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Youth Detention Review

GPO Box 149

Brisbane QLD 4001

Attention: Youth Detention Review

Via email transmission: enquiries@youthdetentionreview.qld.gov.au

ATSILS' (Qld) Ltd. Submission to Youth Detention Review on the Independent Review of Youth Detention Discussion Paper

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS) welcomes the opportunity to make a submission on the Independent Review of Youth Detention Discussion Paper (the Discussion Paper).

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). As an organisation which for over four decades has practised at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Our background for meaningful comment

ATSILS acknowledges Aboriginal and Torres Strait Islander peoples are chronically over-represented in the criminal justice system and that Aboriginal and Torres Strait Islander children are 22 times more likely to be in detention, than non-Aboriginal and Torres Strait Islander children¹. This situation 'has been deemed a 'national crisis' by the Australian House of Representatives inquiry into Aboriginal and Torres Strait Islander youth and the criminal justice system'². This over-representation has been linked to a number of culturally specific criminogenic needs stemming from social and economic disadvantage and have been identified as³:

- substance abuse and personal/emotional functioning;
- acculturation stress and deculturation;
- the impact of separation from family, communities and land;
- physical health problems, mental health issues, identity confusion, intra and inter-family violence, discrimination, literacy and numeracy problems;
- generational unemployment;
- significant life skills deficiencies;
- specific transitional and post-release needs;
- over-crowded housing and high rates of homelessness; and
- over representation in the child protection system⁴.

It follows that Aboriginal and Torres Strait Islander offender programs and services in youth detention centres 'should not only seek to address these needs, but should also be delivered in ways that are considered to be culturally appropriate and culturally 'safe' as

¹ Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009), 113.

² House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011), 2.4.

³ Karen Heseltine, Andrew Day and Rick Sarre, 'Prison-based correctional offender rehabilitation programs: The 2009 national picture in Australia' (Research and Public Policy Series 112, Australian Institute of Criminology), 34.

⁴ National Aboriginal & Torres Strait Islander Legal Services, *Senate Legal and Constitutional Affairs Committee Inquiry into Justice Reinvestment in Australia* (2013), 9-10.

well as being supported by the wider community'⁵. Early intervention at both the individual and social level is needed to stop the rise of Aboriginal and Torres Strait Islander children seeing prison as a rite of passage into adulthood.

Feedback On Certain Questions

Question Six: Programs and services delivered in youth detention centres including addressing causational issues behind their offending behaviour

i) Case Worker Team:

- CHART – Changing Habits Reaching Targets
- Anger Replacement Therapy (ART)

ii) Behavioural Support Team:

- MVOP – Motor Vehicle Offending Program
- Anger/Aggression Management – one on one program
- Drug & Alcohol – one on one program
- Emotional Regulation/Impulse Control – one on one program
- Anxiety/Stress Management – one on one program
- Self-esteem – one on one program
- Suicide/Self-Harm reduction – one on one program
- Grief & Loss – one on one program

Question Seven: Current cultural programs and services and their effectiveness in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention.

Submissions and feedback was sought on the following:

i) The cultural programs and services available to assist young people subject to detention.

⁵ Karen Heseltine et al, above n 3, 34.

- Mentoring Program
- Chaplaincy/Pastoral Support
- Prison ThroughCare
- Aboriginal & Torres Strait Islander events (i.e. Reconciliation Day, NAIDOC Week, Mabo Day, Coming of the Light)

ii) The available cultural programs effective in addressing the specific needs of Aboriginal and Torres Strait Islander young people in youth detention.

There is a chronic lack of cultural programs and appropriately culturally competent program staff to provide the programs and services to address the specific needs of Aboriginal and Torres Strait Islander young people in either Brisbane or Cleveland Youth Detention Centres. Anecdotal evidence from ATSILS staff attending the youth detention centres refer to mainstream 'service providers' coming into the centres, not being able to engage with Aboriginal and Torres Strait Islander youths in a manner that displays cultural integrity. Further ATSILS staff have been told that many of the programs that are altered to accommodate Aboriginal and Torres Strait Islander youths, do not provide any particular benefits to youths attending the programs, lack continuity and consistency of services. It is ATSILS experience that the current programs design is less concerned with cultural relevance and measurable outcomes for Aboriginal and Torres Strait Islander detainees. Rather there is a 'tick the box' practice that cultural programs are being provided when they are not.

Aboriginal and Torres Strait Islander youths in detention have informed ATSILS staff that the behaviour support team, through Mental Health, Alcohol and Tobacco and Other Drug Services, do not know 'where they are at' causing disengagement from the program, but will say what is expected from them so they can complete the program. The youths' social and emotional wellbeing effect the authenticity of the communication with the behaviour support team. Aboriginal and Torres Strait Islander youths in detention have suggested the programs available are not helping them and the programs that gain some traction soon become inaccessible due to staff changes, alterations to programs, lack of continuance and

limited or no follow up. It is also noted that when the young people return to their community the programs accessed in detention are not available.

iii) What challenges are there regarding cultural programs and services in youth detention including but not limited to: accessibility, resourcing or funding.

There are inherent difficulties in custodial environments in the development and implementation of programs for Indigenous offenders, which can include:

- young people being on remand and not having access to programs until sentenced;
- short custodial sentences providing insufficient time to participate in any meaningful program;
- serving sentences away from family and community support networks;
- mental health and substance use co-morbidity, language barriers and low levels of English literacy;
- educational difficulty;
- grief and loss issues;
- trans-generational trauma;
- kinship difficulty with group composition and the lack of Indigenous facilitators⁶.

To engage Aboriginal and Torres Strait Islander youths in detention and to overcome these challenges when necessary, a strategy is needed that recognises the 'connectedness between the individual, family and community'⁷ as researchers have found this holistic life course approach is 'fundamental to improving social and emotional wellbeing'⁸. Improving the social and emotional wellbeing of Aboriginal and Torres Strait Islander youths in detention through culture and customs, which is a source of 'strength and social and emotional wellbeing', will enable:

⁶ Karen Heseltine et al, above n 3, 34.

⁷ Queensland Mental Health Commission, Queensland Aboriginal and Torres Strait Islander Social and Emotional Wellbeing Action Plan 2016-18: Proud and Strong (2016) 11.

⁸ Ibid.

Many to endure hardship and adversity. Linked closely to community and family and to culture and customs as well as connections to land and sea, social and emotional wellbeing is the foundation for proud and strong First Nations Peoples⁹.

The strategies will need to incorporate the following:

- recognising the different needs of children at different stages in their lives including experiences impacting throughout their lives (before birth experiences, ie. Foetal Alcohol Syndrome, and early childhood trauma);
- strengths based approach where strategies and initiatives are more effective if local Aboriginal and Torres Strait Islander people lead the consultation, development, procurement and implementation of these services/programs;
- continuous monitoring and evaluation of the effectiveness and culturally capability of policies, programs and services;
- increasing integration and collaboration between services and organisations; and
- while being Aboriginal and Torres Strait Islander led, the programs and services are culturally competent and address the local circumstances¹⁰.

Anecdotal evidence is in agreement with a strategic Aboriginal and Torres Strait Islander led approach. The use of Aboriginal and Torres Strait Islander Queenslanders, who have direct links with Aboriginal and Torres Strait Islander youths in detention has been suggested to be hugely beneficial in establishing a sense of identity and enhancing a sense of belonging. Understanding the historical context of where these youths come from and having insight into their parents and grandparents' struggles can lead to healing. Individualised plans starting with kin identification and following on with input from family and community will assist the youths social and emotional healing.

⁹ Ibid, 5.

¹⁰ Queensland Mental Health Commission, above n 7, 11.

iv) The cultural programs and services that ought to be available to assist Aboriginal Torres Strait Islander young people subject to detention.

ATSILS submits there should be a greater commitment to more culturally relevant rehabilitation/intervention programs in Queensland youth detention centres. The cultural programs must be informed by cultural practices and include content that reflects Aboriginal and Torres Strait Islander Queensland norms and experiences. Regular evaluations of these cultural programs must be a part of any framework, to ensure their continuing relevance, effectiveness and cultural appropriateness. Further, the evaluation data collected should be transparent and objective. This transparency will overcome the 'ticking the box' approach (compliance), that a program has been completed, without proper consideration of its success or not. The Australian Institute of Criminology special report on Indigenous Youth Justice Programs Evaluation is a clear indication of limited evaluation and lack of evaluation set into program frameworks, thereby missing the mark for rehabilitation or reform for offenders.

Brisbane and Cleveland Youth Detention Centres should also increase their numbers of identified positions for Aboriginal and Torres Strait Islander Queensland liaison officers, case managers, teaching staff and transitional officers, to be consistent with the rate of Aboriginal and Torres Strait Islander youths incarcerated in Queensland youth detention centres. Further cultural competency training should be mandatory for all prison staff as well as those delivering services to Aboriginal and Torres Strait Islander youths.

Cultural support and culturally appropriate programs or services delivered in prisons are critical in preventing reoffending, as well as improving outcomes for Aboriginal and Torres Strait Islander youths in detention and their communities. There is a need therefore to provide programs/services to all those detained in Queensland youth detention centres, including prisoners detained for less than six months. Data collected by Brisbane Youth Education and Training Centre in 2015 indicated that 54% of young people detained in Brisbane Youth Detention Centre were there for 14 days or less, with 55% only being admitted once. Prisoner ThroughCare assistance should also be extended to Aboriginal and

Torres Strait Islander youths on short-term stays to aid social and emotional wellbeing, address transitional issues and possibly help reduce recidivism

Question Eight: A comparative assessment of the current policies, practices and programs relating to the terms of reference in youth detention centres in Queensland and other Australian Jurisdictions.

Section 277 of *Youth Justice Act 1992* sets out the complaints regime for a child in detention which states that a child or parent of a child detained in a youth detention centre has a right to complain about a matter that affects the child in detention. The Director-General of the Department of Justice and Attorney-General must issue written instructions on how a complaint may be made and dealt with, including directions to a community visitor (child), child advocacy officer or other appropriate authority acting on behalf of the child. The Director-General need not deal with a complaint that he or she reasonably believes is trivial or made only to cause annoyance, and must tell the child how the complaint will be dealt with. Despite the Director-General having the discretion set out above, a child has a right to complain directly to a community visitor (child), child advocacy officer or other appropriate authority without fear of retribution from those complained against within the correctional facility. Complaints made against correctional staff should be investigated by an external party who has no relationship and or peer relationship with the person the complaint is alleged against.

On compliance with the *Youth Justice Act 1992*, written instruction on complaint processes is set out in two policies, Youth Detention – Complaints YD-1-9 and Youth Detention - Complaints to external agencies YD-1-10. These policies state that the Department is fully supportive of youth in detentions having access to internal and external complaints mechanisms and that it will take all reasonable steps in facilitating and participating in resolution processes. A youth in detention who wants to make a complaint can fill out a complaint form and give it to a youth detention staff member to send to the police (if has to do with a criminal matter), phone the Office of the Public Guardian or leave a message for the community visitor from the Office of the Public Guardian in the communication box in the youth's unit.

For parents, carers or friends of a youth in detention, they can fill out a complaint form and email or post it to the youth detention centre that the complaint is about, phone the youth detention centre and make the complaint over the phone or make a complaint in person at the youth detention centre. Youths who have left the detention centre can still make a complaint by filling out a form and emailing or posting the complaint to the detention centre that the complaint is about, phone the youth detention centre and make their complaint over the phone or make the complaint in person at the youth detention centre.

If the complaint has been received at the youth detention centre, then internal processes and internal investigation procedures are followed. An assessment is made about the validity of the complaint internally and it is then to be actioned and resolved fairly in an environment free of reprisal or retribution. If the complaint is assessed as CaPE category 3 (serious misconduct or extremely serious misconduct) the complaint must be referred to Ethical Standards Unit for consideration. Irrespective of the serious nature of the complaint the Ethical Standards Unit must be charged with the responsibility of impartial investigation. The matter must not be elevated above the unit as currently happens from time to time because of potential political fallout. If a youth is unhappy with how the complaint is dealt with, they can write to the Assistant Director-General, Youth Justice.

ATSILS is concerned that there are requirements for a complaint to be in writing and notes:

Writing is a significant barrier for many youths who experience language or literacy barriers. Whilst a young person may be able to access legal assistance for the purpose of making a written complaint, young people serving a sentence of detention following the finalisation of their legal matters may not have ongoing contact with a lawyer. In the absence of assistance from an adult who is separate to the corrections system, this complaints mechanism is inaccessible to many young people. Aside from possible language and literacy barriers, young people will also face significant cultural barriers to utilising the complaints

system, and will be affected by the power imbalance that exists between them as individuals and the corrective system¹¹.

ATSILS is also concerned that anecdotal evidence suggests that Aboriginal and Torres Strait Islander youths are scared to make a complaint internally or to get someone on their behalf to make a complaint, as they lack confidence that it will be resolved fairly in an environment free of reprisal or retribution. When the Department of Justice and Attorney-General mechanism for complaint management in youth detention rests with the youth detention centre which is to report to the Minister for Attorney-General and Minister for Justice, questions of accountability and transparency come into play, 'as [it] is like the department investigating itself'¹². From a community perspective it is like police investigating police.

This can also be said of the Office of the Public Guardian and Queensland Police Service receiving complaints from Aboriginal and Torres Strait Islander youths in detention. If it is not a CaPE Category 3, the complaint is referred back to the youth detention centre to be dealt with internally. With the release of footage of a youth stripped naked, handcuffed and left in isolation in Cleveland Youth Detention Centre, the validity of processes of internal investigation and complaint mechanisms are called into question.

We understand currently the Office of the Chief Inspector is empowered by the *Corrective Services Act 2006*, to undertake inspections and reviews of the operations of Corrective Services facilities and to provide independent scrutiny regarding the treatment of offenders, and the application of standards and operational practices within Queensland correctional centres. The Office of the Chief Inspector is a part of Queensland Correctional Services, under the Department of Justice and Attorney-General, which reports to the Honourable Bill Byrne MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services. Reports made by the Chief Inspector are also provided to parliament through the

¹¹ North Australian Aboriginal Justice Agency and the Central Australian Aboriginal Legal Aid Service, Submission to National Children's Commissioner, *Optional Protocol to the Convention against torture (OPCAT) in the context of Youth Justice Detention Centres*, (June 2016) 2.

¹² Queensland Council for Civil Liberties, 'Call for an Independent Prisons Inspectorate' (Media release, 19 August 2016).

Minister for Police, Fire and Emergency Services and Minister for Corrective Services. Many ATSILS clients see the official visitor as a 'part of the system' and avoid them. This statement is reflected by the significant decrease in the number of complaints dealt with by official visitors in recent years.

ATSILS supports the need for an Independent Statutory Office of the Inspector of Custodial Services based on the Western Australian model. It is problematic having to rely on the goodwill of youth justice employee's working for the Department of Justice and Attorney – General and the Minister of this department to assess complaints appropriately. To install a culture of trust and safety around reporting and investigating a complaint (internally and externally), accountancy and transparency must be paramount. ATSILS supports an independent inspector to provide transparency and to ensure that Aboriginal and Torres Strait Islander youths are protected from misconduct and serious misconduct. This should also assist in ensuring that if unsafe practices are taking place, they will be investigated independently and reported accordingly to parliament and not just to the Minister of the Departments.

The inspector in respects to youth detention centres should be given 'powers to do without notice inspections 24 hours a day, seven days a week with regular reports to Parliament and not being able to be controlled or directed by the prisons bureaucracy and the Minister, they would be safer and much more accountable and transparent places'¹³.

Question Nine: Best practice or international models of youth detention.

ATSILS would support a specifically designed youth detention centre(s) for only Aboriginal and Torres Strait Islander youths based on Aboriginal Sensitive Juvenile Justice Standards, guided by the general principles of the Beijing Rules¹⁴.

Alternatively, consideration of adoption of these practices would be likely to achieve outcomes much closer to best practice in this area. These standards and rules include:

¹³ Queensland Council for Civil Liberties, above n 12.

¹⁴ *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res,40/33 (29 November 1985).

- Custody based 'in-country' to avoid Aboriginal and Torres Strait Islander children being incarcerated hundreds of kilometres from their home country;
- Minimising long-distance transports;
- Recognising funeral obligations and having mechanisms in place to meet those obligations;
- Recognising elders/traditional owners and their roles in prisons, especially in relation to younger prisoners;
- Training all prison staff to be culturally respectful and minimise racist norms;
- Having a majority of Aboriginal staff to work in these specific prisons;
- Having mandatory health checks on admission to youth detention centre and follow ups;
- Having a buddy system where a prisoner who does not need to be in a safe cell or crisis care unit can decide on the option to share a cell with a friend or relative;
- Having more Aboriginal and Torres Strait Islander Support Officers per number of identified children in detention, that share country with the children;
- Having traditional cooking pits or other cultural practices (dancing pit, yarning circles, totem poles, humpies) to be offered at youth detention centres to maintain their culture and contact with the land;
- Having consistent, well-funded culturally appropriate programs and services evaluated for effectiveness, with follow ups;
- Having social and emotional wellbeing programs recognising connectedness between the children, family and community;
- Youth camp programs and family overnight stays;
- Community (country) meetings held in custody; and

- Preparation for release through offender treatment and training programs.

In closing, once again our thanks for this opportunity to provide feedback on the Independent Review of Youth Detention Discussion Paper.

Please do not hesitate to contact us at our head office in Brisbane should you have any questions or require any clarification.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Shane Duffy". The signature is written in a cursive, flowing style with a large initial 'S' and 'D'.

Shane Duffy

Chief Executive Officer