

**RESPONSE TO CONSULTATION PAPER APRIL 2022 PUBLISHED BY THE CRIMINAL PROCEDURE REVIEW
MAGISTRATES COURTS BY:**

COOEE INDIGENOUS FAMILY AND COMMUNITY EDUCATION CENTRE

BIDJARA COMMUNITY AND GOORATHUNTHA TRADITIONAL OWNERS PTY LTD

SOUTHEAST QLD FIRST NATIONS ELDERS ALLIANCE

BAYSIDE COMMUNITY JUSTICE GROUP ELDERS

BRISBANE ELDERS

KNOWLEDGE CONSULTING PTY LTD



**COOEE - QLD RECONCILIATION
AWARDS WINNER 2021**



**LOST CITY – MOUNT TABOR STATION -
BIDJARA LAND SACRED SITE**

**ACKNOWLEDGEMENT OF COUNTRY AND
ELDERS PAST AND PRESENT**

This submission has etched within its text a deep respect for and acknowledgement of generations of Elders and all First Nations people whose lives have been marred by the imposition of colonial policies which have helped to embed within the justice system, a punitive spirit that has contributed to generational trauma, over incarceration, subjugation, child removal and community control.

The authors also pay homage to the non-Indigenous people who have acknowledged the consequences of ongoing punitive practices within the justice system at all levels; and resolved to work with First Nations people in the spirit of reconciliation and respect to give life to government policies that speak to the value of more humane and proactive practices, bi-cultural collaboration, and justice reform.

Criminal Procedure review – Magistrates Courts
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30 June 2022

Dear Judge Mr Michael Shanahan and Review Team

We greatly appreciate the opportunity to make a submission to this very important review. As you are well aware, very sadly First Nations people are grossly over represented before Courts, in prisons and in contact with the criminal justice system.

On 29 November 2021 we provided a Submission to the Community Support and Services Parliamentary Committee concerning *The Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*. We have attached a copy of this Submission for consideration by your review, as well as a copy of a presentation relevant to the administration of justice for First Nations people in Queensland.

The Submission and presentation cover the terrible circumstances around the interface of First Nations people with the criminal justice system and presents a reform model for rehabilitative alternative sentencing options for Courts to utilize in lieu of Youth Detention Centres and prisons. The Parliamentary Committee, with one dissenting voice, did not recommend this well-researched First Nations reform model to government.

Our reform model was founded in earlier proposals advanced in 2006¹, 2017 and 2021 to parliamentarians and the public service with no result, even though Departmental Heads, Magistrates, (Chief Magistrate, Deputy Chief Magistrate and Murri Court Magistrate – 2017 submission²), corrections practitioners, communities, Shire Councils and respected researchers evidenced strong support. Two significant reports with recommendations by the Queensland Productivity Commission (QPC)³ relating to this issue have not been progressed by government.

If action had been taken in relation to earlier proposals and the QPC reports, the current nightly TV footage of young repeat offenders in stolen cars, invading homes, committing serious assaults, youth suicide, etc would largely not be happening. Under our model, Courts would have had the power via *Control Orders* to take these young offenders off the streets early and they would have remained off the streets in a 24/7 supervised therapeutic environment and lives would have been saved.

The proposed reform model, addresses the drivers of juvenile crime at the family and community level and speaks to the need for different measures in order to bring about much needed change. Under this model, when a young person is at risk of offending or offends, they would be taken to a secure assessment centre for holistic assessment. That is, family and social circumstances, mental and physical health, education, treatment needs, the risk they pose to the community and themselves, etc. Courts would be provided with a full report and a recommended treatment plan.

¹ QLD Parliamentary Public Works Committee Inquiry recommendations relating to a Proposal to build a 4,000 cell Correctional Centre at Gatton - recommended that early version of reform proposal be subject to cost benefit analysis prior to proceeding with prison option – recommendation ignored by government

² Market led proposal submitted by Bidjara Community and Goorathuntha Traditional Owners Pty Ltd – earlier version of reform model

³ The QLD Productivity Commission's (QPC) Report of their Inquiry into *Service delivery in Queensland's remote and discrete Indigenous Communities*, 22 June 2018 and report of their *Inquiry into Imprisonment and Recidivism*, August 2019 and a public submission to this Inquiry by, Keith Hamburger AM, February 2019;

Courts would oversee treatment plans via *'control orders.'* Young people would undergo intensive therapy in small groups under a variety of 24/7 supervised arrangements to preserve community safety, while over time being rehabilitated with support provided to their families. They are taken off the streets before offending is entrenched. Unsupervised release into the community for young people at risk or deemed to pose a risk would not be an option. Ineffective, inhumane juvenile detention centres that further criminalise young people and turn them into adult offenders can be phased out with many millions of dollars in savings.

For adult offenders, the Queensland Productivity Commission has said the median adult prison sentence in QLD is only 3.9 months and 60% of offenders are in prison for non-violent offences. Yet, inexplicably thousands of these prisoners are in high security cells at \$1 million per cell plus custodial costs. Many more of these cells are being planned and built, even though less costly, more effective, secure rehabilitation alternatives can be provided. \$3 billion will be required for more secure cells by 2025 if policies don't change.

Queensland's imprisonment rates are shameful by world's best outcomes, prisons are dangerously overcrowded, rehabilitation programs are impaired or non-existent and health services are under significant pressure. This results in large numbers of prisoners being held beyond their parole date at a reported cost to taxpayers of \$3.9 million each month. These circumstances create an extreme *'Duty of Care'* risk with potential serious consequences for administrators in the event of a Coronial Inquiry.

The reform model for adult corrections, that has been available to governments since 2006, and ignored, includes new architecture where large prison precincts are replaced by small high security facilities for dangerous and or long-term prisoners, around 30 - 40% of prisoners.

The remainder of offenders, more than 50% of the current prison population would be diverted from Courts to therapeutic 24/7 supervised *community custody* rehabilitation facilities on Traditional Lands and other places. The diversion vehicle would be *Probation Orders with a residency clause* requiring offenders to remain at the community custody facility and complete prescribed programs. Courts would be kept informed of the offender's progress in *community custody* and have power to amend orders based on progress or lack of progress.

Locally owned Public Benefit Corporations (PBC's) will operate these facilities under contract and in partnership with Queensland Corrections. Operational surpluses will be invested into local community development initiatives to reduce crime. Magistrates supported this model and in 2017. The then Deputy Chief Magistrate suggested the *Probation Order – residency clause* option. Senior public servants recommended that it be trialed. Inexplicably, trials were not authorised to proceed even though funds had been allocated.

In 2019, the Queensland Productivity Commission supported a trial of this model, and again inexplicably no trial has been authorised. Demonstrably, billions of dollars would have been saved since 2017 if these trials had proceeded. Commencing trials in coming months, will lead to savings of billions of dollars over the next decade through secure alternatives to cells and greatly reduced operating costs. Recidivism and crime will be significantly reduced, lives will be saved and *'Duty of Care'* risks will be avoided.

For Juvenile Justice, as covered in the attached Submission, Courts would have available:

- ❑ Secure 24/7 supervised Reception and Assessment Centres – where police will take all apprehended children (up to 17 years of age) for holistic assessment of them personally and their circumstances and a recommended Treatment Plan for Court Consideration. These would be relatively small facilities, perhaps in the order of (12) beds. Actual size would be determined in co-design with Youth Justice;
- ❑ Secure 24/7 supervised Therapeutic Treatment Facilities where Courts can place problematic children who require intensive specialised treatment – maximum number of children per facility will be small, perhaps in the order of six (6);
- ❑ Kinship Caring System – where selected First Nations people, who receive training and accreditation and are paid for their services, provide accommodation and care for children placed with them directly by the Courts. These carers would have 24/7 support available. They may also receive children from the Therapeutic Treatment Facilities, where the Courts are satisfied that the child is ready for such a placement. Their role will be to feed, clothe and care for these children, ensure they attend approved schooling, engage in cultural, sporting, recreational activities, access medical services as required and facilitate family contact under approved arrangements.

Notes:

- i) Supervised Assessment Centres and Therapeutic Treatment Facilities will be located across the State in appropriate locations conducive to family and community contact. Infrastructure will be provided by First Nations’ Public Benefit Corporations (PBC’s);
- ii) All therapeutic programs to these facilities will be auspiced by these PBC’s and delivered holistically involving family members where appropriate;
- iii) All children will attend approved education as well as cultural programs including, *cultural healing and LORE*. Education, including cultural programs to be provided either by a mix of Elders, First Nations Special Education Service Providers and or mainstream education - depending on the child’s capacity and circumstances;
- iv) Courts will receive regular feedback on each child’s progress and may decide to adjust the Court Order on the basis of this progress or regression;
- v) This model, with adjustments can be adapted for non-First Nations children;
- vi) Over time, with the establishment of these facilities, numbers in existing Juvenile Detention Centres will diminish until they can be phased out. Perhaps the Business Case for the model should aim to phase out existing Juvenile Detention Centres potentially within three (3) years. The savings will be enormous as well as greatly reduced crime and improved community safety;
- vii) No child will be dealt with under criminal law. Legislation may need to be amended to provide Courts with the power to place children who have committed offences in the above supervised treatment systems and monitor their progress.

For adult offenders, as covered in the attached Submission, Courts would have available for non-dangerous adult offenders, as identified in pre-sentence reports, 24/7 supervised Healing and Rehabilitation Centres on Traditional Lands and in other Appropriate Locations. Courts could sentence offenders to be located there under a Probation Order with a *residency clause**, who otherwise would have received prison sentences of up to 12 months. (**Residency clause enforceable by the Court -an option suggested by the then Deputy Chief Magistrate to the Chief Magistrate in a meeting involving them with the MURRI Court Magistrate and Keith Hamburger AM, where the Healing Centre concept*

was discussed, to which they gave in-principle support. They also made an offer to assist the government with the drafting of legislation to cover these centres, if amended legislation was required)

This 24/7 supervised adult Healing and Rehabilitation Centre approach will:

- i) achieve a significant reduction in prisoner numbers eliminating the current wasteful inappropriate use of costly secure cells;
- ii) significantly reduce the gross over-representation of First Nations people in QLD prisons and assist in achieving '*closing the gap*' targets and in implementation of recommendations of the *Royal Commission into Aboriginal Deaths in Custody (RCIADIC)*;
- iii) Offender rehabilitation outcomes would be greatly enhanced thus reducing recidivism and contributing to less crime and fewer people in prison; and
- iv) Secure prisons would only be used for offenders who are either dangerous or serving sentences of 12 months or more. This initiative alone will save billions of tax-payers dollars over the next decade.

Notes:

- i) This initiative when proposed as part of the Bidjara Community and Goorathuntha Traditional Owners Market Led Proposal (MLP) in 2017 had in-principle support from the then Chief and Deputy Chief Magistrates and the Murrie Court Magistrate;
- ii) It was also supported by QLD Corrections, the Market Led Proposals Secretariat, QLD Treasury and DATSIP in 2017 for Business Case development. The proposal was never progressed for Cabinet Budget Committee consideration with no explanation to the First Nations Traditional Owners who presented it;
- iii) Healing and Rehabilitation Centres would be located across the State in appropriate locations conducive to family and community contact. Infrastructure will be provided by First Nations' PBC's;
- iv) All therapeutic and rehabilitation programs to these facilities would be auspiced by First Nations PBC's and delivered holistically involving family members where appropriate;
- v) Programs would cover *cultural healing and LORE*, approved education, work skills training, Education, and cultural programs. They will be provided by a mix of Elders, First Nations Special Education Service Providers and or mainstream education depending on the adult's capacity;
- vi) Courts would receive regular feedback on each adult's progress and may decide to adjust the Court Order on the basis of this progress or regression;
- vii) This model, with adjustments can be adapted for non-First Nations adults;
- Viii) Over time, with the establishment of these facilities, significant numbers of adult offenders will be diverted by Courts away from prisons. This will significantly reduce operating costs in Reception Prisons. Healing and Rehabilitation Facilities provide the missing 24/7 supervised element between prison and relatively unsupervised Probation Orders for many problematic offenders. Perhaps the Business Case for the model should aim to reduce QLD prison population by some 40% over the next three (3) to five (5) years. The savings will be enormous (a reduction in billions of dollars in

the forward estimates for prison cells over the next decade), as well as greatly reduced crime and improved community safety;

The foregoing initiatives are proposed to be provided as part of a holistic *Community Development* approach that includes:

- Community wide culturally appropriate cognitive change programs to underpin an approach to develop pro-social attitudes in a significant majority of community members;
- Parental support programs relating to child care, nutrition and intellectual development;
- Cultural, sport, recreation and community pride programs;
- Driver's license and road safety training;
- Housing services and Aged Care;
- Commercial activities relevant to each community e.g. agriculture, beef cattle, fencing, weed eradication and tourism with associated work skills training programs;
- Employment training programs and partnerships with private and public sectors on job creation programs.

To build family and community resilience and capacity, it is essential that all of the above services are delivered under an *umbrella* local organisation that approaches the task with *holistic* intent for service delivery, such that the interrelationships between social, educational, health, criminal justice and commercial functions work in concert towards the overarching goal of a *resilient, safe and prosperous community*. Local Public Benefit Corporations (PBC's) would fulfill this *umbrella* role and could be known as a *Family and Community Hub*. DATSIP's *Local Thriving Community Model* has great relevance in operationalising this approach.

There exists significant literature and experience in application of the Community HUB Model to connect at-risk individuals or populations to health and social services and improve their health outcomes where tailored *pathways* or programs are developed to connect them to needed services.

The above vital services all provide empowerment opportunities for local leaders and members of the community to become engaged in employment that not only benefits their families but their community as a whole. The business case for provision of these services by PBCs will demonstrate that this method of service delivery will be far more cost effective than the current model.

It will overcome the existing siloed approach to service delivery by government agencies and non-First Nations Not for Profits with their combined business models that disempower First Nations communities.

In conclusion, your *Consultation Paper* and the questions it poses have resonated with all First Nations people who are working in partnership with non-First Nations colleagues to bring about the reform program briefly summarised above and in the attached submission. Many of the *Consultation Paper's*

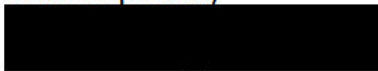
questions deal with issues that occur on a daily basis in Magistrates Courts that cause distress to First Nations people and we thank you for raising these issues for review.

Unfortunately, in the various communities and families from whence we come, we have had in recent time unprecedented amounts of *Sorry Business* compounded by a range of social issues impacting on families, as well as needing to contribute to development of the reform program, including meetings with senior State Government officials. All of this has constrained our ability to devote adequate time to developing appropriate written response to your questions.

What we are hoping is that you may kindly offer us the opportunity to appear before you to expand upon the material we have provided in this letter and in the attached submission. Should this occur, we will make an oral presentation relating to issues raised by your questions that can be followed up by a written response. We also have issues relating to the MURRI Court that we wish to raise constructively with you and your Review Team together with suggestions for enhancement of processes.

We look forward to hearing from you and if possible, appearing in person to present to you.

Yours respectfully



Reverend Aunty Alex Gater - First Nations Elder - a proud descendent of the KOA people



Professor Boni Robertson - First Nations Elder - a proud Kabi Kabi woman



Aunty Keelen Mailman AM - First Nations Elder - a proud Bidjara woman



Aunty Sheryl Lawton - First Nations Elder- a proud Bidjara woman



Mervyn Langford - Convenor Bardon Consultative Group



Keith Hamburger AM - Former Director General, QLD Corrective Services Commission