

**Submission by
YOUTH ADVOCACY CENTRE INC**

to the

**Queensland Productivity Commission's
Issues Paper: *Imprisonment and recidivism***



OCTOBER 2018

The Youth Advocacy Centre Inc (YAC) is a well-respected community legal and social welfare agency for young people who are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years old) and/or are homeless or at risk of homelessness (15-25 years old) – young people who are among the most marginalised and excluded by our community and often the most harshly judged. This is particularly unfair given that these young people are usually “troubled” - victims of their environmental, family or personal circumstances - becoming “troublesome” as a result of these factors. YAC’s aim is to provide a safety net of legal and social welfare services and then seek to transition young people to more secure lives and opportunities – for their benefit and that of the community more broadly.

YAC’s submission will therefore discuss the place of the youth justice system within the QPC reference. The evidence indicates that those young people who become entrenched in the youth justice system and youth detention are at significantly greater risk of involvement in the adult justice system and adult detention. It would therefore seem logical to commence any strategy in preventing imprisonment and recidivism with children and young people.

YAC, like many other agencies, has provided comment and information to government, for as long as it has existed, on addressing youth offending and youth offenders. There is a wealth of evidence and research already available, including literature and meta-literature reviews. There are also many Brisbane, Queensland and Australian based academics who can provide information about their research in this area.

The QPC would be aware that the Minister for Child Safety, Youth and Women and her staff are currently undertaking the development of a Youth Justice Strategy: this Strategy must be a key mechanism for preventing imprisonment and recidivism. This begins with ensuring that Queensland children have the best start in life and identifying risks to that as early as possible – potentially during pregnancy itself.

Youth justice: a short history

Childhood and adolescence are modern concepts. Today we accept that childhood is a *unique and crucial period of human life* and that the development of the child is a gradual physical and mental process¹.

In seventeenth century England children were simply viewed as “mini adults” – they were expected to work as hard and for the same hours as adults. Aberrant behaviour was therefore treated no differently and punishments were often severe.

The eighteenth century saw the beginning of an ongoing debate over the nature of childhood and its importance in an individual’s life. However, change in the reality of children’s lives was slow. In the early nineteenth century, 80% of workers in English cotton mills were children. Between 1812 and 1817, 349 convicts under 17 were transported to Australia. On one day in 1815, five children between 8 and 12 were hanged for petty larceny (theft) in London.

Adolescence was not identified as a particular stage of development until the late nineteenth century. Around the same time, child psychology became a recognised science, thus giving greater legitimacy to the concept of childhood. By the turn of the twentieth century adolescents were considered to be vulnerable and in need of adult guidance, training and control.

Therefore, in keeping with the accepted societal norms of how children were regarded, when Australia was first settled by the English in 1788 the law treated child offenders no differently to adult offenders. They went to the same courts and received the same sentences including hard labour and corporal and capital punishment. Children as young as six are known to have been sent to prison².

¹ Clarke-Stewart, A., Friedman, S., & Koch, J. (1985). *Child development: A topical approach*. New York: Wiley.

² Cunneen C and White R (2007) *Juvenile justice: youth and crime in Australia*.

The only concession under English law and therefore Australian colonial law, was the *doli incapax* rule. Children under the age of seven were deemed incapable of committing an offence. For children aged seven but not yet 14, there was a presumption that they were incapable of breaking the law but this was rebuttable by prosecution evidence showing that they knew the act was wrong. How well this limited protection worked in practice is unclear as accurate information about birth dates was not readily available in the nineteenth century and it would seem at times the rules were not followed³.

The way in which the law changed in its application to children alleged to have broken the law reflects the way in which childhood is socially constructed and the way in which the concept of childhood has been expanded to include adolescence.

In the 1880s in some states legislated to allow children charged with very serious offences to be tried summarily. In Queensland this was for all offences other than homicide. The establishment of a separate and specialist children's court first occurred in South Australia in 1890 and 1907 in Queensland:

*We have to endeavour to distinguish between a legal function and a fatherly correction. The offences of nearly all children do not call for legal punishment but for correction administered in a fatherly manner and it is a grave mistake when we confound one of these with the other.*⁴

Initially the aim was to: allow for minor offences by children to be dealt with speedily; remove the stigma children suffered when appearing in an adult court; eliminate the procedures which treated young offenders as criminals and "reclaim erring children."

In the early 1900s there was a paradigm shift from punishment to prevention and guidance. During this time until the 1960s there was a commitment to the welfare model with a focus on the individual child as influenced by the experiences and circumstances in their lives.

Over time, there has been a significant amount of research in relation to both child and youth development and also youth offending behaviour. It is widely acknowledged today, both in Australia and internationally, that juveniles should be subject to a system of criminal justice that is separate from the adult system which recognises their inexperience and immaturity. The United Nations' *Standard Minimum Rules for the Administration of Juvenile Justice* (the 'Beijing Rules') stress the importance of nations establishing a set of laws, rules and provisions specifically applicable to and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights⁵.

*The existence of separate juvenile justice systems is based on the recognition that children warrant different treatment to adults involved in criminal proceedings. Children, due to the continuing development of the frontal lobes that does not culminate until the early to mid-twenties, exhibit behavioural and emotional deficits compared to adults. They have less capacity for forward planning, delaying gratification and for regulating impulse. Impulsivity is a commonly observed element in juvenile offending and raises questions as to the culpability of juveniles in relation to criminal behaviour.*⁶

Thus, preventing involvement in criminal behaviour commences from birth and is affected by the positive and negative experiences a child has. We can now physically see the damage which has been done to the brain or where the brain has not developed properly as the result of

³ Ibid.

⁴ A Queensland member of Parliament when the Children's Bill was debated on the introduction of the court.

⁵ Richards K: *What makes juvenile offenders different from adult offenders?* Trends & Issues in Crime and Criminal Justice no. 409.

⁶ *The prohibition of the publication of names of children involved in criminal proceedings* / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2006 (Report; no. 35).

negative experiences in the first 25 years of life. This critical information, together with study and research by speech therapists and pathologists about the importance of oral language in a child's development, tells us that the role of health and education in this arena cannot be overstated.

It also means that those young people who are becoming entrenched in the system are not likely to respond to a primarily punitive regime and that, as a community, we need to move beyond retribution if we want a 'safer' community and to spend public monies to good effect.

*The 'teen' brain is not the same as the 'adult' brain – but adults tend to appeal to the mature prefrontal functions that do not yet exist. Adults around young people need to be **authoritative** and set realistic boundaries that are understandable and respected, but **not authoritarian**⁷.*

Crime and youth offending in Queensland

Responding to youth offending over the years has sought to manage "the complexity of the objectives of juvenile justice which have oscillated between, and have attempted to reconcile, two apparently conflicting agendas, that is, to punish young people for offending behaviour while at the same time acknowledging the implication of their particular age status and attending to their welfare needs"⁸. Where the welfare needs are significantly contributing to involvement in the criminal justice system, it would seem only logical and sensible that those welfare needs must be addressed if we are to prevent re-offending.

Responding objectively to the evidence is made difficult, however, by a hostile media and others who demonise young people and take a "lock them up" approach. The lack of empathy for young people in some parts of our community is highly concerning.

YAC has consistently noted the following:

- Concern with young people's behaviour is an enduring mythology with examples going back millennia:

Young people today are unbearable, without moderation... Our world is reaching a critical stage. Children no longer listen to their parents. More and more children are committing crimes and if urgent steps are not taken, the end of the world as we know it, is fast approaching.

Hesiod, Greek poet

8th Century BC

- There is no crime wave – youth related or generally.
- Young people themselves are victims of crime: young people under 18 are at least as likely to be the victims of a crime as a perpetrator
- Most young people are not offending: in 2017-18 less than 1% of the total population of 10-17 year old Queenslanders appeared in court (4,017 young people of 490,111)
- Young people are more likely than adults to come to the attention of police
- Most young people who come into contact with the police before 18 will not go on to be "career criminals" – their contact will be shortly lived and relatively minor and they will "grow out" of offending from late adolescence.
- Property offences are the most commonly committed offences by 10–17 year olds in Queensland and the rate of property offences committed by young people has fallen over the past decade
- Compared with adults, young people tend to commit offences that are:
 - attention-seeking, public and gregarious
 - episodic, unplanned and opportunistic⁹

⁷ Based on a presentation by Professor Elisabeth Hoehn at the Balanced Youth Justice Forum, Brisbane, 29 May 2013

⁸ Alder, C and Wundersitz, J (1994). New Directions in Juvenile Justice Reform in Australia In C. Alder and J. Wundersitz (eds.), Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism? Canberra: Australian Institute of Criminology. Pp 15-44.

⁹ Cunneen C and White R (2007) *Juvenile justice: youth and crime in Australia*.

- Young people are dealt with seriously as the sentencing regime below indicates: there is very little difference between the adult and child sentences other than the length of them, but even the length can be significant, particularly in the context of a child's life:

Child¹⁰ Reprimand Good Behaviour Bond Fine Probation Order Community Service Order Conditional Release Order Intensive Supervision Order Detention Detention up to life – means will most likely be transferred to adult jail	Adult¹¹ Absolute or Conditional Discharge Recognisances Fine Probation Order Community Service Order Suspended Sentence Intensive Correction Imprisonment Imprisonment - indefinite	
	Child	Adult
Robbery in company with violence	10 years <i>or</i> Life* if: there was violence against a person <i>and</i> Court considers particularly heinous	Life
Arson		
Grievous bodily harm	7 years	14 years
Receiving stolen goods		

*Life in Queensland means the whole of one's life

Persistent young offenders

A Jesuit Social Services report¹² noted:

.... profiles of young people in detention show that a high proportion of detainees have been victims of abuse, trauma, and neglect, with high rates of drug and alcohol abuse, child protection involvement and school exclusion. Mental health issues and intellectual disability are also prominent. Particular attention is given to the need for a wider focus on the environments in which children develop and this brings in factors such as family, school, community and society. Evidence gathered in the present project shows that children who come into the system at an earlier age are associated with higher rates of offending and longer criminal careers. Also, Aboriginal children are over-represented in youth justice systems across all states and territories in Australia.

The 2013 Discussion Paper *Safer Streets*, the precursor to a number of draconian responses to youth offending, still noted the evidence that:

With approximately 70% of young people in the youth justice system known to the child protection system, improving responses to child protection should assist in diverting young people from the justice system.

And:

Young people entrenched in the justice system and those who are at high risk of becoming entrenched often have a range of things happening in their lives that influence their criminal behaviour.

These young people have often experienced:

- *child abuse and neglect;*
- *exposure to domestic or family violence;*
- *severe and long-term family dysfunction in their childhood years; and*
- *homelessness.*

¹⁰ Youth Justice Act 1992.

¹¹ Penalties and Sentences Act 1992.

¹² Richmond Jesuit Social Services (2013) *Thinking Outside: Alternatives to remand for children: Profiles of children in the youth justice system.*

These experiences often lead to:

- *drug and alcohol misuse;*
- *poor mental and physical health;*
- *inter-generational poverty and unemployment; and*
- *low levels of education.*

All the evidence shows that when a young person experiences these things without receiving any help, committing crimes is often the next step in life.

Youth justice strategy¹³

YAC fully supports the comprehensive review of the youth justice system – particularly in relation to when and why we bring children into the criminal justice system, when the research indicates that this is likely to increase the risk of ongoing involvement.

The need for “prevention rather than cure” is as valid for youth justice as for child safety or health. However, it is important that families do not feel they are being labelled or stigmatised, and can approach agencies for help without judgement. Services and resources need to be framed in the context of providing support to families, and the best start and opportunities for children – a clear link into another of the government’s “Our Future State” priorities.

Health and education services are well placed to identify when things seem to be going wrong before there are events which could involve the police. We believe that every school should have its own fully qualified social welfare worker who can engage in a universal way in the school, but be there for individual children and their families, and be a resource for teachers who identify a child is having challenges. They should not be Education Queensland employees to allow for confidentiality and encourage engagement. The previous incarnation of the Youth Support Co-ordinator model should be considered in this context.

There has been research by Griffith University on hot spots for youth offending and youth offenders. As such we already know where resources and services are needed – along the continuum of universal early years support (such as child nurse visits in the first two years) through to diversion from the justice system.

There are some important lessons to be learnt from others – the outcomes of Vincent Schiraldi’s work appears to be almost miraculous in what has been achieved in New York. We understand that the policy team has been following this. Victoria has recently put in place a diversion scheme which also seems to be having an impact.

One of the key priorities listed in the recent Report on Youth Justice by Special Advisor, Mr Bob Atkinson (Atkinson Report) is to keep children out of court: as such, the question must be asked: **when and why should children even be brought into the criminal justice system?** Could our limited resources be more effectively spent in terms of managing young people’s behaviour?

The Queensland youth justice system is, in reality, only a slightly modified adult justice system. Children are subjected to the full impact of the criminal law. The Criminal Code applies to them (in fact they are criminalised for activities adults would not be – this is discussed later). There has been no significant response to recent evolutions in the knowledge of child and youth brain development nor the impact of trauma on the brain and its development.

The characteristics of young people who continue to re-offend, noted previously, are well documented and the Atkinson Report again noted:

...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.

¹³ Much of the material which follows is drawn from YAC’s recent response to Atkinson Report which it provided to DCSYW.

...the disproportionate representation of Aboriginal and Torres Strait Islander children in the youth justice system, particularly those in detention.

YAC staff attended a seminar recently given by Dr Scott Harden, a psychiatrist with experience in working with children in legal settings, primarily Family Court matters. He noted that it was his experience that children in the youth justice system were the most vulnerable and disadvantaged of our young people.

Our community therefore holds to account the most vulnerable of our children with the least ability to influence and change their life course. Some of these young people are in the care of the State: a disproportionate number of children in care are represented in the youth justice system, albeit not to the same extent as Indigenous children. It must be asked how the State is being held accountable for its failure to adequately support children in its care.

Whilst YAC would support the raising of the age of criminal responsibility, this would still fail to address this clear injustice of criminalising these children.

Doli incapax was intended to address the immaturity of children who were brought into the system at the age of ten to the age of thirteen – children who are at, or have just left, primary school. However, this has spectacularly failed to protect children in Queensland. A student thesis on the topic in 2011 indicated that at that time, it had not been successfully argued in Queensland since 1979. The test is such that a child is virtually always going to be considered capable of a crime due to the drafting of section 29 of Queensland's Criminal Code which changed, rather than enshrined, the common law test.

In a range of other contexts, a child cannot give instructions and be provided with confidential services unless they understand their situation, their choices and the consequences of those choices - be "Gillick competent". In family law matters adults constantly seek to discount the views of teenage children because they "don't really know what they want" yet the community seems happy to send them to a criminal court at age 10.

If the age is raised to 12 years, the bare minimum the Committee on the Rights of the Child has approved, then *doli incapax* should continue to apply to 12 and 13 year olds, and the test revised to ensure that children actually understood what they were doing **and** the consequences of that, in line with the Gillick case. YAC's view is that the minimum age should be 14 and a non-criminal process with diversionary (therapeutic and educative) measures the only response for 10-13 year olds. From 14, the emphasis should still be on diversion.

YAC's recommendation is that diversion should be the overall focus of a youth justice strategy, not the use of the criminal law. This will avoid the courts and the use of custody. It will, however, require a comprehensive review of the resources and services available across the State to ensure that all children have the opportunity for diversion. Culturally competent responses for Aboriginal and Torres Strait Islander children are imperative and will require engagement with Indigenous organisations as a matter of priority.

Assessments of a child's physical and mental health are an important component of assessing the diversionary needs of the child.

Diversion should be the focus of the police (noting a current drop in police cautioning) and the court if a matter should proceed that far. Consideration should be given to the operation of the SCC and its current iteration as a model and how that might be relevant to responding to children in crisis.

Specialist jurisdiction

To the extent that the criminal law is used in relation to children, it must be properly recognised as a specialist jurisdiction. Everyone involved in it must be given proper training on understanding child and youth development, the research on youth offending and youth offenders, and the skills

in engaging and working with children, particularly those children who are repeat offenders. The linkage with the overrepresentation of Aboriginal and Torres Strait Islander children must be included in this training as well as the challenges for other at risk groups, such as children in care.

Police

As we understand it, youth justice is an elective rather than a compulsory component of police training at the Academy. Police engage with all sections of the community, whether victims or offenders, and they should have cultural capability across the diversity of the population. Every police officer should have training in engaging and working with children and young people, not only in terms of how to “process” them, but particularly in terms of a community policing role, acting as role models and mentors, and informally supporting desistance from offending. This will be particularly important if police are provided with greater opportunities for diversion. This training should then be revisited from time to time, to ensure police knowledge remains current and in line with developments in the fields, for example, of child psychology and neuroscience.

In addition, the Child Protection Investigation Unit should be re-named and refocused on specialist engagement with children who are victims or offenders.

Defence lawyers

We believe that more emphasis should be given to the role of the child’s lawyer than is currently the case. YAC lawyers were the first specialist youth lawyers in Brisbane and Queensland. Together with our colleagues in the South West Brisbane Community Legal Centre and Logan Youth Legal Service, YAC continues to provide significant legal help to young people in the youth justice system. (Unfortunately this was overlooked in the Atkinson Report, which only makes reference to Legal Aid Qld and ATSILS). It is the case that the specialist youth community legal centre (CLC) lawyers service the south-east corner rather than the whole State, but our contribution and impact are significant. Testament to this is the fact that his Honour, Judge Shanahan, President of the Childrens Court of Queensland, always makes specific reference to YAC in his thanks to practitioners in his annual report.

The Atkinson Report recommends (R 45) that lawyers undertake specialist training and accreditation. While this recognition of specialism is positive, being a specialist youth lawyer is not simply about understanding the law as it relates to children and the Childrens Court jurisdiction. It is about knowing how to engage and work with children, and particularly those with chaotic lives and personal challenges. As the Report notes “child crime is a relatively small area of practice” (that is, there are not a lot of clients because there are not a lot of offenders) and private lawyers may not consider it worth investing time and money in accreditation because they will not get the return they need as a business on that investment. The extent to which they are prepared to take up training which should also include non-legal components – “an understanding of child and adolescent neurological development” and trauma informed practice – is not clear.

CLC lawyers tend to demonstrate different attitudes toward children and young people as clients for various reasons. One of these is that, due to CLC funding structures, CLC lawyers do not have the restriction of LAQ lawyers and the private profession of being limited by the amount of a grant of aid. YAC lawyers will therefore go to where clients are, rather than expecting them to come to the office, where necessary; they develop a professional rapport with the clients in order to obtain the best instructions and be best placed to minimise risk of custody or lengthy delays in matters. There are no arbitrary limits such as closure of case files where a client fails to attend a certain number of appointments– YAC lawyers are able to persist. They undertake client-centred practice.

YAC lawyers retain management of their cases so that the child has a consistent legal representative. Building rapport and trust means that YAC lawyers are better placed to encourage the child to work with one of the YAC social welfare staff to address the reasons for their ongoing engagement with the youth justice system, where this is an issue. This recognises that offending

by young people is a developmental and/or social welfare issue and the law is not the vehicle to address that.

YAC lawyers are also able to travel around the courts in the region and so can provide a consistent service to children who are often transient. They are also regularly asked to attend the Brisbane Court for fresh arrests.

For several years, YAC ran an After Hours Legal Service (5pm to 9am Monday to Friday and 24 hours on Saturday and Sunday) for any child who was arrested by the police to receive legal advice and for the lawyer to negotiate with the police if necessary. The service was supported by a roster of volunteer lawyers. However, it was not uncommon for police to try to dissuade the child from contacting the rostered lawyer.

The service was discontinued as we were unable to secure funding for a coordinator, but YAC has been considering the potential to reinstate it and operate it statewide. Computer technology and mobile phones would make it much more straightforward than in the past in terms of using volunteers. In recent times, LAQ has put a similar, more limited service in place but, taking on board the Report's recommendation that services need to be available out of hours, this still leaves no legal help available after 9.00pm, which is relatively early, and most of the weekend, including Saturday night. If a service were readily available 24/7, it would be harder for police to process children without enabling the appropriate legal help.

Judicial officers

Every Magistrate will have children come before them and therefore every Magistrate must have specialist training similar to the police and defence lawyers – not least because everyone is then on the same page in terms of what we are working to achieve. In terms of the judiciary, there must be sufficient specialist judges who have also received the training so that every child has equality before the law.

The judiciary should not underestimate the impact that their engagement with a young person can have, aside from the message they intend any sentence to give. For example, one young woman among YAC's clients was quite sure that a particular magistrate did not like her. However, on one occasion when she appeared, the Magistrate remarked that the young woman had undertaken a series of positive steps, which was pleasing to see, and they were taken into account. The young woman left court feeling that she had been listened to; the recognition of her attempts to sort her life out was an encouragement to keep trying.

Youth workers

Young people often rely on a social or allied worker for information. To assist these workers in understanding the youth justice system, YAC has been delivering its two day specialised training program, "Laying down the Law" (LDL) for anyone who works with young people (e.g youth workers, teachers, school support workers) for over 20 years – around the State when we have been able to secure the funding for travel costs. In the past we have received a grant from the Workforce Council as well as attracted funding from LAQ and worked with the then LAQ Youth Advocate to collaboratively run our training with LAQ training on civil issues. The program has been adapted for a range of workers, including school based nurses.

LDL is co-presented by YAC's legal education lawyer and highly-experienced youth homelessness worker. The training aims to give participants a better understanding of:

- the law and legal processes in the context of the criminal law and the youth justice system;
- the law and legal processes in the context of child protection laws and the child protection system;
- the law of confidentiality and legal responsibilities including duty of care (negligence); and
- the choices/decisions which may be faced by workers and young people, introducing a

decision-making framework which identifies:

- how and when the law is relevant in decision making;
- the relevance of UN Convention of the Rights of the Child ; and
- when and how better to support young people involved in legal processes (including police interviews and court proceedings).

Participants receive a suite of comprehensive resources on CD following the training for ongoing reference.

The program is always very well received – we have never received a rating of anything other than Excellent or Good for a presentation of the program. Some workers have taken a second opportunity as a refresher after a period of years.

Aside from the program's quality, the fact that LDL receives such positive feedback is perhaps a reflection of the dearth of other sources of training and information about the youth justice system for those working with children and young people. LDL grew out of a lecture which YAC was asked to provide to students in the youth work practice component of a QUT degree, which brought to our attention the limited knowledge available to such workers and necessary for their qualifications. It was then, and continues to be, concerning how little many youth workers know about the operation of the youth justice system in particular, and how prevalent are the mythologies which exist around the legal rights of young people and workers. This can have the problematic result that, despite the worker's best intentions, their support compromises the young person's situation. Even agencies which purport to provide 'court support' are often not well informed.

Against that background, it is our strong view that Child Safety workers should undertake LDL to ensure that they properly understand their responsibilities for children in care who are brought into the legal system and the consequences for not doing so.

Criminalisation of children

There are some specific circumstances where children are unnecessarily or inappropriately criminalised and drawn into police and court processes. There are five particular instances which we would like to draw attention to.

First, there have been discussions for years about residential services calling the police for behaviour which parents would generally deal with within the home environment. Aside from being an inappropriate response on that basis, seeking police intervention to address problematic behaviours of children in care completely ignores the life experiences common among them. Children who are in out-of-home care, and particularly residential care, are some of our most traumatised. The "brain science" tells us how trauma affects the brain and triggers the "flight, fight, freeze" response. Yet staff who should be trained in trauma-informed practice and have the skills to de-escalate situations instead effectively use the police as a behaviour management mechanism. Some of the damage which ensues can be significant, but it is also not uncommonly quite mundane – such as breaking a piece of crockery. There are some young people whose only criminal history relates to these incidents.

Illustrative of the lack of proportionality in resorting to police intervention is one case YAC dealt with involving a young person who had something personal locked in the office of the shelter at which the child was residing. When shelter staff refused to return it, the child became increasingly agitated and then broke into the office. The child entered and then left the office three times – and was then charged with three counts of 'entering with intent'. It is unclear where the public benefit lies in prosecuting this child and particularly in the unnecessary overcharging. We emphasise that such complaints and charges are not rare but rather disturbingly common.

A protocol has recently been developed to prevent these sorts of responses by service staff, but only time will tell if it is effective in changing their behaviour. YAC is, however, concerned that the

protocol does not sufficiently discourage use of the police. Moreover, without a commitment to adequate funding to employ sufficient staff with the skills and experience necessary to work with a cohort having such complex needs, we fear the practice is likely to continue.

Second, another instance of inappropriate charging occurs when children are prosecuted under laws put in place to protect children from exploitation by adults. YAC has dealt with a number of matters where a child took a picture of themselves which would meet the definition of “child exploitation material” and then sent it to another child. The first child has then been charged with making and distributing child exploitation material, and the second, with possessing child exploitation material. It is unclear how these children could know their actions were wrong or unlawful since such activity is now quite common among adults. Additionally, where such activities are consensual, there is no victim. It is simply an expression of sexuality among children and young people that cannot be considered surprising given the increasingly sexualised media content now commonly available. If we wish young people to be able to develop healthy and respectful sexual relationships, we must be consistent in the messages being sent and open in discussions around this – something which is highly likely to be hindered by criminalisation of these activities. It is perplexing that so many adults do not see the injustice of this situation. We note that we are not referring to a circumstance where an image is being used maliciously or circulated without consent.

In a similar vein, the third common case of prosecution against the public interest relates to young people whose only crime is developmentally-appropriate exploration of their sexuality. In Queensland, if two children – even if both fifteen years old – are involved in sexual activity, they can both be charged with indecent dealing of a child under 16. (Again, we are only referring to a consensual situation.) In Victoria, sexual activity is not an offence as long as there is no more than a two-year age gap between the parties. In relation to images, if the image sent is of the person sending it, the child does not commit an offence. As a result, the future of some Queensland children will be significantly affected due to having sexual offence records which will unfairly label them. Whilst education is important to discourage behaviours which put children and young people at risk, criminalisation is not.

We do not suggest that these children should be cautioned by police rather than being taken to court – rather that they not be involved in the criminal justice system **at all**. It is a matter of education.

Fourth, there is the use of public nuisance offences and the use of obstruct and assault police. Young people are visible in public space because, as they have always done, they tend to be out and about when others are not because they do not have commitments in relation to children, or meals to prepare or the many other responsibilities of adults. They come together in groups – as young people always have. Unfortunately, ably assisted by the media, if young people are in groups, there is now an assumption that they are a “gang”. It is also quite understandable that young people who feel comfortable together will be in groups together – such as groups of Sudanese young people, or Aboriginal and Torres Strait Islander young people, or Pacific Islander young people, or, indeed, Caucasian young people. This does not make them “Sudanese (etc.) gangs”

In reality, it takes very little to meet the criteria for public nuisance, obstruct/assault police or contravene a direction by police. To a significant extent, this comes down to how police respond and engage – which should be in a way which de-escalates situations rather than a more confrontational approach. For some young people, while their behaviour is not optimum, they do not have the skills to be able to manage their actions and express their frustration and anger more appropriately. Bringing them in the criminal justice system will not assist with this. Additionally, some engagements with police result in children being charged with the offences solely as a result of their interaction with police even and no other charges being laid. This is where training, as previously discussed is key.

It is particularly concerning that in 2014 in Queensland, nearly half of public nuisance offences were alleged to have been committed by Aboriginal and Torres Strait Islander young people. This is an obvious opportunity to reduce engagement with the criminal justice system.

Finally, there is the issue of fare evasion – which is an offence with direct links to poverty and homelessness. The reality is that public transport is not cheap. Many of the children we represent do not have the ability to pay travel costs while their more fortunate peers have parents who can and will transport them or provide them with the ability to do so - and will replace their GoCard when they lose it as many young people do. YAC issues many GoCards to prevent our clients being at risk in relation to this, but we have limited resources and cannot provide ongoing top up.

If we are truly committed to keeping children out of court and custody, we need to address those issues which unnecessarily bring children into conflict with the law.

Multi-agency approaches

The Atkinson Report recommends multi-agency, coordinated approaches at all stages. YAC agrees and, even with the success of our multidisciplinary model, accepts that no one agency can provide all the responses needed for every child who is involved with the court system.

There are two challenges to improved cooperation:

- The inability of government to date to “de-silo” and work effectively across agencies. This is sometimes driven by the political imperative that particular ministers want to be able to show what they and their department have achieved, as well as the jealous guarding of departmental budgets. Staff also may not see the value of having to spend time liaising and meeting with others when they have particular tasks to do for their own department.
- The tender processes which make community agencies competitors while requiring them to work collaboratively and in partnership. The latter needs trust between the agencies but if divulging certain information may give another agency a competitive advantage, then an ongoing level of self-interest will prevail. Tenders tend to favour the larger NGOs who have the time and capacity to draft detailed applications. Yet large NGOs tend not to be as nimble as the smaller ones who know their community well and adapt more readily. The smaller organisations benefit from not having to go through layers of approvals, and from management and administration being closer to client groups.

Government also needs to appreciate that while its cross-government collaboration has been less than successful to date on the whole, the community sector has always worked collaboratively – as indicated by the peak bodies it has established and the referral pathways to other organisations it has always used. In and around Brisbane, youth interagency meetings are used by individual organisations to keep in touch generally with what others are doing, and for new workers to come and find out about the sector.

Government and government departments need to be part of cross-agency collaboration on the same footing as non-government agencies, rather than feeling the need to set up new structures or processes, or otherwise dominate discussion and initiatives. They should, at the local level, be part of the social fabric, responding as the communities they are engaged with see appropriate for them.

YAC - a multidisciplinary approach

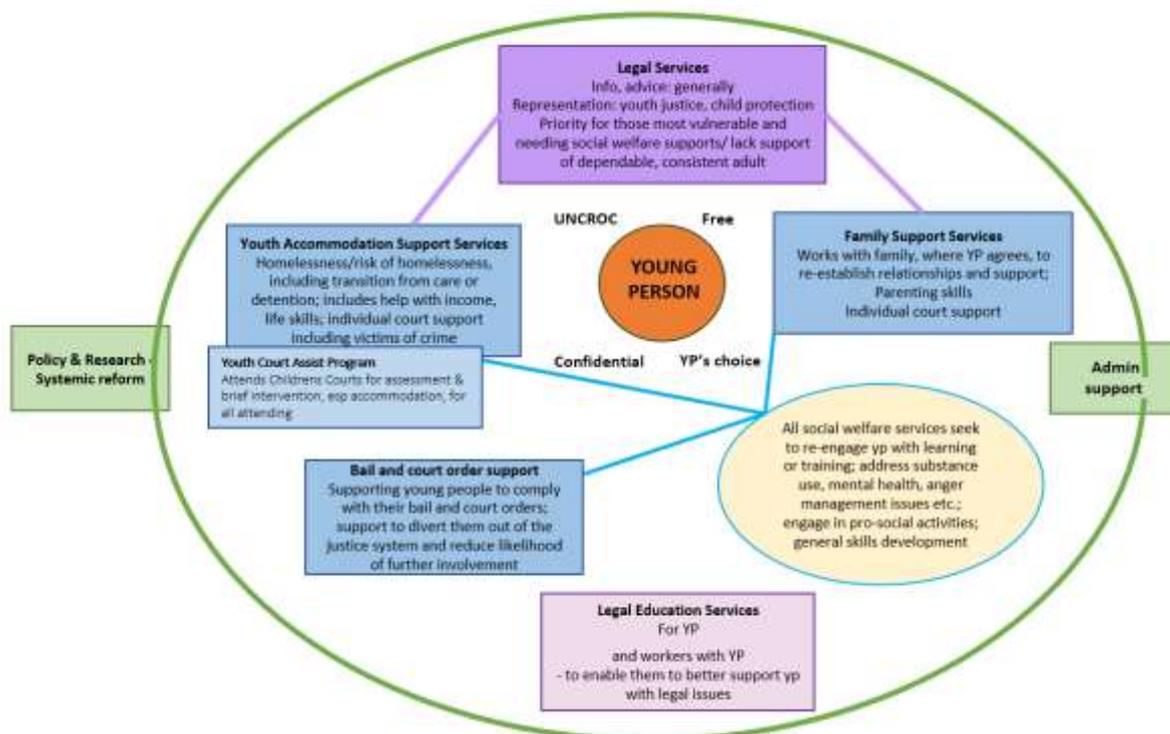
YAC not only works with other agencies to ensure a child engaged in the legal system receives the support they need but takes that one step further. It operates as a multi-disciplinary legal and social welfare agency where all programs have a youth justice focus and all staff have a good understanding of the youth justice system.

YAC opened its doors in June 1981 as a consequence of the experience of Father Wally Dethlefs, a chaplain at the Sir Leslie Wilson Youth (Detention) Centre in the 1970s. He was concerned to see children as young as 10 appearing in court without any legal assistance, who therefore had no understanding of what was happening. It was apparent that most young people held in detention had serious personal and environmental issues in their lives, over which they had little if any influence, which were contributing to their involvement in the juvenile justice system. He was also concerned at the manner in which children were treated in the Centre, where there were clear breaches of children's human rights.

With a number of committed lawyers and citizens, Father Dethlefs developed a blueprint for a Youth Advocacy Centre. The centre would have a multidisciplinary team: lawyers to provide specialist legal information, advice and representation, but also social welfare staff to seek to address the reasons why children and young people were in contact with the criminal law. The blueprint remains as relevant today as when it was first conceived (see Figure 1 for a diagrammatic representation of the model). Research and evidence confirms the benefits of this holistic approach.

Figure 1

YAC: a multidisciplinary, legal and social welfare response to get young people back on track



Strengths of the YAC model:

As a specialist youth legal and social welfare agency:

- recognition that a young person's legal issues generally result from or contribute to social welfare issues
- holistic response
- ability to work with young people 10-18

As a multidisciplinary agency

- can access services from the one place
- consistency of service: all programs are driven by the same philosophy and principles

- staff have ongoing working relationships with clients, which facilitates addressing clients' various needs holistically
- referrals can be made more seamlessly

As a community agency

- greater flexibility than government
- can develop relationships with clients more readily than government agencies with statutory responsibilities
- no fee for service
- able to go the extra mile
- have relationships with other community agencies which can be leveraged

The "take away" messages from a presentation by Associate Professor Tamara Walsh at the recent YJ consultation on young women in the youth justice system supports the YAC approach:

- Research shows that relationships are key and the only pathway out of the criminal justice system
- Providing support in a flexible and non-statutory way (not intervening in a formal way) works
- Multidisciplinary approach is key
- "wrap around support/care is needed.

Over its 37 years, YAC has developed expertise in working with children in the youth justice system. Its day-to-day experience has informed its advocacy to government in better understanding and responding to children in crisis. It has been instrumental in influencing important policy issues such as abandonment of care and control orders, the development of a protocol on use of watch houses, extension of the youth justice system to include 17 year olds, and currently advocating regarding the inappropriate use of child exploitation offences against children and the raising of the age of criminal responsibility. YAC has also been instrumental in the establishment of other services such as the Children's Court Duty Lawyer scheme, ZigZag young women's sexual assault service, Othila's young women's service (now absorbed into BYS), and South West Brisbane Community Legal Service (originally Community of Inala Legal Service).

In its policy and systems advocacy function, YAC has kept up to date with the research and evidence on youth offending and youth offenders. It has developed an extensive literature review of its own with the assistance of a volunteer Masters student from QUT. The literature supports the integrated YAC model of ensuring that justice is done but also addressing the causes of young people coming into contact with the justice system.

We have had interest from regional areas, such as Mount Isa and Cairns, for a YAC style-organisation over the years, particularly following the delivery of youth worker training. At this point we see a significant need in the Caboolture area where we have recently established a mobile homelessness support service with funding from the Department of Housing and Public Works (which extends the work we have done in this area to date as well as the greater Brisbane region as a whole). We will also be providing bail and order support services there. We would like to be able to replicate YAC's Brisbane team with a family worker and at least a part time lawyer.

Youth Court Assist Program (YCAP)

A further example of YAC's integrated service delivery is its Youth Court Assist Program (YCAP) which it has delivered at the Brisbane Childrens Court for many years. This service generally operates on callover days when there may be a number of young people coming into the system for the first time; when we can identify young people who may have "fallen through the gaps"; or when we can re-connect with those who have "dropped off the radar" due to losing or changing phones, or moving placements.

A YAC youth worker attends the court for the dual purpose of providing court support and undertaking outreach for young people who are homeless or at risk of homelessness. This outreach also facilitates on the spot referrals for education and training programs; family support; support with alcohol and substance use; and/or mental health support services.

The court process can be confusing for young people, particularly if they do not have an adult or support person with them. Court support increases young people's understanding and inclusion in the process at several stages.

Pre-court support involves:

- explaining the court process including the layout of the courtroom, expectations of the young person whilst in court, and the roles of the magistrate, police prosecutor, youth justice personnel, and duty lawyer;
- explaining the pre-court interview process with the duty lawyer and/or ensuring their legal representative is aware they are at court;
- supporting young people when talking with their lawyer to ensure young people understand the legal advice and to provide relevant information to the lawyer;
- managing any interactions with Security staff and tensions between young people; and
- providing cold drinks and food – young people often attend court without breakfast and then have to wait for hours before their matter is heard. This keeps young people in the court precinct and also lowers tensions and restlessness.

Court support involves:

- assisting and supporting young people during their court appearance (particularly when they are attending court alone);
- providing court support letters for young people who are engaging with YAC through a case management process; and
- working alongside the young people and their solicitor in developing a court support plan (including working with other support services).

After-court support involves:

- ensuring young people understand the outcome at court and the next steps (for example, their obligations if they are sentenced to probation, bail conditions, drug diversion programs, restorative justice conferences etc);
- supporting young people after court with the reasons for their presentation at court (such as family, education, income, housing); and
- providing information, referral and assistance to young people and their families to link with other services if YAC is unable to assist.

Due to the correlation between homelessness and increased contact with the youth justice system, the Childrens Court is a valuable outreach location. Having this presence at court provides young people with both short-term and crisis responses, such as information and support regarding the court process, accommodation options, and referral to other specialised services (including education and training opportunities, mental health assistance, and family and domestic violence services). Mobile support at court also provides opportunities to engage consistently with young people who present more than once. Specialised responses can be developed, offering longer-term support to address the complex reasons why young people are presenting within the court context (for example, homelessness, family conflict, disengagement in education or training, or mental health issues).

Through this outreach, the youth worker is able to:

- make on-the-spot referrals and assessments for youth accommodation: the position is part of the homeless program, which is important because it is therefore able to access the QHIP common assessment referral tool and accommodation availability platform;

- undertake housing assessments in order to provide ongoing mobile or centre-based support;
- provide information about different housing options;
- provide information to young people about accessing Centrelink;
- assist young people to re-engage with education, training and employment programs;
- provide information to young people about alcohol and substance use support, mental health services, and youth support services in their area.

The court provides the youth worker with an opportunity to connect, and build trust and rapport, with young people who have frequent contact with the youth justice system. The worker has an iPad and phone, so can make calls and referrals with the young person on the spot rather than having to schedule an office appointment to make these arrangements.

YAC is due to run a similar service in Caboolture and Pine Rivers courts, again through its homelessness staff based there. As a result of some additional funding from Youth Justice as part of the Bail and Order Support Service, we will be extending this program to other courts in the Sunshine Coast – Gold Coast corridor.

One of the biggest challenges for the YAC model is that it relies on funding from four different programs across different government departments – and this can shift when there are Machinery of Government changes. We have advocated for some years now for YAC to be funded as a program with component parts, all of which must be present for the whole to be effective.¹⁴ YAC would then have one agreement and one grant, and it would be for government departments to sort out the allocation of funds between them – a backroom activity which does not need to be articulated in any grant agreement. This would also reduce the need for multiple meetings with departmental staff, to the benefit of all parties. Other, particularly smaller, agencies may also benefit from a similar approach.

The following are questions asked in the Atkinson Report relevant to the OPQ review and YAC's responses.

Pillar 1 - Intervene early

How can we intervene early to better support families of children who are at risk of offending?

What community supports would be important to deliver early intervention to children, young people and their families?

The literature now gives good guidance on this and it is important to be led by this evidence-based information.

We would argue that “giving children the best start in life” as a universal approach should be where we start, providing a positive message and support.

Intervening early relates more to health services, child care and education, where people may be able to identify when things begin to go poorly. The service system then needs to provide a non-judgemental space where families and parents can feel comfortable seeking advice and support. The non-government sector is more likely to provide this feeling of comfort, rather than the sense of intervention that may come from a government-led approach.

¹⁴ We would seek to add a second family worker and an education worker who would specialise in addressing suspensions and exclusions, as well as linking young people to education and training opportunities, and supporting them through that transition.

Pillar 2 – Keep children out of court

What are your views about police exercising greater discretion to divert children away from court by using warnings, cautions, restorative justice, and referral to rehabilitative programs and supports?

What community supports are needed to support police to divert children away from arrest and having to appear in court?

The literature now gives good guidance on this and it is important to be led by this evidence-based information. The voices of those who speak out against increased diversion, but cannot provide any foundation for this in evidence, should be discounted given the weight of evidence in its favour.

The community needs to be given confidence that where serious breaches of the criminal law occur, they will be addressed in the manner most likely to prevent further offending. Police are more likely to use diversion if they believe there to be community support for this approach.

It is also important that politicians present a united front, and agree to an evidence-based response rather than not public and political point-scoring. Put simply, youth offending should not be used as a political football, which will not address public concerns in any event.

Pillar 3 – Keep children out of custody

What evidence-based alternatives to detention centres would work in Queensland?

What are your views about using youth detention centres only for dangerous and serious offenders?

The literature now gives good guidance on this and it is important to be led by this evidence-based information. There is substantial evidence that detention is criminogenic and that the more often children go to detention, the more likely it is that they will return.

There should be much stronger adherence to the principle of detention as a last resort and only where there are genuine, serious safety issues. Only a very small number of cases would fit this description.

Pillar 4 – Reduce reoffending

This pillar is really a goal of the Pillars 2 and 3.

The following is a summary of the key points answering the question “what works?” which YAC has previously included in submissions:

- Offending behaviour in relation to young people must be considered in the context of child and youth development: early adolescence through to early adulthood is a peak period for brain development and consequently a period of increased risk¹⁵
- For the majority of those who come to the attention of the police or courts and who do not become persistent offenders, the current sentencing regime is clearly sufficient
- *The statistics seem to demonstrate that there are a small number of persistent offenders who are charged with multiple offences*¹⁶ (the President of the Queensland Children’s Court)
- The small group of repeat offenders (a sub group of the 1.5% who appear in court in a given year) tends to have low socioeconomic status, low educational attainment, significant physical and mental health needs, substance abuse and a history of childhood abuse and neglect

¹⁵ AIHW *Young Australians: their health and wellbeing 2011* Chapter 25, Young people and crime

¹⁶ Ibid

- Do what has been shown to work: *In developing a program, practitioners should therefore start with a recognized theory about the causes of crime and then proceed to design an intervention to target the factors identified in that theory* (Andrews & Bonta, 1998)¹⁷
- Research consistently shows that prisons are ineffective in rehabilitating offenders and preventing re-offending: imprisonment is therefore a poor use of public money, particularly as the building, maintaining and staffing of detention centres or prisons is very costly
- The Texas (USA) based group Right on Crime puts forward *The Conservative case for reform: Fighting Crime, Prioritizing Victims, and Protecting Taxpayers*¹⁸: Cost-effective interventions that leverage the strengths of families and communities to reform troubled youths are critical to a successful juvenile justice system
- Begin early: antisocial behaviour invariably begins during primary school years and tends to be associated with exclusion - from school itself, but also within the school
- Keeping young people at school can prevent and reduce criminal and anti-social behaviour.
- Diagnose and support those with disabilities: a 2005 NSW study found 88% of young people in custody reported symptoms consistent with mild, moderate or severe psychiatric disorders¹⁹
- “The science from a number of fields shows that parents’ own experiences in their lives strongly influence how they react and parent. Our positive and nurturing experiences influence our parenting, but our negative and painful experiences affect us as well ...[and]... can cause us to react in ways that don’t really make sense, so that we end up parenting in ways that we aren’t really happy with. For this reason, it’s important that parents do all they can to understand themselves (self knowledge)”²⁰ Parents are important in:
 - the development of language skills, particularly in the early years. Language skills are critical in being able to manage socially but also in being able to develop literacy skills and therefore are important for longer term success at school
 - early brain development and socio-emotional and cognitive development which can be severely affected by inadequate or harmful parenting. While the majority of abused and neglected children do not offend, a significant number of children who do offend have had abusive, neglectful or inadequate parenting
 - monitoring and limit setting which have been linked to managing antisocial/offending behaviour, substance abuse and sexual risk taking by adolescents²¹
 - offering an appropriate balance of nurture and demands of their child which maximizes the possibility of the child growing up:
 - with the courage to persevere when they face obstacles
 - able to control their impulses
 - being accountable to themselves and others
 - with the drive to work toward goals that are both personally and socially desirable
 - with an understanding of right and wrong
 - with the tendency to choose right over wrong.²²

The most effective approach ...

¹⁷ Casey S. Article *Understanding Young Offenders: Developmental Criminology* The Open Criminology Journal, 2011, Volume 4

¹⁸ <http://www.rightoncrime.com/priority-issues/juvenile-justice/>

¹⁹ AIC (2011) *What makes juvenile offenders different from adult offenders* Trends and Issues in crime and criminal justice No 409

²⁰ Dr. Tina Payne Bryson, psychotherapist and co-author (with Dan Siegel) of *THE WHOLE-BRAIN CHILD* (Random House Delacorte, 2011)

²¹ Australian Institute of Family Studies (AIFS) (2011) *What works with Adolescents – family connections and involvement in interventions for adolescent problem behaviour* Family Matters No.88

²² *What’s Your Parenting Style and How Does it Affect Your Child?* Barrie Morganstein, Ph.D.

...would be to reduce the likelihood of a child or young person ever developing anti-social or offending behaviour patterns by:

- supporting families who are struggling
- providing parents with support and parenting programs from the early years into adolescence
- supporting the development of good oral language and social skills
- responding more appropriately where young people are the victims of abuse and neglect.

For those already in the system, providing therapeutic support, assisting their development of life skills and ensuring that they receive an education will be most effective.

*The **least effective** approach...*

... is to put them into a youth detention centre which is known to be criminogenic:

Detention acts as a corrupting influence on these children, many of whom go on to re-offend.

NSW Attorney General, Greg Smith: 28 Feb 2013

...or a military style boot camp as these have been clearly shown to have no long term effects on repeat offending:

The traditional boot camp for young offenders was arguably the least successful sentence in the Western world – it made them fitter, faster, but they were still burglars, just harder to catch.

Judge Andrew Becroft, New Zealand, 2009.

How can we keep children and young people better engaged with school and vocational training?

Schools must be prevented from suspending and excluding “troublesome students”. Instead, they should be supported to address the issues leading to the behaviour which precipitates this – the same approach we are advocating for the youth justice system. It was highly concerning to hear it reported this week that the number of prep students suspended or excluded has doubled in the last four years to over 1,000 children. There is clearly a problem which needs to be addressed – not by the children but by the adults around them.

Schools should view students as their **clients** and work in a **client-centred way**, meeting the individual needs of each. Social workers should be in every school to undertake universal work across the school cohort but also able to respond to individual challenges and needs.

Asking young people what would keep them better engaged would be an extremely useful thing to do: finding out why young people have disengaged and what might have prevented that and/or would encourage or support their return will often achieve a more positive outcome than simply making a decision in which the child has no input.

For young people whose families do not have strong educational backgrounds to support and assist with their schooling, or for whom the Queensland system is a different experience that they struggle with, having mentors based at the school could be a useful response as well (the literature discusses this).

Collaboration and cultural capability

How can we achieve more effective collaboration between communities, non-government organisations and government agencies to prevent and respond to youth offending?

We have made some remarks in relation to this in our initial comments.

Community organisations are better placed than government agencies to work with people who are in need or crisis. This work is all based in relationships and those in crisis, in whatever form, are more likely to go to a community agency rather than a government agency where there is a

perceived risk of judgment and formal government intervention. This is particularly the case for Aboriginal and Torres Strait Islander families.

Government must change its attitude as to how it does business with NGOs, because at present it does not work collaboratively or in true partnership with them. Instead, it seeks to control the agencies it funds, with the increasing risk that NGOs are perceived as simply delivering government services and given little respect for their autonomy and practices.

How can Aboriginal and Torres Strait Islander people have a greater say in the policy and programs affecting Indigenous young people in the youth justice system?

Hand control over to Aboriginal and Torres Strait Islander communities and agencies: it is not about them “having a greater say”, it is a question of self-determination. Government and non-Indigenous agencies should work alongside the communities and agencies to support what they are doing, and ensure that potential barriers are removed or negotiated.

General questions

What do you believe is the single most important thing that Queensland can do to reduce youth offending?

There is no silver bullet. However, we believe that the two most critical issues are that children:

- have a safe and secure place to live;
- remain engaged with education and training – whatever form that may take – for their school years. The fact that, as reported this week, the number of prep students suspended has doubled to over 1,000 in the last four years must be a red flag that there is a problem which needs to be addressed or that the current response is not working and/or appropriate.

What is the single most important thing that Queensland can do to reduce the over-representation of Aboriginal and Torres Strait Islander young people in the criminal justice system?

Listen to Aboriginal and Torres Strait Islander families and communities, and give them the authority and resources to take the action they advise needs to be taken.

Do you have any other thoughts, ideas or suggestions about dealing with youth offending in Queensland?

It is also important that communities and public areas are inclusive of young people, for example, by providing space for them to meet and gather. If shopping centres provided a youth friendly space, in the same way that they make provision for small children, there is likely to be less confrontation in these public spaces, particularly if the security staff area also properly trained to de-escalate situations rather than add to them by issuing banning notices.

Appendixed to this submission is a submission made to the Senate Legal and Constitutional Affairs Committee regarding the “value of a justice reinvestment approach to criminal justice in Australia” (March 2013). We would argue that governments must look to justice reinvestment if they are truly committed to reducing offending.

In conclusion

Thank you for the opportunity to provide a submission in relation to this important issue and your consideration of this material. We would be happy to attend any briefings or roundtables which might discuss these issues further.