Submission by

YOUTH ADVOCACY CENTRE INC

regarding

A Youth Justice Strategy for Queensland

SEPTEMBER 2018

The Youth Advocacy Centre Inc (YAC) is a community legal and social welfare agency for young people across the greater Brisbane area who are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years) and/or are homeless or at risk of homelessness (10-25 years). Our clients are some of the most marginalised young people in Queensland and often have multiple challenges but little ability to influence their life and environment.

YAC is unique in its legal and social welfare multidisciplinary model with a focus on the youth justice age group. It was the first specialist legal service for children in Queensland, and one of the first in Australia. As such, it has developed significant expertise over the 37 years it has been responding to children who find themselves becoming enmeshed in the youth justice system.

YAC notes the significant accomplishment of the Palaszczuk government in finally addressing the inclusion of 17 year olds in the youth justice system, thus bringing Queensland into line with Australia's human rights obligations and all other Australian jurisdictions. It had previously also reversed legislation and policy which had been implemented contrary to the substantially consistent research and evidence on how to respond effectively to youth offending and youth offenders.

The Palaszczuk government could be forgiven for believing it has done enough in the youth justice space. To its credit, it has decided to continue on a path of reform of the youth justice system to the benefit of the individual children concerned and the community as a whole. We welcome the Report on Youth Justice by Special Advisor, Mr Bob Atkinson (the Report) as the next step along this journey and a useful document in summarising the extensive research and evidence base in relation to youth offending and youth offenders, particularly for those who are not familiar with this detail.

YAC is pleased to have the opportunity to provide this submission and contribute to the development of an effective and fair youth justice system which responds appropriately to young people who find themselves in conflict with the law.

This submission comprises three sections, being YAC's:

- reflections on the youth justice system
- feedback on the survey questions
- comment on the recommendations

Reflections on the youth justice system

Understanding "the problem"

Context is critical to understanding a "problem". While providing significant information is provided in the Report on responding to the "problem" the Report does not describe its nature and extent.

We have to reiterate, as we have done for nearly 40 years: youth offending is not out of control and never has been. To that extent, it is disappointing that the Report commences without presenting the relevant data. Unfortunately, by not doing so and taking the notion that "public safety is paramount" as one of its two fundamental principles, the Report in general, and the wording of the three dot points on page 21 in particular, imply that children and young people are a threat to the community. However, government data indicate that in 2016-17:

- there were 426,353 children aged 10-16 years in Queensland;
- 0.8%, or 3,407 distinct young people, went to court for offending and were found guilty;
- a small group – 10% of young people offending – were responsible for 43% of all proven offences;
- young offenders with a proven offence **decreased** by 2.4% on the previous year. [*There has been a downward trend in the number of distinct young people who had a charge disposed of in a Queensland court since 2012–13*: Annual Report of the Childrens Court of Queensland 2016-17. This trend is replicated across other countries including New Zealand and the UK];
- of finalised charges, 63% were property related and 7% were offences of violence; and
- young people are as likely to be the victim of a crime as an offender – although if issues of child abuse and neglect are included, this would significantly favour being a victim. The elderly are

the least likely to be a victim of a crime. The rise in reported elder abuse relates in the main to perpetration by much older adult children or other people known to the elderly person. The Queensland Elder Abuse Prevention Unit (EAPU) helpline has noted that in 2014-15, "…Where perpetrator age was known, the most common age group was 50–54 years".

With respect to breaches of the criminal law overall, the Magistrates Court Annual Report 2016-17 indicates that **less than 6% of those appearing before a magistrate were children, with less than 8% of offences being committed by children**.

Thus we need to be clear that addressing youth offending will not mean that public safety will be significantly enhanced **because the public is not at significant risk from young people**. The greatest impact in addressing the causes of youth re-offending will be in enabling individual young people to lead fulfilling lives and contribute positively to the community.

It is also important that youth offending data be juxtaposed with the prevalence of child abuse and neglect, and instances of family and domestic violence – both of which have been shown to be contributors to repeat offending by young people. The Report notes that 83% of children in the youth justice system were known to Child Safety Services in 2014. We further note that Youth Justice staff now have to receive training in trauma informed practice. In 2016-17:

- 55,441 children were subject to one or more child concern report;
- 20,076 children were subject to one or more notification;
- 6,242 children were found to have experienced significant harm and/or be at risk of significant harm;
- 26,706 Family and Domestic Violence Protection orders were made in Queensland; and
- 13,518 defendants were convicted of breaching a Protection order.

We agree that it is important for the community to have confidence that:

- our children are being given the best opportunity in life, from conception, and thus avoiding those things which may put them at risk of offending behaviour; and
- if problems should occur, there are the resources and services to address those problems which will minimise the risk of future offending behaviour.

To that end, clearly the best course of action is to follow the well-established research and evidence which is detailed in the Report, both to be effective in outcome and cost-effective in relation to the use of public monies. It is YAC's view that the strategy to address youth offending, particularly repeat offending, is therefore already quite clear.

However, there must be a commitment, preferably across party lines, to follow and implement an evidence based strategy rather than respond to populist mythology, and self-serving media and political imperatives, otherwise this Report will collect dust on a shelf as so many before it. The government did the right thing by 17 year olds – we now ask that they do it for all young people at risk of contact with the criminal justice system, particularly those at risk of ongoing contact.

Since YAC supports following the research and evidence detailed in the Report, there is little to be gained by reiterating that information in this submission. YAC staff have also attended the consultation sessions which the Department has organised and we have therefore provided comment on the broad questions posed there. YAC's focus in this submission is the youth justice system itself rather than "what works" in terms of preventing (re-)offending.

We believe that the title of the discussion paper by the Office of the New Zealand Prime Minister's Chief Science Advisor is the mantra we should follow: **"It's never too early, never too late"** with respect to offending behaviour.

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.

Children and the criminal law

The most fundamental question which the Report does not consider, is that if one of the key priorities is to keep children out of court, then: **when and why should children even be brought into the criminal justice system?**

The Queensland youth justice system is simply a slightly modified adult justice system. It is interesting to read the Discussion Paper on the Re-instatement of the Special Circumstances Court (SCC) in 2015 which states at the beginning:

> Specialist courts and court diversionary programs were 'developed to manage and deal with specific offender populations, where it is recognised that traditional criminal justice procedures have not been effective.' They use the authority of the court to address the contributors to an individual's offending, such as mental illness, cognitive impairment, or homelessness, and aim to achieve greater reductions in offending than traditional court processes. The success of specialist courts and court diversionary programs relies on effective collaboration among criminal justice, mental health, substance abuse and other related services in order to improve defendants' general health and well-being.

Nowhere in the SCC paper is there reference to people being "accountable for their actions" – although this is a constant in all youth justice material, including for those young people who would be eligible to participate in an SCC if they had been 17 or over.

Most interestingly, the diagram of the development of Queensland's Specialist Courts in the Discussion Paper made no mention of the Childrens Court: indeed, it posed the question as to whether a reinstated SCC should include children.[1]

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 response to recent evolutions in the knowledge of child and youth brain development nor the impact of trauma on the brain and its development.

[1] Respectfully, we strongly disagree with our colleagues from ATSILS in their submission on this point that extending the SCC to children would not be necessary "*purely from the view of conserving resources. The clients we had in the SCCDP were mostly complex needs clients who were not receiving the support and services they required. The Department of Child Safety and Youth Justice do an excellent job of connecting children and young people in the justice system with the services they need, and therefore the SCCDP would be a duplication of resou*rces". The children YAC works with have complex needs – indeed, the level of that complexity seems to be increasing and these children are often isolated without any adult support. In our view, the current discussion would not be taking place if children were being effectively connected to services.

The characteristics of young people who continue to re-offend are also well documented and known. As noted above, a high proportion of children in the youth justice system are known to Child Safety Services and the Report itself identifies:

> ...many of the causes of offending, such as family dysfunction, children experiencing abuse, neglect, poor attendance resulting in poor educational attainment, mental health problems and neurological disabilities.
>
> ...the disproportionate representation of Aboriginal and Torres Strait Islander children in the youth justice system, particularly those in detention.

YAC staff attended a seminar this week 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.

We therefore hold 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 has 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. The recent High Court case on *doli incapax* does not assist with its use in Queensland because the Queensland Criminal Code has not simply codified the common law.[2]

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. 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.

[2] See Attachment A for a descriptor of the law on this point.

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 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 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 taking 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 are 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.

Responding to girls/young women

We were pleased that there has been a consultation specifically on girls and young women in the youth justice system (noting they have traditionally been a smaller component of the offending cohort than the boys) has been part of the YJ survey and consultation process and the insights that Associate Professor Tamara Walsh provided in support of that. We know that there are the differences between when and why young women offend as opposed to young men, and responses need to be tailored accordingly.

Multi-agency approaches

The Report recommends multi-agency, coordinated approaches for all Four Pillars. 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

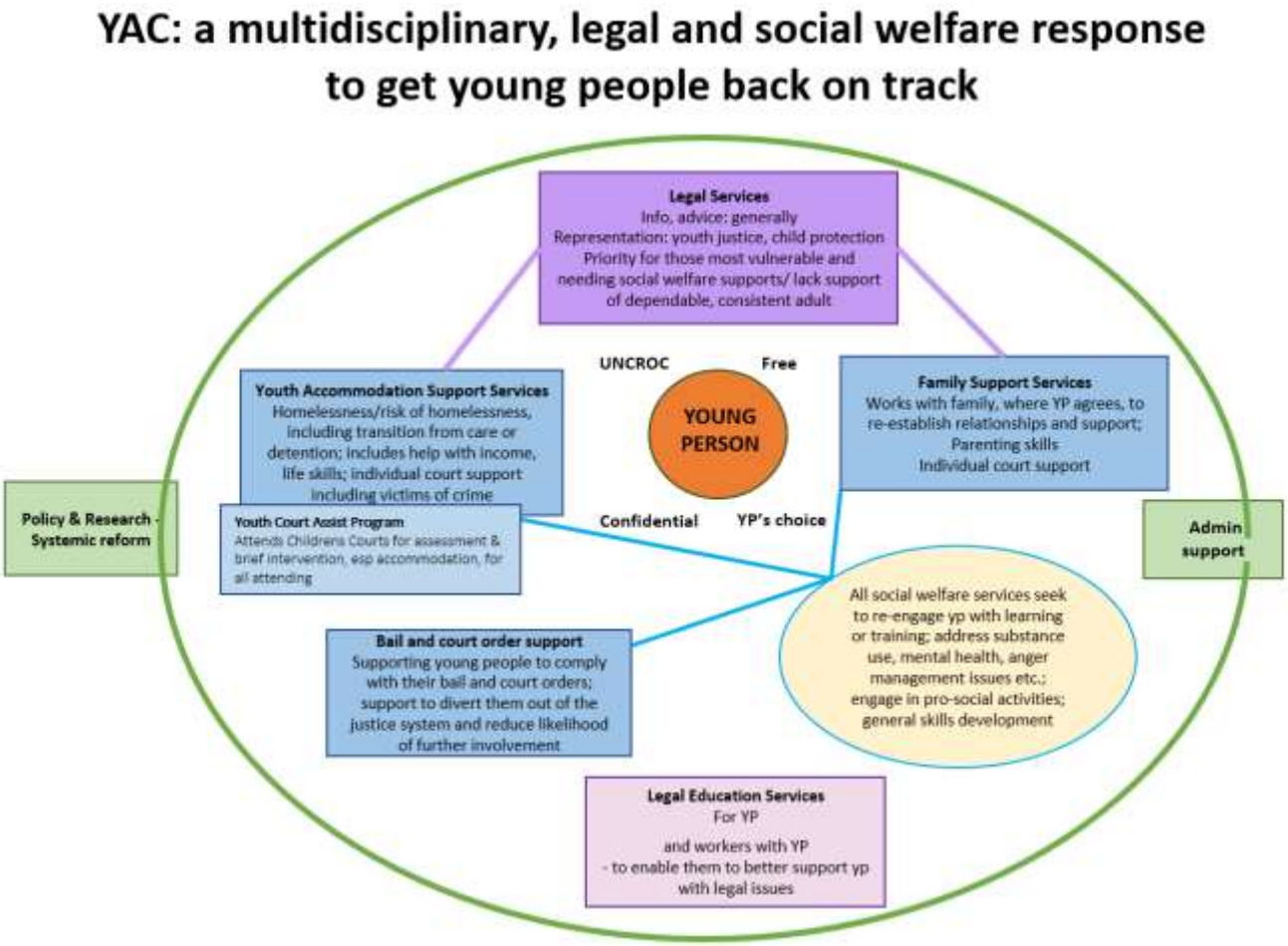
YAC not only works with other agencies to ensure a child engaged in the legal system receives the support they need but takes that one step further. It operates as a multi-disciplinary legal and social welfare agency where all programs have a youth justice focus and all staff have a good understanding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



Strengths of the YAC model:

As a specialist youth legal <u>and</u> 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 that 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 the 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 watchhouses, 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, again through its homelessness staff based there. We are also attempting to do the same in Pine Rivers. We have additionally been asked by Youth Justice staff if we could provide this service in Redcliffe and Richlands, but unfortunately do not have the staff or budget available to do so. YAC would welcome Youth Justice negotiating with the Homelessness Program in DHPW for funding for a YAC youth work position to enable us to provide this service at all courts across the greater Brisbane region.

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.[3] 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.

We note that the Seniors Legal Services are funded by the government agency responsible for Seniors aside from the Department of Justice and Attorney-General which has traditionally provided funding for legal services through the Commonwealth-State Partnership on Legal Assistance Services. We would suggest that The Department of Child Safety, Youth and Women could also look to fund specialist youth lawyers in such a holistic response.

RESPONSE TO QUESTIONS RELATED TO THE FOUR PILLARS

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.

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?

[3] 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.

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.

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.

Legislative change

What are your views about stand-alone child criminal justice legislation that combines youth justice, bail, and police powers legislation?

This would assist comprehension of the Childrens Court jurisdiction as a whole as well as promoting consistency across courts.

What are your views about a national agenda to raise the current minimum age of criminal responsibility? How might this be achieved?

We have no issue with participating in a national discussion but we cannot wait for national agreement if there is not currently consensus: if we believe this is fair for Queensland children, then we should move forward and take the lead nationally. The history of the Australian Commonwealth is littered with examples of painfully slow reform while nine jurisdictions try to line up. As governments change, negotiations falter as the position of States and Territories shifts.

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.

For comment on individual recommendations, please see Attachment B

Conclusion

YAC fully supports a 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. We acknowledge the government's commitment in this regard and again, note out appreciation of the opportunity to participate in this discussion on the proposed youth justice strategy.

A strategy, however, will only be successful if it has a solid action plan implementing it. This is where the input of stakeholders is important, as the plan must also allow for responses to be relevant to individuals and local community issues. In particular, the voice of children and young people must be heard as they will have views on what needs to change in order to be able to help them change their life trajectories.

Implementation of the strategy and action plan will come at a cost – but the indications are that it will be at a significantly lower cost than keeping children in detention and paying for police and court staff.

Most importantly, there needs to be cross-party support, with an agreement that youth justice be taken out of the regular political law and order debate. There needs to be sufficient time (years) to implement an evidence based strategy and let actions bear fruit, instead of the 'chopping and changing' of policy for populist approval which undermines the very goals everyone claims to be working toward.

We are excited at the potential opportunities which lie ahead which will benefit the community in general, but our children and young people in particular. YAC will be pleased to work alongside government in achieving this.