community.

### *Queensland Health*

Due to the high prevalence of drug, alcohol, general health and mental health concerns of children in the youth justice system, Queensland Health is a key agency. Agencies within Queensland Health such as the Child and Youth Mental Health Service (CYMHS) and the Child and Youth Forensic Outreach Service (CYFOS), provide specialised assessments, treatment and intervention planning for children with mental health concerns. Queensland Health also has a permanent presence in youth detention centres through the services of the Mental Health, Alcohol, Tobacco and Other Drugs Service (MHATODS) and on-site nurses to provide medical and health checks to children, particularly upon admission to a Detention Centre.

### *Department of Education, and State, Independent and Alternative Education Providers*

The Department of Education and other education providers play a crucial role in the youth justice system, working collaboratively to ensure children at risk of disengagement or displaying adverse behaviours within education settings, are assisted to re-engage in education and provided with specialist support to ensure their continued involvement in education, in addition to maintaining the safety of school communities. The Department of Education also operates schools in the youth

detention centres and has significant expertise working with children in these environments.

### *Legal Services, including Legal Aid Queensland (LAQ) and Aboriginal and Torres Strait Islander Legal Service (ATSILS)*

Legal services, advice and support provided to children who have, or allegedly have, committed offences, is critical to ensure children's rights are protected, and that they are well-informed. Given the particular vulnerability of children, it is important that each child in the criminal justice system has access to legal advice and representation that assists them at key points in the youth justice system.

### *Non-Government Organisations (NGOs)*

NGOs play a variety of roles in supporting children at various points through the youth justice system, including on-going involvement and support after a child's statutory requirements with Youth Justice are fulfilled. NGOs range from small, local, private organisations to large national community service providers. They may be fully or partially funded by the Department of Child Safety, Youth and Women, other Queensland Government agencies or the Commonwealth or local governments to deliver specific supports to children in the youth, family support, child safety, domestic violence and youth justice systems. The services provided by NGOs to children (and their families) in the youth justice system are essential to achieving positive outcomes for children and the community.

### *Department of Child Safety, Youth and Women*

#### *Child Safety Services*

Approximately 13% of children in the youth justice system are subject to Care and Protection orders, however, the proportion of children in the youth justice system who have had contact with Child Safety Services is significantly higher. The most recent published data shows that 83.1% of children in the Queensland youth justice system were known to the child protection system at 30 June 2014. Given the crossover that occurs between children in the child protection system and the youth

justice system, there is a high level of collaboration between the two services, to ensure children and families in contact with both receive wrap around services and support.

### *17 year olds Transition*

The Queensland Government has finalised its commitment to transitioning 17 year olds from the adult criminal justice system to the youth justice system. An announcement to end the practice of treating 17 year olds as adults in Queensland's criminal justice system was made on 7 September 2016 and legislation to give this commitment effect commenced on 12 February 2018.

This reform brings Queensland laws into line with all other Australian States and Territories, aligns with the UN Convention on the Rights of the Child, and is consistent with the Report of the recent National Royal Commission into Institutional Responses to Child Sexual Abuse.

The transition has occurred with slightly different outcomes for three different cohorts of young people depending on the stage their matters were at in the criminal justice system:

- approximately 1200 17 year olds on community based orders at 12 February 2018 transitioned to the youth justice system on that day
- of almost 600 17 year olds whose matters were before the court on 12 February 2018, 97% have transitioned to the Childrens Court jurisdiction with only a small number of higher court matters remaining in the adult jurisdiction
- approximately 50 17 year olds were in adult corrective services facilities on 12 February 2018. At 4 June 2018 this number had reduced to eight and it is anticipated that these 17-year olds will all have exited prison by 31 October 2018.

We acknowledge the contribution of Queensland

Corrective Services and Queensland Courts through the transition.

Several initiatives, some supported by additional resources, were implemented to support the transition and manage the increased demand brought about by the transition of 17 year olds into the youth justice system, including:

- Additional Youth Justice staffing resources for community and detention supervision
- Legal Aid After Hours Youth Legal Advice Hotline
- Supervised Bail Accommodation Services (four now operational)
- Greater court efficiencies and funding for two Childrens Court Magistrates and more Police Prosecutors
- Higher Court Bail Reviews and Bail Support
- Additional youth detention centre capacity and fencing to manage different cohorts.

Unfortunately due to the limitations of current bed capacity in detention centres, children who are remanded in custody are not immediately able to be transferred to a youth detention centre. Instead they are being temporarily held in police watchhouses. At 4 June 2018, 17 children were being held in police watch houses across the state. While this is being monitored closely and all efforts made to ensure that children are safe, and their education, mental health and other needs are being attended to, this is not a satisfactory long-term arrangement. Continued efforts to develop alternatives to remand in custody must continue to be a priority.

## Outcomes, Pillars and Principles

### Outcome: Improved Public Safety

Public safety is the penultimate outcome that underpins the themes, concepts and recommendations in this report. Enhanced public safety is the indicator of successful holistic reform to the human services and criminal justice systems. Public safety is a useful concept because as both an objective and an outcome, benefits are achieved for all those who are affected by youth offending:

- communities within towns, cities and localities where children offend, which affects people's sense of wellbeing, their ability to conduct their lives free of fear of crime or its impacts, and live in environments that are pleasant and conducive to work, social interaction and recreational activities
- victims of crime including the elderly, families, business owners, organisations such as local governments and children who themselves are often victims of crime
- children who commit offences or are alleged to commit offences. By working with these children in effective ways we can reduce antisocial behaviour and reoffending thereby enhancing community safety and providing opportunities for these children to participate in a positive way in their communities.

### Four Pillars

Four key objectives form the pillars of this report:

- Intervene early
- Keep children out of court
- Keep children out of custody, and
- Reduce reoffending.

The four pillars have been tested in interviews with stakeholders who expressed support for them and provided advice about how they might be best achieved. Whilst stakeholders expressed a range of views about the relative importance of each pillar and the best ways to accomplish them,

the four pillars embody a commonality across all stakeholder interests and perspectives. They reflect well-established research findings and documented practice wisdom, across Australian and international jurisdictions.

The four pillars underpin our approach and the report's recommendations flow from these. As well as addressing the terms of reference, the four pillars form the basis of the Special Advisor's advice to the Minister.

### *The Four Pillars as Whole-of-Government Policy*

It is proposed that the Queensland Government adopt the four pillars as its Youth Justice policy; and that they underpin all responses related to children who are offending or at risk of offending. Government policy on youth justice should form an integral part of the Government's key objective of keeping communities safe under the Advancing Queensland framework. It should be supported by a commitment from all relevant Government agencies as they play a key role in relation to different pillars and parts of the system.

A description of each of the four pillars along with associated evidence and information about the extent to which they are currently applied in Queensland follows.

#### *1. Intervene Early*

Preventing crime at its most fundamental level involves ensuring children are born healthy and raised in loving, supportive environments where their physical, emotional and social needs are met. Prevention and early intervention responses can be applied at many touchpoints across the lifespan of a child. This starts as early as pre-natal care for mothers, ensuring children get the best start in life and includes areas such as health, family support, financial wellbeing, education, housing and disability. Due to its broad nature, prevention and early intervention is a whole of community and whole of Government responsibility, requiring a collaborative approach.

While intervening as early as possible in the life of a child is ideal, it is possible to intervene at later points in their life and still make a difference. For example, positive school engagement and retention strategies work well with children in their middle years of schooling and decrease their likelihood of future delinquent and offending behaviour<sup>1</sup>.

By intervening early when risk factors associated with antisocial or criminal behaviour are evident, there is a much greater chance of preventing a child's later involvement in the criminal justice system and improving their life outcomes. Ideally, this involves the early identification of risk factors in families and children, including where a child's behaviour indicates signs of deeper issues that may lead to later offending. Pre-school and primary school environments provide ideal opportunities to identify and respond to issues. Key transition points, such as the move from primary to high school, are also important and well-documented intervention points that can make a difference to a child's educational engagement and their risk of offending. Early intervention includes identification and active efforts to address risk and protective factors, and greater engagement with families and their communities.

Schools, families and communities all have a role to play in addressing the multiple factors that contribute to youth offending. In Australia, the *Pathways to Prevention* project, operating over 10 years from 2002 to 2011 in a disadvantaged area of Queensland targeted all three dimensions, identifying an absence of a positive attachment to school at age seven as the greatest predictor of later offending, along with positive family support making a difference for younger children at pre-school age<sup>2</sup>.

Integrated and coordinated responses to both the child and their family have the best chance of success, specifically those involving, schools, community organisations, state government, and

federal and local government agencies. Leadership is fundamental to ensure community support for programs, services and approaches that are developed and implemented in a way that is informed by the research evidence about what works to manage and respond to youth offending and reduce recidivism.

There is a developing knowledge and evidence about factors within partnerships that result in positive outcomes from collaboration. We note the CREATE framework developed to drive effective practice within prevention-focussed collaborations. CREATE is an acronym for: Collaborative; Relationship-Driven; Early (in the pathway); Accountable; Training-focused; and Evidence-driven. These principles are being used to drive positive outcomes in 22 Queensland and New South Wales communities through the federally funded Communities for Children program<sup>3</sup>. A research group at Griffith University is also in the process of developing a tool that will assess the health of networked coordination and collaboration arrangements and allow organisations that use the tool to identify areas for improvement in their relationships and operations.

A variety of coordinated approaches to early intervention are in place in some parts of Queensland, some of which are reported to be achieving good results in terms of improvements for children in a range of outcomes. The Townsville Stronger Communities Action Group (TSCAG) is one example. Collective impact approaches such as the Logan Together project in South East Queensland represent an evidence and data informed collaborative approach for dealing with complex social issues in a community identified as having significant levels of disadvantage<sup>4</sup>. There is also a growing knowledge within organisations that drive and participate in coordination and collaborative approaches about what it takes to develop, strengthen and maintain such approaches<sup>5</sup>.

<sup>1</sup>Bumbarger, B. K 2018. *Effective strategies for preventing youth crime and promoting youth development*. Presented in Cairns, March 2018.

<sup>2</sup>Hornell, R., Freiberg, J.K. and Branch, S 2013, *Creating the conditions for collective impact: Transforming the child-serving system in disadvantaged communities*. [Online] Available at: [https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0019/14581/Collective-Impact-ARC-Linkage-2-page-outline-REVISED-OCTOBER-2013.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0019/14581/Collective-Impact-ARC-Linkage-2-page-outline-REVISED-OCTOBER-2013.pdf)

<sup>3</sup>Australian Government, Department of Social Services. *Communities for Children Facilitating Partners*. [Online] Available at: <https://www.dss.gov.au/our-responsibilities/families-and-children/programs-services/family-support-program/family-and-children-s-services>

<sup>4</sup>Logan Together 2017, *Results*. [online] Available at: <http://logantogogether.org.au/results/>

<sup>5</sup>Department of Education. 2018, *Youth Engagement Alliance Inter-agency Collaboration Guide*. [Online] Available at: <http://advancingeducation.qld.gov.au/youthengagement/Pages/youth-engagement-alliance.aspx>



## 2. Keep Children Out of Court

Where children offend or come to the attention of police, it is critical that a focus is maintained on keeping them out of court, by way of police diversions accompanied by non-court support options. To be effective, diversion processes should be supported with new approaches to information sharing, improved assessment processes and enhanced referral pathways, and support services, for children as well as their families and carers.

There is consistent evidence that many children who offend for the first time will never reoffend and that diverting low risk young offenders from the criminal justice system is the most effective and efficient way to proceed<sup>6</sup>. The Campbell Collaboration in its 2017 meta-analysis of research on sentencing policy concluded that it is preferable to avoid children reaching court and instead to manage the behaviour through police diversion such as cautioning. The meta-analysis focussed on specific pre-court interventions: policing warnings, counselling and release, and cautioning schemes, in the United States, Canada, Australia and the United Kingdom.

Other research on moderate to high-risk offenders who come to the attention of the police suggests that diversion from court accompanied by more intensive intervention targeted at known risk and protective factors achieves more favourable reoffending outcomes for moderate to high risk children<sup>7</sup>. It is important therefore to differentiate children who are low risk from those who are moderate and high risk of reoffending. Diversion out of the system by using cautioning and informal warnings needs to be targeted at lower risk or first time offenders, while diversion involving intervention is best targeted at children with moderate to high levels of risk.

There are several examples of effective police diversion schemes and evidence indicating even greater effectiveness when consistency in delivering the diversion is achieved. This includes supporting

police with well-designed decision support tools, training and effective tracking by management<sup>8</sup>.

Queensland's *Youth Justice Act 1992* provides for the police to divert a child by way of taking no action, issuing a caution, referring the child to a restorative justice process, referring a child to a graffiti removal program (for graffiti offences) and referring the child to a drug diversion program in the case of minor cannabis related offences. Police are also able to take a child to a safe place if they are charged with being intoxicated in a public place. Another option available for Aboriginal and Torres Strait Islander children is a caution administered by members of the Aboriginal and Torres Strait Islander community. According to the Queensland Police Service (QPS) Operational Procedures Manual (OPM), this only appears possible however, where there is a mutually agreed protocol.

There are some limiting factors that are reported to impact on the use of the existing diversionary measures available to police. For example, only trained officers may currently issue cautions, a factor potentially limiting the use of this diversion option. The Queensland Police Service has committed to expanding the number of trained officers able to issue cautions and is undertaking this exercise during 2018-19.

Notwithstanding the existence of the QPS Redbourne referral database, a view exists that there are insufficient or inadequately accessible services for police to refer a child who they would consider suitable for diversion if sufficient support were available. In addition, if police were able to receive feedback about the result of a referral, this would potentially increase their confidence in using this option and provide valuable information about a child's engagement with services and supports should they come to further police attention. The availability of after-hours services for referral by police would also help them to consistently consider referral options, including for acute services outside of business hours.

Under current procedures, children must admit to an offence before police can caution and refer them to a

<sup>6</sup>White, H 2017, *Policy brief 4: The effects of sentencing policy on reoffending*. [ONLINE] Available at: <https://campbellcollaboration.org/library/campbell-policy-brief-sentencing-effects-on-reoffending.html>

<sup>7</sup>Wilson, H. A. and Hoge, R.D 2012, The effect of youth diversion programs on recidivism: A Meta-Analytic Review. *Criminal Justice and Behaviour*. 4/5, 497-518.

<sup>8</sup>For example, see Operation Turning Point: Testing an evidence information approach to policing low-risk offenders designed to reduce reoffending. University of Cambridge. Available at: [http://whatworks.college.police.uk/Research/Research-Map/Documents/TP\\_Storyboard.pdf](http://whatworks.college.police.uk/Research/Research-Map/Documents/TP_Storyboard.pdf)

service or diversionary program. This is potentially a barrier to diversion by police as a child may be reluctant, often on legal advice, to make such an admission. There also remains some scepticism about the ability of existing services to provide the level of intervention and support required for medium and high-risk offenders.

As a result, current legislation, policy, programs and practices are unlikely to be optimising the number of children who could benefit from being diverted from the system and to appropriate support.

### 3. Keep Children out of Custody

If children can't be kept out of court, all efforts should be made to keep children out of custody prior to and following an appearance in court. This principle applies both to sentenced detention and remand in custody. Research is clear that a period of detention can be harmful to a child<sup>9</sup>. This does not however negate the importance of detention as an important tool to keep the community safe in the case of highly recidivist and serious offenders.

Keeping children out of detention whilst keeping the community safe requires a suite of options available to courts to tailor interventions and orders to the specific factors that will help divert each child away from future offending. This may involve families, reparation, community service, rehabilitative programs, mentoring, community supervision, re-engagement in education and health, mental health and disability interventions as well as placements outside of a detention centre environment that provide structure, supervision and a plan for a positive way forward, often addressing complex family needs as well as the child's offending behaviour.

Therapeutic jurisprudence approaches are useful ways that courts can divert or sentence children and ensure they are engaged in and benefit from interventions that will address both their

criminogenic risks and needs. This type of model provides courts with the ability to monitor and receive feedback about the engagement of children (and adults) in programs and use this information to guide treatment and sentencing. In Queensland some Murri Courts provide this type of response to Aboriginal and Torres Strait Islander children.

There are a range of court orders and sentences being utilised in overseas jurisdictions that include varying forms of restorative justice, family group conferencing and participation in specific programs such as substance abuse, sex offender or mental health treatments. Some of these have strong evidence of their efficacy, for example, the Campbell Collaboration concluded that restorative justice conferencing significantly reduced reoffending and increased victim satisfaction<sup>10</sup>. There are others such as Drug Courts where there is consistent evidence of their effectiveness for adults but where the success for children is less conclusive, suggesting more child-appropriate approaches may be required<sup>11</sup>.

Overseas jurisdictions have developed specific sentence orders in response to increasing numbers of children experiencing serious mental health issues or committing very serious violent offences. As the nature of the offending population changes and offending becomes concentrated among the most disadvantaged, it may be worthwhile considering new sentencing options that respond to these children's changing and complex needs.

In terms of alternatives to remand in custody, bail support services and supervised bail accommodation are both well-established ways of providing high levels of support to children. When delivered well and with the confidence of courts, these programs can reduce remand in custody and address other needs of a child related to their home environment, accommodation, education, mental health and access to other support services<sup>12</sup>.

<sup>9</sup>White, H 2017, *Policy brief 4: The effects of sentencing policy on reoffending*. [ONLINE] Available at: <https://campbellcollaboration.org/library/campbell-policy-brief-sentencing-effects-on-reoffending.html>

<sup>10</sup>Campbell Collaboration 2017, op. cit.

<sup>11</sup>Campbell Collaboration 2016, *Drug Courts: More effective in reducing drug use and reoffending in adults than juveniles: Plan Language Summary*. [ONLINE] Available at: [https://campbellcollaboration.org/media/k2/attachments/PLS\\_Mitchell\\_Drug-courts.pdf](https://campbellcollaboration.org/media/k2/attachments/PLS_Mitchell_Drug-courts.pdf)

<sup>12</sup>Willis, M 2017, *Bail Support: A review of the literature*. AIC Research Reports 04, Australian Institute of Criminology. [Online] Available at: <https://aic.gov.au/publications/rr/rro04>

In Queensland it appears that the location of a child's offending can affect the likelihood of them being given bail, both by police and by courts. Bail approvals and reasons for bail refusal appear to vary across different locations. Evidence further suggests that once a child has been refused police bail, they have a much greater chance of being refused bail by the court. Further analysis of this data and court and police practice is required to form an understanding of why this might be the case and whether greater consistency can be achieved across the State.

Queensland courts currently have a number of options available to them that enable a non-custodial approach that may or may not involve supervision and further intervention. These include granting bail with conditions that may involve, for example, a conditional bail program (CBP), residence at a Supervised Bail Accommodation (SBA) service or additional bail supports; referral to restorative justice conferencing; and a number of community-based orders, including unsupervised orders such as a reprimand, a good behaviour order or a fine.

Restorative justice conferencing and CBPs are delivered by staff from Youth Justice Service Centres who provide services, programs, and support, whilst SBAs are delivered jointly with NGOs and bail support services are delivered wholly by NGOs. They all serve as alternatives to remand in custody but are not systematically available across Queensland. We note an internal evaluation by Youth Justice of conditional bail programs showed variable success, resulting in some cases in higher rates of incarceration. This was dependent in large part on the design, duration and level of supervision of the individualised CBP program. We note also that preliminary findings from an evaluation of restorative justice conferencing support its efficacy for addressing many types of youth offending, including offences of a serious nature.

Four Supervised Bail Accommodation (SBA) services now operate in Townsville and South East Queensland and are increasingly being utilised by courts as safe, supervised environments for intensive case management of children who would otherwise be remanded in custody. These facilities

have a total bed capacity of 21 and their utilisation depends on a number of factors including the mix of children in a facility and the children's risk levels. Whilst there are early successes with the SBAs, they are not yet fully utilised, and the current services cannot alone address the pressure on youth detention centres.

Bail support services provide case management and support to provide stability that children need to meet their bail conditions in the community. This can include support to children and their families or carers in their current homes or, if this is not suitable, assisting them into stable accommodation. This type of service is currently limited to South East Queensland, with one service provider funded specifically for this purpose. Bail support services are comparatively low cost compared to the cost of detention. As such, they could provide viable alternatives to remanding children in custody in other high needs locations in Queensland. This type of service may be particularly valuable in locations where there is no Supervised Bail Accommodation service available.

Specialist Courts can also be of assistance in keeping children out of detention. Children are currently not eligible for Drug Courts but they are eligible for Mental Health Courts in limited cases. Children can also participate in Murri Courts, with six of the 14 Murri Courts in Queensland having the capacity to deal with children's matters – Brisbane, Cleveland, Mackay, Richlands, Rockhampton and Wynnum. It is early days in terms of the operation of the Murri Courts and it is important that they are monitored and adjustments made to ensure they achieve positive outcomes for Aboriginal and Torres Strait Islander children appearing before them.

#### *4. Reduce Reoffending*

The best chance of reducing reoffending behaviour among children is delivering evidence-based interventions that address their individual risks and needs determined by assessment, and that are delivered with the right intensity and frequency. This applies to children found guilty of offences who are subject to court-ordered supervision in the community and those who have been sentenced to

a period of detention or remanded in custody. There is likely to be a number of children (albeit relatively small) who have committed offences such as armed robbery, serious physical assault and sexual assault who will need to be in detention for public safety reasons. All children in detention should, from first arrival, engage in programs that address their offending and personal circumstances, with such programs continuing into and after their transition back into the community to minimise the chances of them reoffending.

**Assessment:** It is best practice to assess children's risks and needs using reliable and valid assessment tools. The well-established Risk Need Responsivity principles provide guidance about how assessment tools should be used to assess and then respond to an offender's criminogenic risks and needs<sup>13</sup>. These principles apply equally to children and adults. A range of assessment tools based on these principles are available and used throughout Australia.

In Queensland two evidence-based assessment tools are used to assess children's risks and needs and guide the interventions delivered to children in the community and in detention. These tools are the Youth Level of Service Case Management Inventory v2.0 and the Youth Level of Service Case Management Inventory Brief Screener. These tools were both developed in Canada and have been normed on North American populations. To ensure the maximum benefit is derived from assessment, it would be advisable to ensure that these tools are valid for Aboriginal and Torres Strait Islander children.

**Intervention:** The literature on programs that work to prevent offending is unequivocal; that is, programs that are therapeutic rather than control oriented have the best chance of success with young offenders<sup>14</sup>. Therapeutic programs include restorative services, skill building and counselling. These types of programs achieve between a 10%

and 15% reduction in reoffending. There are other factors strongly related to reductions in recidivism that were consistently identified in this research:

- the need for implementation of quality services and programs including clear protocols, staff training, monitoring and quality assurance, and improvement
- the correct amount of services, sometimes called dosage. This refers to having services delivered for a suitable time and with sufficient frequency, and
- the greatest impact of interventions is achieved with higher risk children.

These research findings have been developed into the Standardised Program Evaluation Protocol (SPEP) framework, for use by staff who work with young offenders<sup>15</sup>. This framework can be used to develop new programs and improve existing programs and services. Queensland is leading the way in Australia with the SPEP framework. Training for staff to assess and develop programs is already available and the framework is being progressively applied to existing programs and the development of new programs for children in the youth justice system.

When children are sentenced to a period of supervision (either in the community or in a detention centre), the sentence duration determines the type of interventions with which a child can be engaged. For example, a 10-week anger management program is not considered suitable for a child who is remanded in custody for a period of one week (unless the program transitions back to community with them). This highlights some systemic issues with interventions being limited, for example, by uncertainty about how long a child will be remanded in custody. Interventions should ideally be based on need. Therefore, any period of supervision, should, at a minimum allow for the assessment of a child's risks and needs if this has

<sup>13</sup>Bonta J. and Andrews, D.A 2007, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation*. Public Safety Canada. [ONLINE] Available at: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-en.aspx>

<sup>14</sup>Lipsey, M.W., Howell, J.C., Kelly, M.R., Chapman, G. and Carver, D 2010, *Improving the effectiveness of Juvenile Justice Programs*. Centre for Juvenile Justice Reform. [Online] Available at: [http://njjn.org/uploads/digital-library/CJJR\\_Lipsey\\_Improving-Effectiveness-of-Juvenile-Justice\\_2010.pdf](http://njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of-Juvenile-Justice_2010.pdf)

<sup>15</sup>Lipsey, M.W. and Chapman, G 2017, *Standardised Program Evaluation Protocol (SPEP™) Service Type Categories*. SPEP™ Users Guide, Vanderbilt University.

not already occurred, and a plan for completion of an intervention that will facilitate behaviour change in the child and help them to remain offence-free. For a child in detention, the plan could involve completion of an intervention that will help facilitate the child's return to the community. Ideally there would be a seamless experience of program participation for children, with programs that can be delivered in both community and detention centre settings to enable continued participation in a program on release, where appropriate.

We note that group programs can sometimes create barriers to timely participation, particularly if the group relies on having a particular number of children for a specified period of time. Therefore, open programs that allow movement across community and detention should be considered in the mix of programs and services.

It is not clear to what extent high and moderate risk children are being focussed on within the youth justice system. Given the research that indicates positive outcomes from focussing on higher risk offenders, together with the fact that a small proportion of children are responsible for a high proportion of offences, it is suggested that the treatment of moderate and high-risk offenders in Queensland is warranted with a view to focussing effort and energy on these cohorts.

### *Recommendations*

1. That the Four Pillars model be adopted as the Government's Youth Justice policy:
  - a. Intervene early
  - b. Keep children out of court
  - c. Keep children out of custody
  - d. Reduce reoffending.

## *Principles and Considerations*

This report proposes changes that will enhance the way in which Queensland as a State prevents and responds to youth offending to improve the safety and wellbeing of all members of the community (including child offenders who are often victims of crime themselves). These proposals are consistent with the following overriding considerations that are fundamental to the way in which we prevent and respond to youth offending in Queensland.

### *Responding to Over-Representation of Aboriginal and Torres Strait Islander Children*

Extremely high rates of over-representation of Aboriginal and Torres Strait Islander children is a stand-out feature of the youth justice system in Queensland and Australia. This is true for all parts of the system and, in the case of detention, has worsened over the past 25 years. These statistics reflect at least two key issues that must be tackled in order to effect real change to this seemingly intransigent issue:

- more must be done to tackle the causes of offending amongst Aboriginal and Torres Strait Islander children, in their families, their communities, and within broader society
- Aboriginal and Torres Strait Islander people and communities are integral to developing local sustainable solutions that effect transformation over time, and must be engaged, consulted, supported and enabled to drive change and contribute to keeping their communities safe.

### *Safety and Security of the Community is Paramount.*

There is a small cohort of children who commit a large proportion of crime. Queensland Youth Justice data from 2016-17 shows that 10% of child offenders are responsible for 43% of offences. It is primarily these children who pose an ongoing risk to the safety of the community<sup>16</sup>.

<sup>16</sup>Youth Justice Queensland 2016-17, unpublished data.

Fortunately, serious repeat offenders make up a small proportion of all child offenders. Most children who come into contact with police will never offend again. Of those whose matters proceed to court, only about half will commit another proven offence. A very small proportion of children will commit multiple offences in their lifetime<sup>17</sup>.

Neuroscience tells us that adolescent brains are still developing and that behaviour moderation, impulse control, reasoning and consideration of consequences are not yet functioning at the level we expect in adults. Many adolescents will experiment, test boundaries and take risks, but will grow out of their offending behaviour<sup>18</sup>. The system currently responds quite well to one-off adolescent offenders, provided there are sufficient family and community supports in place.

Recent research indicates that some children who are repeat offenders may demonstrate signs of neurological impairment. Therapeutic, disability and health responses need to include appropriate measures to respond to harmful behaviours that result from these impairments.

Many recidivist child offenders also have highly traumatic histories and some live day to day in harmful or neglectful environments that contribute to their risk of offending. Community and family responses are required to mitigate this aspect.

Those who work with serious youth offenders tell us that a very small number of youth offenders demonstrate traits that indicate they are an ongoing risk to the community and to others they come into contact with in the youth justice system. The appropriate response to these offenders must be preserving community protection whilst doing no further harm to the child and addressing their behavioural and other needs.

It may be necessary for repeat and serious offenders to spend a period in detention but this should always be in an environment where they can participate in programs that address their

offending behaviour, where they have their other health and wellbeing needs addressed and develop their skills to successfully transition to life outside of detention. This should also involve family and community support to address the risk factors in the environment that the child is returning to.

It is important therefore that child offenders are carefully assessed to determine the most appropriate response to their characteristics, offending histories and risks associated with potential further offending. Likewise the responses must address these factors to ensure both the protection of the community and ensure children receive the support they need to participate positively in society.

### *Maintaining Public Confidence*

Maintaining the public's confidence that they will be protected from crime, can live safely in their communities and that the Government will intervene to prevent reoffending is critical. Community champions in hotspots to facilitate community dialogue, involvement and information and to coordinate effective whole-of-Government and community responses to youth offending can go some way towards building community responsibility and community confidence.

What works in one community might not quite fit in another. Whilst core principles, borne through evidence are key to success, these may be found in different local solutions. For example, an enduring mentor relationship with a trusted adult can be provided in different ways. For many children this will be within the family, but for others, community members outside family must take up this responsibility.

Many community members want to help disadvantaged children to both keep them out of the criminal justice system and enable them to reach their full potential. Their local knowledge, connections and influence, as well as their commitment to their own communities, including

<sup>17</sup>Youth Justice Queensland 2016-17, unpublished data.

<sup>18</sup>Moffitt, T.E 1993, Adolescence-Limited and Life-Course Persistent Antisocial Behaviour: A Developmental Taxonomy, *Psychological Review*, 100, pp 674-701. [Online] Available at:

[http://users.soc.umn.edu/~uggen/Moffitt\\_PR\\_93.pdf](http://users.soc.umn.edu/~uggen/Moffitt_PR_93.pdf)

the future of their children and the safety and wellbeing of all community members, is integral to a way forward.

It's important also that communities are provided with information that supports a balanced view of crime and community safety. To this end, communication strategies that provide a combination of real life examples of individual and group success stories along with positive and accurate media reporting can go some way to mitigate high levels of concern about crime and improve public confidence in Government strategies and place-based initiatives.

Providing opportunities for citizens to participate in problem identification, solutions, and engaging them in implementing solutions, are ways in which community members can be actively engaged. Success in one domain can lead to success in others.

### *Engagement with Education, Training or Work is Essential*

All stakeholders told us that engagement with education, training or work was critical to reducing children's offending behaviour. This is also borne out in research and reports from other jurisdictions.

Engaging in suitable education, training and getting work ready must be central to every intervention with a child in the youth justice system. This means a critical role for the Department of Education and the Department of Employment, Small Business and Training to ensure all child offenders and those at risk of offending are engaged in, and complete, suitable education including alternative and flexible schooling options, where children develop positive supportive and enduring relationships with adult mentors, positively influencing peers, and other role models.

An enhanced approach to education for children also needs to recognise that many children who are disengaged from education will not perform well

in a traditional school environment or in traditional school subjects. Because of some children's disrupted or negative experience of education, learning to participate in a structured environment, learning to trust and feel safe with educators, regular attendance and developing an enjoyment of learning are important pre-requisites to academic achievement.

Engagement with non-academic activities for example, sport, recreation and artistic endeavours might be a key factor positively reconnecting children to education and reduce anti-social behaviour<sup>19 20</sup>.

Activities that focus on culture and connections to country can be important engagement and re-engagement tools for Aboriginal and Torres Strait Islander children.

Vocational training, job readiness, and employment are important pathways out of the youth justice system for older children. It is therefore important that training and employment options for children aged 16 and 17 years are a feature of their case management and their transition out of the youth justice system. Meaningful engagement in work is an important contributor to reducing the risk of adult offending<sup>21</sup>.

### *Evidence-based Approaches*

There is a wealth of evidence about what works and what doesn't when it comes to child and youth offending<sup>22</sup>. Universities, governments, community groups and service providers have evaluated programs, approaches, systems and other interventions. Every government proposal to prevent and respond to youth offending should be scrutinised in the context of this evidence. That's not to say that innovation should be discouraged. New approaches should however be informed by evidence, tested, monitored and evaluated. What is popular or convenient should not be adopted simply for those reasons alone. Community

<sup>19</sup>Ware, V.A and Meredith, V 2013, Supporting healthy communities through sports and recreation programs, resource sheet no. 26. *Closing the Gap Clearinghouse*. Australian Institute of Health and Welfare and Australian Institute of Family Studies.

<sup>20</sup>Ware, V.A 2014, Supporting healthy communities through arts programs, resource sheet no. 28. *Closing the Gap Clearinghouse*. Australian Institute of Health and Welfare and Australian Institute of Family Studies.

<sup>21</sup>Sydes, M., Eggins, E. and Mazerolle, L. Unpublished. *What Works in Corrections? A review of the evaluation literature*. University of Queensland, Australia.

<sup>22</sup>Sherman, L.W., MacKenzie, D.L. Farrington, D.P., & Welsh, B. C. (Eds) 2002, *Evidence-based crime prevention*. London: Routledge.

opinions matter – about whether people feel safe, what they want for their communities, its members and its children. These opinions can and should be harnessed to inform local responses preventing and responding to children’s crime. However, a considered approach is required. Knee-jerk responses, often borne out of understandable frustration, can sometimes make things worse. We know that the further a child goes into the criminal justice system, the more likely they are to return to it. A short time in detention, without adequate intervention and support to transition effectively back into the community, can normalise a child’s experience of the criminal justice system, expose them to negative role models and may lead to increased offending.

The Government’s responsibility is to listen to community members and ensure, through evidence-based policy, legislation, funding and services that it delivers things that will work. This requires regular, systematic, critical examination of practice by governments and service providers, and the courage to stop what does not work and change tack to things that do work.

### *Value for Money*

Government funding, whether for detention facilities, rehabilitation programs, individual or group activities or family support, must deliver a return on investment. This requires a commitment of both evidence-based policy and service delivery as well as to monitoring and evaluation.

Youth offending has a complex interconnected set of causes. For serious repeat offenders in particular, changing offending behaviour requires persistent, intensive intervention that will generally take some time to deliver and result in changes for the individual. Therefore, value for money considerations also need to factor in long-term analysis of costs and benefits. At a community level, this includes an assessment of qualitative and quantitative benefits such as reduced costs of crime, enhanced well-being and decreased fear of crime.

At the most basic level, success must be defined and articulated from the start. Services and programs must be monitored and evaluated in appropriate forms and intervals, and reviewed and revised in response to findings.

There is much room for innovation and change, and this must be accompanied by honest, rigorous evaluation and the courage to stop what doesn’t work and invest more in what does.

The four pillars provide a framework for evaluating success, along with their associated goals.

### *Long-term Commitment to Sustained Change*

Improved public safety takes a consistent and concerted effort and a commitment to change over a long period of time. This is evidenced in countries and jurisdictions that have embarked on significant criminal justice reform, such as Canada and New Zealand, where a planned, long-term and bi-partisan commitment to a specific set of reform goals was found to be most likely to result in desired change, including reduced offending and reduced recidivism. It is important therefore that long-term targets are supported by intermediate and medium-term targets to encourage progressive improvement.

Commensurate with this principle is the need to invest in and fund initiatives over a sufficient period of time for them to be designed, implemented, improved, and for their outcomes to be evaluated. Funding contracts are not always aligned to this objective and instead often align with election cycles or the availability of time-limited funding. Five-year funding is considered industry best practice for human service programs dealing with complex issues such as prevention or response to youth crime. Similarly crime prevention programs in Australia and overseas can take up to five years to reap desired reductions<sup>23</sup>.

A well-considered and comprehensive solution to preventing child and youth crime will involve a combination of short-term, medium-term and long-term responses, some of which will not begin to bear fruit until long after a Government term is over.

<sup>23</sup>Feinberg, M. E., Jones, D., Greenberg, M.T., Osgood, D.W. and Bontempo, D 2009, Effects of Communities that Care Model in Pennsylvania on Change in Adolescent Risk and Problem Behaviours. *Prevention Science*. 11, 163-171.



## Key Topics from Consultation and Analysis of Research

The following topics emerged through consultation with key stakeholders, including representatives from the Queensland community and government agencies.

Each represents either a stand-alone topic that is of sufficient importance to warrant specific consideration or is a synthesis of consultation and research findings with common threads.

Each topic aligns with at least one of the four pillars. Recommendations are made with respect to each topic.

### Topic – Prevention and Early Intervention

#### *Pillars*

1. Intervene early

#### *Discussion*

Universally, people we spoke to expressed a view that preventing youth offending requires intervention and support from a very early age, even as early as providing support to young women prior to conception to prevent risk factors to their future children's health and development.

We know that children who return to the criminal justice system have generally experienced significant disadvantage and exposure to risk factors. A 'snapshot' investigation of 25 children aged 10 to 13 years who were in a youth detention centre in Queensland at 13 September 2017, identified a range of serious issues for these children. All had experienced neglect and poor school attendance. Many had been exposed to traumatic events, domestic and family violence, had parents with criminal histories including incarceration.

There can be many signs in a child's life that some form of assistance or intervention may be needed in the home environment. Generally, these involve behaviour that is considered challenging, anti-social or harmful to others. This can often be apparent in a child's early years at pre-school or school. Often this behaviour will escalate as the child progresses

through primary school. School environments therefore present an ideal opportunity to identify vulnerable children and families and provide targeted support.

Indicators for the need for early intervention for children and families include:

- challenging or difficult behaviour at school at an early age
- frequent absences from school
- coming to police attention in the company of known offenders
- committing acts that, if not for their age, would be considered criminal
- being unsupervised outside of home at night
- living in homes where there is known domestic violence and substance abuse.

We heard about increasing poverty for vulnerable families, with consequential increased risks for youth offending. We were told that this was increasingly a problem for working poor as a result of casualisation of the workforce, as well as for families reliant on welfare payments. We heard many cases of children whose offending behaviour was linked to poverty and questionable parenting practices. We were told of theft offences related to children stealing food and basic items of clothing.

It is acknowledged that the causes of child offending are multiple and that ideally we would address all these causes. However, there are some stand-out types of prevention and early intervention initiatives that have a significant measurable impact on reducing children's future likelihood of delinquency, which should remain a focus.

#### **What Works: Family and Parent Interventions for Younger Children**

Parenting programs for families have been shown to improve family functioning, children's behaviour, and reduce later delinquency, even for families with children at a very young age. A systematic review of 55 parenting programs undertaken for the Campbell Collaboration in 2008 found that children from families who received training cope much better and exhibit less problem behaviours

than those whose families who did not receive an intervention<sup>24</sup>. Best practice examples including *Triple P – Positive Parent Program* (Australia), *Parent Child Interaction Therapy* and *The Incredible Years*. Family interventions are an important component of collaborative placed-based early interventions such as Logan Together (discussed elsewhere in this report).

### What Works: Intervening with Older Children and Adolescents

Mentoring was raised by some stakeholders as a way to positively influence children involved in the justice system. Mentoring can also be effectively used with children who are at risk of involvement. Research shows that if done well, by the right people with the right frequency and for a suitable length of time, mentoring can reduce offending and reoffending for both groups of children and young people<sup>25</sup>.

An evaluation of the *Big Brothers Big Sisters Community Based Mentoring Program* for children aged between six years and 18 years, found that mentors need to be well-trained and supported. To be most effective mentors have to be matched with mentees, have clear agreed goals, and spend between three and five hours per week with the mentee for a least one year<sup>26</sup>. This program achieves superior results to other less intensive mentoring programs.

### What Works: Diverting Children's Early Involvement in the Criminal Justice System

Diversion services that divert children with high levels of need can have a marked impact on offending and reoffending outcomes. There are multiple examples of good practice from Australia and overseas. Two examples in which positive

outcome evaluations have shown improved offending outcomes for high risk children are:

- *Youth On Track*, a New South Wales Department of Justice initiative operating in three sites<sup>27</sup>
- *Ottawa Community Youth Diversion Program*, a Canadian Police, Justice and NGO initiative<sup>28</sup>

Findings from evaluations indicate reduced reoffending outcomes for children compared to conventional justice responses such as court processing and supervision. Other positive results have been achieved in terms of attitude and behaviour change. An important finding is that diversion programs with an intervention (such as drug or alcohol treatment programs) work best with children who have moderate to high risks and needs. In contrast, intervening with low-risk children can result in involving them further in the criminal justice system and other negative outcomes. This means that it is better to undertake a simple diversion such as a caution with children who are considered or assessed as low risk, without further intervention.

There are no short cuts to success, and evidence-based prevention, and early intervention approaches can take years to show consistent, community-wide positive results. Research from the United States on the *Communities That Care Program* shows that improvements in multiple domains can be achieved with a concerted effort over a five year period<sup>29</sup>.

The spectrum of prevention and early intervention activities required to tackle risk of reoffending among children is broad and, as a result, responsibility lies with multiple government agencies and non-government organisations,

<sup>24</sup>Piquero, A. Farrington, D. Welsh, B., Tremblay, R. and Jennings, W 2009, Effects of early family/parent training programs on antisocial behaviour and delinquency. *Journal of Experimental Criminology*. 11/2, 83-12

<sup>25</sup>Lipsey, M.W., Howell, J.C., Kelly, M.R., Chapman, G. and Carver, D 2010, *Improving the effectiveness of Juvenile Justice Programs*. Centre for Juvenile Justice Reform. [Online] Available at: [http://njjn.org/uploads/digital-library/CJJR\\_Lipsey\\_Improving-Effectiveness-of-Juvenile-Justice\\_2010.pdf](http://njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of-Juvenile-Justice_2010.pdf)

<sup>26</sup>National Institute of Justice – Office of Justice Programs 2011, *Big Brothers Big Sisters Community-based Mentoring Program*. [ONLINE] Available at: <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=112>

<sup>27</sup>Circa 2017, *Youth on Track Social Outcomes Evaluation*. [ONLINE] Available at: <http://www.youthontrack.justice.nsw.gov.au/Documents/circa-evaluation-final-report.pdf>

<sup>28</sup>Wilson, H. A. and Hoge, R.D 2012, The effect of youth diversion programs on recidivism: A Meta-Analytic Review. *Criminal Justice and Behaviour*. 4/5, 497-518.

<sup>29</sup>Feinberg, M. E., Jones, D., Greenberg, M.T., Osgood, D.W. and Bontempo, D 2009, Effects of Communities that Care Model in Pennsylvania on Change in Adolescent Risk and Problem Behaviours. *Prevention Science*. 11, 163-171.

including those charged with responsibility for health and mental health, education, family support and behaviour management, child protection, domestic and family violence, sport and recreation activities and substance misuse services. Collaboration and multi-agency responses are key to both individual, family and community level crime prevention and early intervention. For Aboriginal and Torres Strait Islander children and families, culturally informed and responsive collaborations will be critical for success. Elsewhere in this report we discuss coordinated multi-agency responses and the enabling mechanisms for these to work effectively.

### Recommendations

2. That a Youth Justice strategy include collaborative crime prevention and early intervention initiatives in high-risk communities.
3. That a systematic response be developed for cases where indicators identify a need for early intervention.
4. That schools become focal points for early intervention for children in need of targeted support, with key agencies working collaboratively to proactively identify, assess and work with families, communities and non-government organisations.
5. That the Government consider appropriate alcohol and drug assessment, and interventions for families and children as part of early intervention.

## Topic – Education, Vocational Training and Employment

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

In all our discussions with stakeholders, education emerged as key to preventing crime and getting children back on the right track once in contact with the criminal justice system. Positive engagement, positive experience of education and positive outcomes are, however, inextricably linked to other factors or issues, such as family members experience of education, cognitive capacity, disabilities that impact on learning, and the family's capacity to support the child's experience at school,

Vocational training and employment were identified as important for older children to allow them to become independent and live crime-free.

Research literature also supports these elements as critical factors in preventing and addressing youth offending. Education, vocational training and employment are therefore fundamental to successfully addressing each of the four pillars.

### The Importance of Education

A positive attachment and experience of education has been found to be crucial to successful life outcomes including children not becoming juvenile offenders<sup>30</sup>. Problems with education relate to a range of problematic adolescent behaviours, including juvenile delinquency. In the reverse, positive engagement with education and positive educational attainment are important protective factors that are linked to improved life outcomes<sup>31 32</sup>.

<sup>30</sup>Hamel, R., Freiberg, JK. and Branch, S 2013, *Creating the conditions for collective impact: Transforming the child-serving system in disadvantaged communities*. [Online] Available at: [https://www.griffith.edu.au/\\_\\_data/assets/pdf\\_file/0019/14581/Collective-Impact-ARC-Linkage-2-page-outline-REVISED-OCTOBER-2013.pdf](https://www.griffith.edu.au/__data/assets/pdf_file/0019/14581/Collective-Impact-ARC-Linkage-2-page-outline-REVISED-OCTOBER-2013.pdf)

<sup>31</sup>The Smith Family 2018, *Attendance lifts achievement: Building the evidence base to improve student outcomes*. [Online] Available at: <https://thesmithfamily.com.au/research/reports/attendance-lifts-achievement>

<sup>32</sup>Abbott-Chapman, J. Martin, K. Ollington, N. Venn, A. Dwyer T and Gall, S 2013, The longitudinal association of childhood school engagement with adult educational and occupational achievement: finds from an Australian national study, *British Educational Research Journal*, Vol 40, 1., pp 102-120.

As well as education being key to the positive development of children, school provides an ideal environment to identify those who are at risk of anti-social or offending behaviour. As early as age five, children manifest behavioural signs indicative of a need for targeted support with increasing numbers of children of a very young age being excluded from primary school in several Australian jurisdictions<sup>33</sup>, including Queensland, where in 2017, 1,027 children at prep level were subject to suspensions or exclusions<sup>34 35</sup>.

Stakeholders told us of a typical trajectory where a child's behaviour is difficult to manage at pre-school or in prep, they have difficulty learning fundamental literacy and numeracy tasks, their behaviour continues to become increasingly problematic in the classroom and they become further and further behind their peers in learning. For teachers, the behaviour is very challenging and for children, their experience of classrooms and schools becomes increasingly negative. Eventually these children will self-select out by truanting and during the high school years will be amongst those who are suspended or expelled from school as a result of their behaviour.

We were also told about a large volume of children who are not counted in official statistics as they are not enrolled in school. We were told in some locations this may number in the hundreds. Proactively ensuring that children are enrolled in school is one way that the Government can avoid these children slipping out of the education system, unnoticed.

### Poor Educational Engagement Amongst Children in the Youth Justice System

Youth Justice data show that many children in the youth justice system have poor levels of school engagement and attendance, with a significant number not attending or enrolled in school. The Youth Justice Census conducted annually from 2015 to 2017, has consistently shown high levels of education

disengagement for children under youth justice supervision. Of great concern is that only about 30% of children of compulsory school age (aged 15 years and under) regularly attended school. And in 2017, about one third of children in the youth justice system who were of compulsory school age were not enrolled in school<sup>36</sup>. The rate of school disengagement was even higher for Aboriginal and Torres Strait Islander children.

These statistics are particularly worrying given the high level of disadvantage and unmet need already experienced by many children involved in the youth justice system. The same Youth Justice Census shows that many children have poor levels of mental health, high rates of disability, behavioural issues, substance misuse, high levels of family conflict and housing stress. For young people in detention, these issues are even more entrenched.

*The Measurement Framework for Schooling in Australia 2015* provides the basis for national reporting on the performance of schooling as agreed by education ministers and defines national key performance measures for schools. The agreed measures are: student participation, achievement, attainment and equity. Alongside this framework is the National Standards for Student Attendance Data Reporting, which provides a national set of parameters for the collection and reporting of school attendance.

There is a high degree of pressure on schools to meet performance measures, including those relating to academic achievement and attendance. As noted earlier, many children in the youth justice system will have relatively low levels of academic achievement and attendance at school. This can be particularly challenging for schools, with an individual's results and poor attendance impacting on overall school performance. Consideration could be given to ameliorating this pressure on schools with more support to accommodate high risk children in the youth justice system in a way that does not penalise a school because of the child's performance or attendance levels, provided there is progressive improvement.

<sup>33</sup>Sargeant, J 2016, *Are we expelling too many children from Australian schools?* [Online] Available at: <http://theconversation.com/are-we-expelling-too-many-children-from-australian-schools-65162>

<sup>34</sup>Includes short term suspensions (1 to 10 days) and long term suspensions (11 to 20 days).

<sup>35</sup>Department of Education 2018, *School disciplinary absences by student demographics 2013-2017*. [Online] Available at: <https://qed.qld.gov.au/publications/reports/statistics/schooling/students>

<sup>36</sup>Youth Justice Queensland 2016-17, unpublished data.

## Suspensions and Exclusions

Suspensions and exclusions are currently a legislated means for schools to deal with difficult behaviour and suspected criminal behaviour of students attending school. A recently published systematic review<sup>37</sup> has highlighted the multiple negative effects of exclusions from school on young people, including academic failure, aggravated antisocial behaviour and an increased likelihood of involvement with juvenile justice systems. The negative impacts compound and opportunities for training and employment are considerably reduced for those who have repeatedly been excluded, with long term social and economic costs to the community and Government.

Between 2013 and 2017, the total number of disciplinary absences in Queensland increased by 24%. This takes into account short and long-term suspensions, exclusions, and cancellations of enrolment. We also note that there was significant change to Education legislation in Queensland in 2014, including a new category of suspension, charge suspensions, which applies when a student is charged with an offence and is suspended if the principal is satisfied that it would not be in the best interests of other students or staff for the child to attend the school. Whilst the overall number of children suspended under these provisions is very small as a proportion of total student enrolments (27 in total), suspension from school prior to charges being heard (and an outcome decided by courts) may have significant negative consequences for the child.

The total number of very young children at prep level being suspended or excluded from school has increased by 80% since 2013. Similarly, disciplinary absences for Years 6 and 7 students have increased since 2013, by 74% and 144% respectively. This data suggests that the transition years from primary school to high school are also key points of possible intervention.

A Victorian Ombudsman's 2017 report found similar trends in Victoria and noted the volume of vulnerable children among those suspended and excluded from school, including students suffering trauma and manifesting trauma-related behavioural problems<sup>38</sup>. This report also found evidence that there are a significant number of informal exclusions and students who exit the education system. There is currently no way of reliably identifying these students, which poses further challenges for a consistent approach to providing alternative education and other supports to these children and their families.

## Promising Approaches

In recognition of the importance of education to improving the prospects of children in the youth justice system, the Queensland Childrens Court Committee is developing a trial project related to the provision of information about children's education status at the Brisbane Childrens Court. The proposal for the trial arose out of children appearing before court who were not attending school and courts having little information on a child's educational status and their educational needs to inform court decisions about these children.

New South Wales and Victorian Children's Courts have also noted and responded to similar issues about poor levels of education engagement and attainment among children appearing before the courts. As a result, in Victoria, the *Education Justice Initiative* (EJI), a partnership between the Courts, Department of Education and Youth Justice, was implemented in 2014. The EJI operates from the Melbourne Children's Court, including the Koori Court and seeks to reconnect children in the criminal justice system with appropriate forms of education by:

- providing information about children's education history and attainment to courts to inform court decisions, and
- supporting children into different forms of education that best suit their abilities and circumstances.

<sup>37</sup>Valdebenito, S., Eisner, M., Farrington, D.P., Ttofi, M. and Sutherland, A 2018, *School based interventions for reducing disciplinary school exclusion: a systematic review*. [Online] Available at: <https://campbellcollaboration.org/library/reducing-school-exclusion-school-based-interventions.html>

<sup>38</sup>Victorian Ombudsman 2017, *Investigation into Victorian government school expulsions*. [Online] Available at: <https://www.ombudsman.vic.gov.au/getattachment/57d918ec-feeo-48eo-a55e-87do262d3c27//publications/parliamentary-reports/investigation-into-vic-gov-school-expulsions.aspx>

An evaluation report published in 2015 shows very positive results for this initiative. In its first year of operation, the EJI showed high levels of reconnection of children with education (75%) mostly in a new education setting, an increase in formal enrolment at school, re-enrolment and increased school attendance. The 2017 Victorian Ombudsman's report also noted this as a significant initiative and successful approach to effectively re-engaging students and reducing recidivism.

The proposed trial at Brisbane Magistrates Court seeks to implement the first component of the Victorian approach, that is, information provision about a child's education history. Given the positive evaluation findings in Victoria, consideration should be given to implementing both components of the EJI in the Brisbane pilot and extending this to other locations in Queensland for all children who appear in court charged with criminal matters.

The Department of Education has also led the development of the *Queensland Youth Engagement Alliance* aimed at addressing the holistic needs of young people towards successful education and employment pathways. Multiple agencies have committed to the Alliance which is supported by tools such as an Inter-Agency Collaboration Guide, Information Sharing Charter and a 'Pledge to Young People', as well as practice guidance for staff to retain children in school, Youth Engagement Hubs which aim to re-engage dis-engaged children and Positive Learning Centres to improve learning and behaviour of children in mainstream schools or support their transition to more alternative learning settings<sup>39</sup>.

The Youth Engagement Alliance may be a useful platform for further work engaging extremely high risk children who are involved in the youth justice system in education and employment pathways.

## Alternative and Flexible Education Approaches

We heard from a number of stakeholders that there was a need for more high-quality, alternative options for children who are disengaged from education and who do not function well in mainstream school environments. There was a desire for more alternative education options for the volume of children with significant behavioural issues alongside connected and complementary services to deal with the multiple needs that these children have such as health, developmental, mental health and family conflict issues.

Alternative education takes many forms, depending on the funding stream and program; with some funded by the Commonwealth government, others by the Queensland Department of Education, and others by both. The Commonwealth government funds Special Assistance Schools across Australia, which are generally delivered by non-government organisations. In Queensland they include 12 flexible schools delivered by Edmund Rice Education Australia (EREA) and others that are partnerships between schools and NGOs, for example the St James-Salvation Army school partnership located in Fortitude Valley, Brisbane.

Education Queensland has recognised that not all children are suitable for mainstream schooling environments. To this end, Positive Learning Centres and Pop-Up Schools have been implemented as alternative learning environments for children with special or challenging learning needs. Regional Engagement Hubs<sup>40</sup> also exist in seven regions of Queensland. These are places where children with challenging behaviours who are at risk of being excluded from school or who are already disengaged can be referred for support and appropriate placement. For some children, however, their challenging and disruptive behaviour render them unsuitable even for these types of structured and supported environments.

<sup>39</sup>Department of Education. 2018, *Youth Engagement Alliance Inter-agency Collaboration Guide*. [Online] Available at: <http://advancingeducation.qld.gov.au/youthengagement/Pages/youth-engagement-alliance.aspx>

<sup>40</sup>Department of Education n.d, *Regional Youth Engagement Hubs*. [Online] Available at <http://advancingeducation.qld.gov.au/SiteCollectionDocuments/youth-engagement-hub-information-sheet.pdf>

Flexible education options provide opportunities for students to re-engage and learn in ways that suit their learning styles and abilities. These options can also include Vocational Education and Training (VET) accredited pathways for children who may not do well in standard education programs. Flexible learning options have been shown to be cost effective and have long term economic benefits. According to research commissioned by Edmund Rice Education Australia, every dollar spent on Flexible Learning Options for young people generates \$25 in socioeconomic returns and saves \$32,000 in youth justice and welfare costs<sup>41</sup>.

For children in detention, education forms an important part of their daily routine. The existing Queensland youth detention centres have dedicated schools and children of school age are required to attend regardless of whether they are on remand or sentenced. The importance of support to transition back into education is also recognised and actively supported. For example, children exiting the Brisbane Youth Detention Centre have access to teachers and support staff to help them to re-engage in education and vocational training. Although not formally evaluated, teachers involved in this program report significant improvements in children's learning progress and outcomes, along with reduced recidivism. Reintegration back into school on release from detention can be challenging, particularly in remote or regional locations at a distance from the youth detention centres, but endeavouring to ensure that each child is successfully supported in this transition is critical.

### Vocational Training and Employment

As for all young people, those involved in the youth justice system require support and direction to positively fulfil their potential. Facilitating and supporting age-appropriate access to vocational training and employment is key to future independence and can be an important factor in halting an offending trajectory. The value of employment in sustaining a crime-free lifestyle is of

critical importance to older children and adults and is well-evidenced in research literature<sup>42</sup>.

Vocational training, job readiness and supported job placements are ways in which vulnerable young people can be supported to gain access to the workforce. Transition to Success (Youth Justice, DCSYW) and Skilling Queenslanders for Work (Department of Employment, Small Business and Training) are examples of existing government programs that target young people who are known offenders or are at high risk of criminal behaviour. These programs support and guide young people's behaviour, enhance literacy and numeracy skills and impart the vocational skills and knowledge necessary to engage in employment.

Meaningful and sustainable employment for young people is a challenge for those who have been in contact with the justice system so programs such as these and others specifically targeting Aboriginal and Torres Strait Islander young people are important to future success. Myuma Pty Ltd at Camooweal and Transport and Main Roads employment programs targeting Aboriginal and Torres Strait Islander communities in Far North Queensland are pertinent examples.

### Recommendations

6. That the Government consider adopting a collaborative model between the Department of Education, Department of Child Safety Youth and Women, and the Childrens Court based on the Victorian Education Justice Initiative (EJI).
7. That consideration be given to using the Youth Engagement Charter as a platform for further work in education and employment pathways when engaging with high-risk children involved in the youth justice system.
8. That targeted resourcing be provided for schools with a high occurrence of children with problem behaviours so that teachers can retain their focus on education while specialist behaviour management staff can focus on those aspects.

<sup>41</sup>Youth Plus Institute 2018, *Research and Knowledge Exchange*. [Online] Available at: <https://youthplusinstitute.org.au/research-and-knowledge-exchange/>

<sup>42</sup>Sydes, M., Eggins, E. and Mazerolle, L. Unpublished. *What Works in Corrections? A review of the evaluation literature*. University of Queensland, Australia.

9. That alternative and flexible schooling options and pathways into them are available for children in the youth justice system and those at high risk of mainstream school disengagement.
10. That supported transition back to school following a period in detention is delivered in partnership between the Department of Education, Department of Child Safety, Youth and Women, Department of Aboriginal and Torres Strait Islander Policy and local community organisations.
11. That the importance of vocational training, job readiness and employment is recognised and reflected in responses to criminal offending, in particular for older children who are involved in the criminal justice system.

## Topic – Health and Wellbeing

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

Children involved in the youth justice system are significantly more likely to have undiagnosed or untreated health issues. Children with mental health concerns, childhood trauma, cognitive and intellectual disability and substance abuse concerns, are over-represented in the youth justice system<sup>43</sup>. The table below provides a comparison of the prevalence rates of select health concerns in the general Australian community with prevalence rates in the youth justice system.

**Table: Prevalence of selected health concerns in general Australian community verse those in Australian youth justice systems<sup>44</sup>**

|                                   | Prevalence in the general Australian community | Prevalence in youth justice systems across Australia |
|-----------------------------------|--|--|
| <b>Mental health conditions</b>   | Between 13% and 20%                            | Between 40% and 70%                                  |
| <b>Cognitive disability</b>       | Between 2% and 3%                              | Between 11% and 17%                                  |
| <b>Drug and Alcohol disorders</b> | Approximately 5.1%                             | Approximately 64%                                    |
| <b>Childhood trauma</b>           | Difficult to determine                         | Between 50% and 66%                                  |

### Foetal Alcohol Spectrum Disorder (FASD)

Foetal Alcohol Spectrum Disorder (FASD) is characterised by severe neurodevelopmental impairment due to prenatal alcohol exposure. The condition affects executive functioning, memory, language, learning and attention, consequently impacting on the ability to learn the relationship between cause and effect, learning from past

<sup>43</sup>NSW Law Reform Commission 2010, Consultation Paper 5. *People with cognitive and mental health impairments in the criminal justice system: An overview*. [ONLINE] Available at: <http://www.lawreform.justice.nsw.gov.au/Documents/Publications/Consultation-Papers/CP05.pdf>

<sup>44</sup>ACT Children and Young People Commissioner 2016, *Children and young people with complex needs in the ACT youth justice system*. [ONLINE] Available at: <http://hrc.act.gov.au/wp-content/uploads/2016/03/MHYJ-Report.pdf>



experiences and decision-making abilities. Such characteristics are highly evident in children in the youth justice system either by way of developmental immaturity or disability. These concerns consequently lead to issues with school, employment, socialisation, increase in substance misuse and engagement with the law.

Limited data exists on the prevalence of FASD in children in the justice system with reports that it is likely to be significantly undiagnosed or misdiagnosed. Western Australia has undertaken the first assessment of the prevalence of FASD in a youth detention centre in an Australian jurisdiction finding that 90% of participants had neurological impairment, with 37% diagnosed with FASD<sup>45</sup>. The recent Australian Law Reform Commission (ALRC) report, *Pathways to Justice*, also found that children with FASD are 19 times more likely to be incarcerated<sup>46</sup>.

FASD can impact all aspects of legal proceedings, such as a child's understanding of the court process, fitness to plead, legal capacity and the sentencing process. It also impacts on enforcement of interventions, bail conditions and court orders, with children experiencing difficulty in complying with set requirements.

## Trauma

There is 'a strikingly high prevalence of trauma exposure and traumatic stress' experienced by children in youth justice systems with a majority of children exposed to a history of trauma<sup>47</sup>. A review of 25 children aged 10-13 in Queensland youth detention centres in September 2017 found that all had experienced chronic trauma including exposure to domestic violence, sexual abuse and neglect.

Further, a large-scale study conducted in the USA found that 92.5% of a sample of children in a detention centre had experienced at least one type of psychological trauma at some point in their lives, and over 50% of the sample (average age of 14 years) had been exposed to six or more potentially traumatic adversities by the time of detention<sup>48</sup>.

Among other effects, trauma creates a decreased capacity for new learning and maturational processes and creates maladaptive coping responses to dealing with stress, such as substance abuse, risk taking, deviant and criminal behaviour, and deviant sub-cultural identification<sup>49</sup>.

## Mental Health

Studies indicate a high prevalence of mental health disorders in Australian youth justice systems, with children who have mental health concerns more likely to enter the youth justice system and ultimately adult prison<sup>50</sup>. The 2017 Queensland Youth Justice census recorded 38.3% of young people having been diagnosed or suspected of having at least one mental health disorder, while 34.6% were diagnosed with or suspected of having at least one behavioural disorder. Many children within each cohort had two or more mental health or behavioural disorders<sup>51</sup>.

In the 2015 New South Wales Young People in Custody Health Survey, 83.3% of children met the threshold criteria for at least one psychological disorder, with 63% meeting the criteria for two or more. In the same survey, 59.4% met the criteria for attention or behavioural disorders<sup>52</sup>.

We note that Trauma-Informed Practice is used in Queensland detention and community settings in

<sup>45</sup>Bower, C., Watkins, R., Mutch, R., et al 2018, Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia. *BMJ Open*. [ONLINE] Available at: <http://bmjopen.bmj.com/content/8/2/e019605#block-system-main>

<sup>46</sup>Australian Law Reform Commission 2018, *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*. [ONLINE] Available at: <https://www.alrc.gov.au/publications/indigenous-incarceration-report133>

<sup>47</sup>The National Child Traumatic Stress Network 2009, *Helping traumatised children tips for judges*. [ONLINE] Available at: <http://www.ncsby.org/sites/default/files/resources/Helping%20Traumatized%20Children%20-%20Tips%20for%20Judges%20--%20NCTS.pdf>

<sup>48</sup>Ford, J.D. and Blaustein, M.E 2013, Systemic Self-Regulation: A Framework for Trauma-Informed Services in Residential Juvenile Justice Programs. *Journal of Family Violence*. Springer Science & Business Media, New York.

<sup>49</sup>Bambling, M 2014, November. *Trauma and Youth Who Offend – mechanisms and treatment*. Presented at the Trauma-Informed Care Innovation Lab.

<sup>50</sup>Baldry, E., Dowse, L and Clarence M 2011, *Background paper: People with mental health and cognitive disability: pathways into and out of the criminal justice system*. Presented at the Reintegration Puzzle Conference, Melbourne. [ONLINE] Available at: <https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/MHDCDbackgroundOutlaws%20Conf1.pdf>

<sup>51</sup>Youth Justice Queensland 2016-17, unpublished data.

<sup>52</sup>Justice Health and Forensic Mental Health Network and Juvenile Justice 2017, *Young people in custody health survey: Full report*.

Youth Justice in Queensland, (and other parts of Australia), and there is interest in extending this to staff in other key agencies such as frontline police, teachers, the judiciary and legal practitioners.

### General Health and Disability

Children presenting with significant health concerns also have a significantly increased risk of poor academic performance and disengagement from the education system. While there may be a number of contributory factors, physical health of children, such as their eyesight and hearing, is often overlooked. Assessments of children in Queensland youth detention centres have found a number of children with significant hearing and eyesight concerns, with consequential negative impacts on their education capacity. The importance of education is a well-recognised protective factor in child development and the prevention and reduction of offending. As such, identifying health, mental health, educational capacity and cognitive disability at the earliest possible time is important. Connecting children with care and therapeutic services designed to work with difficult to engage and complex children is essential to support a reduction in repeat offending.

For children in the youth justice system these health and wellbeing risk factors are often compounded further by other risk factors such as substance use, unstable or unsuitable accommodation, domestic violence and economic and financial disadvantage<sup>53</sup>.

Many stakeholders expressed concern that children who repeatedly offend may have significant health and wellbeing issues that contribute to their offending behaviour, and that they will often progress quickly through the youth justice system without receiving a health, mental health or disability assessment that could help inform suitable interventions. With the advent of the National Disability Insurance Scheme (NDIS), ensuring early assessments of children are completed, particularly very young children, when they first start offending, could ensure children with neurological impairment and other disabilities are

linked up with the appropriate funding, referrals and supports to reduce their risk of reoffending and change their life trajectory.

Mental health and general health are other areas where comprehensive early assessment and referral to suitable health interventions can make a significant difference in the future of children at risk of reoffending. Establishing a framework and commitment for proactive identification and assessment of health, mental health and disability concerns at key touchpoints in the youth justice system, together with diversion to responsive programs, services and supports, are important interventions.

The cost, resource implications and challenges (such as, in some aspects, the need for parental support and consent) with this proposal are acknowledged, however, the ultimate potential benefits support such an investment.

We note also wide support amongst stakeholders for developing a better understanding of child and adolescent neurological development in those working in the criminal justice system, such as police, the judiciary, Youth Justice staff and legal practitioners.

### Recommendations

12. That the capacity to conduct full physical health, mental health, disability and educational assessments of children at all levels of the youth justice system, together with referral to related treatment and programs be progressed to the greatest extent possible.
13. That training in the impact of trauma on neurological development, and the risk of impairment be adopted for key staff working in the youth justice system, notably frontline police, teachers, judiciary and legal practitioners, as well as Youth Justice staff and non-government service providers.

<sup>53</sup>New South Wales Justice, Health and Juvenile Justice 2009, *New South Wales young people in custody health survey*. [ONLINE] Available at: <http://www.justicehealth.nsw.gov.au/about-us/publications/ypichs-full.pdf>

## Topic – Substance Abuse

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

Adolescence is a critical period for brain development and establishing life-long adult characteristics. Research shows that children are particularly vulnerable to suffering long term effects of substance use, including disruptions in brain development<sup>54</sup>. During this period, the human brain undergoes critical development. Children who use substances are particularly vulnerable to suffering longer term effects on memory, problem solving skills and mental health<sup>55</sup>.

Queensland Youth Justice data demonstrate that 76% of children subject to youth justice supervised orders are suffering from entrenched alcohol or drug misuse issues. A Youth Justice Census indicated in 2016-17 that for 62% of children subject to youth justice supervised orders, substance misuse contributed to their risk of reoffending.

Compounded by multiple risk factors such as accommodation, mental health concerns and family dynamics, children sentenced to supervision either in the community or in detention tend to use drugs more frequently, use a wider range of drugs and start using drugs and alcohol at an earlier age, compared to other children of the same age<sup>56</sup>. A number of research articles observe the association

between substance abuse and offending in the youth population, arguing that the same risk factors predict both behaviours<sup>57</sup>. This is further supported by studies demonstrating that drug use in adolescence predicts the externalising of problem behaviour and involvement in offending<sup>58</sup>.

The impact of substance misuse on offending behaviour is further demonstrated in the primary offences committed by children and the prevalence of such offences. Illicit drug offences comprised 11% of all offences committed by children, the third largest offending type after theft and acts intended to cause injury<sup>59</sup>. Nationally, the number of child offenders has been declining across most categories of offences with the exception of illicit drug offences and sexual assault and related offences. Between 2008-09 and 2016-17, the number of children committing illicit drug offences increased by 47%<sup>60</sup>.

It is noted that these figures are solely for offences directly involving illicit substances, and do not include offences committed for the purpose of obtaining illicit substances. We heard many reports that the use and effect of drugs influences the commission of other offending such as theft and break and enter, with alcohol use also highly prevalent. Research cites that the use and resultant effect of drugs on individuals may influence the commission of other offending such as theft and break and enter due to the need to also support the individual's drug use<sup>61</sup>. We were told of different patterns of drug use, for example with Volatile Substance Misuse a problem in Mt Isa and intravenous drugs used more often in South East Queensland.

<sup>54</sup>Morris, S and Wagner, E 2015, *Adolescent Substance Use: Developmental Considerations*. [ONLINE] Available at: [http://atcnetwork.org/REGCENTERS/productDocs/14/Adolescent\\_Monograph\\_1.pdf](http://atcnetwork.org/REGCENTERS/productDocs/14/Adolescent_Monograph_1.pdf)

<sup>55</sup>Ibid.

<sup>56</sup>Putnins, A 2001, Substance use by South Australia young offenders. *Information Bulletin*, no. 19, South Australian Office of Crime Statistics.

<sup>57</sup>Hammersley, R., Marsland, L and Reid, M 2003, *Substance use by young offenders: the impact of the normalisation of drug use in the early years of the 21<sup>st</sup> century*. Department of Health and Human Services, University of Essex. [ONLINE] Available at: [https://www.drugsandalcohol.ie/5336/1/Home\\_Office\\_Research\\_Study\\_261\\_Substance\\_use\\_by\\_young\\_offenders.pdf](https://www.drugsandalcohol.ie/5336/1/Home_Office_Research_Study_261_Substance_use_by_young_offenders.pdf)

<sup>58</sup>Estevez, E and Emler, N 2011, Assessing the links among adolescent and youth offending, antisocial behaviour, victimisation, drug use, and gender. *International Journal of Clinical and Health Psychology* vol. 11, no. 2. [ONLINE] Available at: [http://www.aepc.es/ijchp/articulos\\_pdf/ijchp-380.pdf](http://www.aepc.es/ijchp/articulos_pdf/ijchp-380.pdf)

<sup>59</sup>Australian Bureau of Statistics 2018, *Recorded Crime – Offenders*. [ONLINE] Available at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0~2016-17~Main%20Features~Youth%20Offenders~4>

<sup>60</sup>Ibid.

<sup>61</sup>Goldstein, P 1989. Drugs and Violent Crime. In Weiner, N and Wolfgang, M (eds), *Pathways to criminal violence*.

To maintain a focus on limiting contact with the formal justice system, all Australian States and Territories have a range of diversionary options available to police for drug-related offences. For children, only Queensland and Western Australia restrict these programs to minor cannabis-related offences. New South Wales, South Australia and Tasmania enable police drug diversion for minor offences relating to all illicit substances, including alcohol. Both Victoria and the Northern Territory do not have specific police drug diversion programs. Instead these jurisdictions have agencies to which they can divert children, to address the multiple causes of offending, including substance abuse.

South Australia is unique in its approach to managing minor drug related crime. The Police Drug Diversion Initiative requires police to divert both adults and children for minor possession or consumption offences of all illicit substances, (with the exception of cannabis for adults, which is dealt with by an on-the-spot fine via a cannabis expiation notice), to programs for drug education, assessment and treatment. Unlike other jurisdictions with similar drug diversion programs, police have no discretion – minor drug offences cannot be prosecuted unless the individual does not comply with the requirements of the drug diversion program, or the individual's referral has been terminated by the service.

A 10-year evaluation of the South Australian Drug Diversion Initiative<sup>62</sup>, completed in 2012, highlighted that of the 13,627 distinct individuals diverted, approximately one quarter were diverted more than once, 15% were diverted twice, 5% diverted three times and 4% diverted four or more times. The overall compliance with diversion was high, however it decreased for subsequent diversions. The evaluation found that children were significantly more likely to comply within the first five days of receiving the diversion than adults. Individuals who complied with their diversion were less likely to reoffend,

with a 23% reoffending rate, while those who did not comply had a reoffending rate of 32%. In response to this, the evaluation recommended capping the number of diversions an individual is able to receive. This is substantiated in other research indicating prior offences impact on recidivism outcomes for mandatory drug diversion programs<sup>63</sup>.

Outside of police referred drug diversion, the Queensland Childrens Court has no pathway to refer children presenting with substance abuse issues to drug rehabilitation facilities specific to their needs. This is because there is an absence of rehabilitation services for children in Queensland, and only one detoxification clinic for children, which is located in Brisbane. Studies from Canada show that children who enter detoxification facilities tend to continue to access treatment and to reduce their substance use following release<sup>64</sup>.

Both Victoria and New South Wales have residential rehabilitation centres that cater to youth justice clients. Various levels of coercion are applied, including attendance being a condition of parole and direction from caseworkers. In New South Wales, the Triple Care Farm offers a 12-week holistic psychosocial rehabilitation program based on harm minimisation and health promotion. There are 18 beds available and the program is followed up with 6 months of community aftercare.

An independent review<sup>65</sup> of Triple Care Farm found benefits in terms of:

- improved health
- social improvements
- government savings from the health and welfare sectors
- financial savings through diverting 67 young people from detention during the initial investment period.

<sup>62</sup>Office of Crime Statistics and Research 2012, Ten years of the South Australian Police Drug Diversion Initiative: Data Analysis Report. Government of South Australia.

<sup>63</sup>McSweeney, T., Hughes, C., & Ritter, A 2018, The impact of compliance with a compulsory model of drug diversion on treatment engagement and reoffending. *Drugs: Education, Prevention and Policy*, 25(1), 56-66. [Online] Available at: <https://www.tandfonline.com/doi/abs/10.1080/09687637.2016.1219695>

<sup>64</sup>Alberta Health Services 2009, *Evaluation of the services provided under the Protection of Children Abusing Drugs Act: Year two evaluation findings*. [ONLINE] Available at: <http://www.assembly.ab.ca/lao/library/egovdocs/2007/alad/165626.pdf>

<sup>65</sup>Social Ventures Australia (SVA) Consulting 2015, *Triple Care Farm: Baseline Social Return on Investment*. Mission Australia

Many stakeholders supported police diversion being extended to a wider range of illicit drugs. It was also suggested that restorative justice would be a more appropriate response for some drug offending, in preference to charging. The availability of a wider range of treatment options across the State to deal with substance abuse issues for children in the youth justice system could also be considered. Residential treatment options could complement the existing suite of interventions when other less intrusive options are not likely to have an impact on high-risk substance use. We note there is a significant body of research about what is most effective in this regard that can help inform any future investment<sup>66 67</sup>.

### Recommendations

14. That the Government consider extending drug diversion to drugs other than cannabis for minor drug offences committed by children.
15. That the Government consider a range of evidence-based treatment options for children in the youth justice system with substance abuse issues.

## Topic – Minor Offending

### Pillars

2. Keep children out of court
3. Keep children out of custody

### Discussion

The Queensland Police Service (QPS) necessarily operates 24/7 across Queensland. As such, it is the key justice agency that is likely to encounter children offending and which is enabled to initiate prosecutions and appearance before a children's court. QPS is also the only agency that is able to divert children who have committed an offence from the formal justice system prior to a matter being heard by the courts.

The *Youth Justice Act 1992* requires that before exercising their power to arrest or issuing a Notice to Appear (NTA), police are to consider a diversionary options such as taking no action (for example, an informal warning), administering a caution or referring the matter to a restorative justice process. Referral to a restorative justice process can include a restorative justice conference or a program aimed at the child's offending. No data is routinely collected on the number of informal warnings police give to children, however, for the 2016-17 period, police took action against children aged 10-16 years on 38,338 occasions. Of this number, 10,840 cautions were administered by police to children and 1,941 children were referred to a restorative justice process by police<sup>68</sup>. This equates to 28% and 5% respectively, of actions taken by police. On the remaining 25,557 occasions, the child was charged and appeared in court.

A child's appearance before a children's court is normally through arrest or the issue, by police, of a NTA. Legislation and the QPS Operational Procedures Manual (OPM) require the parents of a child to be advised when either occurs, unless the parent can't be found after reasonable inquiry.

<sup>66</sup>Lindstrøm, M, Saidj, M, Kowalski, K, Filges, T, Rasmussen, P. S. and Jørgensen, A. M. K 2015, Family behavior therapy (FBT) for young people in treatment for illicit non-opioid drug use: A systematic review. *Campbell Systematic Reviews*, 11/9. [Online] Available at: [https://pure.sfi.dk/ws/files/340404/Lindstrom\\_FBT\\_Review.pdf](https://pure.sfi.dk/ws/files/340404/Lindstrom_FBT_Review.pdf)

<sup>67</sup>Filges, T, Rasmussen, P. S, Andersen, D and Jørgensen, A. M. K 2015, Multidimensional family therapy (MDFT) for young people in treatment for non-opioid drug use: a systematic review. *Campbell Systematic Reviews*, 11/8. [Online] Available at: [https://www.campbellcollaboration.org/media/k2/attachments/Filges\\_MDFT\\_Review.pdf](https://www.campbellcollaboration.org/media/k2/attachments/Filges_MDFT_Review.pdf)

<sup>68</sup>Australian Government, Productivity Commission 2018, *Report on Government Services 2018*. Chapter 17 Attachment Table 17A.21. [Online] Available at: <http://www.pc.gov.au/research/ongoing/report-on-government-services/2018/community-services/youth-justice>

Whilst diversion may occur multiple times, at multiple points in the justice system, we heard that police (and courts) feel constrained in the number of times they can divert a child under the legislation, even if repeat offending or subsequent offences are of a minor nature.

There are a range of matters that we believe are able to be classified as minor offending that could be routinely diverted away from court, and for which children should not be remanded in custody. This could apply where offending has the type of features described below:

- offences that can only be dealt with summarily
- not involving violence, theft or property damage
- not involving a member of the public as a victim
- if the offender were an adult, capable of being dealt with through the issue of an infringement notice with a monetary penalty
- shoplifting.

This is consistent with *The United Nations Convention on the Rights of the Child*, which states:

*Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

*(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected*<sup>69</sup>.

Contact with the courts produces a stigmatizing and negative labelling effect, especially for children who are highly vulnerable, with research demonstrating

that the more contact a child has with the judicial system, the increased likelihood of committing further offences. This is particularly exacerbated for those children who enter the youth justice system at an early age, usually by committing minor offences<sup>70</sup>.

Considering this and the episodic and transitory nature of offending by children, diversionary responses to youth crime are advocated because they are deemed swift and economically efficient, particularly for minor offences. Furthermore, an explicit aim of diversion is to redirect individuals from the stigmatizing and criminogenic impacts of the criminal justice system .

There is no prescribed policy position in the OPM as to how often alternatives to arrest or an NTA could or should be utilised. Whilst each matter will involve a consideration by police of the entire circumstances, including the child's criminal history, any previous cautions and any other ways the child has been dealt with for an offence, there may be scope to amend the OPM to reflect that best practice includes repeatedly using all possible diversionary actions for minor matters before arrest or issuing an NTA.

It may well be that further diversionary options can be created for children for persistent minor offending. These may be offence or location specific, and may be achieved under the current legislation, for example referral to an alternative diversion program; or by way of legislative amendment such as referral to a family group conference.

Stakeholders additionally told us that many children can be influenced towards pro-social behaviour in the same way as they can be influenced towards offending behaviours, and were supportive of responses to low level youth offending that took this approach, including developing those young offenders with leadership qualities to have a pro-social influence on their peers.

Many stakeholders supported greater use of

<sup>69</sup>Office of the High Commissioner for Human Rights 2018, *Convention on the Rights of the Child*. [ONLINE] Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>70</sup>Parliament of Victoria 2018, *Inquiry into youth justice centres in Victoria: Final report*. Legal and Social Issues Committee. [ONLINE] Available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth\\_Justice\\_System/Reports/LSIC\\_Inquiry\\_into\\_Youth\\_Justice\\_Centres\\_report\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth_Justice_System/Reports/LSIC_Inquiry_into_Youth_Justice_Centres_report_WEB.pdf)

<sup>71</sup>Jordan, L and Farrell, J 2013, Juvenile justice diversion in Victoria: A blank canvas. *Current Issues in Criminal Justice*. 24/3, 419-437. [Online] Available at: <http://www.austlii.edu.au/au/journals/CICrimJust/2013/7.pdf>

informal warnings by police and suggested the OPM could encourage police practice in this regard. There was also a suggestion that a formal warning could be introduced into the legislation. This approach could also be adopted where a child is peripheral to an offence, for example they were standing with friends who were central to the commission of the offending.

We heard from many members of the QPS that cautions work well with the majority of young offenders, many of whom never reoffend. This is borne out in research conducted in Queensland and other jurisdictions which has demonstrated a significantly reduced likelihood of these children not having additional contact with the youth justice system<sup>72</sup>.

### Recommendations

16. That members of the Queensland Police Service be supported in exercising discretion not to prosecute and be provided with as wide a range of options as possible in that regard.
17. That pathways for police to refer to non-government service providers for the purposes of diversion be enhanced.

## Topic – Protected Admissions and Enhanced Diversions

### Pillars

2. Keep children out of court
3. Keep children out of custody

### Discussion

There is significant credible research that supports police diversion rather than prosecution for children in appropriate cases as well as avoiding detention where possible. This research is referred to elsewhere in this report in the discussion supporting the four pillars.

Legislation also reflects this position, notably:

- the Youth Justice Principles in schedule 1 of the *Youth Justice Act 1992* provide that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances, and
- the *Youth Justice Act 1992* also provides that the police must consider diversion before proceeding against a child except for a serious offence, and may consider diversion options for a serious offence (section 11).

Many stakeholders told us that a barrier to police diversion in some cases (essentially property crime), was a lack of admission to an alleged offence when there was sufficient evidence without an admission to charge the child with the offence. We were also told that this arises because a child is exercising their right to silence, often on the basis of advice from the Aboriginal and Torres Strait Islander Legal Service (ATSILS) or Legal Aid Queensland (LAQ).

The Queensland Police Service (QPS) Operational Procedures Manual (OPM) Chapter 5 'Children' Part 5.3.1 states:

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<sup>72</sup>Little, S., Allard, T., Chrzanowski, A and Stewart, A 2011, *Diverting young Indigenous people from the Queensland Youth Justice System: The use and impact of police diversionary practices and alternatives for reducing Indigenous over-representation*. [ONLINE] Available at: <https://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>

*“Before a caution can be administered:*

*i. the child must:*

- a. admit to having committed the offence;  
and*
- b. consent to being cautioned.”*

We were advised that in the absence of an admission the police proceed to charging. In examining the processes involving children in detention it would seem that many are remanded in custody for up to three months. They then plead guilty and are released by the court on the basis of time served on remand. This practice results in less than optimal diversion of children away from court and away from detention despite the research and legislative intent. It appears that no individual or entity is at fault in this regard. Indeed those involved are acting conscientiously in what is a challenging area.

New South Wales appears to experience similar barriers to police diversion, in particular, we were told that the requirement by police for a full record of interview following an admission contributed to lower levels of consent to caution than might otherwise be achieved. It was suggested that an admission in a similar form to that required by courts might go some way to enabling greater use of police diversions where appropriate.

New South Wales has had some success in this space, however, by operating a Youth Legal Aid Hotline through Legal Aid NSW from 9am to midnight weekdays with a 24 hour service from Friday to Sunday midnight and public holidays. In 2016-17, the hotline received 15,449 calls, provided 5,933 legal advice services, 4,012 minor assistance services, and 3,280 legal information services. Many of these calls facilitate police diversions where, after legal advice, children may make admissions to police and may be given a caution or warning or referred to a youth justice conference, rather than being charged with offences and brought before a court. There is a 2005 protocol with the NSW Police Service about using the service and NSW case law that supports police use of the Hotline.

In November 2017, Legal Aid Queensland (LAQ) launched the Youth Legal Advice Hotline pilot,

for children to talk to a lawyer and get free and confidential legal advice about bail, diversionary options, being charged with an offence and talking to police. The Hotline operates Monday to Friday 8am to 9pm and Saturday 7am to 12 midday (except for public holidays). The service is funded to 30 June 2018. The key benefit the service seeks to achieve, like the NSW Youth Legal Aid Hotline, is an increase in cautions and referrals to restorative justice conferencing by police. Since the Hotline opened it has received 436 calls, provided 173 advices and facilitated 35 police diversions. To improve the effectiveness of the Hotline, it is advisable that it align its hours of operation with the times that police require its services, similar to the hours of operation of the NSW Youth Legal Aid Hotline.

We note QPS is also progressing a series of initiatives to increase police diversions where appropriate, including training more police officers to administer cautions. Greater use of police diversions is discussed elsewhere in this report in relation to minor offending.

In our consultations, we put to stakeholders a proposal for a trial of a ‘Protected Admissions’ and enhanced diversions scheme in a suitable location in Queensland, which, if successful, could be progressively introduced in other locations across the State, with the ultimate aim of State-wide implementation. The ‘Protected Admissions’ and enhanced diversions trial is aimed at increasing the number of matters that are diverted by police rather than charged. It essentially involves a police officer and a legal representative agreeing that the police will administer a caution to a child if they admit to a particular offence, for which they would otherwise be charged. This would be supported by referral by police to support services and programs where indicated. Key features of the proposal include:

- support from key stakeholders, including the QPS, Crime and Corruption Commission, the police unions, legal services providers, as well as DCSYW, other key Government agencies, non-government organisations and the local community



- a relationship of mutual trust between legal service providers (ATSILS and LAQ) and QPS and an agreed protocol for a discussion about a 'Protected Admission'
- agreement that any 'Protected Admission' statement of admission of the alleged offence will not be admissible in court if the offence is prosecuted or for other purposes such as in a bail application
- the possibility that a statement of admission is sufficient for police to administer a caution, and that a record of interview and further questioning is not required
- the option to agree to other offences being included in the 'Protected Admissions' caution
- not limiting the number of diversions that may be given to a child, with a view to measuring success in reduced offending over a longer time period
- a range of appropriate programs, services, supports and efficient and effective referral pathways that support police diversion under a 'Protected Admissions' scheme
- revised operational policy, procedure and practice where necessary.

Whilst the intent of increasing the proportion of matters that are diverted by police has merit as a stand-alone measure, the proposal would ideally support police diversion practices with suitable, available referral pathways that address circumstances that contributed to the offending and reduce the risk of reoffending. It is therefore highly desirable that a 'protected admissions' and enhanced diversions scheme be accompanied by:

- information regarding the child's school attendance and educational achievement
- a health and disability assessment
- an assessment by Youth Justice (and if relevant Child Safety) of the child's history, and
- referral to a holistic, linked-up program that embraces the child's education and health needs as well as personal and family circumstances.

Ideally the trial would take place in a location where there is sufficient youth offending activity to measure results, potential for existing services to accommodate police referrals, access to child crime legal advice and services; where existing resources of State Government departments have the capacity to absorb the project's needs without separate additional funding; where there is potential for the expanded involvement of the Department of Education and Queensland Health; and where there is a willingness of key stakeholders to change current practice to succeed.

### *Recommendations*

18. That the Government support a trial of a 'Protected Admissions' and enhanced diversions scheme in a suitable location, which, if successful, could be progressively introduced in other locations across the State.

## Topic – Bail

### *Pillars*

3. Keep children out of custody

### *Discussion*

Bail is a key element of the criminal justice system, the most important reason for this being the presumption of innocence and the principle that a person, including a child, not be punished before conviction. Other parts of this report discuss the potential negative consequences of holding a child in custody, such as disengagement from community supports as well as the risk of normalising detention and entrenching them further in the criminal justice system.

Where risk of harm to the community can be minimised by managing and supporting a child in a community setting, that is preferable to detaining them whilst their matter is proceeding through the courts. As such, measures that support both police and court bail for a child, (or release of a child without bail), are important if we are to reduce the number of children remanded in custody in Queensland. It is important that access to these measures is available at the point of decision-making by a police officer or a court as to whether to release a child pending their future appearance in court.

Elsewhere in this report we highlight the importance of avoiding delay in gathering information and accessing supports for children that can potentially see them held in custody or detained for longer than they might otherwise be. It is also essential that police and courts have options available that enable them to be satisfied that a child can remain in the community until their matter is heard. In addition to education, health, disability and family assessment and referral services that support police and court diversion, other measures that directly support a child to meet bail conditions are also important. Some of these are discussed below.

We note that Youth Justice is currently progressing a joint exercise with Legal Aid Queensland and the Department of Public Prosecutions to identify children on remand with sufficient bail merit to

support a bail application being immediately progressed. Reports suggest that this exercise is tracking well, resulting in bail being granted for children who were previously on remand.

### *Bail Assistance Line*

In New South Wales, Juvenile Justice operates a Bail Assistance Line (BAL) to provide after-hours services (4pm to 3am, seven days a week) to police on occasions when police are inclined to grant conditional bail to a child in their custody, however, are concerned the child won't meet their bail conditions. The BAL operates for children who are arrested later in the day and can't appear in court that same day. The police must call the BAL to start the process of sending the child to a juvenile detention facility. At this point, an officer on the BAL will discuss with the police officer accommodation support that might be able to be provided through BAL to support the child to meet bail conditions. The officer at the BAL undertakes an assessment of the child and assists police to access services such as accommodation, transport and case support to meet bail conditions.

50% of all referrals through the BAL were for 14 and 15 year olds, accounting for 27% and 23% of BAL placements respectively. However, all other age cohorts were also referred through the service – 11 year olds (1%), 12 year olds (3%), 13 year olds (9%), 16 year olds (19%), 17 year olds (17%) and 18 year olds (1%).

Using shared information between NSW Juvenile Justice and NSW Police Service databases, the BAL will contact family members in the first instance to request help in accommodating the child. If no appropriate community placement can be located, the child will be referred to one of the BAL's partner NGOs, which operate specially-funded beds for BAL clients. These placements generally last for no more than 28 days, after which the child or young person is transitioned to long-term care, or back to the family home, if appropriate. The child or young person is provided with structured case management along with access to other services to ensure bail compliance and appearance at court.

The BAL frees up police by taking responsibility for organising suitable accommodation for children

and by undertaking transport of children from the watchhouse to their accommodation.

The objectives of the BAL include minimising the entrenchment of children in the juvenile justice system, reducing the number of children on remand in detention centres who can be safely supervised in the community and reducing the number of children on remand in detention centres who are there for non-criminal related reasons such as lacking accommodation. The service has additionally entered into funding agreements with NGOs to provide services to children such as case management, accommodation, referrals and transport to drug and alcohol, mental health and vocational services<sup>73</sup>.

Three case studies provided to us were:

- a 15 year old child was arrested on assault charges. The refuge the child had been staying at refused to allow a return. The child spent several weeks with a NGO organised by the BAL before successfully transitioning to alternative long-term accommodation and has since had no contact with the juvenile justice system
- a 13 year old child was arrested on shoplifting offences and their parent or guardian could not be contacted. The child was provided with a single night's accommodation and was returned to the family home the next morning. The child has had no contact with the juvenile justice system since
- a 16 year old child was arrested in relation to public order offences. The young person was unable to secure transport from the police station to enable return to the family home in Wollongong. The NGO collected the young person from the police station and provided transportation. The young person has had no contact with the juvenile justice system since

We understand that promoting the service to individual police stations around the state has had a significant impact on take-up of the service by police.

We note that the Cairns High Risk Young People Trial

includes an on-call youth justice worker available to be contacted by police on weekends. The worker is able to provide information which may assist in the young person being granted watchhouse bail. Together with the other aspects of this trial, that is, a co-responding initiative between QPS and Youth Justice and weekday pre-court support, commencing at 7am, local police and Youth Justice workers are working together to identify supports that might be provided by Youth Justice to satisfy police that a child can be released on bail.

### *Bail Support*

All Australian jurisdictions utilise bail support services to support children to successfully meet their bail obligations. Other jurisdictions have successfully utilised bail support as a strategy to keep children in the community pending the outcome of charges.

Bail support services, generally delivered by non-government services, provide varying levels of support and supervision and assistance to children who are granted bail. They also serve an important function diverting children from being remanded in custody, particularly where they have a high profile and level of confidence in the courts.

The evidence indicates that bail support services work best where children participate voluntarily, are engaged immediately at court and are supported holistically to meet their individual needs such as education, housing and substance misuse at the local level. A recent major review of bail support programs published by the Australian Institute of Criminology drew from overseas and Australian experiences and concluded that best practice bail support programs should be:

- voluntary, ensuring that clients are somewhat motivated, willing to engage with treatment and make changes to their lives
- timely and individualised, that is, available immediately upon bail being granted and responsive to the accused person's immediate needs, even before they have left court
- holistic, addressing the full range of the individual's criminogenic needs

<sup>73</sup>Juvenile Justice NSW 2018, *Bail Assistance Line*. [ONLINE] Available at: [http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail\\_assistance\\_line.aspx](http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/bail_assistance_line.aspx).

- collaborative, using inter-agency approaches involving other government and non-government service providers
- consistently applying a strong program philosophy
- able to prioritise support over supervision
- able to be localised and make use of local community resources and knowledge
- able to have a court-based staffing presence and establish good working relationships with court officers, officials, the judiciary and other agency staff, and
- based on sound guidelines and processes that assist clients to engage with the structured court processes and requirements of court orders while maintaining program integrity<sup>74</sup>.

There is currently only one bail support service, the Youth Bail Accommodation Support Service (YBASS), operating in Queensland, delivered by the Youth Advocacy Centre, which provides support to children who are on bail in South-East Queensland. We note that a perceived lack of housing and wrap-around services available to police and courts, which would allow children to return to the community rather than await sentencing in detention centres, together with the isolation of remote Aboriginal and Torres Strait Islander communities, and a lack of place-based supports in these locations, may contribute to bail being refused.

A range of quality bail support services in high demand locations to which police and courts can refer children who they would otherwise remand in custody would address a significant gap in the service system in Queensland. These services would need after-hours capacity and a level of supervision and support that facilitates a child's compliance with bail and sustains police and courts' confidence.

### *Bail Accommodation*

Police, courts, legal advisors and community representatives noted that there is a demand for bail accommodation in Queensland, expressing concern that children are in youth detention centres due to lack of suitable accommodation options.

There are four Supervised Bail Accommodation (SBA) services in Queensland that have progressively commenced operation since December 2017; two in South East Queensland and two in Townsville. Uptake has not been as rapid as expected and they currently operate at about half capacity. We had the benefit of visiting all four SBA services in Queensland and were highly impressed at the model and service provision. We note that one of the key features of SBAs is that they are transitional facilities, where children reside for up to six weeks. In that period, they participate in intensive case management that involves connecting and engaging the child with the necessary supports and services that they need in the community, including education or training, health and family support services, where indicated, as well as long-term stable accommodation, often with extended family.

In discussions with stakeholders, there was wide support for bail accommodation for children following arrest prior to attending court. Short-term bail accommodation could provide an alternative to custody, by providing safe accommodation, with appropriate supervision until the child's first appearance in court.

There was also support for bail accommodation located locally but away from the location of offending and other high risk youth, particularly in regional locations. In many cases this would mean being outside of town, and far enough away to remove the likelihood of contact with others who might be a negative influence. On-country programs were proposed as a suitable type of bail facility in these locations as they provide a meaningful experience for children that can be helpful towards changing their offending trajectory.

<sup>74</sup>Willis, M 2017, *Bail Support: A review of the literature*. AIC Research Reports 04, Australian Institute of Criminology. [Online] Available at: <https://aic.gov.au/publications/rr/rro04>

### **Bail Conditions**

When bail is granted to a child it is important that the conditions are realistic and based on the child's circumstances, whilst taking into account community safety and the need to reduce the risk of future offending. We heard from a number of stakeholders about variability of effectiveness of bail conditions in preventing a child from reoffending whilst in the community awaiting court proceedings. We were told that bail conditions were more effective if they were tailored to suit the circumstances of the particular child and the child was proactively supported to meet the conditions.

Youth Justice currently delivers a Conditional Bail Program (CBP) for children who might otherwise be remanded in custody by a court. A CBP involves an assessment of the child and preparation of an individualised support program to develop their capacity to comply with the bail undertaking, together with support for the child to comply with their bail conditions.

In 2015-16, Youth Justice completed a review of CBP along with a supplementary literature review, which highlighted the need to match program intensity with the child's level of risk<sup>75</sup>. The review documented concerns regarding the application of information about offending to CBP. There were many children who were first time offenders, or who had committed minor offences, who were being subject to onerous CBP conditions or requirements. The report suggested that this may have contributed to 40% of CBPs in the 2015-16 period ending due to bail revocation, likely due to a breach of bail conditions. Numerous or unrealistic bail conditions can result in increased breaches of bail rather than achieving the intent of increasing bail compliance. The review also found that CBPs may inadvertently accelerate a child's trajectory into remand by exposing them to a strictly monitored bail program. Further, the review found that a child who was on a CBP for more than two months was at a significantly higher risk of breaching bail.

The report recommended that CBP be reserved for high-risk children who would otherwise be remanded in custody, have exhausted less onerous bail options and, further, that bail conditions should not set unrealistic expectations in the context of the child's circumstances. It also recommended that CBPs should be time limited, preferably by speeding up the court process so that children's matters could be finalised more quickly. Furthermore, CBPs should target children who do not require specific interventions, but rather support to adhere to bail conditions.

### **Recommendations**

19. That the Government maintain the existing Supervised Bail Accommodation services in Townsville, Logan and Carbrook and consider extending the referral pathways to include:
  - a. children leaving detention
  - b. children on bail and ordered by the court to reside as a condition of bail
  - c. children subject to police bail
  - d. children on supervised orders who have nowhere suitable to live.
20. That a referral pathway similar to the Bail Assistance Line (BAL) in NSW be considered.
21. That child criminal matters be returned to court regularly to test readiness to proceed and, where a child is in custody, whether bail is appropriate.
22. That further measures be put in place to ensure bail conditions do not place unrealistic expectations on children in light of their circumstances, whilst ensuring community safety.
23. That, to the greatest extent possible, bail support services are available to keep children in the community, instead of remanded in custody.

<sup>75</sup>Bonta J. and Andrews, D.A 2007, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation*. Public Safety Canada. [ONLINE] Available at: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-en.aspx>

## Topic – Remand in Custody

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

80% of children in detention centres in Queensland are on remand, that is, they are either waiting for their matters to be heard in court or awaiting sentence. This is higher than the national average which is 64%<sup>76</sup>. High rates of remand of children in detention is an issue in all Australian jurisdictions with Western Australia the only state where the proportion of children in sentenced detention is higher than those on remand<sup>77</sup>.

Remand in custody rates in Queensland have gradually increased over the last four years from 2.79 per 10,000 in 2013 to 3.23 in 2017<sup>78</sup>. This gradual increase is replicated across Australia with the exception of South Australia, which has experienced a consistent moderate decline in recent years<sup>79</sup>. The recent Victorian Parliamentary inquiry into Youth Justice Centres also noted an unprecedented increase in remand numbers in Victoria over the last 10 years, citing that 10 years ago the ratio of children on remand to those sentenced was approximately 80% sentenced to 20% on remand and that this was now reversed to 20% sentenced and 80% on remand<sup>80</sup>.

A child arrested for a criminal offence is brought promptly before the Childrens Court<sup>81</sup>. For children arrested later in the day or on the weekend this means that they appear in court the next business day. Where the police decide to detain a child in

custody until their first court appearance, the child may be admitted into a youth detention centre and will either return there if the court remands them in custody or will be released awaiting further court proceedings. In locations a sufficient distance from Townsville and Brisbane, where the two youth detention centres are located, a child may be temporarily held in a police watchhouse. On average, three young people are placed in youth detention centres each day following police bail refusal<sup>82</sup>. We note a recent change in this practice that has occurred as a result of the two youth detention centres operating at full capacity following the transition of 17 year olds into the youth justice system. An arrangement has been made with the Queensland Police Service (QPS) and Queensland Corrective Services (QCS) for children to be detained in police watchhouses on remand until accommodation can be provided in a youth detention centre.

Once a child appears in court charged with an offence, the court may further remand the child in custody or release them on bail on their own undertaking until their matter is finalised in court. For the five year period between 2011-12 and 2015-16, of all arrests, 65% resulted in bail refusal by police. Of these, 11% were finalised in first or subsequent court appearances. Of the remaining appearances that resulted in adjournments, 43% were granted bail by the courts.

During 2016-17, the median number of days young people spent remanded in custody in Queensland was 18 days, and the median number of days for those serving detention orders was 43 days.

Of children remanded in custody in 2016-17 who subsequently received a custodial order, 41% were released from custody without further time to serve<sup>83</sup>. In 26% of these cases, the child was not required to

<sup>76</sup>Australian Institute of Health and Welfare 2017, *Youth Justice in Australia 2015-16*. [ONLINE] Available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2015-16/contents/table-of-contents>

<sup>77</sup>Ibid.

<sup>78</sup>Ibid.

<sup>79</sup>Ibid.

<sup>80</sup>Parliament of Victoria 2018, *Inquiry into youth justice centres in Victoria: Final report*. Legal and Social Issues Committee. [ONLINE] Available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth\\_Justice\\_System/Reports/LSIC\\_Inquiry\\_into\\_Youth\\_Justice\\_Centres\\_report\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth_Justice_System/Reports/LSIC_Inquiry_into_Youth_Justice_Centres_report_WEB.pdf)

<sup>81</sup>*Youth Justice Act 1992* (Qld)

<sup>82</sup>Youth Justice Queensland 2016-17, unpublished data.

Youth Justice Queensland 2016-17, unpublished data.

fulfil any additional supervised intervention in the community, due to having spent time in custody that was equal to or, potentially, in excess of, the time they would have served on a detention or community based order for their offences.

An analysis in February 2017 by Youth Justice found the most frequent reasons for bail refusal were associated with concerns regarding unacceptable risk of reoffending (29%) and an absence of suitable accommodation (7%). In 17% of cases, no bail application had been made by the child. For children, even a short episode of remand has been associated with future remand episodes. The seriousness and numbers of charges also tended to escalate following the first remand episode, presumably in part due to the criminogenic nature of custody. This is consistent with research from the *Pathways to Desistance* studies<sup>84</sup> in the United States that found that for some youth incarceration may actually raise the level of offending. This suggests that an important leverage point for intervention is preventing initial episodes of remand.

This concern was echoed by several stakeholders who expressed a view that the disruption caused to a child from brief periods spent in detention, may cause further disengagement from support structures and lead to further entrenchment in the criminal justice system. For example, even a short absence from education, community and family may disadvantage a child and require focused intensive rehabilitation and transition following release. There was concern that this dislocation may have the unintended consequence of contributing to higher reoffending rates upon release. Dislocation may potentially be avoided with community based interventions that reduce the risk of reoffending instead of custody, where appropriate.

Many legal stakeholders identified delay in court proceedings as a major contributor to remand of children in custody. There are a number of factors that may contribute to delay in any particular case, such as the need for legal advisors to have good information about the circumstances of the child and their offending before advising them; availability

of a parent to attend court for the matter to be heard; time spent on assessments by professionals to provide information to a court about the child's mental health, disability and fitness to plead; time spent seeking information for a court on educational enrolment, attendance and achievement as well as any family risk factors such as domestic violence or child protection history. Unfortunately, while these processes are in train, children can sit in detention centres waiting, often in circumstances where they will never receive a custodial sentence.

We were told that the closer the consequence to the offence the more meaningful it is for a child and the more likely that it will have a deterrent effect. This is well-recognised in child development research and is reflected in the Charter of Youth Justice Principles contained in the *Youth Justice Act 1992*. Principle 11 states: *A decision affecting a child should, if practicable be made and implemented within a timeframe appropriate to the child's sense of time.*

We hope that some of the proposals in this report will go some way towards reducing delay in children's criminal proceedings, either by diverting them away from court proceedings or streamlining the court process.

We were told that there are limitations on the extent to which children remanded in custody are currently able to participate in therapeutic programs targeted at the criminogenic factors that led to their offending, as they have not yet been found guilty of the offence. It appears from what we have been told, that it is not unusual for a child to be arrested, to exercise their right to silence, be detained by police and remanded in custody by the court, and when their matter comes on for hearing, to plead guilty and to be sentenced to no further time in detention, having never participated in a program or intervention that addresses their offending behaviour.

The limited provision of services and programs for children who have not yet been convicted and who are remanded in custody for a short period of time was recognised in the Victorian Youth Justice Review and Strategy, which noted a

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<sup>84</sup>Pathways to Desistance 2018, *A study of serious offenders as they transition to adulthood and out of crime*. [ONLINE] Available at: <http://www.pathwaysstudy.pitt.edu/>

reluctance to deliver programs which involve a risk of potential disclosure of evidential information about the offences. They proposed protections for any disclosures by a child when undertaking rehabilitative programs whilst remanded in custody as a way forward, to ensure the child can obtain the programs and service they need to support them to reduce their risk of reoffending, whilst not compromising their legal rights<sup>85</sup>. We would support measures in Queensland that ensure a child's legal rights are protected whilst also enabling immediate relevant therapeutic interventions that are targeted at their behaviour and support their rehabilitation.

We believe that setting goals and regularly measuring performance will assist to reverse the trend of increasing remand rates in Queensland and ultimately help to reduce the rate. Whilst there are no quick fixes and this requires a long-term strategy, examples of the types of goals the Government might adopt include:

- Stage 1 – reduce the proportion of children on remand in youth detention centres to the national average (from 80% to 65%)
- Stage 2 – reduce the proportion of children on remand in youth detention centres to less than half (50%)
- Stage 3 – reduce the proportion of children on remand in youth detention centres to the QCS average (30%)
- Stage 4 – reduce the proportion of children on remand in youth detention centres to less than the QCS average (less than 30%)
- Stage 5 – permanently maintain the population of children on remand in youth detention centres at less than the QCS average (less than 30%).

Given the importance of our children and the safety of our communities, it is crucial that governments develop and commit to a long-term plan in this regard, preferably with bipartisan support.

### *Recommendations*

24. That goals be set to progressively reduce the proportion of children on remand in custody, with annual targets and key milestones.
25. That measures be put in place to ensure all children on remand in custody have access to rehabilitative programs to address the criminogenic factors relating to their offending including, where indicated, continuation of the program on release from custody.

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<sup>85</sup>Armytage, P and Ogloff, J 2017, *Meeting needs and reducing demand: Youth justice review and strategy*. Victorian Government. [ONLINE] Available at: [http://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report\\_meeting\\_needs\\_and\\_reducing\\_offending\\_executive\\_summary\\_2017.pdf](http://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report_meeting_needs_and_reducing_offending_executive_summary_2017.pdf)



## Topic – Restorative Justice

### Pillars

2. Keep children out of court
3. Keep children out of custody

### Discussion

The restorative justice model used for young offenders in Queensland is an evidence-based process aiming to achieve restoration for those people affected by a child's offending behaviour<sup>86</sup>. This involves facilitating a conference involving the child and victim (or their representative) and other people associated with the child such as their family and legal representative.

Interaction between the child and the victim is an integral aspect of the process. The process aims to discuss the crime, the impact of the offences and how the child can repair the harm caused. At the end of the conference, an agreement is developed between the child and the victim. Agreements can be as simple as an apology or may include participation in a course or performing service to the victim or the community. Post conference reports from victims indicate that they are often happy with the process, even in circumstances where a child may not have been able to complete their agreement.

There are four referral pathways for a restorative justice process in Queensland:

- police diversion – police divert the child from the court by way of referral to a restorative justice process
- court referral where police should have referred – the police commence proceedings in court, however, the court finds that the matter should have been dealt with by way of a police referral to a restorative justice process. The court then dismisses the charge and sends the matter to Youth Justice for a restorative justice process
- court diversion – the court refers the matter directly to a restorative justice process instead of sentencing the child

- presentence referral – the court refers the matter for a restorative justice process to assist with sentencing. After the process, the court, when sentencing, takes into account the child's participation in the process, the agreement, and any progress the child has made in relation to his or her obligations under the agreement
- restorative justice order – the court sentences the child to a restorative justice order. The child must then participate in a restorative justice process and fulfil the obligations of any agreement reached. A court may only make a restorative justice order if the child indicates a willingness to comply.

If the child fails to attend or comply with a restorative justice process, court proceedings for the offence may be started or re-started.

There was wide support for restorative justice conferencing in its current form and for more use of restorative justice processes by police and courts. Many stakeholders were of the view that facing a victim is very powerful and is more effective in reducing recidivism than traditional sentences. Legal stakeholders also reported that restorative justice was a very effective way for dealing with a wide range of offences, including serious offences. There were some concerns expressed, however, that historically there has been a low application of restorative justice for Aboriginal and Torres Strait Islander children into restorative justice conferencing in Queensland<sup>87</sup>, and that greater use of culturally appropriate restorative processes for Aboriginal and Torres Strait Islander children should be explored. We support this view.

Proposed improvements from stakeholders to the current restorative justice model in Queensland include the capacity for restorative justice processes to better respond to the needs of Aboriginal and Torres Strait Islander children. There was a view that there is significant potential for these types of processes to be more engaging and impactful for Aboriginal and Torres Strait Islander children and

<sup>86</sup>Sherman, L. W, Strang, H, Mayo-Wilson, E, Woods, D. J, and Ariel, B 2015, Are restorative justice conferences effective in reducing repeat offending? *Journal of Quantitative Criminology*, 31/1, 1-24. [Online] Available at: <https://link.springer.com/article/10.1007/s10940-014-9222-9>

<sup>87</sup>Little, S., Allard, T., Chrzanowski, A and Stewart, A 2011, *Diverting young Indigenous people from the Queensland Youth Justice System: The use and impact of police diversionary practices and alternatives for reducing Indigenous over-representation*. [ONLINE] Available at: <https://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>

their families, with greater recognition of the social structures around Aboriginal and Torres Strait Islander children, notably that family and broader kinship groups, are vital in a child's life, to their wellbeing and their life outcomes. Suggestions included greater involvement of community elders in any restorative process, planning to address the factors that led to the child's offending, and providing support to the child after a conference.

There was some evidence of less than full utilisation of referrals to restorative justice conferencing because of perceptions of police, legal advisors, and conferencing staff regarding its applicability in a wide range of circumstances, including serious criminal matters. To encourage restorative justice conferencing through the QPS, legal practitioner networks and Youth Justice is recommended. If there are concerns that conference co-ordinators do not feel equipped to conference serious offences, then further skills development may be required, or a pool of experienced conference coordinators identified and developed to take on cases that are particularly challenging, complex or serious. Formal recognition of skills and capabilities through certification may also assist in this regard.

Other restorative justice approaches are used in Australia and other countries. Some of these that could potentially be adopted in Queensland are described below. We note also that the quality of delivery of any restorative justice model is also critical to its success.

### Family-Led Decision Making

Family-led decision making is an alternative option where families can play a key role in decision making about issues that affect them. This is a model that has been successfully trialled in a child safety context in Queensland and that shows promise in a youth justice context. Youth Justice staff are currently developing a proposal for a pilot of family-led decision-making in three communities targeting Aboriginal and Torres Strait Islander children involved in the criminal justice system.

### Family Group Conferencing

Family Group conferencing is an approach that was developed in New Zealand and has been continuously used in that jurisdiction for the past 25 years<sup>88</sup>. It is embedded in New Zealand's legislation, the *Oranga Tamariki Act 1989 (NZ)/Children and Young People's Wellbeing Act 1989 (NZ)* and is a key process in both care and protection (child protection) and youth justice service systems<sup>89</sup>. Each year, roughly the same number of Family Group Conferences occur for child protection and youth justice matters. Importantly, it is a mandatory process under Oranga Tamariki when a child is charged with offences that would require hearing in a Youth Court, unless they deny the offences.

Family Group Conferencing is a more holistic process than the restorative justice process that currently operates in Queensland. Under the New Zealand legislation, Family Group Conferences for youth justice purposes have a number of functions and responsibilities, namely:

- consider and make decisions related to the care and protection of the child
- consider whether the child should be prosecuted for offences that relate to the referral to Family Group Conferencing
- ensure that all relevant information about the needs of the child is provided at the conference, specifically including information and advice about health and education
- provide advice to courts about how young people can be dealt with for offences they have admitted to or for which they have been proven guilty
- consider whether the child should undertake any mentoring or alcohol or drug rehabilitation programs, and
- consider whether a parent or guardian of the child should be required to attend a parenting education program.

<sup>88</sup>Oranga Tamariki, Ministry for Children 2018, *Family Group Conferences* [Online] Available at: <https://www.orangatamariki.govt.nz/youth-justice/family-group-conferences/>

<sup>89</sup>*Oranga Tamariki 1989/ Children and Young People's Wellbeing Act 1989 (NZ)*

The Family Group Conferencing process works as follows: When a child appears in the Youth Court, the court will order that the matter be adjourned for a short period. During that period, a Family Group Conference occurs with the child, family, community elders and police, with input from education, health and child protection agency staff if relevant (plus optional parties such as disability services, mental health, housing, domestic violence service providers), to develop a plan for the child. Other people can attend the conference to provide the relevant information about the child's needs, with the agreement of the core conference participants. The child and their family must agree to the plan which will include participation in services, programs, school and therapeutic interventions relevant to the child and their family's needs. The plan may include some element of restoration to victim or community.

There is a requirement that the Family Group Conference process occurs for most young people charged with offences. The joint planning and decision-making process and the involvement of family, carers and mandated agencies, primarily health and education, is an excellent starting point for developing a plan that addresses critical risk factors and needs of the child, to reduce their offending.

### Aboriginal and Torres Strait Islander Approaches to Restorative Justice

Another less formal but culturally appropriate form of restorative justice is where Community Justice Groups deliver mediations or conferences to deal with antisocial and criminal behaviour. For example, a Community Justice Group or similar body will meet with the offender and their family or carers and work out a way the offender can be supported and make amends for any harm they have caused. This approach has been used successfully in places such as Mornington Island and Aurukun.

Circle sentencing is another approach often used in conjunction with Aboriginal and Torres Strait Islander courts. These approaches are currently delivered in New South Wales and Western Australia<sup>90</sup>. Circle sentencing is based on traditional practices conducted by Canadian Indigenous communities<sup>91</sup>. The key features of circle sentencing are:

- the sentencing court is embedded in a community setting
- elders and Aboriginal and Torres Strait Islander community members participate as part of the Circle (the Court) and in most cases lead the process
- the process promotes healing for all parties involved, with members of the circle making suggestions or being actively engaged in providing support to victims and offenders
- healing and sentencing goals are equally important.

### Recommendations

26. That restorative justice conferencing continue to be promoted for use in a wide range of child offending matters.
27. That Youth Justice staff, police and courts are supported with the requisite knowledge, skills, training and resources to facilitate referral of a wide range of offences to restorative justice conferencing.
28. That the Government consider adopting other forms of restorative justice for application in Queensland, including Family Group Conferencing and Family-Led Decision-Making, with specific consideration of their relevance and suitability to deal more effectively with Aboriginal and Torres Strait Islander children who commit offences.

<sup>90</sup>Australian Institute of Criminology, 2017, Restorative justice in Australia, [ONLINE], Available at: <https://aic.gov.au/publications/rpp/rpp127/restorative-justice-australia>

<sup>91</sup>Marchetti, E and Daly, K 2004. *Indigenous courts and justice practices in Australia*. Trends and issues in crime and criminal justice No. 277. Canberra: Australian Institute of Criminology. [Online] Available at: <https://aic.gov.au/publications/tandi/tandi277>

## Topic – Court Orders and Sentencing Options

### Pillars

3. Keep children out of custody
4. Reduce reoffending

### Discussion

#### Specialist Court Approaches

Specialist courts are a type of therapeutic jurisprudence aimed at improving outcomes for people appearing in court who have one or multiple issues related to their criminal offending, for example mental health problems, disabilities, substance abuse or homelessness. Specialist courts take a more individualised approach than equivalent court processes, focus on addressing the causes of people's offending, and are generally more informal in their operation. Service provision is often a key element of the approach. Staff working in the courts have expertise in working with the target group, court users are engaged more intensively with the court process and there are regular opportunities for courts to check in on progress and use this information to inform sentencing. In Queensland, Drug Courts, Mental Health Courts, Domestic and Family Violence Courts and Murri Courts are examples of a specialist court approach. Specialist children's courts are another example and are discussed elsewhere in this report.

Specialist courts have been established overseas and in other Australia jurisdictions in relation to specific cultural groups experiencing disadvantage and over-representation in the justice system. Murri Courts in Queensland and Koori Courts in New South Wales and Victoria are examples of these. In Canada, Indigenous (or First Nations) Courts operate in several provinces with Indigenous Elders providing advice and, in some cases, assuming responsibility for sentencing children. They often incorporate Indigenous-led restorative justice processes, for example using Sentencing Circles as the sentencing process or to inform subsequent sentencing by judges.

#### Drug Courts

The evidence regarding the efficacy of drug courts for adults is compelling, however the results are modest for children<sup>92</sup>. A Campbell Collaboration systematic review that included 34 Juvenile Drug Courts found that programs with few high-risk offenders were more successful than those with large numbers of high-risk offenders. Queensland has a new Drug and Alcohol Court for adults that commenced operating in January 2018 in Brisbane, after a hiatus of four years following the cessation of the previous Queensland Drug Court. There are no plans to expand or change the target group for this court until an evaluation is completed in 2023. The use of drug courts was not specifically canvassed with stakeholders however substance abuse was discussed as a risk factor including children's exposure to substance use in their families and among peer groups.

#### Murri Courts

Murri Courts were reinstated in 14 Queensland court locations after funding was made available by the Government in 2015. Youth Murri Courts regularly operate in two locations, Mackay and Rockhampton. Currently Rockhampton Youth Murri Court operates once a month and Mackay Murri Court sits fortnightly. Brisbane, Wynnum, Cleveland and Richlands Murri Courts operate on an 'as needs' basis. To be eligible to participate in Murri Court, the following criteria apply:

- the defendant identifies as an Aboriginal or Torres Strait Islander person or has a kinship or appropriate connection to an Aboriginal or Torres Strait Islander community, either in Queensland or elsewhere
- the offence falls within the jurisdiction of the Magistrates Court, that is, the charges can be finally determined in that jurisdiction
- the defendant intends to plead guilty or a guilty plea is entered
- the defendant is on bail or is eligible for bail, and
- the defendant consents to participate fully in a Murri Court.

<sup>92</sup>Mitchell, O., Wilson, D., Eggers, A., and MacKenzie, D 2012, *Drug courts' effects on criminal offending for juveniles and adults*. [Online] Available at: <https://campbellcollaboration.org/library/drug-courts-effects-on-criminal-offending.html>

The primary goal of Murri Courts is to reduce the frequency and seriousness of criminal justice system involvement by children and adults appearing before them “by engaging the Aboriginal and Torres Strait Islander community in the court process, having culturally relevant processes, and ensuring the magistrate has information about the defendant’s culture, personal history and efforts at rehabilitation at sentencing”<sup>93</sup>. The process is fundamentally different from a non-Murri Court. It incorporates a comprehensive pre-sentence assessment process, a pre-sentence referral process and a sentencing phase, delivered over several months.

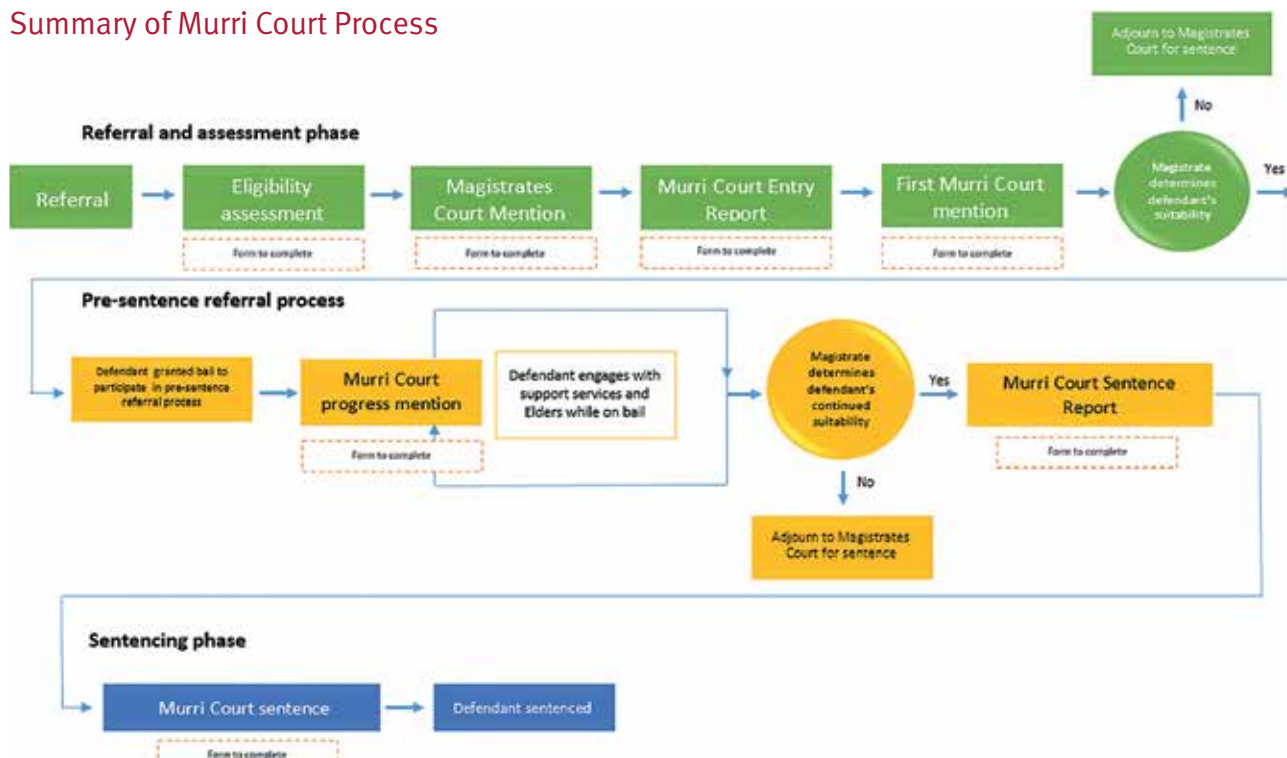
Community Justice Groups, Elders and respected persons play a key role in the operation of these courts alongside traditional court stakeholders such as legal representatives, police, QCS and Youth Justice staff. The layout of the court is less formal, it is optional for court staff to wear uniforms, and

court rooms are decorated with or incorporate Aboriginal and Torres Strait Islander design and symbols.

Several stakeholders we spoke with were positive about the value of Murri Courts for Aboriginal and Torres Strait Islander children. Some stakeholders supported greater referral of children to Murri Court for sentencing, where they consider children will have a more meaningful experience and sentencing outcome, provided appropriate referrals and supports are available.

An independent evaluation of the Murri Courts will be undertaken in 2018. The evaluators will work closely with those involved in supporting Murri Courts to help them understand if the Murri Court is being implemented as intended and meeting its objectives. The evaluation will provide an opportunity to consider what is working and what could be improved.

### Summary of Murri Court Process



Source: Murri Court Procedure Manual, Queensland Courts, Page 14

<sup>93</sup>Queensland Courts 2017, *Murri Court Procedures Manual*. [Online] Available at: [http://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0009/493893/cip-mc-procedures-manual.pdf](http://www.courts.qld.gov.au/__data/assets/pdf_file/0009/493893/cip-mc-procedures-manual.pdf)

## Mental Health Courts, Therapeutic Orders and Treatment Options

It is the court's responsibility to ensure that an accused person is fit for trial. In practice, fitness is presumed unless it is raised by the defence. The notion of 'fitness to plead' is centred on whether a person:

- understands that they have been charged with a criminal offence
- understands the nature of the criminal proceeding, and
- can give competent instructions to their legal representative.

Under the *Mental Health Act 2016*, a person may be referred to the Mental Health Court for a serious indictable offence if there is a question about whether they are unfit for trial, either permanently or temporarily. If the Court decides the person is permanently unfit for trial then criminal proceedings against them will be discontinued.

If the Mental Health Court decides the person is temporarily unfit for trial they must make a forensic order. A person's fitness for trial, if found temporarily unfit, is regularly reviewed by the Mental Health Review Tribunal. The criminal proceedings will continue once the person becomes fit for trial. If they remain unfit for three years, criminal proceedings are discontinued, or in the case of an offence carrying a maximum sentence of life imprisonment, the proceedings are discontinued after seven years.

In the summary jurisdiction, the *Mental Health Act 2016*, unlike its predecessor, provides for magistrates to deal with offences when fitness is an issue. In short, magistrates in the adult or children's jurisdictions can dismiss a charge if reasonably satisfied, on the balance of probabilities, that the person is unfit.

Most proceedings against children are in the summary jurisdiction so this option is open to magistrates. Magistrates are supported by Queensland Health's Court Liaison Service (CLS) to help make these decisions. CLS staff will assess a child and provide a report to the court which will decide whether the child is fit to stand trial. There

are however issues with the ability of the CLS staff to deal with all matters requiring assessment, with additional capacity required in some locations. Ensuring sufficient resourcing of CLS staff and timeliness of assessments would assist greatly in reducing delays and potentially help to reduce the number of children remanded in custody.

Legal stakeholders expressed concern that whilst a charge can be dismissed by a magistrate due to unfitness of a child under the Mental Health Act, without therapeutic intervention or family support, the child will often reoffend as they are released to the same circumstances of their initial offending, with the same risk factors and environment. As a result the court will eventually remand the child in custody.

It would be preferable, for a child whose charges are dismissed because a magistrate determines they are unfit to plead, for the child to have access to an immediate mental health or disability assessment, with referral either to the Queensland mental health or disability service system or to the National Disability Insurance Scheme (NDIS), potentially with priority access to services directed at reducing their risk of reoffending. We note also that NDIS assessments are costly (we were advised an assessment costs approximately \$2000 per child) and many children in the justice system will not be able to privately fund an assessment for referral.

Stakeholders also raised the possibility of the Government considering a forensic mental health facility to treat children with serious mental health problems and substance abuse issues. Some expressed concern that there is a significant gap in the treatment available for children experiencing these issues and for those who are unfit to plead or of unsound mind. We were told of increasing concerns about the lack of ongoing support for children who may suffer significant and lifelong disabilities or illness. Without this specialist support and treatment, these children are sadly at risk of cycling repeatedly in and out of the criminal justice system.

A number of legal stakeholders also expressed an interest in magistrates having the ability to make involuntary therapeutic orders, particularly

in the case of children with mental health issues, substance abuse issues or disabilities who are unfit to stand trial. Currently this is not possible under the *Mental Health Act 2016*.

### Wider Scope for Court Orders and Sentences

A number of stakeholders proposed a wider range of court orders and sentencing options for young people with challenging behaviours and complex needs, for example, a court order for specific therapeutic services. We note that there is already provision for specialised assessment to be ordered by a court but enhanced utilisation could be achieved by strengthening practice and relationships between the courts, Youth Justice and mental health and forensic mental health services.

There was wide support from many stakeholders for sentencing that involved mandating a residential therapeutic, or training and education program as an alternative to detention or a community based-order for repeat offenders. Several models were proposed including various on-country options for Aboriginal and Torres Strait Islander children, as well as placements at rural working properties, and restoration and improvements to national parks and community infrastructure. Another proposal from some stakeholders was wider scope for community service to be incorporated into sentencing and rehabilitation.

A number of police also expressed frustration that proceeding against repeat offenders was fruitless and that more effective sentencing options with effective interventions were needed. From our conversations, police are supportive of using alternatives to detention to respond to youth offending, if they are made available with appropriate supports in the community.

The accessibility for children to specialist courts in Queensland is currently limited to Murri Courts and the Mental Health Court in limited cases. While many of the people we spoke with commended the use, and in some cases an expansion, of specialist courts for children, we note that the design of these is critical and that this should be informed by evidence, to ensure the appropriateness of these approaches for children.

With respect to therapeutic and other court orders and sentences, there are strong stakeholder views that a wider range of options available to the court could support more targeted intervention for recidivist child offenders. Some clear direction was provided by stakeholders about meaningful court orders for both Aboriginal and Torres Strait Islander and non-Indigenous children that compel them to participate in programs and undertake community service that benefits both themselves and their communities.

The discussion and recommendations about Restorative Justice Practices, notably Family-Led Decision-Making and Family Group Conferencing are located elsewhere in this report.

### Recommendations

29. That the capacity for mental health and disability assessments to assist the courts be enlarged to the greatest extent possible, including availability and timeliness.
30. That the Government consider legislation and facilities to make available to the courts, therapeutic and forensic orders for children with mental health, substance use or disability issues related to their criminal offending.
31. That the range and content of current court orders and sentence options under the *Youth Justice Act 1992* be reviewed and consideration be given to a wider range of options being available for children's courts.

## Topic – Detention

### Pillars

3. Keep children out of custody
4. Reduce reoffending

### Discussion

There are, and will presumably always be, a small number of children who require detention, due to the seriousness of their offending and the need to keep the community safe. Youth Justice data indicate that over the past six years, approximately 40% of offences for which children are detained are categorised as ‘offences against the person’. This includes assaults, abduction, murder and related offences. The other 60% of offences include property crime, fraud, drug, traffic, public order, procedural, and miscellaneous offences<sup>94</sup>.

In 2016-17, 516 children entered detention for the first time in Queensland. Some of these children will have committed less serious offences and will be on remand. If we could reduce the number of children entering detention for the first time by half then we would be making a significant impact on improving the lives of these children and reducing the pressures on youth detention centres, providing community safety is protected. Apart from the immediate benefit of detaining children and therefore preventing them from committing further offences in the community while they are in custody, youth detention centres are extremely costly to operate and do not reduce offending in the long-term. There is a large body of evidence that supports this<sup>95 96</sup>.

British Columbia in Canada, the United Kingdom, and Missouri, Wisconsin and Pennsylvania in the United States of America have reversed the trend of increasing incarceration of children by changing policies and practices<sup>97</sup>.

Elsewhere in this report we have discussed specific measures that are directed at reducing the number of children in detention at any time by providing more targeted responses to particular offending and reoffending.

In addition to these, alternative approaches to delivering custodial facilities or detention orders as well as some promising alternative to custody programs that have empirical evidence demonstrating their effectiveness could also be considered. Whilst there are some promising models overseas, the suitability of these for Queensland would necessarily have to be assessed prior to being adopted.

Whilst it would be regrettable for the Government to have to build more detention centres in Queensland, this may be necessary despite changes to the youth justice system, particularly given projected population growth in the State. If the Government were to go down this path, then we would recommend smaller local detention facilities dispersed throughout Queensland as a better model for rehabilitation. Smaller more therapeutic facilities provide greater opportunity to address children’s problem behaviour, improve and strengthen connections with culture and community and facilitate their positive transition back to the community; all factors contributing to a greater likelihood of reduced future offending.

The primary locations where need appears greatest are Far North Queensland, followed by Mt Isa and surrounds, then South-East Queensland. Locating custody facilities in these locations would avoid significant transport and dislocation costs for children from these areas, and provide opportunity for better connections with families, communities and local services and therefore better support for a child’s transition back into the community. Local facilities also mean that local Elders and community representatives are able to work with

<sup>94</sup>Total number of detention nights per age group and offence group, Queensland January 2012 to December 2017, Youth Justice Performance and Reporting, Department of Child Safety, Youth and Women, YJ\_1278.

<sup>95</sup>Mendel, J 2011, *No Place for Children: The Case for Reducing Juvenile Incarceration*. Annie E Casey Foundation. [Online] Available at: <http://www.aecf.org/resources/no-place-for-children-full-report/>

<sup>96</sup>Villettaz, P., Gillieron, G. and Killias, M 2015, *The effects on reoffending of custodial vs. non-custodial sanctions*. [Online] Available at: <https://campbellcollaboration.org/library/custodial-vs-non-custodial-sanctions-reoffending-effects.html>

<sup>97</sup>McCarthy, P. Schiradli, V. and Shark, M 2016, *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model*, *New Thinking in Corrections*, No. 2. Harvard Kennedy Scholl and National Institute of Justice.



children in detention to connect them with culture, an important strategy in the toolkit for reducing reoffending among Aboriginal and Torres Strait Islander children.

Consideration could also be given to greater use of leave of absence to facilitate reintegration of children back into the community during a period of detention. *The Youth Justice Act 1992* provides for leave of absence for a child in detention under specific circumstances where this is considered important to their reintegration back into the community. Examples include seeking or engaging in employment; attending education or training; visiting family or relatives; taking part in sport or recreation; attending a medical examination or treatment; and attending a funeral. Leave of absence for suitable children could potentially be used more often and for longer periods than it is currently. For example, leave of absence might be suitable for undertaking work experience, community reparation activities such as meaningful community service, or for maintaining cultural connections for Aboriginal and Torres Strait Islander children, including through residential programs.

We note the 2016 Review into Youth Detention in Queensland, and the Government's continued implementation of its recommendations.

We note also that youth detention centres are currently operating over capacity and that, with the added pressure of 17 year olds transitioning into the youth justice system, this is being temporarily managed by holding children in watchhouses whilst awaiting a Detention Centre placement. To ensure their needs are being met, children being held under this temporary measure are supported by Queensland Corrective Services, Queensland Police Service, the Department of Education, Queensland Health and the Department of Child Safety, Youth and Women.

## Smaller Facilities and Relationship-based Custody

Vincent Schiraldi, a United States expert on juvenile justice reforms appeared as an expert witness before the Northern Territory Commission of Inquiry into the Protection and Detention of Children and provided evidence about fundamental changes to the way in which detention centre facilities were constructed and operated in Washington DC and New York City<sup>98</sup>.

New York City overhauled its approach to youth detention as part of a suite of reforms to the youth justice system. In conjunction with only incarcerating the most serious offenders, they instituted an initiative called Close to Home, which involved moving young people out of the existing large state-operated prison-like institutions into small, home-like facilities operated by not for profit organisations. These new centres were operated based on the Missouri model<sup>99</sup>. They involve small facilities dispersed to multiple regional locations and consist of home-like facilities, (with gardens, recreational areas and activities), where the environment is inherently therapeutic and educational. Security is achieved through positive and therapeutic staff relationships with children<sup>100</sup>.

The application of the Missouri model in several states in the United States and Canada has had a significant impact on the way detention facilities are designed, built and operated. It has resulted in improved reoffending outcomes and, in conjunction with other reforms, in significant declines in the numbers of children being detained for criminal offences.

<sup>98</sup>Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report 2017, vol. 1, 133. [ONLINE] Available at: <https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-1.pdf>

<sup>99</sup>Annie E. Casey Foundation 2010, The Missouri Model: Reinventing the Practice of Rehabilitating Youth Offenders. [ONLINE] Available at: <http://www.aecf.org/resouces/the-missouri-model/>

<sup>100</sup>Ibid

## On Country and Cultural Healing Programs for Aboriginal and Torres Strait Islander Children

We received many suggestions for On Country programs and facilities in regional and remote locations that were proposed as culturally responsive services for Aboriginal and Torres Strait Islander children in the youth justice system. These initiatives usually involve consortia of Traditional Owners, community-controlled organisations and alternative education providers who are involved in the design and delivery of programs. The program component is healing-focused rehabilitation and education or learning programs that can also serve as pathways to further training and employment. Programs can be delivered On Country or in other culturally appropriate environments, with On Country locations having the added benefit of providing a physical and spiritual connection to traditional lands. There is sound evidence to support cultural healing and On Country approaches from both Australia and Canada. There are about a dozen different organisations that use a cultural healing approach in Australia, targeting adults and young people. There are also three On Country programs currently that target children with substance misuse issues or who are involved in the criminal justice system, that are funded by State and Federal governments. These are located in the Northern Territory and Western Australia<sup>101,102</sup>. Features that cultural healing and On Country approaches have in common include that they:

- provide physically, socially and culturally safe and meaningful spaces for Aboriginal and Torres Strait Islander people, and for the community which they serve
- are founded on an Aboriginal and Torres Strait Islander worldview, and strengthen connections between families, communities, land and culture
- are developed, led and primarily staffed by Aboriginal and Torres Strait Islander people, but also draw on complementary skills from mainstream partners and professions
- are operated with and for their own communities, and work to empower individuals and communities to overcome the causes and symptoms of trauma
- facilitate healing through an experimental approach and emphasis on ‘what works’, but draw on both traditional and modern healing practices<sup>103</sup>.

There is great potential for cultural healing approaches to be used in conjunction with On Country service models as alternative justice programs for Aboriginal and Torres Strait Islander children at multiple points in the justice system. For example, they have the potential to be used for children sentenced to detention, as locations for leave of absence to support a child’s transition out of detention, and as culturally appropriate places and programs for those requiring intensive support and supervision.

## Alternative Custody Approaches

Full Time Attendance Programs (FTAPs) used in British Columbia, Canada incorporate a combination of education and therapy delivered to small groups of children during the day and placement with professional foster carers or a residential service provider at nights and on weekends. FTAPs are universally delivered by non-government service providers but are supported by close working relationships with juvenile justice and education staff.

These programs were reviewed in 2014 and have been attributed as a key contributor to British Columbia’s significant reduction of youth in detention, the lowest of all provinces in Canada<sup>104</sup>.

<sup>101</sup>Lopes, J. Fouris, A. and Lindeman, M.A 2013. *Youth development programs in Central Australian Aboriginal communities: A review of the literature*. [Online] Available at: [https://www.crh.org.au/administrator/components/com\\_jresearch/files/publications/youth-development-programs-in-central-australian-aboriginal-communities-a-review-of-the-literature-lobes-j-flouris-a-lindeman-ma.pdf](https://www.crh.org.au/administrator/components/com_jresearch/files/publications/youth-development-programs-in-central-australian-aboriginal-communities-a-review-of-the-literature-lobes-j-flouris-a-lindeman-ma.pdf)

<sup>102</sup>Yiriman Project n.d, *Yiriman Story*. [Online] Available at: <http://www.yiriman.org.au/>

<sup>103</sup>Cultural Healing Model, unpublished. Proposal developed by Youth Justice Cultural Unit, Department of Justice and Attorney-General, February 2017.

<sup>104</sup>Barnett, P and Howell, S 2014, *Advancing Best Practice: A Review of Full Time Attendance Programs for Youth in British Columbia*. [ONLINE] Available at: [https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/oo-public-ministry-reports/full\\_time\\_attendance\\_program\\_review.pdf](https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/oo-public-ministry-reports/full_time_attendance_program_review.pdf)

Children can be required by courts to participate in one of these programs as a condition of a supervised court order and they are targeted at those requiring a level of intervention and support beyond non-residential programs or a Day Attendance Program (a sentencing option available under Canada's *Youth Criminal Justice Act*). The time period varies between four and six months depending on the child's circumstance, risks, needs and the model delivered by the service provider. The authors of the 2014 review proposed that treatment foster care models being used in some of the programs should be applied across all models with adaptations for Aboriginal children. There is a body of evidence supporting these alternative types of foster care with children in the justice system which is discussed below.

### Specialist Foster Care Models

Specialist foster care programs are used as alternatives to custody for children in several countries and take different forms depending on their purpose and target group. Remand fostering has been used in the United Kingdom since the 1990s and is operated as a partnership between local government authorities and non-government or private foster care organisations<sup>105</sup>.

Multidimensional Treatment Foster Care (MTFC) is used in the United States and Netherlands<sup>106</sup> and a model called Professional Foster Care is used in British Columbia, Canada<sup>107</sup>. MTFC is an intensive therapeutic foster care intervention for adolescents with chronic anti-social behaviours, emotional disturbance and delinquency. The approach includes skills training and therapy for participating youth, and behavioural parent training for foster carers and their families of origin over a period of five to 15 months. MTFC is intensive however the evidence in support of its effectiveness is positive. In addition, MTFC is reported as having a positive cost-benefit<sup>108</sup>.

### Recommendations

32. That the Government adopt a goal of reducing by half the number of children entering detention for the first time (516 in 2016-2017), by 2019-2020.
33. Noting the negative consequences of detention, that detention be used for serious offenders where public safety is a factor.
34. That consideration be given for more use of detention options in alternative community settings for example community detention, leave of absence, community service, and for court-ordered periods at on-country residential programs, remand fostering and professional foster care.
35. Should the construction of additional detention centre infrastructure be required, that consideration be given to designing facilities that are different from the current large-scale institutions. They should ideally be small in size, built in multiple locations across Queensland and potentially specialised and therapeutic in focus, to meet the circumstances of different cohorts of children, for example girls, serious and high-risk offenders, or offenders with challenging behaviours.
36. That flexibility with detention and remand orders be adopted so that children can spend time outside of a detention centre during periods of custody to maintain positive connections to home and country and to support their transition and reintegration back into the community.

<sup>105</sup>National Association for the Care and Resettlement of Offenders 2004, *Remand Fostering: Briefing Note*. [Online] Available at: [www.nacro.org.uk](http://www.nacro.org.uk).

<sup>106</sup>Parosanu, A., Pruin, I., Grzywa-Holten, J. and Horsfield, P n.d, Alternatives to custody for young offenders and the influence of foster care in European juvenile justice. [Online] Available at: [http://www.oijj.org/sites/default/files/comparative\\_report\\_alternatives\\_to\\_custody\\_for\\_young\\_offenders.pdf](http://www.oijj.org/sites/default/files/comparative_report_alternatives_to_custody_for_young_offenders.pdf)

<sup>107</sup>Barnett, P and Howell, S 2014, *Advancing Best Practice: A Review of Full Time Attendance Programs for Youth in British Columbia*. [ONLINE] Available at: [https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/oo-public-ministry-reports/full\\_time\\_attendance\\_program\\_review.pdf](https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/oo-public-ministry-reports/full_time_attendance_program_review.pdf)

<sup>108</sup>Washington State Institute for Public Policy 2017, *Benefit cost results for multidimensional treatment foster care*. [Online] Available at: <http://www.wsipp.wa.gov/BenefitCost/Program/20>

## Topic – Electronic Monitoring Devices

### Pillars

3. Keep children out of custody

### Discussion

Queensland Corrective Services (QCS) currently uses electronic monitoring devices for two cohorts of adult offenders. Approximately 120 high risk sexual offenders are subject to continuing supervision under the *Dangerous Prisoners (Sexual Offenders) Act 2003* by way of GPS monitoring and approximately 185 persons are being supervised by way of electronic monitoring whilst on parole. The Queensland Police Service (QPS) recently introduced electronic monitoring for adults on bail with four people being monitored at the time of writing.

Whilst contemporary electronic monitoring technologies provide a cost-efficient solution to effectively locate and track movements of adult offenders, particularly in the context of an overall case management approach incorporating therapeutic programs, caution must be exercised in extending this technology to children<sup>109</sup>.

For dangerous sex offenders who are a serious risk to the community, GPS tracking is used to apply the strictest supervision possible. For parolees, GPS tracking is used to enhance supervision capability and monitoring of parolees and to support case management monitoring of compliance with a parole order.

There is potential for Youth Justice to use electronic monitoring for a small cohort of young offenders together with intensive case management to support compliance. This would be the equivalent of detention but served in the community, for both remand and on sentence. The courts would need to assess a particular child to determine if electronic monitoring was suitable for them. It would be limited to children who have supported stable accommodation to ensure success. Parental or caregiver support to ensure compliance would be necessary, for example, recharging batteries, and remaining at home after curfew. It may be limited to older children, 16 to 17 year olds, who have sufficient maturity to pro-actively ensure the functioning of the

device, compliance, and contact with case managers. The most suitable timing would perhaps be towards the end of a long sentence if behaviour in detention indicates that early release subject to electronic monitoring would be successful if the child were supported in the community with case management.

Electronic monitoring in the community could also potentially be used as an alternative to detention for long-term remandees who are awaiting trial or as way of enabling children who are detained to participate in employment. Case management must be provided in conjunction with the electronic monitoring, so it would only be suitable in locations where this is available.

With the very small number of children this technology might be suitable for, it would likely be cost prohibitive for the Department of Child Safety, Youth and Women (DCSYW) to set up its own infrastructure and electronic monitoring system. A fee for service model could be investigated with QCS. Early investigations suggest that QCS has a well-established capability and service system to provide the type of monitoring that would be suitable for children who would otherwise be in detention. The QPS bail electronic monitoring service may not be targeted in this regard.

Further considerations that suggest this technology could be suitable for older children who are no longer attending school, include the visibility of the monitoring device and potential associated stigma. Emerging technology means that in the future, discrete wrist watch type devices may be adopted but the current technology used by QCS is a fairly prominent ankle bracelet that would be visible on a child attending school. Access to daily recharging and use of a mobile phone to communicate regularly with case managers who are overseeing compliance is also necessary. Further, there is potential for a child to try to remove the device so sufficient maturity and support to avoid this risk would also be a consideration when assessing suitability.

In addition to the benefits to the community and the child of remaining out of detention, including costs discussed elsewhere in this report, compliance would be monitored by case managers who can be made immediately aware of breach of curfew, for example,

<sup>109</sup>Belur, J, Thornton, A, Tompson, L, Manning, M, Sidebottom, A and Bowers, K 2017, A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders. *What Works Crime Reduction Systematic Review Series No. 13*. [Online] Available at: [http://whatworks.college.police.uk/Research/Systematic\\_Review\\_Series/Documents/Electronic\\_monitoring\\_SR.pdf](http://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/Electronic_monitoring_SR.pdf)

without the need for police checks at the child's home. Case managers would only notify police if they were unsuccessful at resolving a breach and required further intervention by police. This approach also encourages a child to contact their case manager proactively to advise of any changes in their whereabouts, for example, if they expect to be late home or if they are required to go to another family member's home after curfew. This model gives the case manager a role in assessing risk and managing the particular situation in a way that both meets the rehabilitative needs of the child and ensures community safety. Court orders could reflect this approach where appropriate.

To ensure electronic monitoring is only used in appropriate cases, it would ideally be ordered by a magistrate or Judge on application by the child's legal representative, considerations being public safety, low risk of reoffending as well as likelihood of compliance. Intensive case management with in-time responsiveness is essential to the success of this model. Reliable GPS coverage as well as case managers and services located close by are also essential, so this approach may not be suitable in remote parts of Queensland where these can be challenges.

There may be very few children for whom this is a suitable option but, if a satisfactory arrangement can be agreed with QCS that enables electronic monitoring to be used in those few cases, it may be a reliable option.

Both South Australia and Western Australia use electronic monitoring to a limited extent with older children in the youth justice system. An investigation of their approaches and the success or otherwise of these models would inform any decision by this government to consider this as an option for some Queensland young offenders. International experience in this regard may also be insightful.

### *Recommendations*

37. That the Government examine the use of electronic monitoring together with community or home detention as an alternative to detention in a youth detention centre.

## Topic – BYDC and CYDC Human Resource Management

### *Pillars*

4. Reduce reoffending

### *Discussion*

The two youth detention facilities in Queensland are located at Townsville (Cleveland Youth Detention Centre CYDC) and Wacol (Brisbane Youth Detention Centre BYDC). Both are large facilities, CYDC having a built bed capacity of 96 and 252 funded staff positions consisting of permanent and casual staff, and BYDC having a built bed capacity of 130 and 286 funded staff positions consisting of permanent and casual staff.

At the time of this report both facilities were at full capacity. As the result of a Queensland Industrial Relations Commission decision, the safe capacity at BYDC cannot be exceeded. As a consequence, children were being held on remand in police watchhouses awaiting transfer to a youth detention centre pending an available bed.

Two Unions represent the staff at both youth detention centres. CYDC staff are predominantly members of the Australian Workers' Union (AWU) and BYDC staff are predominantly members of the Together Union.

There is a current bed expansion program that will increase bed capacity at BYDC by 16 beds in mid- 2018 and by 12 beds at CYDC in early 2019. In spite of this expansion, current demand indicates the likely need for further additional youth detention facilities. Contemporary thinking is that any additional youth detention facilities should be smaller and be constructed closer to areas of greatest demand. This is discussed in further detail in the topic on detention.

The cost of building new facilities and the ongoing operating costs for existing and new facilities is significant. The cost of holding a child in detention is currently almost \$1500 per day<sup>110</sup>. Once a child

<sup>110</sup>Australian Government, Productivity Commission 2018, *Report on Government Services 2018*. Chapter 17 Attachment Table 17A.21. [Online] Available at: <http://www.pc.gov.au/research/ongoing/report-on-government-services/2018/community-services/youth-justice>

is in a youth detention centre on remand, or sentenced, there is a high rate of recidivism and return and therefore ongoing cost to the community. For many children, youth detention is a pathway to adult prison. The contributing factors towards this are numerous and complex. Many have experienced significant trauma, abuse and neglect, have health and mental health issues, neurological impairment (including Foetal Alcohol Spectrum Disorder) and poor educational attainment.

It is possible that, over time, the minimum age of criminal responsibility may increase to 12 years and that best practice will include minimising the number of 12 or 13 year olds in detention. In the interim, we have proposed that the Government consider restricting 10 and 11 year olds entering youth detention centres to only very serious offenders. If these changes eventuate, the cohort of children in detention is likely to be older, that is, 14 to 17 year olds who have committed more serious offences and who may be in custody for longer periods of time.

Even if these changes do not occur, working in youth detention centres will most certainly continue to involve working with children with increasingly challenging behaviours and backgrounds of abuse and neglect. Ideally therefore, detention centres require operational staff with appropriate capabilities, who have a good understanding of childhood and adolescent development and good behaviour management skills.

Operational staff, called youth workers, are responsible for both the day-to-day supervision of children in youth detention centres as well as the management of the dynamic security within centres. While there are other staff employed in detention centres such as teachers, case workers and psychologists, youth workers have the most consistent contact with children.

The task of managing children in detention, and reducing their likelihood of reoffending and return to a youth detention centre, may present a major challenge for the Department of Child Safety, Youth and Women (DCSYW) without additional support for the capability and operation of detention centres. Accordingly the overall human resource

management framework for staff involved in youth detention should be as close as possible to best practice. That means professionalising and increasing the capability of the youth worker workforce alongside valuing and rewarding the important roles that these staff undertake. Key elements of proposed change are outlined below.

## Recruitment

Staff recruitment processes for the youth detention centres are comprehensive and have multiple steps and requirements. Youth workers do not require a qualification although recruitment material indicates a Certificate IV or Diploma in Youth Justice are highly desirable. The steps involved in becoming a youth worker include:

- written application
- medical assessment
- fitness testing
- applicant profiling involving psychometric testing
- interview
- employment screening
- reference checks, and
- induction training.

## Training and professional development

Training for youth detention centre operational staff (youth workers), currently consists of induction training and mandatory competency training.

**Induction training** is for six to seven weeks depending on the number of new staff commencing employment. It includes multiple content areas and learning processes to prepare staff for working in the detention centre environment including in-classroom learning, assignments, observational learning and job-shadowing. New staff must complete the induction training, including all assessment and meet competencies, before they are confirmed in the role of youth worker. They also receive a week's additional training at week 12 of their employment. Following induction training, staff are subject to a probationary period of six months. Planning is underway to amend the format of the

induction training to have a series of levels where staff must achieve competency before they move on to the next level.

**Mandatory competency training** consists of up to five days of training undertaken offline, focussed on areas that are either required by law or by departmental policy. The latter includes content deemed critical to undertaking a role in a detention centre environment. Mandatory competency training includes:

- fire safety and emergency procedures
- First Aid (annually) and CPR (every three years)
- emergency management in detention centres
- suicide response, and
- Protective Actions Continuum (PAC).

We were told that it takes up to four days to undertake this mandatory training. To meet the five day requirement, detention centre management can choose the type of training required for staff in each centre. This can include the use of personal protective equipment (PPE), Cultural Capability, working with Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning (LGBTIQ) children and Trauma Informed Practice but could include other priorities determined by the management. In practice, the training that is delivered in a given year will vary depending on the centre, its needs and priorities. For example CYDC has opted to deliver training about PPE as a safety response to rioting in 2016 at the centre, during which staff were seriously injured. In the past, some difficulty has been experienced in determining annual mandatory training priorities. It may be helpful therefore to consider a systematic and data-informed approach to identifying the annual training priorities in detention centres.

It is apparent that current mandatory training does not include content about the therapeutic and relationship focussed elements of practice necessary for well-operated and effective detention centres. Based on what we know about the characteristics and histories of children who are remanded in custody or sentenced to detention, these areas would include cultural competency, trauma informed practice, and positive behaviour

management. All are important, but cultural competency particularly so, given the very high number of Aboriginal and Torres Strait Islander children in detention. Training should ideally be accompanied by supervision and ongoing professional development so that staff can work effectively and sensitively with Aboriginal and Torres Strait Islander children as well as their families and community members. This type of professional development could be extended to other cultural groups who are represented in detention centre populations.

To ensure all mandatory training requirements are up to date and the workforce is appropriately skilled, it would be advisable to consider up to 10 days of mandatory training that capture the therapeutic elements of the youth work role necessary to a detention centre worker's role. It is our view that this is an investment in good outcomes for detention centres and children who reside temporarily in them.

### Professionalisation of Youth Detention Centre workforce

Youth workers in detention centres undertake a difficult role that is generally not fully valued and appreciated by the general public. Negative publicity about the treatment of children in youth detention centres in the Northern Territory and Queensland, along with negative publicity about children who offend, further entrenches these views and has consequential effects on the morale of staff.

There are a number of improvements that could be made to enhance the professionalisation of staff. Two of these are somewhat superficial, but important symbols that distinguish the occupation from other human service roles, namely ensuring the job title and the uniform accurately reflect the role.

Changing the name of youth workers in detention centres for example to youth justice worker, or youth justice officer, might better reflect the dual therapeutic and security role undertaken in this unique environment and invokes a more professional tone than the current 'youth worker' title. Uniforms are also important in this regard. In Australia, the trend has consistently been

for detention centre staff to wear a uniform, sometimes paramilitary in style. In other countries with relationship focussed custody models, non-government operators have moved away from uniforms for staff altogether. We understand that the continued use of uniforms is supported by detention centre staff in Queensland and we support this preference in terms of providing a distinct identity. Exploration of appropriate uniforms that strike a balance between professional attire and a non-threatening, non-imposing appearance would be desirable.

A training and accreditation program for detention centre staff would also facilitate greater skills and professionalisation of the workforce, particularly if delivered in partnership with Universities. Staff are currently encouraged to complete a Certificate IV in Youth Work, with departmental support, which is a nationally recognised qualification, and, upon completion, they obtain a modest pay rise. Professional development could be further enhanced so that it is aligned with qualifications at Graduate Certificate, Graduate Diploma and Undergraduate degree level. Ideally these would also be with commensurate salary increases and changes to titles that reflect the increase in skills and qualifications (for example, Trainee Youth Justice Worker, Qualified Youth Justice Worker, Advanced Youth Justice Worker, Senior Youth Justice Worker, Graduate Youth Justice Worker).

This staged development of detention centre staff with recognised qualifications also provides the opportunity for them to move into other roles, either within the detention centre environment, in Youth Justice Service Centres or in other related employment.

## Reward and Recognition

A recognition and awards program specific to detention centre staff was advocated as another way of recognising the unique contribution these staff make.

Annual conferences or gatherings of detention centre staff for specific networking and development purposes is also a concept we support. Queensland-specific or nation-wide events are worth considering. Awards ceremonies could be built into these events.

## Workplace Health and Safety

We heard reports of high rates of overtime being worked in detention centres over a prolonged period of time. While staff become accustomed to the remuneration this brings, there are substantial negative impacts, including absenteeism and fatigue. Shifts at BYDC are for 12 hours and this can mean that staff who are working overtime can be working up to 24 hours continuously.

Staff in detention centre environments require quality support and supervision to ensure their work-life balance is maintained and that they have the resilience to cope with what can be a stressful and challenging work environment.

We acknowledge the work being undertaken by the Department of Child Safety, Youth and Women in relation to human resource management and the associated operation of both detention centres.

## Recommendations

38. That the Department of Child Safety, Youth and Women continue to progress a long-term comprehensive workforce plan that embraces professionalisation and best practice for youth detention centre staff.



## Topic – Stand-alone Specialist Childrens Court

### Pillars

3. Keep children out of custody
4. Reduce reoffending

### Discussion

In 1987, New South Wales (NSW) was the first Australian jurisdiction to recognise the need for a court that employed magistrates with specialised training and skills in dealing with children who had committed offences. All Australian states and territories now have a specialist children’s court and in South Australia, Tasmania and the Australian Capital Territory (ACT) they have an exclusive jurisdiction for all children’s criminal matters in the summary jurisdiction. In the other jurisdictions, non-specialist local courts also hear children’s criminal matters, particularly in remote and regional areas where there may be only one magistrate or local court judge presiding. The table below provides a summary of the characteristics of specialised children’s courts in each Australian jurisdiction for comparison.

**Table: Summary of specialised children’s court in Australia**

| Jurisdiction | Number of specialised children’s court magistrates | Indictable offences heard by specialist children’s court | Children’s court President hears only children’s matters i.e. not in addition to District Court matters | Rural/Remote Circuits conducted by specialist children’s court? | Local courts hear child criminal matters            |
|--------------|--|--|---|---|---|
| QLD          | 1  | No   | No  | No  | Yes   |
| NSW          | 16   | No   | Yes   | Yes   | Yes   |
| VIC          | 14   | Yes  | Yes   | Yes – if a contest hearing takes longer than 4 days             | Yes – if a contest hearing takes three days or less |
| SA           | 3  | Yes  | Yes   | Yes   | No  |
| WA           | 5  | Yes  | Yes   | Yes   | Yes   |
| TAS          | 3  | No   | No – Tas does not have a children’s court President   | Yes   | No  |
| ACT          | 1  | No   | No – ACT does not have a children’s court President   | No  | No  |
| NT           | 0  | N/A  | No – NT does not have a children’s court President  | N/A   | Yes   |

Like other Australian States, Queensland has a Childrens Court President, who is a District Court Judge. As a District Court Judge, the Childrens Court President also presides over other District Court proceedings, and is not confined to Childrens Court work. Queensland also has a single specialist Childrens Court magistrate, hearing matters only in the Brisbane Childrens Court. Outside of Brisbane, magistrates who are charged with a broader jurisdiction, such as civil and adult criminal law, hear Childrens Court matters in the summary jurisdiction. An exception to this is in Townsville, with the High Risk Youth Court, where a single magistrate (though not appointed especially as a specialist Childrens Court magistrate) hears matters on a court list of identified children deemed to be high-risk offenders.

The President of the Childrens Court in Queensland has established a Childrens Court Committee to establish a new case management process for Childrens Court matters, to expedite children's criminal matters, supported by necessary Practice Directions and a legislative, policy and practice framework to strengthen the system in place<sup>111</sup>. The Committee is also tasked to analyse and evaluate the current Childrens Court criminal justice system in Queensland and implement systemic change in areas including remand timeframes, legal representation of children, committals and sentencing regimes. This Committee has had a number of notable achievements, including:

- development of a Youth Practitioners Guide to assist in the training of practitioners in Childrens Court practices. This came out of a response to the lack of specialisation and understanding within the Childrens Court, as to the difference between adult and children's criminal proceedings
- trial listings – to address the considerable delays in listing trials in the Childrens Court of Queensland in Brisbane, the trial listing system has been changed to a running list. This allows for more flexibility and the listing of more trials, particularly where a large number of trials collapse shortly before the listing date
- a Practice Direction regarding sentencing procedures for all sentence proceedings in the Childrens Court of Queensland as constituted by a Judge. The purpose of this Practice Direction is to ensure that where a child has given instructions to plead guilty to an offence that all procedural steps are taken to expedite the matter (including circuit courts).

Whilst Queensland has significantly fewer specialised magistrates than other Australian jurisdictions, all states face challenges in providing specialisation in children's matters in regional and remote areas. In some jurisdictions, specialist children's magistrates conduct 'circuits' on a regular basis, travelling to rural and remote locations to hear children's court matters. Otherwise, magistrates who are charged with a broader jurisdiction such as civil and adult criminal law, will hear local children's court matters.

There is also some variation in specialisation in higher court matters across Australian jurisdictions. In New South Wales, the Australian Capital Territory, Tasmania and Queensland, the children's court has jurisdiction to hear all criminal proceedings with the exception of a range of indictable offences that are not able to be heard summarily, such as murder and manslaughter. In cases such as these, the matters must be committed to higher courts, which are generally presided over by non-specialist Judges. In South Australia, Victoria and Western Australia serious indictable offences that require committal will be heard by a dedicated children's court Judge, generally the President of the children's court.

We had the benefit of visiting the New South Wales Childrens Court in our consultations. It has become increasingly specialised since the *Special Commission of Inquiry into Child Protection Services* (the Wood Inquiry) with the appointment of the first President of the Childrens Court in 2009. NSW now have a total of 16 specialised Childrens Court magistrates and 10 Childrens Court Registrars who work exclusively in the Childrens Court jurisdiction

<sup>111</sup>Terms of Reference – Queensland Childrens Courts Committee. 2016.

dealing with both child protection and youth justice matters. The NSW Childrens Court sits permanently in seven locations and conducts circuits on a regular basis at country locations across that State. Three of the seven permanent Childrens Courts are standalone and the remainder share facilities with adult courts. The NSW Childrens Court currently hears approximately 90% of child protection matters and 67% of matters in the children's criminal jurisdiction. The balance of children's court matters are heard by local court magistrates, exercising the Childrens Court jurisdiction, predominantly in remote parts of NSW. In NSW, the President is a position held by a District Court Judge under the *Childrens Court Act 1987*. As a matter of practice, the President works full-time in the Childrens Court jurisdiction and the functions associated with the appointment include judicial leadership in the Childrens Court, conferring regularly with community groups and social agencies, as well as court administration and presiding over Childrens Court matters.

The President of the New South Wales Childrens Court, Judge Peter Johnstone, is a strong advocate for specialisation in the children's jurisdiction. Benefits of specialisation include a greater understanding of the development of the adolescent brain and the impacts of intergenerational trauma<sup>112</sup>. He cites opportunities for regular attendance and engagement in training and seminars on, for instance, child development and the impacts of family violence on children<sup>113</sup>, stating that the opportunity to attend sessions such as these hold significant value in the ability to develop and enhance the Childrens Court in its dealings with complex children and families<sup>114</sup>.

Many stakeholders that we spoke to advocated for increased specialisation of magistrates courts in the children's criminal jurisdiction, similar to the specialist Domestic and Family Violence Court. The benefits that have been associated with the development of the specialist Domestic and Family Violence

Court are similar to those attributed to specialised children's courts. For instance, the interim evaluation of the Southport Domestic and Family Violence Court found that having dedicated magistrates provided opportunity for the development of expertise in domestic violence matters, as well as greater consistency in sentencing perpetrators and procedural fairness<sup>115</sup>.

We support greater specialisation in the children's criminal jurisdiction, potentially staged over a medium timeframe. This is in recognition of the specialised nature of the jurisdiction, importantly, the risk factors for youth offending and the best interventions to reduce recidivism. Specialisation of children's courts provides an opportunity for greater emphasis on therapeutic jurisprudence that is targeted to children. In addition to the Domestic Violence Court, Drug Court and Murri Court are other examples of specialist courts in Queensland that apply a specialised therapeutic jurisprudence approach to a particular cohort. More information is provided about these specialised courts in the topic on Court Orders and Sentencing Options.

Some other recognised benefits of specialist children's courts are:

- specialist courts and magistrates provide greater protection to children from the stigmatisation associated with the adult court system
- specialist children's court magistrates are appointed with due regard to their level of experience, knowledge and skill in matters relating to child welfare and youth crime
- greater capacity for magistrates to regularly attend seminars relating to child welfare, psychological and psychiatric issues in order to continue to build a knowledge base and ensure emerging practices are considered in context

<sup>112</sup>Association of Children's Welfare Agencies, Centre for Community Welfare Training 2018, *NSW Children's Court President Shares His Insight Training*. [ONLINE] Available at: <https://www.acwa.asn.au/1107>.

<sup>113</sup>Johnstone, P 2018, *Updates in the Children's Court Jurisdiction*. Presented at the Children's Legal Service Conference. [ONLINE] Available at: [https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/28541/CLS-conference-Judge-Johnstone-presentation-2018.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0020/28541/CLS-conference-Judge-Johnstone-presentation-2018.pdf)

<sup>114</sup>Ibid.

<sup>115</sup>Department of Justice and Attorney-General 2016, *Interim evaluation of the trial specialist domestic and family violence court in Southport*. [Online] Available at: [http://www.courts.qld.gov.au/\\_\\_data/assets/pdf\\_file/0006/511737/report-on-the-interim-evaluation-of-the-domesticand-family-violence-court-in-southport.pdf](http://www.courts.qld.gov.au/__data/assets/pdf_file/0006/511737/report-on-the-interim-evaluation-of-the-domesticand-family-violence-court-in-southport.pdf)

- magistrates possessing a greater capability in managing highly complex cases, and understanding and addressing the vulnerabilities of young people
- increased consistency in the court's decisions
- better working relationships between the court, defence, prosecution, Youth Justice and other agencies.

An evaluation of Tasmania's Specialised Court Pilot, between 2011 and 2012, noted success in achieving the above benefits. In particular the evaluation noted the greater psychosocial expertise the court harnessed with regard to complex youth justice matters and a significant increase in collaborative work between agencies involved in the life of the young person<sup>116</sup>. The pilot did not improve the timeliness of matter finalisation, but this was due to the court investing considerable time in achieving the other important benefits. The evaluation recommended the continuation of the Hobart Specialist Youth Justice Court and expansion to Launceston.

It is recognised that specialisation can be challenging in remote and regional locations. It may be that technology can be considered to support specialist children's courts in this regard. During 2014-15, children appeared in court via video-link on 1,264 occasions from the Brisbane Youth Detention Centre. While this technology is currently being utilised in Queensland youth detention centres, other jurisdictions, including New South Wales, Victoria and Western Australia, also use technology for hearings and sentencing of children in their communities, in remote and regional areas. The use of technology for court proceedings in the children's jurisdiction continues to increase. For instance, in New South Wales, the use of video link for children in the Children's, District and Supreme Courts rose from 33.6% (n=3817) of all matters in 2009-10 to 52.27% (n=3761) in 2014-15.

Increased accessibility of technology for children to appear before a specialist children's court by way of video-link could enable greater specialisation of the children's criminal jurisdiction in Queensland where matters do not proceed to trial. It should be noted that the Childrens Courts Committee is considering a Practice Direction in relation to the use of video-link facilities in Childrens Court proceedings to provide guidelines for the use of this technology.

### *Recommendations*

39. That the Government consider establishing a standalone Childrens Court for all youth justice and child protection matters based on the model that currently exists in New South Wales.
40. Allowing for resource implications, that more full-time Childrens Court magistrates be appointed over time to work exclusively in the Childrens Court jurisdiction.
41. That the President of the Childrens Court be able to perform that role and provide the associated leadership and management in a full-time capacity.
42. In recognition of the benefits of greater specialisation, that consideration be given to extending the summary jurisdiction in the Childrens Court to enable specialist children's magistrates to deal with more serious offences.

<sup>116</sup>Magistrates Court Tasmania 2013, *Hobart Specialised Youth Justice Court Pilot: Evaluation Report*. [ONLINE] Available at: [http://www.magistratescourt.tas.gov.au/\\_data/assets/pdf\\_file/0010/388585/Youth\\_Justice\\_Pilot\\_-\\_Evaluation\\_Report.pdf](http://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0010/388585/Youth_Justice_Pilot_-_Evaluation_Report.pdf)

<sup>117</sup>Youth Justice Queensland 2014-15, unpublished data.

## Topic – Stand-alone Child Legislation

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

We heard from many stakeholders that children cannot be treated as little adults. Their brains are still developing, they often have little control over their living circumstances and the environmental factors that contribute to risk of offending and reoffending. Children are recognised as particularly vulnerable because they are dependent on family, community, schools and other parties making decisions for them, and that affect them, as well as access to opportunities, facilities, goods and services. In addition, children are able to adapt and demonstrate behavioural and developmental change with the right supports, opportunities and environments, much more readily than adults. This also provides a window of opportunity for investment in a different approach to child offending that has potential to generate real returns and achieve real results in terms of averting future offending behaviour.

Youth justice systems have evolved over time to diverge from an adult criminal justice approach and adopt a child-focused specialised approach to youth offending, as the body of evidence about what works with children and what is an appropriate response to child offending has grown.

This evidence base about children has expanded greatly in recent years as we discover more about neurobiology and, specifically, child and adolescent brain development. The implications of adolescent brain development, generally and specifically, the incidence of neurobiological impairment in recidivist youth offenders has featured prominently

in recent reports, including The Royal Commission into the Protection and Detention of Children in the Northern Territory and the Parliamentary Inquiry into Youth Justice Centres in Victoria<sup>118 119</sup>. Research indicates that most children age out of offending particularly if they get the benefit of additional chances where appropriate. Tolerance for a certain level of child and adolescent risk-taking, experimentation, boundary-testing and impulsive behaviour, along with a lesser capacity in children and adolescents to consider consequences as learning experiences, must be incorporated into our collective understanding about how we build safe communities.

The youth justice system is small compared to the adult criminal justice system and it operates fundamentally as a derivative of the adult criminal justice system. The youth justice system navigates a path through the adult criminal justice system by providing specifically for variations to the adult approach where these are better suited to children. At various times, the criminal justice approach to children is adjusted to reflect new evidence and community views about youth crime.

We feel from our discussions with many stakeholders that it is time again to consider revising the regulatory framework for youth justice to lead and support the changes in the system that incorporate new evidence as well as new and emerging best practice in the field. The arguments in favour of more specialisation in the Childrens Court also support more specialisation in children's criminal legislation.

Chapter 5 of the QPS Operational Procedures Manual (OPM) brings together the relevant legislation applying to children from the *Youth Justice Act 1992* (Youth Justice Act), the *Bail Act 1980* (Bail Act) and the *Police Powers and Responsibilities Act 2000* (PPRA) as well as Department of Public Prosecutions guidelines.

The Youth Justice Act was designed to be a code on youth justice, however the law relating to bail is

<sup>118</sup>Parliament of Victoria 2018, *Inquiry into youth justice centres in Victoria: Final report*. Legal and Social Issues Committee. [ONLINE] Available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth\\_Justice\\_System/Reports/LSIC\\_Inquiry\\_into\\_Youth\\_Justice\\_Centres\\_report\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth_Justice_System/Reports/LSIC_Inquiry_into_Youth_Justice_Centres_report_WEB.pdf)

<sup>119</sup>Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report 2017, vol. 1, 133. [ONLINE] Available at: <https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-1.pdf>

complex with large parts of the Bail Act continuing to apply to children. This relationship between the Youth Justice Act and the Bail Act remains complex with differing views and practices about how bail considerations for children differ from those for adults. We note that the QPS has recently adopted a separate child bail form and instructions to assist police in making bail decisions for children. Many stakeholders involved in the court process supported a move to include all the legislation relating to bail for children in one single piece of legislation (notably the Youth Justice Act), to simplify the legislation in this area and support relevant agencies, courts, and legal practitioners to consistently apply child-appropriate considerations to bail.

Similar considerations apply to arrest and the interviewing of children by police, with distinct practices applying to children that reflect a complex relationship between the Youth Justice Act and the PPRA. For example, children have a right to have a parent or another adult notified when arrested and present when interviewed, police must consider diversion prior to charging, and for Aboriginal and Torres Strait Islander children they should contact the Aboriginal and Torres Strait Islander Legal Service (ATSILS). Recent case law in New South Wales notes the right of a child to take advice from the NSW Youth Legal Hotline. If the pilot of the Youth Legal Hotline in Queensland is extended, then best practice in Queensland may include systematic referral of a child by police to legal advice through the Youth Legal Hotline or ATSILS. (This service is discussed further in the topic on Legal Representation in the Children's Criminal Jurisdiction).

A move towards incorporating all legislation relating to child criminal justice matters in one piece of legislation would support the proposal for greater specialisation in the children's criminal jurisdiction and would support the move to manage and respond to child offending with a whole of system approach. It may be that the role of other agencies such as health, education and child safety can also be recognised and facilitated through stand-alone child criminal justice legislation.

### *Recommendations*

43. That the Government consider stand-alone child criminal justice legislation that potentially incorporates bail and police powers and responsibilities relating to a child. That consideration also be given to including in the stand-alone children's criminal legislation, provisions relating to court proceedings for children, the role and functions of the Childrens Court and the role of key agencies in the youth justice system.
44. If the Four Pillars are adopted as Government policy that consideration be given to adopting them as principles and objectives in legislation that impacts on preventing and responding to youth offending. This potentially includes the current *Youth Justice Act 1992*, the *Bail Act 1980*, the *Police Powers and Responsibilities Act 2000*, as well as legislation governing courts, child safety, education, health, housing, and other service provision.

## Topic – Legal Representation in the Children’s Criminal Jurisdiction

### *Pillars*

3. Keep children out of custody

### *Discussion*

In the same way that greater specialisation in the Childrens Court and children’s criminal legislation is proposed to ensure a specialised focus in all dealings with children in criminal matters, greater specialisation of legal representation for children’s criminal matters could also be considered.

Many legal stakeholders reported that criminal matters for children are dealt with much more quickly through the courts where the practitioner is experienced in the child criminal jurisdiction.

Legal Aid Queensland (LAQ) has specialist child crime practitioners and a specialist panel of child legal practitioners identified throughout the state. The Aboriginal and Torres Strait Islander Legal Service (ATSILS) also provide specialist criminal law services to Aboriginal and Torres Strait Islander people, including children. Child crime is a relatively small area of practice, so many lawyers who represent children in criminal matters will not necessarily be specialised. Some will be specialist criminal lawyers practising in the adult jurisdiction and others, particularly in remote or regional locations, will be general practitioners.

Many stakeholders told us that different considerations apply for child criminal matters and adult criminal matters. This is partly because of youth specific legislation that overlays criminal proceedings for children, for example the application of the Youth Justice Principles, and sentencing considerations. To be meaningful for a child, and therefore to be effective in reducing recidivism, decisions and sentences need to be appropriate to the child’s stage of development, with adult approaches not as effective and possibly harmful. As noted in the discussion about child-specific legislation, this can often be complex and nuanced. For example, adjourning court matters for a child may lose the opportunity for temporal connection between the child’s actions and the

consequences. An understanding of child and adolescent neurological development on the part of court stakeholders is therefore important to procedural decision-making.

The role of a legal advisor is important both at point of contact with police and, if the child is charged, in the process that follows. Legal representation can potentially help to divert a child away from court and from detention. A guide for child legal practitioners could support a consistent approach to legal practice in the child criminal jurisdiction. Such a guide could include matters such as:

- discussion with police at the earliest opportunity to explore options for pre-court finalisation and release from custody
- discussion with the Department of Child Safety, Youth and Women (DCSYW), or other relevant government or non-government service providers, about potential support for a diversion or for bail
- given reports of high levels of neurological impairment, mental health issues and exposure to trauma in recidivist offending children, ensuring that matters such as *doli incapax* for children up to 14 years, fitness to plead and other contributory factors are investigated and brought to the court’s attention
- encouraging bail applications being made in children’s criminal matters and again at subsequent appearances during a period of remand in custody
- early finalisation of matters.

Legislation and the QPS Operational Procedures Manual (OPM) support legal representation being provided to children who are in police custody. A Memorandum of Understanding between ATSILS and the Queensland Police Service further supports police notifying ATSILS every time an Aboriginal or Torres Strait Islander child is in the custody of police.

A pilot Youth Legal Advice Hotline, provided through LAQ, also commenced in November 2017 to provide free and confidential legal advice to

children about bail, diversionary options, being charged with an offence and talking to the police. The service operates Monday to Friday 8am to 9pm and Saturday 7am to 12 midday and enables an early conversation between police and a lawyer about diversionary options for a child who might otherwise be charged with an offence. Recent case law in New South Wales notes the right of a child to take advice from a similar hotline in New South Wales. In 2016-17 the NSW Youth Legal Hotline received 15,449 calls, provided 5,933 legal advice services, 4,012 minor assistance services, and 3,280 legal information services. Best practice in Queensland may eventually include systematic referral of a child by police to legal advice through the LAQ Youth Legal Hotline or ATSILS. Additionally, the development of local area protocols for children could be established between local LAQ, ATSILS and QPS parties regarding legal representation with the view to diverting children from the courts, custody and the criminal justice system.

Consideration of funding models for legal representation in child criminal matters may also assist to support providers of legal services to facilitate early finalisation and non-court outcomes for children in criminal matters.

### *Recommendations*

45. That lawyers who practice in the children's criminal jurisdiction undertake specialist training and accreditation, potentially developed and delivered jointly by LAQ and ATSILS.
46. If the Four Pillars are adopted as Government policy, that:
  - a. the Legal Aid funding model for children's criminal matters be reviewed to examine if it can better support early finalisation of matters and non-court outcomes for children who come into contact with the criminal justice system;
  - b. local area protocols be established between QPS, ATSILS, LAQ and Youth Justice with a view to diverting more children from court, custody and the criminal justice system;
  - c. LAQ and ATSILS collaborate on implementing the four pillars in their criminal justice practices.



## Topic – Multi-agency, Coordinated Approaches

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

Children at risk of involvement or already involved in the criminal justice system commonly face a number of multiple complex, interconnected issues. This was recognised and reflected in our conversation with stakeholders as was the need for coordinated and collaborative approaches to addressing child and youth offending.

There are many different examples of coordinated multi-agency approaches operating throughout Queensland and a strong body of research that supports the efficacy of such coordination mechanisms if implemented well.

Peak bodies and central agencies have developed guidance and literature on these approaches including the Australian Public Service, Australian Institute of Health and Welfare, Queensland Government and Queensland Council of Social Services<sup>120</sup> <sup>121</sup><sup>122</sup>. Key success factors that are routinely documented in the research literature and published by these agencies are:

- strong top down support for the approach
- resources to drive the multi-agency arrangements

- clear terms of reference, and
- participants having sufficient authority to make decisions.

The Australian Institute of Health and Welfare has identified additional factors for effective coordination of service delivery for Aboriginal and Torres Strait Islander populations. Coordination should:

- have a focus on outcomes
- be culturally appropriate
- invest time and resources into community consultation
- apply a strengths based approach, and
- support Aboriginal and Torres Strait Islander and non-Indigenous staff.

Collaborations, partnerships and coordinated responses typically operate at either the community level or the client level, but sometimes at both.

We note the Queensland Government's Youth Engagement Alliance and Chief Executive Officer's pledge to young people (discussed elsewhere in the report) is an example of a collaborative approach by key agencies to support young people to re-engage in meaningful education pathways<sup>124</sup>.

### Townsville Stronger Communities Action Group (TSCAG)

One example of a well working collaborative approach that operates at both levels in relation to youth offending is the Townsville Stronger Communities Action Group (TSCAG) incorporating the Townsville Community Youth Response. This partnerships and service delivery approach evolved in response to heightened community concerns about youth crime in that community.

<sup>120</sup>Queensland Council of Social Services 2013, *A Guide to Integrated Service Delivery to Clients*. [Online] Available at: [http://communitydoor.org.au/sites/default/files/A\\_GUIDE\\_TO\\_INTEGRATED\\_SERVICE\\_DELIVERY\\_TO\\_CLIENTS.pdf](http://communitydoor.org.au/sites/default/files/A_GUIDE_TO_INTEGRATED_SERVICE_DELIVERY_TO_CLIENTS.pdf)

<sup>121</sup>Youth Engagement Alliance, 2017, *Inter-agency collaboration guide: Queensland Government responses to youth re-engagement in education and training*, Queensland Government, [ONLINE] Available at: <http://advancingeducation.qld.gov.au/SiteCollectionDocuments/inter-agency-collaboration-guide.pdf>

<sup>122</sup>Fine, M., Thomson, C. and Pancharatnam, K 2005, *Coordinated and Integrated Human Service Delivery Models*. Social Police Research Centre. [Online] Available at: [https://www.sprc.unsw.edu.au/media/SPRCFile/Report1\\_05\\_CoordinatedHuman\\_Service\\_Delivery\\_Models.pdf](https://www.sprc.unsw.edu.au/media/SPRCFile/Report1_05_CoordinatedHuman_Service_Delivery_Models.pdf)

<sup>123</sup>Stewart, J., Lohar, S. and Higgins, D 2011, *Effective practices for service delivery coordination in Indigenous communities*. Australian Institute of Health and Welfare and Australian Institute of Family Studies, *Closing the Gap Clearinghouse*. [Online] Available at: <https://www.aihw.gov.au/getmedia/322b47bf-ac2c-4de7-9b43-88dd001e8dfe/ctgc-rso8.pdf.aspx?inline=true>

<sup>124</sup>Department of Education. 2018, *Youth Engagement Alliance Inter-agency Collaboration Guide*. [Online] Available at: <http://advancingeducation.qld.gov.au/youthengagement/Pages/youth-engagement-alliance.aspx>

TSCAG is a collaboration of Government and non-government agencies and comprises both governance and service delivery functions. The approach recognises the complexity of youth offending and leverages the skills, knowledge, intelligence and resources of a range of Government and non-government partners to work together to break the cycle of youth offending. One crucial element of the TSCAG approach is the involvement and expertise members of the collective have in relation to Aboriginal and Torres Strait Islander culture, childhood development, health, mental health, drug and alcohol misuse, education, housing, youth justice, families and child protection. Key features are:

- coordination between Government agencies and with NGOs
- co-location
- information sharing, and
- a focus on high-risk children.

One staff member from each of the key agencies (Department of Justice and Attorney-General, Department of Education, Department of Housing and Public Works, Department of Aboriginal and Torres Strait Islander Partnerships, Queensland Health and Department of Child Safety, Youth and Women) is dedicated to the TSCAG and they are co-located with the Queensland Police Service's Rapid Action and Patrols (RAP) team. These agency representatives work together with NGO service providers to address the causes of youth crime rather than the symptoms alone. They do this by working with families as well as individual children and young people to break the cycle of offending. This can mean working with younger siblings in the offender's family who are not yet of the minimum age of criminal responsibility to provide them with the supports they need to prevent them from entering the youth justice system.

The model involves intensive case management of identified high risk children and their families. To prioritise effort, the TSCAG has identified and

focused on the most serious, repeat property offenders in Townsville, and their families. Referrals of children come primarily from QPS. Staff from member agencies assess and identify risks and needs associated with the children and their families and jointly develop a plan to address these issues. In this process, TSCAG was also able to identify some critical service gaps in the Townsville community.

As a result, new services were implemented during 2017, leveraging off existing Youth Justice Service Centre programs to address these service gaps for high risk children in the Townsville community. Together these services are described as the Townsville Community Response and include:

- an after hours youth diversion service
- a cultural mentoring service
- a flexible learning centre
- vocational training and job readiness through the Transition to Success program
- a specialist High Risk Childrens Court
- Intensive Case Management, and
- supervised accommodation.

To date, the collective efforts have resulted in an improvement in school attendance, reduced offending, fewer street checks at night, and improved parental involvement in the children's lives. We also heard from the service delivery team that they have been able to reduce waitlist times for mental health and Foetal Alcohol Spectrum Disorder (FASD) assessments, clarify communication between NGOs and government sectors, and bring balance to the community narrative about youth offending and family disadvantage in Townsville. Service providers believe they are having the greatest impact on younger siblings in the family, potentially diverting them from the youth justice system altogether.

Information sharing is a key success factor as well as a benefit of co-location and collaboration. This is

because the coordinated way in which the agencies work enables them to gain consent for the various agencies to share information to work together for the child and the family. Cross agency service integration and co-ordination is another benefit as each agency works to align their service delivery models. For example, we heard how Mental Health Complex Case Coordination translates well into a Youth Justice case management framework. Another example is use of the QPS street check data which is monitored to identify high risk children to refer to Family and Child Connect services.

We heard from several stakeholders that TSCAG is an effective model that could be rolled out in similar locations in Queensland with high levels of concern about youth crime. We note that it is yet to be evaluated and that this would assist in the assessment of its suitability for other locations.

Other well-established and successful examples of collaborative approaches that focus on at risk young people or children include the Cairns Vulnerable Young Persons Panel, the Gold Coast Youth at Risk Alliance and Logan Together (for children aged 0 to 8 and their families). Domestic and Family Violence High Risk teams are another issues-specific approach being rolled out in five Queensland locations. There was a great deal of support from stakeholders for the Domestic and Family Violence High Risk Team model to be considered for youth offending. We note this model also has a legislative basis for greater information sharing across Government agencies and with NGOs.

In a location with a smaller population and more limited access to services a collaborative model similar to TSCAG would ideally include federal and local government and potentially corporate, private and philanthropic support in addition to state government and non-government agencies.

In all these models, key success factors include:

- designated staff members from relevant agencies
- co-location of staff in one place
- high level of information sharing between agency staff members
- being child and family-centred, cross agency case management
- pro-active engagement of families
- assessing and identifying service needs for each child and family
- having a specific focus and goals
- a sound governance structure that has members with sufficient levels of decision-making authority, clear terms of reference and goals and that is actively involved in the oversight, development and achievements of the collaboration, and
- the use of data and evidence to inform the operating model and service delivery elements and the ongoing evolution of the approach.

### *Recommendations*

47. That the Government consider implementing collaborative approaches similar to Townsville Stronger Communities Action Group (TSCAG) in other towns and communities experiencing child offending and community concern.

## Topic – Place-based Approaches

### *Pillars*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody

### *Discussion*

Every community has different characteristics, factors that contribute to or protect against crime, and different types of services with different levels of social capital, resources and funding.

In our consultations, there was wide support for place-based approaches that are driven from community and supported by genuine partnerships between community members, non-government organisations, police, courts and government service providers. There was a consistent view that genuine local partnerships, where community members, local businesses and opinion leaders contribute to a holistic response to youth offending, underpin the success of local solutions.

We heard of community members who were willing to participate in finding and delivering solutions for children in the community. We believe it is important to harness this energy and ensure that all relevant people and organisations have an opportunity to contribute to solutions. For community-initiated solutions to work, it is also important that communities are resourced and supported in their endeavours. Different communities will have different levels of capacity and resourcing and may be at different stages of readiness to engage in effective crime prevention and responses to youth offending.

Innovative ideas leading to place-based solutions also require foundation in evidence, whether this is based on documented practice experience or research. If programs are new, it is even more important that they are monitored, evaluated, reviewed and revised if not working well; or ceased if they are not working at all or causing harm. This means it is important that place-based solutions are accompanied by sound data collection and user feedback processes so that information can be effectively used to improve programs.

In Queensland, place-based responses have tended to arise in communities where there are high levels of community concern or high levels of offending. There are several such approaches in place. Examples are the Aurukun Four Point Plan, Townsville Safer Community Action Group and Community Youth Response, and the Cairns Safer Streets Taskforce initiative which have community safety objectives in common. Logan Together is a prevention and early intervention approach focussed on families with children aged 0 to 8 years. We also note the work of the Sentencing Advisory Council in Cunnamulla. All of these are multi-agency, coordinated responses, however, they differ in terms of the type of membership and contribution of partner agencies, their approach to collaboration, use of champions, governance, their origin, vision and objectives and the nature of data collection and measurement of success.

Two of these approaches target communities that are largely comprised of Aboriginal and Torres Strait Islander people, the Cairns Safer Streets Taskforce (focussing on West Cairns) and the Aurukun Four Point Plan (focussed on Aurukun, a discrete Aboriginal community in Cape York).

Cairns Safer Streets Taskforce has a sophisticated project management approach incorporating multiple levels of governance, clear articulation of partner responsibilities and deliverables, shared vision and objectives, milestones and success measures for individual projects, regular reporting and risk management processes.

We believe that place-based coordinated plans provide an opportunity for creating safer communities with potential for these approaches and structures to be established in other locations in Queensland. For example, from our discussions with stakeholders in Mount Isa, we believe a place-based approach with a robust governance structure to support coordinated efforts and activities of governments at all levels, together with NGOs and Aboriginal and Torres Strait Islander community representatives could potentially assist to reduce youth offending and achieve better outcomes for the community across a number of measures.

## Best Practice in Place-based Approaches to Preventing Crime

There are several important considerations when it comes to developing and implementing effective place-based responses that deliver improved outcomes for children as well as the communities in which they reside.

A high quality place-based approach to addressing crime should have the following characteristics:

- interventions based on sound analysis, research and planning so they are evidence-based or evidence-informed, reflect the specific issues in the target communities, and are implemented in a way that is responsive to these issues
- interventions implemented in conjunction with robust data collection processes that tell the implementers how they are working and how the component parts are working and contributing to outcomes
- the overall response and its component parts needs to be matched to the community in terms of the capacity of the community and its collective efficacy
- collective efficacy is a related enabling factor which refers to the willingness and motivation of community members to contribute to social cohesion and collective endeavours to solve social issues such as crime<sup>125</sup>
- associated with these is the ability for agencies to work collaboratively, share information and participate in planning, development, monitoring, evaluation and governance activities.

Some approaches that align with these principles are described below.

## Communities that Care

*Communities that Care* is a multi-agency, multi-faceted approach aimed at improving the health and behaviour of children and young people by addressing three key domains – family, school and community<sup>126</sup>. It has well-documented benefits for levels of antisocial and criminal behaviour by children and adults. *Communities that Care* (CTC) is also the name of the not-for-profit organisation that provides research and technical support to implement the approach<sup>127</sup>. CTC has been implemented successfully in specific communities and in entire states in the United States<sup>128</sup>.

CTC has also been successfully used in Australia, for example it has been applied to community, school and family coalitions to reduce alcohol and drug use among school students in the Mornington Peninsula, Victoria. There is one active site in Redcliffe, Queensland, and several other active sites in Victoria and Western Australia.

The CTC methodology guides communities to identify and understand their local needs, set priorities and implement tested and effective strategies to address these needs across family, school and community<sup>129</sup>. The approach has five phases (which are set out below) and takes up to 12 months to implement. Evaluation is listed below as the sixth phase although this should occur in conjunction with implementation in phase 1.

1. community mobilises and prepares for action
2. Community Board and other governance structures are established to guide decision-making and planning
3. Community Profile is developed with a range of data to identify characteristics, issues, community resources and strengths
4. Community Action Plan is developed to guide and prioritise the prevention work

<sup>125</sup>Sampson, R.J 2006, How does community context matter? Social mechanisms and the explanation of crime. In P.O., Wikstrom, and R. J. Sampson (Eds), *The explanation of crime: Context, mechanisms, and development*, pp 31-60. Cambridge, UK: Cambridge University Press.

<sup>126</sup>Hawkins, J.D. and Catalano, R.F 1992, *Communities that Care: Action for drug abuse prevention*, San Francisco: Jossey-Bass Inc.

<sup>127</sup>Communities that Care 2018, *5 Phases of CTC*. [Online] Available at: <https://www.communitiesthatcare.org.au/5-phases-ctc>

<sup>128</sup>Feinberg, M. E., Jones, D., Greenberg, M.T., Osgood, D.W. and Bontempo, D 2009, Effects of Communities that Care Model in Pennsylvania on Change in Adolescent Risk and Problem Behaviours. *Prevention Science*. 11, 163-171.

<sup>129</sup>Communities that Care 2018, op. cit.

5. Evidence based programs, outcomes and roles and responsibilities are implemented
6. *(Initiatives and programs are evaluated).*

## Justice Reinvestment

There is no single definition of Justice Reinvestment (JR) however in a recent literature review undertaken by the Australian Institute of Criminology, Justice Reinvestment is described as:

*'A data-driven approach to reducing criminal justice system expenditure and improving criminal justice system outcomes through reductions in imprisonment and offending. JR is a comprehensive strategy that employs targeted, evidence-based interventions to achieve cost savings which can be reinvested into delivering further improvements in social and criminal justice outcomes<sup>130</sup>.'*

The Australian Law Reform Commission (ALRC) in its 2017 report recommended Justice Reinvestment as a way to comprehensively address the incarceration of Aboriginal and Torres Strait Islander people<sup>131</sup>. It describes Justice Reinvestment as involving a redirection of resources from the criminal justice system into local communities that have a high concentration of incarceration and contact with the criminal justice system. The ALRC commends Justice Reinvestment as an ideal, evidence-based approach because it addresses the key drivers of Aboriginal and Torres Strait Islander incarceration and engages communities as partners in the development and implementation of reforms<sup>132</sup>.

Justice Reinvestment work is currently occurring in Bourke, New South Wales, and the Australian Capital Territory and has recently commenced in Cherbourg, Queensland. Over the past 12 months, an exploratory project has been undertaken in Cherbourg that focusses on identifying whether Cherbourg community members support the

introduction of Justice Reinvestment and what Justice Reinvestment might look like if introduced there. A report was recently completed and will be submitted for consideration by government agencies.

Justice Reinvestment shares some similarities with the CTC approach in that implementation is preceded by a significant amount of planning, including understanding community strengths and issues; evidence is used to inform the different interventions that make up a community action plan; and the overall approach is supported by a dedicated organisation that provides the research, data collection and capacity building necessary to develop and sustain the program over time.

Justice Reinvestment in Bourke actively sought and was successful in attracting philanthropic, corporate and government investment, it has an explicit focus on harnessing the wisdom and input of members of the Aboriginal and Torres Strait Islander community and uses a collective impact methodology to drive and measure change. The end goal is to reduce criminal offending and incarceration. Savings achieved from reductions in incarceration will be reinvested in sustaining crime prevention and healthy communities. Justice Reinvestment commenced in Bourke five years ago and is now in the implementation phase. It is a long-term program that will be evaluated over a five to 10 year period.

There are several examples of place-based responses to youth crime and other related issues in Queensland. The success of these approaches is not fully known. It is understandable that communities and governments wish to quickly harness the energy and resources of multiple stakeholders. In order to learn from these initiatives and contribute to their ongoing development and sustainability, it would be helpful to ensure consistent data collection and reporting outcomes of individual components and the

<sup>130</sup>Willis, M. and Kapira, M 2018, *Justice Reinvestment in Australia: A review of the literature*, AIC Research Reports 09, Australian Institute of Criminology. [Online] Available at: <https://aic.gov.au/publications/rr/rro9>

<sup>131</sup>Australian Law Reform Commission 2018, *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*. [ONLINE] Available at: <https://www.alrc.gov.au/publications/indigenous-incarceration-report133>

<sup>132</sup>Ibid.

overarching approach.

Place-based approaches are worthy of further consideration in Queensland communities with high levels of concern about youth offending, supported by data collection, measurement and reporting, together with community willingness and capacity to develop and deliver responses. Local collaborative leadership and engagement is therefore essential.

### *Recommendations*

48. That the Government consider adopting place-based approaches that address both the causes of offending as well as responses to offending in Queensland towns and communities with high levels of concern about youth offending.

## Topic – Information Sharing

### *Pillars*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### *Discussion*

As we have progressed our consultations, three key aspects have emerged that we believe should underpin future activity. They are:

1. coordinated responses
2. specific focus, and
3. information sharing.

The need for better information-sharing to support co-ordinated responses and outcome-based activity was a recurring theme.

As discussed elsewhere in this report, the Townsville Stronger Communities Action Group (TSCAG) provides an example of the benefits of information-sharing in a location-based approach. We note also the Domestic and Family Violence High Risk trial as an example of a targeted approach supported by greater information-sharing.

The fundamental issue is balancing the privacy and confidentiality of information about a child and the child's familial circumstances with ensuring that sufficient, relevant information is available to achieve the best possible outcomes for the child and any actions or interventions are in their best interest.

A further issue is the scope of information sharing, essentially the extent to which information is shared between Government departments and beyond that to non-government organisations. Notably, the more people who have access to personal information the greater the risk of misuse of that information. This is of particular concern with NGOs as Government essentially loses control of the information once it is

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<sup>133</sup>Information available at: <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>

passed to external service providers, subject only to contractual obligations and relevant legislation.

Arguably the most significant decision makers and accordingly those that most need all available, relevant information about a child offender are:

- the courts
- Youth Justice
- Queensland Police Service (QPS), and
- legal representatives.

Apart from TSCAG, another example that we heard about of positive sharing of sensitive information is the successful arrangement between Queensland Health and QPS, where the QPS responds to mental health patients in the community with elevated concerning behaviour and the associated patient management advice provided to QPS by Queensland Health.

A further emerging example is the current trial in Victoria in the children's court, with a representative from the Education Department available to advise the court of the child's school attendance.

A model that appears to have merit is the central data base concept where all relevant information is stored and authorised persons have access to it. Currently information requests are made by an officer from one department to an officer from another department. This proposed model removes the responsibility on the individual officer to correctly exercise discretion in providing the information and potentially achieves greater consistency in decision-making.

Another approach for consideration is data-linkage, which enables pieces of information held in multiple Government agencies about a person, family, place or event to be connected in order to provide a more informed approach to solving issues<sup>134</sup>. Linking individual data sets further enables users to understand how certain factors interrelate and impact across different areas, which may aid in the development of services and outcomes for children, families and communities.

Legislation may be necessary to enhance current information-sharing between government agencies, accompanied by safeguards that protect information being used for adverse purposes.

### *Recommendations*

49. That the Department of Child Safety, Youth and Women in conjunction with other key agencies examine ways to maximise sharing information about children in the youth justice system to facilitate decision-making and positive outcomes for children.

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<sup>134</sup>Data Linkage Expert Advisory Group 2016, *Developing a whole-of-Government data linkage model: A review of Western Australia's data linkage capabilities*. [Online] Available at: [http://www.jtsi.wa.gov.au/docs/default-source/default-document-library/a-review-of-western-australia's-data-linkage-capabilities---developing-a-whole-of-government-model---december-2016.pdf?sfvrsn=f6c26d1c\\_0](http://www.jtsi.wa.gov.au/docs/default-source/default-document-library/a-review-of-western-australia's-data-linkage-capabilities---developing-a-whole-of-government-model---december-2016.pdf?sfvrsn=f6c26d1c_0)



## Topic – Non-Government Services and Programs

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

During our consultations many stakeholders expressed concerns about an absence of readily available information about services for children and families. Some were concerned about a perceived lack of coordination across Government departments in procuring services, a lack of coordination between service providers, limited information about services that are available, and complex or limited referral pathways.

Elsewhere in this report, we have included specific observations regarding some of these issues relating to non-government organisations, for example, the need for more flexible and out of business hours service delivery, improved coordination and partnerships, improved cultural capability and outcome-focussed services. Both Government and the non-government sector have a role to play in ensuring services are targeted and co-ordinated and deliver measurable outcomes.

We were told that in some locations there is a lot of money invested by Government in the non-government sector. While there are many success stories of services working well together, there were also accounts of duplication, rivalry, and a lack of coordination. This is presumably influenced by competitive funding processes and a lack of connection between different Government agencies' funding programs. Whilst stakeholders identified a need for additional funding for particular types of initiatives, there was also a view that there is significant funding in the system, which needs to be better targeted and better coordinated across and within agencies.

## Service Mapping

Understanding the local service system is important when seeking to better coordinate services to at risk children, young offenders and their families. There are other benefits of service mapping that include maximising the value for money of future effort and investment, ensuring the right mix of investment, improving coordination between service providers, and having appropriate referral pathways for police, courts and Youth Justice.

All agencies face the challenge of having access to up to date and accurate information, raising the question of who assumes responsibility for this task. Ideally service directories would be readily available and easy to use with up-to-date information that includes federally-funded programs, local government funded and delivered programs, independent of government funding programs and the ability to search for and map services for specific target groups.

There are some existing service directories that can be used to assist service mapping processes, in addition to using locally-held knowledge. Many directories are now held online. In Queensland, for example, the *One Place* directory, delivered by the Queensland Family and Child Commission (QFCC), is an online directory of human services that can be used by both community members and service providers. *One Place* provides information about the location of a service, similar services, and has a flexible and easy to use plain language search function<sup>135</sup>. *One Place* is however reliant on service providers to include their listing and keep the material up to date.

In recognition of the range of needs and issues that bring both adults and children to the attention of the police, the Queensland Police Service has for many years operated a police referrals service. This operates as a database (supported by a provider called Redbourne) that police officers can refer children and adults to with their consent. Police provide information to Redbourne which connects the child's information with a service provider who will contact the child or their family by telephone or

<sup>135</sup>Queensland Family and Child Commission 2018, One Place Directory. [Online] Available at: <https://www.oneplace.org.au/>

email to arrange assistance. The extent to which the police referrals service is utilised is unknown and it was not possible to determine the efficacy of this approach within the time available.

Consideration could be given to connecting the existing police Redbourne database and the QFCC's *One Place* community services directory.

### Referral Pathways

For referring agencies such as police, courts and DCSYW, not only is it important to know what services are available to provide the supervision, advice, support and intervention to children who come into contact with the criminal justice system, they need to know that the referral has been actioned and that some form of progress is made. Critical information that may be required by these agencies (dependent on their role) includes:

- eligibility criteria
- information required to accompany a referral
- contact person in the organisation providing the service
- when the referral is received and actioned
- in some cases, when children and their families are engaged and support provided
- in some cases, what interventions are occurring, and
- progress and outcomes at agreed points in time.

Notwithstanding issues of informed consent and confidentiality, ICT based referral systems and traditional referral and information sharing processes, need to be interactive and incorporate a feedback mechanism to the referring agency. This provides assurance that something is happening to reduce the child's risks and address their needs, and allows justice agencies such as police and courts to make informed decisions if the child is apprehended for fresh offences or other incidents occur.

### Recommendations

50. That systems for identifying effective referral services are enhanced to the greatest extent possible to ensure these services are known and available to key agency staff in the locations in which they work.
51. That referral pathways are optimised for police, Youth Justice, courts and relevant Government agencies to facilitate referrals of children to non-government and other support services.

## Topic – After-Hours Services

### *Pillars*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### *Discussion*

In our many interviews with stakeholders, the availability of both Government and non-government services outside of business hours was frequently raised by police and community members. The main issue was that much of the demand for acute service intervention was at night and on weekends, during which time the police are often the only service available to respond to anti-social and at risk behaviour of children. As a result, referral pathways available to police for children after-hours appear to be minimal.

We recognise that building a coordinated after-hours youth justice system requires consideration of matters such as State Government Department industrial arrangements, contractual arrangements for NGOs and the need for links and information-sharing across agencies and NGOs.

We note that there are currently some examples of after-hours services, including for example the Youth Justice Cairns after-hours trial, 'The Lighthouse' in Townsville and pockets of discrete volunteer, church, government and community run events and programs for children and youth.

We identified two categories of need where after hours interventions could benefit children and improve community safety. The first concerns the behaviour of children out on the street late at night, but not necessarily engaged in criminal offending. Activities and diversions that target these children could help encourage pro-social behaviour and reduce the risk of offending and harm for the community and the children themselves, as well as help get children into a healthy routine. The second need applies to circumstances where police arrest a child after hours and detention could potentially be avoided through the after-hours availability and presence of relevant

government or NGO workers and supports. This second need is discussed in more detail in the topic on bail in this report.

One of the benefits of extending Government and NGO services and referral pathways to an after-hours capacity is greater support for police after-hours, thereby sharing responsibility across Government agencies for preventing and responding to youth crime. A more coordinated response across government agencies to youth offending ensures a whole of system response is linked into police practice 24/7. This will become increasingly important if the minimum age of criminal responsibility is eventually raised to 12 years.

One example of an after-hours service currently operating is 'The Lighthouse' in Townsville. This is an After Hours Diversion Service funded by DCSYW and operated by Townsville Aboriginal and Torres Strait Islander Health Service (TAIHS).

It provides an after-hours diversion service for children aged 10-17 years who are at risk of offending. The service offers a place where young people can be safe and engage in non-criminal activities, including table tennis, boxing, computer games, weights, television, gardening, trivia and board games, yarning circle, men's and women's groups as well as supervised excursions, for example, to night markets, fishing, and strand walks. These programs are facilitated from 4pm and overnight to 10am on weekdays and 6pm and overnight to 10am on weekends. There is an option for overnight stays for some children where this is necessary. Lighthouse staff also link clients to other TAIHS services such as health and accommodation services.

'The Lighthouse' is staffed by trained youth workers who provide food, transport and pro-social activities. Children who use the service are often experiencing complex issues within their family including domestic and family violence, drug and alcohol abuse and mental health issues so 'The Lighthouse' provides a safe place they can go to at night. The provider also offers outreach, crisis care, and case management during business hours with follow up by the program coordinator with regular clients to assist with long-term concerns.

Most children are self-referred either by a phone call to 'The Lighthouse' for transport assistance or the child

attends the service of their own accord. A child could potentially be referred by police however referral data indicates that this has occurred on only a handful of occasions since the service commenced in February 2017.

Between February 2017 and January 2018, 'The Lighthouse' provided a service to 190 young people, who have utilised the service on multiple (2086) occasions. The cost of 'The Lighthouse' program is almost \$1 million per year and it is funded until 30 June 2019.

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 night time. Possible locations include Mount Isa, Cairns, Caboolture, Logan and Ipswich.

Another initiative that we heard about that had community support at various times in some Aboriginal and Torres Strait Islander communities was a night patrol, with Elders transported by bus in the evening, speaking to children on the street at night and encouraging, assisting and supporting them to return to a safe place to sleep and attend school the next day.

We were also told about a change in child safety hours in the town of Bourke in NSW to 10pm to ensure staff are available at peak times to provide a non-police response, particularly for children on child safety orders who are out at night.

NSW Juvenile Justice operates the Bail Assistance Line (BAL) to provide after-hours services (4pm to 3am, seven days a week) to police on occasions when police have decided to grant conditional bail to a child in their custody, however are concerned the child will not meet their bail conditions. The BAL undertakes an assessment of a child in police custody who requires support with their bail conditions and assists them to access services such as accommodation, transport and support to meet the conditions.

In November 2017, Legal Aid Queensland (LAQ) launched the Youth Legal Advice Hotline pilot, for children to talk to a lawyer and get free and confidential legal advice about bail, diversionary options, being charged with an offence and talking to police. The Hotline operates Monday to Friday 8am to 9pm and Saturday 7am to 12 midday (except for public

holidays). The service is funded to 30 June 2018. The key benefit the service seeks to achieve is an increase in police diversions, where appropriate. Since the Hotline opened it has received 436 calls, provided 173 advices and facilitated 35 police diversions.

If services are to be extended to after-hours to meet demand at night and on weekends, the need for a coordinated approach between police, government and NGOs will be integral, with an additional focus on streamlined information sharing between agencies. The requirement and capacity to respond to identified needs will need to be ascertained by local service managers, potentially by identifying hotspots where both NGOs and Youth Justice are able to maintain a presence and respond to arising concerns.

In achieving this, it is highly desirable that Youth Justice, Child Safety and NGO staff are on the ground either rostered or on call. For Government departments this may require revisiting industrial arrangements. For NGOs this may require revisiting contractual arrangements and industry awards.

### *Recommendations*

52. That the Government trial key agency and government-funded after-hours service provision in conjunction with police in locations where high levels of need is identified.
53. That the Government consider re-allocating funding to after-hours services where high levels of need are identified.
54. That the necessary industrial and contractual arrangements be investigated to enable and support after-hours service provision by key Government agencies and NGOs.
55. That after-hours youth facilities modelled on 'The Lighthouse' in Townsville be considered for other high-risk youth offending locations in Queensland where there are limited safe, suitable activities and locations for teenagers at night time.
56. That policies, procedures and practices of key agencies be enhanced to support discussions between police, relevant key agencies and NGOs to progress the intent of the four pillars.

## Topic – Community Champions

### *Pillars*

1. Intervene early
2. Keep children out of court

### *Discussion*

Community champions can play an important role in galvanising community members, government agencies and NGOs to work together to develop long-term sustainable local approaches that address the factors that lead to offending and reoffending in a particular community or location. Three examples that we heard about, each with a quite different approach, were the appointment of Major-General Stuart Smith as Community Champion in Townsville; the appointment of a Government coordinator in Aurukun; and the work of Directors-General as Community Champions across Queensland. We also met several other community leaders who were doing positive work in their local communities. Formalising recognition of the role of community champions and leaders in focusing and coordinating the will and activity of the community towards building safe communities and reducing youth offending is often one of the keys to success.

Major General Stuart Smith was appointed by the Premier as the independent Townsville Community Champion in January 2018, to seek the views of the Townsville community on matters relating to youth crime. His work demonstrates the power of bringing people together to address community concerns. He has met with victims of crime, business and service leaders, local and state government representatives, academic staff, Aboriginal and Torres Strait Islander Elders and leaders, local media and social media influencers, as well as young offenders and their families.

In response to requests from residents for further information about the operation of specific government policies, the Townsville Community Champion has held four mini-forums, bringing residents together with content experts to discuss: police pursuit policy, the High Risk Youth Court, GPS trackers, intensive case management, education

and truancy, child safety, and structured programs in the Cleveland Youth Detention Centre. He is also hosting larger community forums inviting residents to share their solutions; taking these ideas to service providers; and presenting these to community leaders to assist in the development of actions.

An important feature of Major General Stuart Smith's appointment is that he is independent, which has facilitated his access to the community, key agencies and service providers and gives them the confidence to speak openly about their views, ideas and concerns. Another key feature of his role is that he reports directly to the Premier, on a monthly basis, enabling direct communication of community views. Interim recommendations made in May 2018 relate to the use of community service, reflecting consistent views expressed by the Townsville community on this matter. His final report is due in January 2019.

Another example of a formalised approach to community leadership is the appointment of a Government Coordinator in Aurukun to coordinate the Aurukun Four Point Plan aimed at building community safety, ensuring access to education, strengthening the community and its governance and harnessing jobs and economic opportunity. These are all key priorities that directly or indirectly affect offending, including youth offending. Stakeholders told us about how the Government Coordinator had successfully brought together the various players to facilitate driver's licences for up to 100 community members in response to the high number of unlicensed driving offences, resultant disqualifications and the barrier to employment that this results in. The Government coordinator facilitated coordination of court applications to remove driving bans, federal CDEP funding to pay for licenses, Queensland Transport visiting the community for testing, and driver education.

The third example is the Government Champion program which provides the opportunity for Queensland Directors-General to act as individual champions for discrete Indigenous communities. Under the Ministerial Government Champion's program, Directors-General from each Queensland Government agency are assigned an Indigenous

community to work closely with and drive change to improve life outcomes for Aboriginal and Torres Strait Islander people. Through this work, they engage in a collaborative partnership with mayors and community leaders from their partner community to improve communications relating to opportunities and challenges facing Aboriginal and Torres Strait Islander communities. This program can potentially provide a basis for further engagement in those communities where youth offending is a concern.

Some key features of community champion type models that could be considered for other locations in Queensland include:

- they are place-based
- they have a network of support that may commence in the community or in government but must ultimately come from both
- they start with a whole of community analysis of the issues, the causes and needs
- the champion is effective in bringing different parties together to work on the issues from a whole of community perspective
- specific interventions respond to the needs that are uncovered in the whole of community analysis
- local resources valued as leverage
- pre-existing programs and services are modified to meet the community plan, rather than the other way around.

Most importantly, a Community Champion is considered to be someone with a high level of credibility and respect in a particular community, town or region.

### *Recommendations*

57. That the Government consider appointing Community Champions in locations in Queensland where there are high levels of community concern about youth offending.

## Topic – Driver License and Vehicle Support Programs

### *Pillars*

4. Reduce reoffending

### *Discussion*

The National Motor Vehicle Theft Reduction Council (NMVTRC) is a joint initiative of the Australian government and insurance industry aiming to advance motor vehicle theft reforms in Australia through national programs and partnerships with local governments. The NMVTRC identifies the diversion of young offenders as a distinct category in their 2016-2018 work program, specifically improving access to diversionary programs and interventions for recidivist motor vehicle offenders. Actions associated with this program include supporting and evaluating the implementation of various projects underway in selected States targeting youth motor vehicle offenders, in addition to commissioning research into the current offending cohort in Victoria to identify the factors linking high levels of violence to motor vehicle offending.

The NMVTRC maintains a strong partnership with Mission Australia's Synergy Repairs program, operating in Melbourne. Synergy Repairs engages young people who have committed motor vehicle offences in order to assist them to forge a career in their interested field, supporting them to transition into employment following their involvement in the program. Participants work with industry automotive professionals, supported by training and employment specialists, to receive practical experience in quality non-structural smash repair services and the employability skills required to commence a panel beating or spray painting apprenticeship. A process evaluation report completed in 2016 found that the program has the opportunity to offer positive long-term outcomes to the young people involved in it.

If a program of a similar nature as Mission Australia's Synergy Repair program is adopted, it is advised that it go hand-in-hand with a program to address responsible motor vehicle usage and reasons for offending, such as lack of a driver's licence. The Department of Transport and Main Roads currently

deliver an Indigenous Driver Licensing Program in remote communities in far north Queensland including Cape York, the Gulf and Torres Strait Islands. The program has a mobile driver licensing unit based in Cairns, taking licensing services to remote areas, providing learners driver license testing, practical driver license testing and support to communities with road safety initiatives.

Braking the Cycle is another program, originally developed by the Ipswich and Logan Police Citizen's Youth Clubs (PCYCs), that aims to provide young people with driver education, community connection and increased employment opportunities through a volunteer driver mentor program. The program is particularly designed to assist learner drivers without access to a supervisor or a registered vehicle to complete the necessary logbook hours to obtain their driver's licence. The program, supported by the Department of Transport and Main Roads and the Motor Accident Insurance Commission, identified that the 100 hour requirement of supervised driving experience necessary to obtain a licence placed significant stress on young people, also acting as a barrier to obtaining employment. The program has now expanded to 22 locations across Queensland.

It is proposed that the viability of a similar program for 16-17 year old young people be examined with the aim of reducing motor vehicle offending by children, through increasing licencing and improved access to road safety education. The components of such a program for youth may include:

- a process for identifying suitable participants
- completion of a BRAKE type program<sup>136</sup>
- obtaining a learners permit
- driving lessons
- completion of a defensive driving course
- obtaining a provisional licence
- resolving of any current licence disqualification and resolving any outstanding traffic debts
- ongoing support.

### *Recommendations*

58. That consideration be given (in partnerships, including with the Departments of Transport and Main Roads, the Motor Accident Insurance Commission, and the Department of Employment, Small Business and Training) to a program for 16-17 year olds in the youth justice system that would assist in obtaining a driver's license and potential employment in a motor vehicle or transport-related field.

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<sup>136</sup>BRAKE is a road safety program created and administered in high schools by Sergeant Rob Duncan of Jimboomba Police. He would (if approved by the QPS) be prepared to assist Queensland Transport, Youth Justice and appropriate adult Aboriginal and Torres Strait Islander representatives enhance the current BRAKE model for this program's target group.

## Topic – Technology to Reduce Car Theft (UUMV) and Traffic Offending

### Pillars

#### 4. Reduce reoffending

### Discussion

The commission of unlawful use of motor vehicle (UUMV) offences is common among youth offenders at a national level, with research revealing that they are thought to be responsible for three out of every four car thefts in Australia<sup>137</sup>. Children who engage in these offences, are often characterised by a significantly higher rate of school truancy, lower level of educational attainment, absent or limited leisure activities and an overall reduced socio-economic status<sup>138</sup>.

Motor vehicle theft falls into two categories: short-term theft and profit motivated theft<sup>139</sup>. The latter represents vehicles stolen for conversion to profit through the on-selling of the whole vehicle or individual parts through various illegal methods. Short term theft refers to opportunistic theft for the purpose of joyriding, transport or the commission of other crimes. Children primarily commit short term theft, in addition to gaining status and recognition amongst their peers<sup>140</sup>.

Queensland Youth Justice data show a steady rise in the number of children being admitted to youth detention centres and community-based orders for unlawful use of a motor vehicle offences. For the 2016-17 financial year, 115 and 164 distinct children were admitted to youth detention centres

and community based orders, respectively, where their most serious offence involved the unlawful use of a motor vehicle. During the 2015-16 period, the number was 93 and 162. Furthermore in 2016-17, 63% of all finalised charges fell in the property offence related category, within which 8% of offences were those related to unlawful use of motor vehicles.

Onset of offending and offending patterns are different in children who have committed unlawful motor vehicle offences compared to those with non-motor vehicle offences. Research identifies that the age of offending onset is younger and prevalence of offending higher for those children with motor vehicle offences, and that they have more recorded offences<sup>141</sup>. This is further highlighted in studies on adult motor vehicle offenders who were found to have been younger at the time of first arrest and recorded nearly twice the number of offences than adults who had committed non-motor vehicle offences<sup>142</sup>.

The ongoing development of car security technology has made a significant dent in the rate of car thefts in Australia, however, vehicles that are more than 10 to 15 years old continue to be prime theft targets due to their limited security features<sup>143</sup>. *Table: Current car theft technology* outlines the current technology utilised to prevent car theft.

<sup>137</sup>Casey, S 2007, *The motivation of motor vehicle theft offenders*. [ONLINE] Available at: [https://carsafe.com.au/docs/mvt\\_offenders\\_final.pdf](https://carsafe.com.au/docs/mvt_offenders_final.pdf)

<sup>138</sup>*ibid*.

<sup>139</sup>National Motor Vehicle Theft Reduction Council 2017, *CARS Statistical Report, 2016/17*. [ONLINE] Available at: [https://carsafe.com.au/docs/annual/annual\\_2016\\_17\\_web.pdf](https://carsafe.com.au/docs/annual/annual_2016_17_web.pdf)

<sup>140</sup>*ibid*

<sup>141</sup>Thielking, M and Pfeifer, J 2016, *Synergy automotive repairs program: Process evaluation report*. [ONLINE] Available at: [https://carsafe.com.au/assets/Synergy\\_Evaluation\\_Report\\_Final\\_\\_3May2016.pdf](https://carsafe.com.au/assets/Synergy_Evaluation_Report_Final__3May2016.pdf)

<sup>142</sup>*ibid*.

<sup>143</sup>*ibid*



**Table: Current car theft technology**

| Technology            | Description  |
|-----------------------|--|
| Engine Immobilisers   | A device that isolates the ignition system, fuel system, starter engine or a combination of these systems, not allowing the vehicle to start unless a signal, generally electronic, is transmitted from the individual starting the vehicle. In newer model vehicles, the use of transponders is most favoured by vehicle manufacturers and deemed the most resistant to theft. Engine immobilisers must comply with standards set out in <i>AS/NZS 4601:1999 Vehicle immobilisers</i> . All new cars sold in Australia since 2011 are required to have an engine immobiliser. |
| Car Alarms            | A large range of car alarms are on the market, enabling them to be tailored to the owner's needs. An example is shock sensing, whereby an alarm is triggered at any attempt to force entry into the vehicle.   |
| Personal Alarm Pagers | Personal alarm pagers work in a similar fashion to a car alarm, minus the audible alarm. Instead of activating a siren when the system thinks someone is breaking in, it sends an alert directly to a mobile device.   |
| GPS Tracking System   | If a GPS device is installed within a vehicle, geographical data is transmitted and received via satellite networks and/or mobile networks and sent to a software interface, such as a mobile phone or computer. GPS trackers enable individuals with access to the software system to track the physical location of the vehicle and its movements within a specific time window. Some GPS systems allow owners to remotely disable the ignition, once the vehicle has been parked.   |
| MicroDots             | An effective form of Whole of Vehicle Marking, involving spraying small dots of the VIN or PIN number of the car throughout the vehicle using laser etching. The dots are less than 1mm in diameter, making them impossible to locate and completely remove. They are usually most effective against on-selling stolen vehicles for profit.  |
| Biometrics            | Not widely installed within cars, however, on the rise due to the increasing use of biometric technology such as fingerprint and facial recognition. Such a feature will allow owners to unlock and start their vehicle through the use of their own unique biomarker.   |

Despite developments in this area, technology such as engine immobilisers has led to a displacement of crime, with children committing break and enter or burglary offences for the purpose of accessing car keys, effectively overriding immobilisation systems. A United Kingdom study showed that the most common way cars are stolen was by keys left in the home, resulting in an increase in violent theft offences<sup>144</sup>. This is further supported by Australian statistics showing that 57% of cars are stolen from residential dwellings<sup>145</sup>.

Car manufacturers such as Mitsubishi and Ford are leading the way in innovative technological design to further enhance vehicle security features. In 2011, Mitsubishi introduced the EMIRAI concept, a car capable of using biometric markers such as fingerprints and facial recognition to lock or commence particular vehicle features when the individual's biomarker matches that stored in the vehicles software<sup>146</sup>. This includes, for example, recognising an individual's unique fingerprint before allowing them

access to the car. If technological solutions such as these are applied to vehicles and embraced by individuals, not only may there be a reduction in car theft, but it may be followed by an additional decrease in break and enter or burglary offences.

In terms of public safety, the high speed and dangerous driving of stolen vehicles represents a significant risk. Whilst it will be a longer-term solution, the use of technology to help prevent this type of offending and reduce the associated risks to public safety should be progressed as soon as it is reasonably possible.

### Recommendations

59. That Government continue to support the development and use of technological solutions to prevent car theft.
60. That Government seek to put the use of technological solutions to prevent car theft on a national agenda.

<sup>144</sup>Budget Direct Blog 2018, *The State of Car Theft in Australia – Budget Direct Blog*. [ONLINE] Available at: <https://www.budgetdirect.com.au/blog/the-state-of-car-theft-in-australia.html>

<sup>145</sup>National Motor Vehicle Theft Reduction Council op. cit.

<sup>146</sup>Proctor Cars Magazine 2018, *Biometrics in Cars: Unlocking Your Car with a Fingerprint Scanner to Become a Standard Feature*. [ONLINE] Available at: <http://www.proctorcars.com/biometrics-in-cars-unlocking-your-car-with-a-fingerprint-scanner-to-become-a-standard-feature/>

## Topic – Role of Key Agency Group and Regional Cross-Agency Coordination

### *Pillars*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### *Discussion*

The 17 year-old Transition Key Agency Group and Project Board provided an excellent governance structure for the transition of 17 year olds into the youth justice system, by enabling a genuine cross-agency, whole-of-government approach to the transition. We support an oversight body of key agencies continuing to lead a whole-of-government youth justice strategy.

In addition, the cross-agency nature of an effective response to youth offending provides an opportunity for the Government to consider strengthening regional leadership and collaboration across the State for agencies that contribute to better life outcomes for children at risk. This would support a more coordinated approach between those agencies in providing a child and family centred multi-agency response to issues that contribute to offending behaviour.

It would also help break down the siloed approach to youth justice service delivery with improved regional-based reporting and accountability. This could be supported by regional reporting across Government against youth justice indicators that encourages celebration of success stories.

A location-based approach to youth offending proposed elsewhere in this report would be enhanced and supported by this type of model.

### *Recommendations*

61. That an oversight body of key agencies continue to lead a whole of government youth justice strategy.
62. That Government consider strengthening regional departmental leadership and accountability for key agencies concerned with youth justice. This could potentially include:
  - Department of Child Safety, Youth and Women (DCSYW)
  - Queensland Police Service (QPS)
  - Department of Housing and Public Works (DHPW)
  - Department of Education (DoE)
  - Queensland Health (QH)
  - Department of Communities, Disability Services and Seniors (DCSS)
  - Department of Justice and Attorney-General (DJAG).

## Topic – Measuring Success

### Pillars

1. Intervening early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

There were many views expressed about what constitutes success when it comes to preventing offending and reoffending by children. Many perspectives were also canvassed regarding whose responsibility it is to prevent crime occurring. Recidivism is undoubtedly an important measure of success for any justice program or justice reform agenda. It is also a measure that is subject to a range of factors beyond the control of a single agency or time-limited government strategy. Therefore it is important that recidivism is judiciously measured alongside other success measures that target key factors associated with childhood offending.

National statistical and performance measurement agencies advocate for and utilise a broader suite of measures to measure the effectiveness of juvenile justice systems. For example the Australian Institute of Health and Welfare (AIHW) and Productivity Commission measure outcomes for young offenders such as stable accommodation, and improved engagement with education and employment as well as recidivism<sup>147</sup>. Research has consistently identified education, mental health and family environments as three key factors affecting youth offending and accordingly three key areas to target to reduce youth offending. The suggestion is therefore that Government focus on and measure improvements in education, mental health and family wellbeing as well as recidivism.

Confidence, trust and perceptions of legitimacy in the criminal justice system are also measures that are worth considering when it comes to measuring success. These would need to be accompanied by a sustained and educative public campaign focussed on the youth justice system, the characteristics of child offenders, baseline offending rates and the changes one could expect or aspire to see from an improved system.

Elsewhere in this report we have suggested particular goals be adopted. We believe that goals are important because they direct and focus activity, complement good practice and provide a basis for evaluating progress and measuring success. Some of the most important goals that we have identified in this report relate to representation of Aboriginal and Torres Strait Islander children in the youth justice system, numbers of children on remand in custody, and recidivism.

### Recidivism

A recidivist offender is generally seen as one who engages in repeated criminal activity<sup>148</sup>. Offending behaviour consistently peaks in the mid to late teenage years and decreases into adulthood. This means that adolescents by their very nature tend to be more highly recidivist than adults. This, as the Australian Institute of Criminology cautions, makes it an unreliable and problematic measure of juvenile justice system performance<sup>149</sup>. However, recidivism continues to be used as an important measure of success of criminal justice systems and reforms.

How recidivism is measured is complex and sometimes contentious. The standard performance measure for youth justice system effectiveness is a variant of “the percentage or rate of children who reoffend”. In practice, the composite parts of the measure vary considerably depending on the program, policy or other aspect of the system being scrutinised. Components that vary include:

<sup>147</sup>Australian Government, Productivity Commission 2017, *Report on Government Service 2017*. Chapter 17. Productivity Commission. [Online] Available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2017/community-services/youth-justice/rogs-2017-volume-f-chapter17.pdf>

<sup>148</sup>Payne, J 2007, *Recidivism in Australia: Findings and future research*. Research and Public Policy Series No. 80, Canberra: Australian Institute of Criminology. [Online] Available at: <https://aic.gov.au/publications/rpp/rpp80>

<sup>149</sup>Richards, K 2011, *Measuring juvenile recidivism in Australia*. Technical and Background Paper No. 44. Canberra: Australian Institute of Criminology. [Online] Available at: <https://aic.gov.au/publications/tbp/tbpo44>

- the unit of measurement – this may be child, offence or charge
- whether an offence is a charged offence or a proven offence
- whether the seriousness of the offence is taken into account
- the time frame between the original and subsequent offence, and
- whether a prospective or retrospective approach to measurement is applied.

The way recidivism is measured is important to how we determine success. For example less frequent offending or less serious offending may indicate progress and therefore intermediate success. This is important also for how we respond to youth offending, for example where a child reoffends, responses tend to be escalated in line with community expectations and an assumption that each subsequent offence requires a commensurate increase in severity of response. This assumption can apply to decisions made by multiple justice system actors; for example to charge rather than divert and to refuse bail for second, third or subsequent offences, court remand decisions and sentencing. However, if offending is less severe and less frequent then perhaps the better response is to reinforce the improvement rather than more severely respond to the transgression.

A simple measure of reoffending, regardless of offence type, does not reflect the seriousness of the offence or give any indication as to whether offending behaviour is escalating or de-escalating. Other more nuanced measures have been developed and tested over recent years. Based on extensive research and analysis, the Australian Institute of Criminology (AIC) has published guidance about the use of recidivism measures<sup>150</sup>. The AIC recommends that for system performance, a suite of measures should be used to minimise the limitations of single measures. Several fundamental principles are recommended including:

- using the offender as the unit of measurement
- excluding minor offences, technical breaches and offences occurring during periods of supervision under youth justice orders from being counted as subsequent offences
- offending tracked into the adult years, and
- including both frequency and severity of offending.

In line with these recommendations, Youth Justice has developed a new measure of ‘offending magnitude’ that is a composite of offending frequency and seriousness. This measure allows for a more sophisticated examination of reoffending that can be used to evaluate the effectiveness of programs and potentially the operation of the youth justice system. It also allows comparison across cohorts and allows for examination of reoffending based on selected characteristics of young people.

Measuring offending magnitude provides an opportunity to reflect some of the success stories for working with child offenders, many of whom have extremely disadvantaged backgrounds and resulting challenging behaviours. To this end consideration could be given to measuring outcomes differentially based on risk<sup>151</sup>. A magnitude measure could be usefully complemented by case studies illustrating effective practices or initiatives among individual children or place-based case studies about reductions in offending in particular locations.

### Crime Harms Index

A relatively new measurement of crime and program effectiveness in relation to reoffending is a weighted Crime Harms Index (CHI). The underpinning principle of a CHI is that not all crimes are equal in their seriousness. Different crimes cause different levels of harm to victims and society. A CHI applies this notion to measuring crime on a scale of how harmful it is, relative to other crimes. This is in contrast to ‘grand total’ measures that, for example,

<sup>150</sup>Ibid.

<sup>151</sup>Lispey, M. W., Conly C. H., Chapman, G. and Bilchik, S 2017, *Juvenile Justice System Improvement: Implementing an Evidence-Based Decision-Making Platform*. National Criminal Justice Reference Service. [Online] Available at: <https://www.ncjrs.gov/>

give equal weight to the seriousness of shoplifting and aggravated assault<sup>152</sup>. Research suggests that this 'grand total' approach to measuring crime can distort risk assessments, resource allocation and accountability, which can impact on police and justice resource allocation, and evaluation of specific interventions, as well as management and sentencing of offenders<sup>153</sup>.

Currently, CHIs are being used, reportedly with success, by policing services in the United Kingdom as well as the USA. In January 2017, New Zealand developed the New Zealand Crime Harm Index (NZ CHI), using sentencing data to determine the minimum sentence for a first-time offender as the means of measuring crime harm<sup>154</sup>. We are unaware if this has yet been evaluated.

We note also that Griffith University is developing a Queensland Crime Harm Index. This project commenced in 2016 and aims to establish the seriousness of harms caused by a wide range of offences by synthesising community, police and other justice professionals' views of crime harms<sup>155</sup>.

## Recommendations

63. As part of a youth justice strategy, that the Government adopt goals related to key priorities, including the amount and frequency of representation of Aboriginal and Torres Strait Islander children in the youth justice system, educational engagement of children in the youth justice system, the proportion of children in detention who are remanded in custody, and recidivism.
64. That success of a reformed and integrated youth justice system be measured using a combination of different measures of offending and reoffending and other outcomes concerning the key factors impacting on offending, such as improvements in education, mental health and family functioning, as well as factors that are important to communities, such as feeling safe and secure, less frequent offending, less harmful offending, and community confidence.
65. That differential harm measures, such as the crime harm index and the offending magnitude measure, are tested and applied to assist police, courts, and youth justice service providers to make better decisions about what is working to reduce youth offending and reoffending.

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<sup>152</sup>Sherman, L., Neyroud, P. W., & Neyroud, E 2016, The Cambridge Crime Harm Index: measuring total harm from crime based on sentencing guidelines. *Policing: A Journal of Policy and Practice*, 10(3), 171-183. <https://academic.oup.com/policing/article/10/3/171/1753592>

<sup>153</sup>*ibid.*

<sup>154</sup>Ham-Curtis, S and Walton, D 2017, 'The New Zealand Crime Harm Index: Quantifying Harm Using Sentencing Data', *Policing: A journal of policy and practice*.

<sup>155</sup>Griffith University 2016, *Assessing Crime Harms*. [Online] Available at: <https://www.griffith.edu.au/criminology-institute/our-research/our-projects/assessing-crime-harms>

## Topic – Media

### *Pillars*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### *Discussion*

The framework or ‘bookends’ of the Four Pillars policy position are public safety and community confidence. Both traditional mainstream media (print, radio, television) and social media have a significant role in influencing the public awareness and perception of safety and crime and the effectiveness of associated Government policy.

It will be necessary to fully engage with both traditional and social media in an ongoing capacity, supported by the Department of Child Safety, Youth and Women (DCSYW) Media Unit. Given the place-based nature of media coverage and community of interest, local media plans will ideally be developed in partnership with Regional Management groups. In that way, keeping the community informed and telling success stories can become embedded in the work of all DCSYW staff in those areas.

Community Champions and University academics would potentially be important contributors. Opportunities to present evidence, whether from practice or research papers, about what works could also help build a narrative that supports best practice in keeping communities safe and reducing youth reoffending. This may include availability of respected individuals for interview.

Additionally, the production of de-identified stories for mainstream and social media of children successfully emerging from a youth justice program as well as stories of the experiences of Youth Justice staff would assist in an enhanced public awareness of the circumstances of many children in the youth justice ‘system’, the associated challenges, and, more broadly, that there is no quick fix.

Engagement with the managers of mainstream media outlets and the drivers and opinion-setters of social media platforms would also be highly desirable.

Finally, if achievable, media support could drive a concerted community goal in terms of closing the gap in the representation of Aboriginal and Torres Strait Islander children in the criminal justice system.

### *Recommendations*

66. That the Government adopt a coordinated Statewide media strategy to promote and support the Four Pillars policy position.

## Topic – Research, Evaluation and Knowledge Dissemination

### *Pillars*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### *Discussion*

Throughout this report we note examples of evidence informed policies, system approaches, programs and practices. As Queensland continues to implement programs and services supported by research, it is equally important that Queensland as a jurisdiction contributes to the international evidence base.

There are some very positive advances within the youth justice system in terms of using research and evidence to inform remand reduction activity and the delivery of programs to address offending behaviour of children already supervised within the youth justice system. We suggest that the implementation of any youth justice strategy be guided by a program of evaluation, research and other evidence.

The following suggestions for improvement in research and evaluation, publication, and enhanced capability and capacity were identified through our consultation with stakeholders and criminal justice experts. Some suggestions are an indirect result of our analysis of the current research literature, evaluation documents and the state of practice in Queensland and Australia.

### **Knowledge Gaps**

A number of knowledge gaps were identified that indicate possible areas of research either for Queensland or as part of a contribution to an enhanced national research agenda. Other potential topics are those focussed on evaluating existing or emerging initiatives. An overarching theme was the development and use of research and evaluation methodologies that are inclusive of or dedicated to the views of children and young people who have experience in the youth justice system. Some areas for further research attention include:

### *Prison, detention and transition*

- trajectory of children to adult prisons
- factors leading to adult imprisonment – systemic and individual analyses
- long-term effects of being in youth detention incorporating the views of young adults who had been in detention
- views of young adults who were in the youth justice system about what could have been done differently to change their trajectory
- what works to support the transition of young people from detention?

### *Programs and implementation science*

- translation of programs that work internationally into programs that will work in Queensland.
- what factors are key to the successful implementation of programs targeting young offenders?
- cost benefit analyses including return on investment of new initiatives
- what contributes to desisting from criminal offending for children and young people, including for Aboriginal and Torres Strait Islander young people?
- children’s experience of bail and remand – what has worked for them, what hasn’t.
- girls – understanding their unique needs and practice responses to these needs
- what works with Aboriginal and Torres Strait Islander children to reduce offending and reoffending?

### *Legislation or major policy*

- Minimum Age of Criminal Responsibility – review other jurisdictions where this has changed, explore implications and any intended and unintended consequences, and should Queensland institute a change to the minimum age, develop and implement a framework to identify the impacts.

- 17 to 25 year olds – what do systems dealing with this age cohort look like and do they produce different outcomes than separate approaches to children and adults?

### *Evaluation research and methodologies*

- evaluating the effectiveness of collaborative place-based approaches to prevent and reduce youth offending, for example, Cairns Safer Streets, Townsville Safer Communities Action Group
- evaluating all initiatives that target Aboriginal and Torres Strait Islander children and families
- utilising and validating new and emerging evaluation methodologies.

To progress research topics such as these, it would be useful for the Department of Child Safety, Youth and Women to have an approved research agenda that is regularly updated and disseminated to research partners. Having such a research agenda would help ensure that research aligns with strategic and operational priorities and helps to manage available resources. Similarly it may also be useful for Queensland to contribute to a national research agenda formulated by the Australasian Juvenile Justice Administrators or other national bodies such as the Australian Institute of Criminology.

### **Developing Research and Evidence Gathering Capability**

Every government agency needs to make decisions about the extent to which it will engage in research and the extent to which it will develop internal research capability or use external research capability. We suggest there is value in doing both and, in addition, real value in developing measurement and data collection skills among service or program providers, community members and staff to inform monitoring and evaluation of new initiatives.

Research partnerships with Universities can significantly enhance capacity to develop and implement evidence-based practices and undertake evaluations. In recognition that different Universities

have different strengths and types of expertise, it is important that partnerships are spread across a range of institutions. Partnerships can take different forms, some dependent on allocating funding, others involve partial or in-kind contributions. They can include:

- contracting Universities on a fee for service basis to undertake targeted literature reviews and research
- procuring complex pieces of work such as data analytics, longitudinal studies or evaluations
- Masters and PhD students' participation in research and evaluation projects
- facilitating access to research subject material for endorsed research projects, and
- sharing responsibilities for joint forums and conferences.

Providing scholarships for Masters and PhD level study for departmental staff can also be a useful way to address known gaps in evidence as well as develop organisational research capability. These have secondary benefits of forging stronger linkages with academia and increasing the rigour of research and evaluation work undertaken within the agency.

As noted elsewhere in this report, monitoring and evaluating initiatives is key to ensuring that services are delivering their intended outcomes and that they can be modified along their implementation journey. It is useful therefore for operational staff, service providers and community members involved in the delivery of new initiatives to be supported to develop the knowledge and skills to collect data and in some cases undertake evaluations themselves.

### **Knowledge Dissemination**

State and national conferences are a key way of sharing information about emerging changes and innovations in policy, programs and practice as well as sharing research that is undertaken at local levels. At a less formal level, staff conferences that focus on particular areas of practice can be used to share information and improve practice among professional groups.



There are existing conferences some youth justice practitioners can access that have a juvenile justice or criminal justice focus. These include a bi-annual youth justice conference hosted by the Australian Institute of Criminology in partnership with AJJA and an annual Applied Criminology Conference hosted alternately by Griffith University and the New South Wales Bureau of Crime Statistics and Research (BOCSAR).

Conferences that focus on the translation of evidence into practice or have an exclusively practice focus that are accessible to community-based service providers and Youth Justice staff appear to be a gap among current knowledge exchange forums. Specific themes or topics that may be useful in that regard that were identified during our consultation and research are:

- ways of working that address the needs of Aboriginal and Torres Strait Islander children in the criminal justice system
- translating overseas approaches to the Queensland context
- other areas such as specialist education, training, mental health and behaviour management approaches for children and young people in the criminal justice system.

### ***Publishing research and evaluation findings***

We all benefit when knowledge is shared publicly and this includes research findings and evaluations, regardless of whether the outcomes are positive or negative or a combination. Others can learn from experiences in Queensland. It is, we believe, a responsibility to publish research and evaluation findings and ensure that the findings are conveyed in ways that are understandable to multiple audiences. Research that is informed by the voices of children and young people is noted above and it is important therefore that children and young people can readily understand the output of that research.

By way of example, the Campbell Collaboration produces systematic review findings in a combination of technical reports and plain language summaries accessible via the internet<sup>156</sup>. Other organisations publish findings in readily digestible formats, including infographics that are suitable for public audiences.

### ***Recommendations***

67. That the Government:
  - a. develop, support and contribute to youth justice and youth crime prevention research agendas for Queensland and Australia and that these align with strategic priorities and guide further research conducted by academics and other external researchers
  - b. explore opportunities for partnering with Universities
  - c. develop research and evaluation capability of Government staff and a scholarship program for those who wish to advance the evidence base alongside developing their own professional knowledge and skills
  - d. explore opportunities for youth-justice-specific conferences
  - e. publish research and evaluation findings in a variety of formats suitable for different audiences.

<sup>156</sup>Campbell Collaboration 2018. [Online] Available at: <https://campbellcollaboration.org/library.html>

## Topic – Minimum Age of Criminal Responsibility (MACR)

### Pillars

2. Keep children out of court
3. Keep children out of custody

### Discussion

A national conversation about raising the minimum age of criminal responsibility (MACR) has recently been ignited with a recommendation from the Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission) that the Northern Territory government raise the MACR from 10 to 12 years<sup>157</sup>. The NT Royal Commission further recommended children under the age of 14 be omitted from serving periods of time in detention centres unless they are convicted of a serious and violent offence

against the person, present a serious risk to the community and that the sentence is approved by the President of a proposed new Childrens Court<sup>158</sup>. The Northern Territory Government have agreed, in principle, to these recommendations, however, have argued the need for a uniform approach to be taken by raising the MACR nationally.

The United Nations Convention on the Rights of the Child, supplemented by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), states that a MACR below 12 years is not internationally acceptable<sup>159</sup>. It calls for signatories to the convention to raise their MACR to 12 as the absolute minimum, in addition to supporting its continued increase. A study of 90 countries found the median MACR to be 14 years and that 68% of countries had a MACR of 12 years<sup>160</sup>. The table below contains legislated international ages of MACR in selected countries.

**Table: International Minimum Ages of Criminal Responsibility (selected countries)**

| Country     | Minimum Age of Criminal Responsibility | Comment   |
|-------------|--|---|
| Australia   | 10                                     |   |
| New Zealand | 10                                     | Children 10-11 cannot be prosecuted for an offence unless it is murder or manslaughter. Children 10-14 cannot be sentenced to detention unless for a serious offence. |
| England     | 10                                     |   |
| Canada      | 12                                     |   |
| Scotland    | 8                                      | Children cannot be prosecuted by courts until age 12. Bill has been introduced to raise MACR to 12.   |
| Ireland     | 12                                     | Exceptions for children aged 10-11 charged with murder, manslaughter, rape or aggravated sexual assault.  |
| France      | 13                                     |   |
| Denmark     | 15                                     | Quasi-judicial process introduced in 2017 to deal with 12 to 14 year olds apprehended by police for offences.   |
| Sweden      | 15                                     |   |
| Finland     | 15                                     |   |

<sup>157</sup>Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report 2017, vol. 1, 133. [ONLINE] Available at: <https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-1.pdf>

<sup>158</sup>Ibid.

<sup>159</sup>Nations Convention on the Rights of the Child, United 2007, General comment no.10: Children's rights in juvenile justice. *In Committee on the Rights of the Child*. Geneva, 15 February 2007. Geneva: Office of the United Nations High Commissioner for Human Rights.

<sup>160</sup>Queensland Family and Child Commission 2017, *The age of criminal responsibility in Queensland*. [ONLINE] Available at: <https://www.qfcc.qld.gov.au/age-criminal-responsibility>.

All Australian jurisdictions have a MACR of 10 years, however, the legal presumption of *doli incapax* enables a charge to be dismissed if the prosecution cannot satisfy the court that a young person under the age of 14 years could differentiate between right and wrong, therefore being capable of committing an offence. Section 29 (Immature age) of the Queensland Criminal Code states:-

- (1) *A person under the age of 10 years is not criminally responsible for any act or omission.*
- (2) *A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.*

The *doli incapax* principle is rebuttable. Therefore, the police or the Director of Public Prosecutions can lead evidence to prove that a child under 14 years did have the requisite capacity to know what they did was wrong and are, therefore, criminally responsible. We were told that the presumption of *doli incapax* is rarely a barrier to prosecution. In Queensland, the threshold to rebut the presumption of *doli incapax* is perceived by some stakeholders to be too low, with the result that many children who do not have the level of cognitive functioning required to be criminally responsible are receiving criminal outcomes and becoming embedded in the criminal justice system.

We note a recent High Court decision in NSW<sup>161</sup> on the common law presumption, which is subtly different from the statutory test in Queensland, that may have some impact on the application of the *doli incapax* principle in Queensland.

We were told that children at a younger age (10-14 years) are committing both more offences and more serious offences. In 2015-16, a total of 214 children

aged between 10 and 12 years, and 921 children between 13 and 14 years, in Australia, had a proven recorded offence against them. This represented 32.5% of children with a proven offence in Australia<sup>162</sup>. In Queensland, 10 to 12 year old children comprised 6.7% of total admissions to youth detention centres in 2015-16, and children 13 to 14 years comprised of 35.4% of admissions to youth detention centres<sup>163</sup>. Furthermore, in 2016-17 approximately 35% of children whose matters were finalised in the Queensland Childrens Court were 10-14 years of age, the highest proportion of all Australian jurisdictions<sup>164</sup>. The proportion for other jurisdictions ranged from 13% in Victoria to 27% in the Northern Territory.

If the MACR is to be raised to 12 years, the concern that children are committing offences at younger ages would need to be tested as part of an overall impact study and implementation strategy, similar to that involving the transition of 17 year olds to the youth justice system. It would also be worth considering a trial in a specific location where, by agreement, only very serious criminal offences were dealt with in the courts. Furthermore, if the MACR is raised to 12 it will be important to maintain public confidence in this process. An essential aspect of ensuring this would be through the development of a range of needs based diversionary program options.

Leading arguments for raising the MACR above the age of 10 years primarily focus on the child's development and higher risk of ongoing criminalisation. The Queensland and Family and Child Commission (QFCC) published an information paper in January 2017 supporting raising the MACR to 12 years in Queensland. It presents a case that children between the ages of 10 and 12 have not reached a stage of developmental maturity to be held criminally responsible for their actions and that a lower age of criminal responsibility further victimises children who are already victims of circumstance<sup>165</sup>.

<sup>161</sup>*RP v The Queen [2016] HCA 53.*

<sup>162</sup>Queensland Family and Child Commission op. cit.

<sup>163</sup>*Ibid.*

<sup>164</sup>Australian Bureau of Statistics 2018, *Criminal Courts, Australia, 2016-17*. [ONLINE] Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02016-17?OpenDocument>.

<sup>165</sup>Queensland Family and Child Commission op. cit.

<sup>166</sup>Jesuit Social Services 2015, *Too much too young: Raise the age of criminal responsibility to 12*. [ONLINE] Available at: [http://jss.org.au/wp-content/uploads/2016/01/Too\\_much\\_too\\_young\\_-\\_Raise\\_the\\_age\\_of\\_criminal\\_responsibility\\_to\\_12.pdf](http://jss.org.au/wp-content/uploads/2016/01/Too_much_too_young_-_Raise_the_age_of_criminal_responsibility_to_12.pdf)

Further studies by child offending experts suggest that children below the age of 14 have rarely developed the social, emotional and intellectual maturity necessary to determine criminal responsibility. Studies in this area widely recognise the strong correlation between early involvement in the youth justice system and chronic offending in adulthood<sup>166</sup>, the trajectory through the criminal justice system often being more rapid the earlier a young person is involved with the system. Whilst causation remains difficult to establish, it is suggested that a more child and family centred approach to offending at this age can help ameliorate the circumstances that led to the offending at a young age.

If the Queensland Government supports, in principle, raising the MACR to 12 years, then this would ideally be achieved through a national uniform approach involving all states and territories. Further, if the MACR is successfully raised to 12, a similar process could be adopted to consider later advancing it to age 14 as criminal justice, human services, health and education systems build the requisite capabilities for non-criminal responses to offending by very young children (up to 13 years of age).

### *Recommendations*

68. That the Government support in principle raising the MACR to 12 years subject to:
  - a. national agreement and implementation by State and Territory governments
  - b. a comprehensive impact analysis
  - c. establishment of needs based programs and diversions for 8-11 year old children engaged in offending behaviour.
69. That the Government advocate for consideration of raising the MACR to 12 years as part of a national agenda for all states and territories for implementation as a uniform approach.
70. In the interim, that the Government consider legislating so that 10-11 year olds should not be remanded in custody or sentenced to detention except for a very serious offence.

## Topic – Aboriginal and Torres Strait Islander Over-representation

### Pillars

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### Discussion

Aboriginal and Torres Strait Islander children are grossly over-represented in the Australian criminal justice system. In 2016-17, Aboriginal and Torres Strait Islander children constituted over 69% of the

children in detention on average in Queensland, despite only representing 7.6% of Queenslanders between the ages of 10-16<sup>167</sup>. The over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system has been studied extensively in Australia, identifying causes including intergenerational trauma, lost connection between culture and country and limited use of diversionary options in response to crime<sup>168</sup>.

The table below represents the significant and ongoing over-representation of Aboriginal and Torres Strait Islander children in criminal justice systems across Australia, demonstrating that over-representation is not confined to Queensland, but is nationwide.

**Table: Rate of children aged 10-17 under youth justice supervision on an average day by Indigenous status, states and territories (per 10,000)**<sup>169 170</sup>

| Year    | Indigenous Status | NSW       | VIC       | QLD       | WA        | SA        | Tas       | ACT       | NT        | Aust      |
|---------|-------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| 2014–15 | Indigenous        | 152       | 136       | 225       | 289       | 178       | 36        | 233       | 105       | 183       |
|         | Non-Indigenous    | 10        | 12        | 14        | 11        | 11        | 19        | 16        | 7         | 12        |
|         | <b>Total</b>      | <b>19</b> | <b>14</b> | <b>30</b> | <b>29</b> | 18        | 21        | 22        | 51        | 22        |
| 2015–16 | Indigenous        | 167       | 152       | 204       | 279       | 195       | 52        | 199       | 120       | 184       |
|         | Non-Indigenous    | 10        | 12        | 13        | 10        | 9         | 15        | 16        | 5         | 11        |
|         | <b>Total</b>      | <b>19</b> | <b>14</b> | <b>28</b> | <b>27</b> | <b>17</b> | <b>18</b> | <b>21</b> | <b>57</b> | <b>21</b> |
| 2016-17 | Indigenous        | 154       | 148       | 203       | 294       | 214       | 59        | 182       | 134       | 184       |
|         | Non-Indigenous    | 9         | 11        | 12        | 11        | 8         | 16        | 15        | 6         | 11        |
|         | <b>Total</b>      | <b>18</b> | <b>13</b> | <b>27</b> | <b>30</b> | <b>17</b> | <b>20</b> | <b>19</b> | <b>67</b> | <b>18</b> |

<sup>167</sup>Australian Bureau of Statistics 2014, *Australian Demographic Statistics – Estimates and Projections, Aboriginal and Torres Strait Islander Australians 2001 to 2026*. [ONLINE] Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3238.0Explanatory%20Notes12001%20to%202026>

<sup>168</sup>Armytage, P and Ogloff, J 2017, *Meeting needs and reducing demand: Youth justice review and strategy*. Victorian Government. [ONLINE] Available at: [http://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report\\_meeting\\_needs\\_and\\_reducing\\_offending\\_executive\\_summary\\_2017.pdf](http://assets.justice.vic.gov.au/justice/resources/c92af2a1-89eb-4c8f-8a56-3acf78505a3a/report_meeting_needs_and_reducing_offending_executive_summary_2017.pdf)

<sup>169</sup>Rate expressed as the number of children per 10,000 children in the population aged 10 to 17 years.

<sup>170</sup>Australian Institute of Health and Welfare 2017, *Youth Justice in Australia 2016-17*. [ONLINE] Available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2016-17/contents/table-of-contents>

At the time of writing this report, of the 100 children both on sentence and remand in the Cleveland Youth Detention Centre, 91 identified as Aboriginal or Torres Strait Islander. Of the 124 children in the Brisbane Youth Detention Centre, 66 identified as Aboriginal or Torres Strait Islander. Unpublished Youth Justice data shows the rate of Aboriginal and Torres Strait Islander children in detention, in Queensland, on an average day in 2016-17 was 170.5 per 10,000 compared to 9.6 per 10,000 for non-Indigenous children. Aboriginal and Torres Strait Islander children are 18.5 times more likely to be admitted to youth detention than their non-Indigenous counterparts<sup>171</sup>. The table below demonstrates this ongoing disparity in Queensland youth detention centres.

**Table: Children aged 10-17 in detention in Queensland on an average night by Indigenous status June quarters 2015-2017, number (and rate per 10,000)<sup>172</sup>.**

| Indigenous Status | 2015       | 2016       | 2017       |
|-------------------|------------|------------|------------|
| Indigenous        | 113 (30.4) | 131 (35.6) | 140 (37.4) |
| Non-Indigenous    | 55 (1.24)  | 54 (1.21)  | 54 (1.18)  |

In addition to higher representation overall, Aboriginal and Torres Strait Islander children are also less likely to be diverted when they do offend than non-Indigenous children. A Griffith University report found that Aboriginal and Torres Strait Islander children were 10% less likely to be cautioned for their first contact with police, and were about half as likely to be referred to a conference by police for their second, third and fourth contacts<sup>173</sup>. Aboriginal and Torres Strait Islander children were also more likely to be dealt with by way of court for their first, second and third contacts with police<sup>174</sup>.

We support adoption by the Government of long-term goals, with reporting on annual progress,

that sees the converging of representation rates of Indigenous and non-Indigenous children at all levels of the criminal justice system. Goals should include closing the gap on:

- rates of children being charged
- rates of children on youth justice orders
- rates of children in remand
- rates of children being sentenced.

Last year, the Queensland Government adopted *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families, 2017-2037*, together with the first action plan under this strategy, *Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017-2019*. Our Way outlines the Government's approach, across 20 years, to work differently with Aboriginal and Torres Strait Islander people and communities to improve life opportunities for vulnerable Aboriginal and Torres Strait Islander children and families with a particular focus on child protection, family support and other services. *Changing Tracks* outlines the Government's action in the first three years to achieve this goal. It builds on existing initiatives and includes new actions guided by Elders, community leaders, community-run organisations, peak bodies and relevant government agencies, aimed at:

- reducing the over-representation of Aboriginal and Torres Strait Islander children in the child protection system
- closing the gap in life outcomes for Aboriginal and Torres Strait Islander people experiencing vulnerability
- ensuring all Aboriginal and Torres Strait Islander children grow up safe and cared for in family, community and culture.

<sup>171</sup>ibid.

<sup>172</sup>Australian Institute of Health and Wellbeing 2017, *Youth detention population in Australia 2017*. [Online] Available at: <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2017/contents/summary>

<sup>173</sup>Little, S., Allard, T., Chrzanowski, A and Stewart, A 2011, *Diverting young Indigenous people from the Queensland Youth Justice System: The use and impact of police diversionary practices and alternatives for reducing Indigenous over-representation*. [ONLINE] Available at: <https://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>

<sup>174</sup>ibid.

The Queensland Plan, implemented in 2014, provided nine foundations with underpinning goals with the aim to achieve the plan's 30 year vision. A number of these foundations recognise goals that will improve education, employment, life opportunities and cultural understanding in relation to Aboriginal and Torres Strait Islander individuals and communities. These actions link to those within the *Our Way* and *Changing Tracks* strategies, particularly in regard to early intervention.

This work links with the Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) Strategic Plan which includes an objective of Safe and Connected Communities by delivering quality frontline services. DATSIP's role under the Strategic Plan includes providing whole of government and leadership advice to address the disparity in the areas of justice, health, education, employment and housing outcomes between Aboriginal and Torres Strait Islander and non-Indigenous Queenslanders. This includes partnering with all levels of government, industry and community representatives, including Elders' groups, to reduce the gap between Aboriginal and Torres Strait Islander and non-Indigenous Queenslanders in the priority areas of health, education (including early childhood), justice, sport and recreation, housing and jobs.

It is important that Government continue to leverage the cultural capability of DATSIP, linking with agencies such as Housing, Health, Employment and Education that have clear strategic actions in place to ensure improvements in Aboriginal and Torres Strait Islander outcomes. Additionally, a strong emphasis should be placed on measuring progress against the relevant strategies and action plans, including the *Our Way* strategy.

The overwhelming consensus amongst Aboriginal and Torres Strait Islander stakeholders that we spoke to, is that solutions to youth offending by Aboriginal and Torres Strait Islander children must be generated in partnership with local communities where the offending is occurring. Aboriginal and Torres Strait Islander peoples must be invited

to have a say on Government policy, practice, programs and services that affect them and they must be integral to addressing and managing youth offending in their own communities.

This is supported by the Australian Law Reform Commission (ALRC) report, *Pathways to Justice*<sup>175</sup>. These solutions must also be community, family and child centred across all government, NGO and private and corporate providers. This may include considering the development of a program of consultation with Aboriginal and Torres Strait Islander communities, identified as having a high proportion of youth offending, to start conversations about local solutions.

A localised approach is essential in Queensland where the cultural differences between geographical locations are as great as the differences in landscape and lifestyle. In many cases there are existing examples of positive deviance in high offending locations that can be leveraged and supported by Government. Genuine consultation with community with a view to generating local plans can reveal these strengths and require local leaders to drive local change.

There was also consensus that any government and NGO interventions must be sustainable in situ. In many cases this means that interventions must be accompanied by a transition plan and capability building so that when particular outside services and individuals exit a town, the work continues to be delivered in and by the community. A model framework for engagement that includes flexibility for local area decision-making, funding models, and service delivery, would support this approach. It was suggested that guiding principles form the framework for action, for example a unified set of principals across all agencies that support the end goal of keeping communities safe for community members, families and children. We note that Justice Reinvestment is one such model, and that it takes time to build relationships, goodwill and trust, which are essential to success.

Aboriginal and Torres Strait Islander representatives also told us that culture must be at the centre of any

<sup>175</sup>Australian Law Reform Commission 2018, *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*. [ONLINE] Available at: <https://www.alrc.gov.au/publications/indigenous-incarceration-report133>

criminal justice response to offending by Aboriginal and Torres Strait Islander children. Culture, family and community must be central to case planning, service delivery and programs. Simple measures such as recognition that guardianship of a child may not vest with biological parents or may be shared amongst family members, are important in a practical sense and could, for example, inform bail residence conditions that enable a child to be at any number of safe places in a community.

At the tertiary end of the youth justice system, there was support for existing cultural programs in detention settings and a desire to strengthen cultural connections. A desire for On Country programs to build respect for Elders and responsibility to ceremony and country that build self-esteem and responsibility of young Aboriginal and Torres Strait Islander offenders was also expressed.

Many stakeholders also expressed a view that there is a need for greater representation of Aboriginal and Torres Strait Islander staff working in the youth justice system at all levels, in particular, the importance of Aboriginal and Torres Strait Islander representation in senior positions. This could be supported by targets with annual reporting against the targets. We also support the need for a high level of cultural capability amongst both Aboriginal and Torres Strait Islander and non-Indigenous staff in all parts of the criminal justice system. This relies on workforce development internally in Youth Justice, other agencies and NGOs, with a greater focus on recruitment, retention, and professional development of Aboriginal and Torres Strait Islander staff, including their representation at senior levels. Building cultural capability in the whole system can also be enhanced with cultural capability training for police, magistrates, lawyers and other key agents. Culturally appropriate services and programs are also integral to the success of any intervention to reduce over-representation, with local Aboriginal and Torres Strait Islander people involved in design and delivery.

## *Recommendations*

71. That the Government set long-term goals for Aboriginal and Torres Strait Islander children to be no more highly represented than non-Indigenous children in the criminal justice system, the priority being that the rate of incarceration of Aboriginal and Torres Strait Islander children be no higher than that of non-Indigenous children.
72. That the Government set annual targets for progress towards long-term goals for reducing the over-representation of Aboriginal and Torres Strait Islander children at multiple points in the criminal justice system, including:
  - a. children charged with offences
  - b. children under community-based supervision
  - c. children remanded in custody, and
  - d. children subject to detention.
73. That the Government consider a program of community consultation in Aboriginal and Torres Strait Islander communities experiencing high levels of concern about youth offending to encourage local solutions to youth offending.
74. That DCSYW and other criminal justice agencies set targets for Aboriginal and Torres Strait Islander representation and report annually against these targets.
75. That staff of key agencies who engage with child offenders undertake cultural competency training and development.



## Topic – A Vision for the Future and a National Agenda: 20-20-38

### *Pillars:*

1. Intervene early
2. Keep children out of court
3. Keep children out of custody
4. Reduce reoffending

### *Discussion*

In 20 years from now (2038), it will be 250 years since the arrival of the first fleet. Regardless of how the occasion is described or celebrated there will almost certainly be reflection, consideration and discussion about the status of Aboriginal and Torres Strait Islander people in terms of ‘Closing the Gap’. Currently (2018) in Queensland, Aboriginal and Torres Strait Islander children are significantly disproportionality represented in the criminal justice system. We have considered this as a stand-alone topic in this report. Many Aboriginal and Torres Strait Islander stakeholders made an important point that the underlying causes of over-representation are rooted in disadvantage, vulnerability and trauma, both historical and present. Therefore any effective approach would need to address both the causes and consequences of Aboriginal and Torres Strait Islander children’s justice system involvement.

In Australia, on an average day in 2016-17, there were 5,359 children aged 10 to 17 years under youth justice supervision with a total of 11,007 children supervised at some time during the year. This equates to a rate of 20 per 10,000 or 1 in 492 young people<sup>176</sup>. Rates of supervision have fallen over the past five years by about 16% (from 25 to 20 per 10,000), however vary considerably between jurisdictions and range from 13 per 10,000 in Victoria, 27 per 10,000 in Queensland to 67 per 10,000 in Northern Territory<sup>177</sup>. This indicates

very different circumstances in each state and territory including different legislation, policies and practices.

In Australia, most children in the youth justice system are supervised in the community. In 2016-17, 83% were on community based orders and 17% were in detention. Across all states and territories, the majority (61%) of young people in detention were unsentenced. In addition, two out of five of these children had experienced time in detention during the same year, with many experiencing a period of remand in custody<sup>178</sup>.

Across Australia, children involved in the criminal justice system are characterised by similar issues. These issues include disengagement from education and, in many cases, limited educational attainment, trauma, substance misuse, mental health concerns, disability, housing and accommodation issues and family concerns, and are discussed elsewhere in this report.

National data indicates that static factors such as where children reside and whether they are Aboriginal or Torres Strait Islander also impact on their involvement in the criminal justice system. An analysis by the Australian Institute of Health and Welfare found that children from geographically remote locations were six times more likely to be under youth justice supervision than those from non-remote locations<sup>179</sup>. In addition, the majority of children in the youth justice system resided in the lowest socioeconomic areas – 42% of Aboriginal and Torres Strait Islander children resided in the lowest socioeconomic areas compared with 34% of non-Indigenous children. Children from the lowest socioeconomic areas were six times more likely as those from the highest socioeconomic areas to be under supervision of youth justice agencies in New South Wales, and 10 times as likely in Queensland, Western Australia and Victoria.

<sup>176</sup>Australian Institute of Health and Welfare 2017, *Youth Justice in Australia 2016-17*. [ONLINE] Available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2016-17/contents/table-of-contents>

<sup>177</sup>Ibid.

<sup>178</sup>Ibid.

<sup>179</sup>Australian Institute of Health and Welfare 2017, Youth justice fact sheet no. 89. *Remoteness, socioeconomic status, and youth justice supervision: 2015-16*. [Online] Available at: <https://www.aihw.gov.au/getmedia/38269948-e866-4855-a6a8-f9734bb2d883/juv111-YJFS-89-Remoteness.pdf.aspx>

## Persisting and Increasing Rates of Aboriginal and Torres Strait Islander Over-representation

Of all issues shared across Australian criminal justice jurisdictions, the most significant and persistent is the disproportionate representation of Aboriginal and Torres Strait Islander children. In Australia, approximately 5% of children aged 10-17 are Aboriginal or Torres Strait Islander, while 50% of children under youth justice supervision on an average day are Aboriginal and Torres Strait Islander. This over-representation increased by 2% from the previous year. Almost half the children under community supervision were Aboriginal and Torres Strait Islander but even more concerning, 58% of those in detention were Aboriginal and Torres Strait Islander.

The Australian Law Reform Commission (ALRC), *Pathways to Justice* report, released this year, recognised the importance of a national agenda to reduce the incarceration of Aboriginal and Torres Strait Islander people in the criminal justice system and noted the links between out-of-home care, and youth and adult incarceration for Aboriginal and Torres Strait Islander peoples<sup>180</sup>. The report recommended a national inquiry by the Commonwealth Government into child protection laws and justice processes affecting Aboriginal and Torres Strait Islander children, as well as the development of specific national criminal justice targets to reduce the rate of Aboriginal and Torres Strait Islander incarceration and violence against Aboriginal and Torres Strait Islander individuals.

The Royal Commission into the Protection and Detention of Children in the Northern Territory (the NT Royal Commission) also recommended that the Council of Australian Governments (COAG) extend the mandate of its Steering Committee for the Review of Government Service Provision to report on State and Territory progress against specific youth justice and child protection indicators, as part of its *Overcoming Indigenous Disadvantage* report. Following the NT Royal Commission, Amnesty International along with over 100 national organisations signed a

petition to the Australian Prime Minister, calling for the immediate development of a national agenda on Youth Justice. The petition cited the need for a national plan to address the issues associated with Aboriginal and Torres Strait Islander incarceration in the youth justice system and invest in community-led prevention and diversion to ensure detention is truly an option of last resort, in addition to implementing mechanisms to counter abuse and torture in youth detention centres.

## A National Agenda

It is evident that while Australian States and Territories have individualised differences in their youth justice systems and offending cohorts, the same underlying characteristics of child offenders exist across jurisdictions. Youth crime remains a topical issue and concern across the country.

A national framework for Youth Justice would see a consistent, evidence-based approach advocated and delivered across Australia through the identification of core service elements, objectives and measurable outcomes. In accord with the ALRC and the NT Royal Commission, addressing Aboriginal and Torres Strait Islander over-representation would need to be a priority.

There are important lessons from the past about how a national agenda can deliver change and desired outcomes. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) concluded in 1991 with key findings about practices and processes related to the criminal justice system. Of fundamental importance, the RCIADIC report called for a holistic and systemic approach, and this by and large has not occurred. Similarly, many recommendations that sought to promote Aboriginal and Torres Strait Islander self-determination to strengthen communities and provide services more appropriate to the needs of Aboriginal and Torres Strait Islander people have not been implemented. The rate of Aboriginal and Torres Strait Islander deaths in custody has not declined and rates of adult Aboriginal and Torres Strait Islander incarceration have increased<sup>181</sup>.

<sup>180</sup>Australian Law Reform Commission 2018, *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*. [ONLINE] Available at: <https://www.alrc.gov.au/publications/indigenous-incarceration-report133>

<sup>181</sup>Parliament of Australia 2016, *The 25<sup>th</sup> Anniversary of the Royal Commission into Aboriginal Deaths in Custody*. [Online] Available at: [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2016/April/RCADIC-25](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2016/April/RCADIC-25)

As a result there have been calls for a new Closing the Gap target to be created for incarceration rates. We support this with a specific target for children distinct from a target for adults.

Themes, recommendations and strategies with relevance to youth justice are spread throughout current national agendas and COAG regimes, including the National Framework for Protecting Australia's Children, the National Drug Strategy and the Closing the Gap Framework. The Building Safe and Strong Communities target in the Closing the Gap Framework identifies the need to reduce Aboriginal and Torres Strait Islander incarceration rates, increase prisoner 'through care' and improve law and justice outcomes for Aboriginal and Torres Strait Islander individuals, among other priorities. However, these priorities are not specific to Aboriginal and Torres Strait Islander children in the youth justice system and no identifiable or measurable national targets have been set to support outcomes being achieved. An Amnesty International petition recommended the incorporation of national youth justice targets in the Closing the Gap framework<sup>182</sup>.

The Department of Child Safety, Youth and Women is represented in the Australasian Juvenile Justice Administrators (AJJA), a group comprising a minimum of one senior executive from each State and Territory. Its purpose is to share information relevant to all youth justice jurisdictions, support the collection of youth justice data and contribute to youth justice research. Additionally the body has developed and maintains a commitment to a set of national principles, standards and guidelines for youth justice across Australia and New Zealand.

While AJJA provides an avenue for collaboration between State and Territory youth justice agencies, its mandate and scope of influence are somewhat limited. The development of a formalised national approach at Ministerial and Director-General level to child and youth offending would provide a forum to focus on systemic change that is difficult to achieve

at a service delivery and departmental officer level. AJJA could however provide valuable support to progress a national or Australasian agenda, providing a critical link between policy and practice.

Elevating youth justice to a national level would facilitate national benchmarking, consistency of legislative frameworks, identification and sharing of best practice and contributing to endeavours to reduce the disproportionate rate of Aboriginal and Torres Strait Islander representation. A national agenda would also ensure the goodwill of governments across Australia is harnessed and the work of departments towards change is directed and supported in a cohesive manner. This would include, for instance, sharing learnings across jurisdictions relevant to other States and Territories.

A high level, collaborative strategy to tackle youth crime at a national level will further enable significant systemic change to take place in a bipartisan manner. An important example of proposed reform that could be investigated and progressed at a national level is lifting the minimum age of criminal responsibility (MACR) as recommended by the NT Royal Commission and others<sup>183</sup>.

A number of social justice or health issues have been taken up at a national level, often led by prominent or well-known community members. Stand-out examples are depression, suicide prevention and domestic and family violence, where there are now high levels of awareness, research funding and responses that involve contributions from many sectors of the community.

### Setting Shared Goals for the Future

Where Queensland and the rest of Australia will be in terms of measurable performance indicators in 20 years' time is of course uncertain. 20-20 is perfect vision. Given the extent of over-representation, we recommend that improving outcomes for Aboriginal and Torres Strait Islander children in terms of their contact with the criminal justice system

<sup>182</sup>Amnesty International 2018, *Amnesty International*. [Online] Available at: <https://www.amnesty.org.au/act-now/national-plan-of-action-kids-in-detention/>

<sup>183</sup>Royal Commission into the Protection and Detention of Children in the Northern Territory, op cit.

<sup>184</sup>Council of Australian Governments 2018, *COAG meeting Communiqué, 9 February 2018*. [ONLINE] Available at: <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-9-february-2018>.

should be prioritised for a national agenda, with targets established to drive performance across all jurisdictions.

It would be a significant achievement if, in 2038, the annual Australian Institute of Health and Welfare Youth Justice in Australia report showed a representation rate of Aboriginal and Torres Strait Islander children in the criminal justice system had declined to the point that it was the same as their representation in the overall population.

Other national goals that we believe are worthy of consideration are reflective of issues canvassed elsewhere in the report or raised in national reviews:

- raising the minimum age of criminal responsibility<sup>184</sup>
- addressing the number of children with disabilities, cognitive impairment, mental health and substance abuse issues who are involved in the criminal justice system
- reducing child offending rates through prevention and early intervention, and
- reducing remand in custody rates for children.

An effective national agenda would ideally have bipartisan support and be supported by a national secretariat, and establish national performance indicators measurable at specific points in time. They would not be met in the short term, but five yearly improvements are not unreasonable and would provide an incentive for Australia to move in a positive direction.

### *Recommendations*

76. That the Queensland Government endeavour to have youth offending put on a national agenda, preferably under the COAG regime.
77. That consideration be given to putting the issue of the disproportionate representation of Aboriginal and Torres Strait Islander children in the criminal justice system on a national level to develop an effective, nationally agreed bipartisan strategy with a set of nationally agreed goals.

## Conclusion

In any civilised society the aim should be to have safe communities alongside the lowest possible number of children in detention. These mutual ambitions are not incompatible.

The four pillars articulated in this report provide a framework for Queensland's way forward through intervening early, preventing children appearing in court, preventing children being detained and reducing reoffending. This includes supporting families and schools to deal with problem behaviours when they are first apparent in childhood through to ensuring the most serious and repeat child offenders are dealt with in a way that maximises their likelihood of rehabilitation.

There are sound reasons to improve the youth justice system in this state and indeed in Australia. The disproportionate rate of Aboriginal and Torres Strait Islander children in detention is one such reason and is unacceptable. The most recent statistical data about this issue was published on 25 May 2018 in the *Youth Justice in Australia 2016-17* report by the Australian Institute of Health and Welfare. Aboriginal and Torres Strait Islander children are 24 times more likely to be detained than non-Indigenous children in Australia, and 30 times more likely to be detained if they live in Queensland.

Whilst it may be unavoidable, based on current projections, to have to build additional youth detention facilities in Queensland, the associated cost of building and maintaining them is substantial. That cost should be minimised and savings redirected to community interventions that will deliver better results. We should improve the youth justice system not only to save money, but because it is the right thing to do for the future of Queensland's children and the safety of Queensland communities.

We believe that there are a number of worthwhile initiatives that could be pursued as part of the way forward. They are set out in our recommendations along with some suggested goals and targets to measure success.

## Issues

Some of the most significant contemporary issues in the Queensland youth justice system are:

- capacity issues at both youth detention centres, but particularly Brisbane
- as a result of capacity issues in the Detention Centres, children being held in police watchhouses on remand for longer than usual, prior to being placed in a youth detention centre
- the high proportion of children on remand in youth detention centres;
- the disproportionate number of Aboriginal and Torres Strait Islander children in the youth justice system particularly in detention
- heightened public safety concerns in certain locations
- a large number of offences being committed by a relatively small number of recidivist children, and
- the multiple causal factors associated with recidivist offenders which include:
  - non-attendance, truancy, suspension or expulsion from school
  - exposure to domestic violence, or physical, sexual and emotional abuse
  - Foetal Alcohol Spectrum Disorder (FASD) and other neurological disabilities
  - behavioural and mental health issues
  - substance abuse – alcohol, drugs and volatile substance misuse (VSM)
  - inadequate sleep and nutrition
  - homelessness, and
  - negative family and peer group influences.

## What is Promising

There is no quick fix or easy solution to dealing with child and youth offending and nor is it the responsibility of a single agency.

Community members and criminal justice agencies alike recognise the need for a sustained, long-term and multi-pronged approach to addressing youth crime. A pertinent police comment for example was 'we can't arrest our way out of this situation'. The views of these stakeholders are reflected in our discussion and recommendations.

Our state-wide consultation and research identified a range of promising initiatives, many of which have a high level of community support. The good work and dedicated ongoing efforts of many people in both the Government and non-government sectors are acknowledged and appreciated. We also acknowledge that some of our recommendations are a progression of current endeavours.

Initiatives that we believe are working now and could be continued, evaluated and expanded are:

- well-resourced and supported collaborative approaches such as the Townsville Stronger Communities Action Group (TSCAG) and Cairns Safer Streets Taskforce, with key features of:
  - coordination
  - co-location
  - information sharing, and
  - targeting high risk families and individuals
- the Youth Legal Hotline
- the four Supervised Bail Accommodation services at Townsville (two), Logan (one) and Carbrook (one)
- community champions to engage communities in local solutions to youth crime.

Short term proposals, that could be considered for commencement by 31 December 2018, are:

- a 'protected admissions' and enhanced diversions trial
- expanded police diversion

- expanded bail support and diversion services, available after-hours
- replicating the TSCAG model in suitable locations
- a focus on school attendance
- locally based Community Champions with the authority to engage broadly across the community and coordinate focused activity
- reducing remand in the two youth detention centres to safe and manageable levels, and
- reducing the number of children entering detention for the first time.

We also advocate specific consideration of raising the minimum age of criminal responsibility from its current 10 years. Queensland could potentially play a key role in driving such an agenda at a national level. Whether the age of criminal responsibility stays at 10 years or is raised, it is apparent that our response to younger children showing signs of problem behaviour requires attention and a comprehensive response.

The broader theme of our recommendations to address child and youth crime reflects a move away from traditional approaches applied in the adult criminal justice system towards one that encompasses an understanding of the unique developmental needs of children, the causes of their offending behaviour and the need to implement high quality, evidence-based, community-informed responses.

The decisions about acceptance and implementation of the recommendations are of course matters for the Government. In that regard we would be supportive of the recommendations being subject to consultation or testing with agencies involved in or affected by them.

We should not accept being in the same or worse place than we are now into the future in terms of youth justice. Our hope is that this report will provide part of the pathway to a better, safer future for Queenslanders.

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## Attachment A – Stakeholder Engagement List

### Location: Brisbane

| Name                         | Position  | Organisation   |
|------------------------------|---|--|
| <b>Queensland Government</b> |   |  |
| Honourable Coralee O'Rourke  | Minister for Communities, Disability Services and Seniors |  |
| Clare O'Connor               | Director-General  | Dept of Communities, Disability Services and Seniors       |
| Tammy Williams               | Director-General  | Dept of Aboriginal and Torres Strait Islander Partnerships |
| Jason Kidd                   | Deputy Director-General Policy                            | Dept of Aboriginal and Torres Strait Islander Partnerships |
| Bruce Visser                 | Director  | Dept of Aboriginal and Torres Strait Islander Partnerships |
| Brendon McMahon              | Government Coordinator (Aurukun Project)                  | Dept of Aboriginal and Torres Strait Islander Partnerships |
| Darren Hegarty               | Senior Executive Director                                 | Dept of Child Safety, Youth and Women                      |
| Julie Kinross                | Executive Director  | Dept of Child Safety, Youth and Women                      |
| Barbara Shaw                 | Executive Director  | Dept of Child Safety, Youth and Women                      |
| Megan Giles                  | Executive Director  | Dept of Child Safety, Youth and Women                      |
| Pam Philips                  | Regional Director, Moreton Region                         | Dept of Child Safety, Youth and Women                      |
| Maureen Brosnan              | Regional Director, South West Region                      | Dept of Child Safety, Youth and Women                      |
| Arnold Wallis                | Director  | Dept of Child Safety, Youth and Women                      |
| Loretta Crombie              | Manager   | Dept of Child Safety, Youth and Women                      |
| Linda Ford                   | Manager   | Dept of Child Safety, Youth and Women                      |
| Wendy Hamilton               | Manager   | Dept of Child Safety, Youth and Women                      |
| Craig Jenkins                | Manager   | Dept of Child Safety, Youth and Women                      |
| Pieta Sephton                | Manager   | Dept of Child Safety, Youth and Women                      |
| Chris Trigger                | Manager   | Dept of Child Safety, Youth and Women                      |
| Shane Warren                 | Principal Program Officer                                 | Dept of Child Safety, Youth and Women                      |
|                              | Supervised Bail Accommodation – Carbrook Staff            | Dept of Child Safety, Youth and Women                      |
|                              | Supervised Bail Accommodation – Logan Staff               | Dept of Child Safety, Youth and Women                      |
| Trevor Cox                   | Executive Director  | Brisbane Youth Detention Centre                            |
| Stephanie Ryder              | Deputy Director   | Brisbane Youth Detention Centre                            |
| Michael Drane                | Deputy Director   | Brisbane Youth Detention Centre                            |
| Patrea Walton                | Deputy Director-General                                   | Dept of Education  |
| Leanne Nixon                 | Deputy Director-General, State Schools                    | Dept of Education  |
| Hayley Stevenson             | A/Assistant Director-General                              | Dept of Education  |
| Liza Carroll                 | Director-General  | Dept of Housing and Public Works                           |
| Christine Castley            | Deputy Director-General                                   | Dept of Housing and Public Works                           |
| Graham Atkins                | Deputy Director-General                                   | Dept of Housing and Public Works                           |
| Ian Purssey                  | Senior Project Manager                                    | Dept of Housing and Public Works                           |

## Location: Brisbane continued

| Name                                       | Position  | Organisation  |
|--|---|---|
| <b>Queensland Government</b>               |   |   |
| David Mackie                               | Director-General  | Dept of Justice and Attorney-General                |
| Tim Herbert                                | Assistant Director-General                              | Dept of Justice and Attorney-General                |
| Michael Byrne QC                           | Director of Public Prosecutions                         | Dept of Justice and Attorney-General                |
| Neil Scales                                | Director-General  | Dept of Transport and Main Roads                    |
| Jennifer Grace                             | Chief Operations Officer                                | Dept of Transport and Main Roads                    |
| Peter Martin APM                           | Commissioner  | Queensland Corrective Services                      |
| Kelly Skillington                          | Manager   | Queensland Corrective Services                      |
| His Honour Judge Michael Shanahan, AO, RFD | President of the Childrens Court – QLD                  | Queensland Courts                                   |
| Leanne O’Shea                              | Deputy Chief Magistrate                                 | Queensland Courts                                   |
| Michael Walsh                              | Director-General  | Queensland Health                                   |
| Dr John Wakefield                          | Deputy Director-General, Clinical Excellence Division   | Queensland Health                                   |
| Professor John Allan                       | Executive Director Mental Health and Other Drugs Branch | Queensland Health                                   |
| Ian Stewart APM                            | Commissioner  | Queensland Police Service                           |
| Tony Wright                                | A/Deputy Commissioner                                   | Queensland Police Service                           |
| Charysse Pond                              | A/Assistant Commissioner                                | Queensland Police Service                           |
| Anthony Crack                              | Executive Director                                      | Queensland Police Service                           |
| Andrew Ross                                | Director  | Queensland Police Service                           |
| Denzil Clark                               | Detective Superintendent                                | Queensland Police Service                           |
| Steve Pyne                                 | Inspector   | Queensland Police Service                           |
| Maryanne Kelly                             | A/Deputy Under Treasurer                                | Queensland Treasury                                 |
| Marni Manning                              | Manager   | Sentencing Advisory Council                         |
| Laurie Bateman                             | Police Liaison Officer                                  | Sentencing Advisory Council Project – Cunnamulla    |
| Alan McSporrán QC                          | Chairperson   | Crime and Corruption Commission                     |
| Cheryl Scanlon                             | Detective Chief Superintendent and Operations Commander | Crime and Corruption Commission                     |
| Rebecca Denning                            | Director  | Crime and Corruption Commission                     |
| <b>Universities</b>                        |   |   |
| Ross Homel                                 | Professor of Criminology and Criminal Justice           | Griffith University                                 |
| John Rynne                                 | Associate Professor                                     | Griffith University                                 |
| Lorraine Mazarolle                         | Professor, School of Social Science                     | University of Queensland                            |
| Rob Hulls                                  | Director  | Centre for Innovative Justice, RMIT University      |
| <b>Non-Government Organisations</b>        |   |   |
| Shane Duffy                                | Chief Executive Officer                                 | Aboriginal and Torres Strait Islander Legal Service |
| Rod Morgan                                 | Juvenile Justice Coordinator                            | Aboriginal and Torres Strait Islander Legal Service |
| Hetty Johnston                             | Founder and Chair                                       | Bravehearts   |



## Location: Brisbane continued

| Name                                | Position  | Organisation   |
|-------------------------------------|---|--|
| <b>Non-Government Organisations</b> |   |  |
|                                     | Supervised Bail Accommodation staff   | Anglicare  |
| Lindsay Wegener                     | Executive Director  | PeakCare Queensland  |
| Marissa Dooris                      | Policy Officer  | Sisters Inside   |
| Siyavash Doostkhan                  | Director  | Youth Affairs Network Queensland   |
| Dale Murray                         | Director  | Youth Plus and Edmund Rice Education Australia   |
| <b>Other Stakeholders</b>           |   |  |
| Anthony Reilly                      | Chief Executive Officer   | Legal Aid Queensland   |
| Paul Davey                          | Deputy Chief Executive Officer  | Legal Aid Queensland   |
| David Holliday                      | Assistant Director, Specialist Courts   | Legal Aid Queensland   |
| David Law                           | Principal Lawyer  | Legal Aid Queensland   |
| Leisa Barnes                        | Senior Lawyer   | Legal Aid Queensland   |
| Aaron Harper                        | Member for Thuringowa   |  |
| Michael Healy                       | Member for Cairns   |  |
| Leanne Linard                       | Member for Nudgee   |  |
| Cynthia Lui                         | Member for Cook   |  |
| Melissa McMahan                     | Member for Macalister   |  |
| Joan Pease                          | Member for Lytton   |  |
| Kim Richards                        | Member for Redlands   |  |
| Peter Russo                         | Member for Toohey   |  |
| Robbie Katter                       | Member for Traeger  |  |
| Shane Knuth                         | Member for Hill   |  |
| Kathryn McMillan QC                 | Commissioner  | Independent Review of Youth Detention Centres in Queensland                              |
| Honourable Margaret White, AO       | Commissioner  | Royal Commission into the Protection and Detention of Children in the Northern Territory |
| Mick Gooda                          | Commissioner  | Royal Commission into the Protection and Detention of Children in the Northern Territory |
| Ian Leavers                         | General President   | Queensland Police Union of Employees   |
| Mick Barnes                         | General Secretary   | Queensland Police Union of Employees   |
| Marty Bristow                       | Regional Representative, Far Northern   | Queensland Police Union of Employees   |
| Peter Thomas                        | Regional Representative, Northern   | Queensland Police Union of Employees   |
| Kev Groth                           | Regional Representative, Central  | Queensland Police Union of Employees   |
| Grant Wilcox                        | Regional Representative, North Coast  | Queensland Police Union of Employees   |
| Col Muller                          | Regional Representative, Southern   | Queensland Police Union of Employees   |
| Phil Notaro                         | Regional Representative, South East   | Queensland Police Union of Employees   |
| Shayne Maxwell                      | Regional Representative, Metropolitan North, A/Asst. General Secretary/Vice President | Queensland Police Union of Employees   |

## Location: Brisbane continued

| Name                                | Position  | Organisation                            |
|-------------------------------------|---|---|
| <b>Non-Government Organisations</b> |   |   |
| Tony Collins                        | Regional Representative, Metropolitan South     | Queensland Police Union of Employees    |
| Shane Prior                         | Regional Representative, Headquarters & Support | Queensland Police Union of Employees    |
| Ken Taylor                          | President                                       | Queensland Law Society                  |
| Damien Bartholemew                  | Deputy Chair, Children's Law Committee          | Queensland Law Society                  |
| Janice Crawford                     | Criminal Law Committee                          | Bar Association of Queensland           |
| Dan Bragg                           | Vice President                                  | Qld Police Commissioned Officers' Union |

## Location: Townsville

| Name                               | Position  | Organisation   |
|------------------------------------|---|--|
| <b>Queensland Government</b>       |   |  |
| Sandra Moore                       | Regional Executive Director                               | Dept of Child Safety, Youth and Women                |
| David Goodinson                    | Regional Director, Far North and North Queensland         | Dept of Child Safety, Youth and Women                |
|                                    | Supervised Bail Accommodation Staff                       | Dept of Child Safety, Youth and Women                |
|                                    | Townsville Youth Justice Service Centre Manager and Staff | Dept of Child Safety, Youth and Women                |
| Fran Biddulph-Amaral               | Executive Director  | Cleveland Youth Detention Centre                     |
| Christine O'Brien                  | Deputy Director   | Cleveland Youth Detention Centre                     |
| Mechelle Hofman                    | Community Services Officer                                | Dept of Communities, Disability Services and Seniors |
| Peter Kelly                        | Director  | Dept of Education and Training                       |
| Mark Lynch                         | Project Officer   | Dept of Education and Training                       |
| Vicki Miles                        | Client Services Manager                                   | Dept of Housing and Public Works                     |
| Zac Murphy                         | Principal Policy Officer                                  | Dept of Premier and Cabinet                          |
| Dan Clark                          | Service Integration Coordinator                           | Queensland Health                                    |
| Kevin Guteridge                    | Chief Superintendent                                      | Queensland Police Service                            |
| Stephen Munro                      | Superintendent  | Queensland Police Service                            |
| Glenn Doyle                        | Inspector   | Queensland Police Service                            |
| Roger Beal                         | Senior Sergeant   | Queensland Police Service                            |
| Liesan Van Der Heijden             | A/Detective Senior Sergeant                               | Queensland Police Service                            |
| <b>Other Stakeholders</b>          |   |  |
| Scott Stewart                      | Member for Townsville                                     |  |
| Major-General Stuart Smith AO, DSC | Townsville Community Champion                             |  |
| Noel Gertz                         | Manager   | Yinda  |
| Wayne Parker                       | Manager   | Yinda  |
|                                    | Supervised Bail Accommodation staff                       | Mission Australia                                    |
|                                    | Supervised Bail Accommodation staff                       | Townsville Aboriginal and Islanders Health Services  |

## Location: Toowoomba

| Name                         | Position                 | Organisation              |
|------------------------------|--------------------------|---------------------------|
| <b>Queensland Government</b> |                          |                           |
| Brian Swan                   | A/Assistant Commissioner | Queensland Police Service |

## Location: Ipswich

| Name                               | Position                      | Organisation              |
|------------------------------------|-------------------------------|---------------------------|
| <b>Queensland Government</b>       |                               |                           |
| David Briese & local QPS personnel | Detective Inspector and staff | Queensland Police Service |

## Location: Maryborough

| Name                                | Position          | Organisation                          |
|-------------------------------------|-------------------|---------------------------------------|
| <b>Queensland Government</b>        |                   |                                       |
| Karen Abrahams                      | Regional Director | Dept of Child Safety, Youth and Women |
| Wendy Hamilton                      | Manager           | Dept of Child Safety, Youth and Women |
| Craig Hawkins & local QPS personnel | Superintendent    | Queensland Police Service             |

## Location: Mount Isa

| Name                                | Position                             | Organisation  |
|-------------------------------------|--------------------------------------|---|
| <b>Queensland Government</b>        |                                      |   |
| Eddie Hollingsworth                 | Manager                              | Dept of Aboriginal and Torres Strait Islander Partnerships      |
| Arna Brosnan                        | Regional Executive Director          | Dept of Child Safety, Youth and Women                           |
| Linda Ford                          | Manager                              | Dept of Child Safety, Youth and Women                           |
| Elva Metcalf                        | Manager                              | Dept of Child Safety, Youth and Women                           |
| Alana Scott                         | Principal, Townview State School     | Dept of Education   |
| Annette Moes                        | Teacher, Sunset State School         | Dept of Education   |
| Phil Sweeney                        | Principal, Spinifex College          | Dept of Education   |
| Craig Casey                         | Regional Justice Program Coordinator | Department of Justice and Attorney-General                      |
| James Morton                        | Magistrate                           | Queensland Courts   |
| Glen Pointing                       | Superintendent                       | Queensland Police Service                                       |
| Chris Hodgman                       | Inspector                            | Queensland Police Service                                       |
| Michelle Clark                      | Acting Inspector                     | Queensland Police Service                                       |
| <b>Non-Government Organisations</b> |                                      |   |
| Lynn Gilles-Hughes                  | Acting head of Campus                | Mount Isa Flexible Learning Centre                              |
|                                     | Reference Group                      | Aboriginal and Torres Strait Islander Community Reference Group |
|                                     | Directors                            | Kalkadoon Prescribed Body Corporate Board of Directors          |

## Location: Mount Isa continued

| Name                                | Position   | Organisation  |
|-------------------------------------|--|---|
| <b>Non-Government Organisations</b> |  |   |
| Dolly Hankins                       | AICC and Women's Justice Coordinator                   | North West Queensland Indigenous Catholic Social Services Youth Justice Program |
| Gina Scott                          | Volunteer  | North West Queensland Indigenous Catholic Social Services Youth Justice Program |
| Sean Ticehurst                      | Youth Worker   | North West Queensland Indigenous Catholic Social Services Youth Justice Program |
| Vincent Bin Dal                     | Program Coordinator                                    | North West Queensland Indigenous Catholic Social Services Youth Justice Program |
| Hayley Hogan                        | Manager  | Mount Isa Youth Shelter   |
| Alvin Hava                          | Manager  | Young People Ahead  |
| Kirsten Russell                     | Board Secretary  | Young People Ahead  |
| Debra Woodward                      | Senior Manager   | Young People Ahead  |
| Danita Singh                        | Team Leader  | Youth Housing and Reintegration Service   |
| <b>Other Stakeholders</b>           |  |   |
| Tara Bell                           | Director   | Kalkadoon Prescribed Body Corporate Inc   |
| Jennifer Watts                      | Director   | Kalkadoon Prescribed Body Corporate Inc   |
| Kurt Caulton                        | Director   | Kalkadoon Prescribed Body Corporate Inc   |
| Dorsey Hill                         | Director   | Kalkadoon Prescribed Body Corporate Inc   |
| Robbie Katter                       | Member for Traeger                                     |   |
| Mick Lowcock                        | Parish Priest  | Good Shepherd Parish  |
| Dianne Marshall                     | Community Elder  |   |
| Roslyn Von Senden                   | Member   | Mount Isa Aboriginal and Torres Strait Islander Community Reference Group       |
| Patricia Macnamara                  | Member   | Mount Isa Aboriginal and Torres Strait Islander Community Reference Group       |
|                                     | Board Member   | Young People Ahead  |
| Noel Sarmardin                      | Community Elder  | Mount Isa Aboriginal and Torres Strait Islander Community Reference Group       |
|                                     | Board Member   | Young People Ahead  |
| Phil Barwick                        | Deputy Mayor   | Mount Isa City Council  |
|                                     | Mount Isa Residents                                    | Victims of Crime and advocates for Victims of Crime – Four Interviews           |
| Tony McGrady                        | Former State MP, Minister, Speaker and Mount Isa Mayor |   |

## Location: Sydney

| Name                                | Position  | Organisation                            |
|-------------------------------------|---|---|
| <b>New South Wales Government</b>   |   |   |
| Lydia Hamilton                      | Manager   | Dept of Justice NSW, Juvenile Justice   |
| Don Weatherburn                     | Director  | Bureau of Crime Statistics and Research |
| His Honour Judge Peter Johnson SC   | President of the Children's Court NSW   | Children's Court of NSW                 |
| Rosemary Davidson                   | Executive Officer   | Children's Court of NSW                 |
| Elizabeth King                      | Research Associate  | Children's Court of NSW                 |
| Michael Vita                        | Manager   | Cobham Juvenile Justice Centre          |
| Andrew Cappie-Wood                  | Secretary   | Dept of Justice, Juvenile Justice       |
| Kate Connors                        | Executive Director , Investment and Priority Initiatives                                | Dept of Justice, Juvenile Justice       |
| Steve Southgate                     | Director, Statewide Operations  | Dept of Justice, Juvenile Justice       |
| Lydia Hamilton                      | Manager, Bail Assistance Line   | Dept of Justice, Juvenile Justice       |
| Steve Kinmond                       | Deputy Ombudsman  | New South Wales Ombudsman               |
| David Scrimgeour                    | Superintendent  | NSW Police Force                        |
| <b>New South Wales Universities</b> |   |   |
| Julie Stubbs                        | Co-Director   | Centre for Crime, Law and Justice       |
| Chris Cuneen                        | Professor of Criminology  | University of New South Wales           |
| Melanie Schwartz                    | Senior Lecturer   | University of New South Wales           |
| <b>Other Stakeholders</b>           |   |   |
| Ken Maroney                         | Former NSW Police Commissioner  |   |
| Brendan Thomas                      | Chief Executive Officer   | Legal Aid NSW                           |
| Debra Maher                         | Solicitor-in-Charge, Childrens Legal Service  | Legal Aid NSW                           |
| Kylie Beckhouse                     | Director, Family Law  | Legal Aid NSW                           |
| Lesley Turner                       | Chief Executive Officer   | Aboriginal Legal Service NSW and ACT    |
| Nadine Miles                        | Principle Solicitor   | Aboriginal Legal Service NSW and ACT    |
| Keisha Hopgood                      | Deputy Principle Solicitor  | Aboriginal Legal Service NSW and ACT    |
| Philip Reed                         | Former CEO of the Royal Commission into Institutional Responses into Child Sexual Abuse |   |

## United States of America

| Name           | Position   | Organisation                               |
|----------------|--|--|
| Lynn Davis     | Chief Executive Officer                          | Children's Advocacy Centre – Dallas, Texas |
| Carrie Pascall | Chief Investigative and Support Services Officer | Children's Advocacy Centre – Dallas, Texas |

## Attachment B – Committees

### 17 year old Transition Key Agency Group

| Key Agency Group  |                            |  |
|-------------------|----------------------------|--|
| KAG member        | Position                   | Organisation   |
| Michael Hogan     | Director-General           | Dept of Child Safety, Youth and Women                      |
| Tammy Williams    | Acting Director-General    | Dept of Aboriginal and Torres Strait Islander Partnerships |
| Patrea Walton     | Deputy Director-General    | Dept of Education  |
| Liza Carroll      | Director-General           | Dept of Housing and Public Works                           |
| Dave Stewart      | Director-General           | Dept of Premier and Cabinet                                |
| Rebecca McGaritty | Executive Director         | Dept of Premier and Cabinet                                |
| Andrew Mills      | Director-General           | Queensland Government Chief Information Office             |
| Peter Martin APM  | Commissioner               | Dept of Justice and Attorney-General                       |
| John Wakefield    | Deputy Director-General    | Dept of Queensland Health                                  |
| Jim Murphy        | Director-General           | Dept of Queensland Treasury                                |
| Ian Stewart APM   | Commissioner of Police     | Queensland Police Service                                  |
| Darren Hegarty    | Senior Executive Director  | Dept of Child Safety, Youth and Women                      |
| Tim Herbert       | Assistant Director-General | Dept of Justice and Attorney-General                       |
| Mark Lynch        | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Julie Kinross     | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Glen Knights      | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Marissa Wise      | Executive Director         | Dept of Child Safety, Youth and Women                      |
| David Mackie      | Director-General           | Dept of Justice and Attorney-General                       |

## 17 year old Transition Project Board

| Project Board      |                            |  |
|--------------------|----------------------------|--|
| PB member          | Position                   | Organisation   |
| Bruce Visser       | Director                   | Dept of Aboriginal and Torres Strait Islander Partnerships |
| Darren Hegarty     | Senior Executive Director  | Dept of Child Safety, Youth and Women                      |
| Julie Kinross      | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Dr Mark Lynch      | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Glen Knights       | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Kathy Masters      | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Marissa Wise       | Executive Director         | Dept of Child Safety, Youth and Women                      |
| Arnold Wallis      | Director                   | Dept of Child Safety, Youth and Women                      |
| David Goodinson    | Regional Director          | Dept of Child Safety, Youth and Women                      |
| Tenneil Murray     | Manager                    | Dept of Child Safety, Youth and Women                      |
| Danny Short        | Chief Finance Officer      | Dept of Child Safety, Youth and Women                      |
| Hannah Cruickshank | Manager                    | Dept of Child Safety, Youth and Women                      |
| Rebecca Keys       | Director                   | Dept of Child Safety, Youth and Women                      |
| Maureen Brosnan    | Regional Director          | Dept of Child Safety, Youth and Women                      |
| Toni Craig         | Manager                    | Dept of Child Safety, Youth and Women                      |
| Bob Atkinson       | Special Advisor            | Dept of Child Safety, Youth and Women                      |
| Sue Lindsay        | Director                   | Dept of Child Safety, Youth and Women                      |
| Brett Weeden       | Executive Director         | Dept of Education  |
| Mark Wall          | Executive Director         | Dept of Housing and Public Works                           |
| Tim Herbert        | Assistant Director-General | Dept of Justice and Attorney-General                       |
| Julie Webber       | Director                   | Dept of Justice and Attorney-General                       |
| Kathrin Jensen     | Director                   | Dept of the Premier and Cabinet                            |
| Marilyn Ooi        | Senior Policy Officer      | Dept of the Premier and Cabinet                            |
| Kate Holman        | General Manager            | Queensland Corrective Services                             |
| Tom Humphreys      | General Manager            | Queensland Corrective Services                             |
| Merridy Marshall   | Principal Policy Officer   | Queensland Health  |
| Andrew Ross        | Director                   | Queensland Police Service                                  |
| Emma Hooper        | Principal Treasury Analyst | Queensland Treasury  |
| Sarah Haigh        | Treasury Analyst           | Queensland Treasury  |

## 17 year old Transition Stakeholder Advisory Group

| Stakeholder Advisory Group |                                       |   |
|----------------------------|---------------------------------------|---|
| Name                       | Position                              | Organisation  |
| Bevan Costello             | Chair                                 | Barambah Local Justice Group                                    |
| Greg Upkett                | Representative of Community Elder     | Respected Community Representative                              |
| Dale Murray                | Director                              | Edmund Rice Education Australia (Youth Plus Institute Division) |
| John Rynne                 | Associate Professor                   | Griffith Youth Forensic Service, Griffith University            |
| Janet Wight                | Director                              | Youth Advocacy Centre (YAC)                                     |
| Wayne Sanderson            | Member                                | Australians for Native Title and Reconciliation (ANTaR)         |
| Debbie Kilroy              | Chief Executive Officer               | Sisters Inside  |
| Siyavash Doostkhah         | Director                              | Youth Affairs Network Queensland (YANQ)                         |
| Carolyn Juratowitch        | Youth Lawyer                          | South West Brisbane Community Legal Centre, Inala               |
| Terry Hutchinson           | Adjunct Professor                     | Queensland University of Technology (School of Law)             |
| Andy Scott                 | Author                                | Amnesty International   |
| Uncle Tiger Singh          | Elder                                 | Brisbane Council of Elders                                      |
| Peter Lyons                | Director and Principal Solicitor      | Prisoner Legal Service  |
| Lewis Shillito             | Director, Criminal Law                | Aboriginal & Torres Strait Islander Legal Service (ATSILS)      |
| Jonathan Tapau             | Support Worker                        | Indigenous Family and Child Support Services                    |
| Uncle Albert Holt          | Community Elder                       | Respected Community Representative                              |
| Lindsay Wegener            | Executive Director                    | Peakcare Queensland   |
| Zara Berkovits             | Manager, Policy & Advocacy Leadership | Queensland Family and Child Commission                          |
| Phillip Brooks             | Commissioner                          | Queensland Family and Child Commission                          |
| Jonty Bush                 | Director                              | Office of the Public Guardian                                   |
| Danielle Jenkins           | Legal Officer                         | Office of the Public Guardian                                   |



## Childrens Court Committee

| Childrens Court Committee      |  |  |
|--------------------------------|--|--|
| Name                           | Position   | Organisation   |
| Judge Shanahan AO, RFD (Chair) | President  | Childrens Court of Queensland                              |
| Kelly Briggs (Secretariat)     | Team Coordinator   | Dept of Child Safety, Youth and Women                      |
| Leanne O'Shea                  | Deputy Chief Magistrate  | Dept of Justice and Attorney-General                       |
| Darren Hegarty                 | Senior Executive Director  | Dept of Child Safety, Youth and Women                      |
| Terry Hutchinson               | Associate Professor  | School of Law QUT, Queensland Law Society                  |
| Julie Kinross                  | Executive Director   | Dept of Child Safety, Youth and Women                      |
| Tracey De Simone               | Official Solicitor   | Dept of Communities and Disability Services                |
| Lewis Shillito                 | Director   | Aboriginal & Torres Strait Islander Legal Services         |
| Catherine Moynihan             | Official Solicitor and Director of Legal Services Investigations | Office of the Public Guardian                              |
| David Law                      | Principal Lawyer   | Legal Aid Queensland                                       |
| Dr Scott Harden                | Assisting Psychiatrist   | AMICUS Medical Chambers                                    |
| Melissa Liessi                 | Team Leader  | AMICUS Medical Chambers                                    |
| Danielle Palmer                | Legal Officer  | Dept of Justice and Attorney-General                       |
| Loretta Crombie                | Manager  | Dept of Child Safety, Youth and Women                      |
| Brigita Cunningham             | Executive Director   | Dept of Justice and Attorney-General                       |
| Hayley Stevenson               | A/Assistant Director-General                                     | Dept of Education  |
| Amanda Brownhill               | Commander  | Queensland Police Service                                  |
| Pam Phillips                   | Regional Director  | Dept of Child Safety, Youth and Women                      |
| Candice Hughes                 | Solicitor  | QLS Reconciliation and First Nations Advancement Committee |
| Julie Steel                    | Executive Director   | Dept of Justice and Attorney-General                       |
| Glen Knights                   | Executive Director   | Dept of Child Safety, Youth and Women                      |
| Binari De Saram                | Policy Solicitor   | Queensland Law Society                                     |
| Damian Bartholomew             | Solicitor  | Youth Advocacy Centre                                      |
| Kirra Faulkner                 | Solicitor  | Youth Advocacy Centre                                      |
| Phil Hall                      | Manager  | Dept of Child Safety, Youth and Women                      |
| Michael Byrne QC               | Director   | Dept of Justice and Attorney-General                       |
| James Benjamin                 | Barrister  | Bar Association Queensland                                 |
| Sarah-Jane Bennett             | Principal Project Officer  | Dept of Justice and Attorney-General                       |
| Natasha Pettit                 | Senior Solicitor   | YFS Legal  |

## Youth Justice First Nations Action Board

| First Nations Action Board        |  |                                       |
|-----------------------------------|--|---------------------------------------|
| First Nations Action Board member | Position   | Organisation                          |
| Arnold Wallis                     | A/Director   | Dept of Child Safety, Youth and Women |
| Tenneil Murray                    | A/Manager  | Dept of Child Safety, Youth and Women |
| Casey Bird                        | A/Principal Project Officer                          | Dept of Child Safety, Youth and Women |
| Jodie Elder                       | A/Principal Advisor                                  | Dept of Child Safety, Youth and Women |
| Joshua White                      | Cultural Capability Learning and Development Officer | Dept of Child Safety, Youth and Women |
| Tamica Elder                      | A/Administration Officer                             | Dept of Child Safety, Youth and Women |
| Tracey Motlop                     | Indigenous Service Support Officer                   | Dept of Child Safety, Youth and Women |
| Alfred Henaway                    | A/Youth, Family & Community Resource Officer         | Dept of Child Safety, Youth and Women |
| Timothy Stephens                  | Youth Worker   | Dept of Child Safety, Youth and Women |
| Simon Hapea                       | Indigenous Service Support Officer                   | Dept of Child Safety, Youth and Women |
| Nathaniel Prior                   | Shift Supervisor                                     | Dept of Child Safety, Youth and Women |
| Kim Thursby                       | A/Project Officer                                    | Dept of Child Safety, Youth and Women |
| Rose Malone                       | Service Leader                                       | Dept of Child Safety, Youth and Women |
| John Buttigieg                    | Manager  | Dept of Child Safety, Youth and Women |
| Alan Murray                       | Indigenous Service Support Officer                   | Dept of Child Safety, Youth and Women |
| Bart Tallis                       | Indigenous Service Support Officer                   | Dept of Child Safety, Youth and Women |
| Shae Fitzsimmons                  | Court Officer  | Dept of Child Safety, Youth and Women |
| Helen Dingle                      | Indigenous Service Support Officer                   | Dept of Child Safety, Youth and Women |
| Justin Power                      | A/Manager  | Dept of Child Safety, Youth and Women |
| Edie Wilmott                      | A/Project Officer                                    | Dept of Child Safety, Youth and Women |
| Aaron Nagas                       | A/Senior Cultural Project Officer                    | Dept of Child Safety, Youth and Women |



## Report on Youth Justice

from Bob Atkinson AO, APM, Special Advisor  
to Di Farmer MP, Minister for Child Safety,  
Youth and Women and Minister for  
Prevention of Domestic and Family Violence

