Public Health Association of Australia
submission on Queensland Youth Justice Strategy

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia. The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.
Introduction

PHAA welcomes the opportunity to provide input to the Queensland Youth Justice Strategy. Supporting young people at risk of offending, using detention truly as a last resort only, and ending the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system are all principles PHAA firmly supports.

We recognise and commend the Queensland Government on the inclusion of 17 year olds in the youth justice system as of 12 February 2018.

PHAA Response to the Atkinson review paper

Pillar 1: Intervene early

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

PHAA considers those children at risk of offending and those who actually offend in the frame of the social, economic, cultural, environmental and political determinants of crime.

Across decades, the Australian Institute of Criminology and the Australian Institute of Health and Welfare have provided abundant data on the most at-risk cohorts of young people. Dominant in this are experiences of out-of-home-care, mental ill-health, poor educational experiences, disability and Aboriginal and Torres Strait Islander young people. Such a canvas requires far more flexible and resourceful responsiveness than governments have traditionally given. New resolve is required of state and territory governments – to work responsively across departmental boundaries; to partner wisely and productively with Aboriginal and Torres Strait Islander communities; and to tap into the experience of local government and civil society.

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

We know that the young people who end up in contact with youth justice services often have multiple vulnerabilities – histories of trauma and abuse, homelessness, alcohol and other drug misuse, mental health issues, poor school performance, and disabilities. They appear in court for having allegedly committed a crime, but often bring with them risks meaning that their own safety should be the first and most urgent consideration. This clearly suggests that community support for early intervention must be holistic, and provide support services across multiple sectors.

The proposed network of bail support accommodation facilities across Queensland will be a vital piece in the puzzle of support required. For those young people able to live with families, non-threatening support should be provided for health and education.

It is imperative that any significant health or disability issues are identified at the earliest possible stage to allow for diversion from court.
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?

PHAA supports the existence of police discretion to divert children away from court through informal and formal mechanisms, and appropriate support programs. Appropriate use of discretion requires that all police, especially first responders, have adequate training in the options available to them, including the formal Queensland Police Service Cautioning System.

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

Police need access to a multi-skilled team of professionals in child safety, alternative education, health and disability, and emergency accommodation, working in and with local communities.

Pillar 3: Keep children out of custody

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

On an average day during 2016-17, 81% of young people in detention were on remand, with an average remand length of 34 days. We know that experiencing youth detention often has negative outcomes for young people. Of young people in youth justice supervision, those who experienced detention had more varied and complex pathways through the system than those who experienced only community-based supervision. Detention often leads to continued and more complex interactions with the youth justice system.

A lack of suitable accommodation must not be allowed to result in detaining young people who would otherwise be in the community. PHAA supports the program to establish supervised community accommodation in Queensland to minimise or eliminate the use of bail as an accommodation alternative, and to support young people in contact with the youth justice system to maintain education and other community based support services. It will be essential to ensure that these accommodation facilities meet standards of care-safety-security-engagement. Staffing will need careful consideration, with professional development and accountability and continuity of commitment required.

Pillar 4: Reduce reoffending

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

Alternative education services such as flexible learning centres for disengaged students have already proven their worth in several Australian location, including Queensland. These services recognise the social and economic difficulties facing their students, and provide valuable positive ways to re-engage with education through provision of child care, social workers, support in finding part-time employment, Aboriginal and Torres Strait Islander staff and pedagogical relationships encouraging a reconnection with learning. Services recognising and addressing the underlying reasons why young people disengage with school – including mental health issues, anxiety, learning difficulties and bullying – and providing casework support, have been found to have positive benefits beyond just educational attainment.

In the pre-vocational sphere, the Queensland government is to be commended for the early success of the Transition to Success (T2S) program at several locations around the state. This program may be suitable to for local adaptation in collaboration with local Aboriginal and Torres Strait Islander communities.
Legislative change

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

While few young people in the youth justice system in Australia are aged 10-14, they have worse outcomes than those who enter the system at older ages. With the high rates of foetal alcohol spectrum disorder and intellectual disability among justice-involved young people, there is a significant risk that a 10 year old in the system may have a younger functional age. Having young children in the youth justice system should be avoided.

In 2007 the United Nations Committee on the Rights of the Child stated:

“A minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level”

Many countries around the world have heeded this advice: Argentina (16), Austria (14), Belgium (12), Canada (12), China (14), Denmark (15), Finland (15), Germany (14), Greece (13), Italy (14), Netherlands (12), Norway (15), Scotland (12), Spain (14), Sri Lanka (12), Timor-Leste (16), Viet Nam (14).

The call to increase Australia’s age of criminal responsibility from 10 to at least 12 has been made over a number of years and has a sound legal basis.

Examples of alternatives to the youth justice system for the 10-14 year olds exist in other jurisdictions. For example in Switzerland education is prioritised over punishment. While the minimum age of criminal responsibility is 10, only ‘educational measures’ may be imposed on 10-14 year olds, with detention restricted to those aged at least 15 years. In England and Wales, the minimum age of criminal responsibility is also 10 years, but detention and training orders can only be imposed on those aged at least 12 years.

A compromise position is found in New Zealand where those aged 10 or 11 can only be prosecuted for murder or manslaughter, and those aged 12 or 13 can only be held criminally responsible for offences with a maximum penalty is at least 10 years in prison. This effectively means that the age of criminal responsibility in the majority of cases is 14 years.

PHAA supports an increase in the age of criminal responsibility to age least 12, and preferably 14, in line with international standards, and believes that this could be achieved through increasing support services to these young people to address the reasons why they are offending – the well-known social determinants.

General questions

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

PHAA believes that the expansion of justice reinvestment (JR) approaches in Queensland are the most important strategy to reduce youth offending:

“JR is a comprehensive strategy that employs targeted, evidence-based interventions to achieve cost savings which can be reinvested into delivering further improvements in social and criminal justice outcomes.”

This rightly places the focus on effort and resources where it should be – on prevention of crime through addressing the underlying causes, rather than dealing with the consequences.
Effective implementation of JR strategies in Australia will require strong governance structures, innovative and local models, multi-faceted interventions at different points across community and criminal justice processes, and a national centre for expert technical assistance.\(^{12}\)

**Health and wellbeing**

**Recommendation:** That the capacity to conduct full physical health, mental health, disability and educational assessments of children at all levels of the youth justice system, together with referral to related treatment and programs be progressed to the greatest extent possible

PHAA supports this recommendation.

It is known that the health is a major concern for young people in the youth justice system, in terms of both health issues they bring to their experience with the system, and health issues arising from those experiences. The most important health-related issues are mental health, disability including foetal alcohol spectrum disorder, substance misuse sexual health including sexually transmitted infections, and trauma. It is also noted that there is a lack of good information available in Australia about the health of young people in the youth justice system, and that this impedes good policy making, particularly in the areas of foetal alcohol spectrum disorder and disabilities.\(^{13}\)

It is vital that health and educational issues confronting young people in the youth justice system are identified and addressed through appropriate treatment and programs. In order for young people to be supported through and from the youth justice system, and to not return, such treatment and programs must include a continuity of care between detention and the community, and between the youth justice system and the general community.

It is possible for this assessment and referral system to begin prior to charges being heard. Canada has legislation which allows for comprehensive assessments to take place in the youth courts,\(^ {14}\) and there are good examples of this legislation being used such as in the Niagara Court Screening Initiative.\(^ {15}\) While implementing such as system would not be simple, utilising existing services such as Headspace, may be possible, and would also enhance the continuity of care between the community and justice health sectors.

**Recommendation:** That training in the impact of trauma on neurological development, and the risk of impairment be adopted for key staff working in the youth justice system, notably frontline police, teachers, judiciary and legal practitioners, as well as Youth Justice staff and non-government services providers

PHAA supports this recommendation.

The complex links between trauma and neurological development are a growing area of research. There are likely to be multiple trajectories of associated risk and resilience, and differences in the impacts of trauma and chronic stress.\(^ {16}\) However, while the complexities are still being researched, it is recognised generally that there is a strong link between trauma and neurological development with neurological symptoms and functional impairment.\(^ {17}\)

Traumatic brain injury is also associated with mental health and behavioural problems, and is significantly more likely among those involved in youth justice than for the general community. These traumatic brain injuries are usually acquired from sports injuries, falls, motor vehicle accidents or fights.\(^ {18}\) This relationship is under-recognised and not well understood, which means it is often not adequately addressed in the system.
Training for all key staff working in the youth justice system, would assist to increase knowledge and awareness of the links between trauma and traumatic brain injury and behaviour, and to implement appropriate trauma-informed care strategies. It is especially important to develop culturally safe, trauma informed care for Aboriginal and Torres Strait Islander young people.

**Substance abuse**

**Recommendation: That the Government consider extending drug diversion to drugs other than cannabis for minor drug offences committed by children**

PHAA supports this recommendation.

Young people under youth justice supervision are 33 times as likely as other youth to receive alcohol and other drug treatment for cannabis use. However, they are also 27 times as likely to be treated for alcohol use and more than 50 times as likely to be treated for amphetamine use. This clearly suggests that cannabis is not the only drug of concern for young people in the youth justice system. Therefore, the policy responses should take account of the other drugs of concern, including extending the availability of drug diversion programs.

**Recommendation: That the Government consider a range of evidence-based treatment options for children in the youth justice system with substance abuse issues**

PHAA supports this recommendation.

It is important for young people with substance use issues as an underlying cause of their offending to be able to access evidence-based treatment programs. It is important that the treatment places provided for such initiatives as drug courts or diversion programs are additional to those already provided in the community. This is essential to ensure that scarce treatment program places are not filled by such programs at the expense of young people in the community voluntarily seeking to address their substance use issues.

**Aboriginal and Torres Strait Islander over-representation**

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

PHAA supports this recommendation.

Despite reductions in the overall rate of young people in Australia being under youth justice supervision, the over-representation of Aboriginal and Torres Strait Islander young people actually worsened. In 2016-17, Aboriginal and Torres Strait Islander young people were 18 times as likely as non-Indigenous young people in Australia to be under youth justice supervision, an increase from 15 times as likely in 2012-13.

While the majority of young people under youth justice supervision are in community-based supervision, the over-representation of Aboriginal and Torres Strait Islander young people is even worse in detention. In Queensland in 2016-17, Aboriginal and Torres Strait Islander young people were 30 times as likely as non-Indigenous young people to be in detention, and 15 times as likely to be in community-based supervision.

It is essential to address the issue for young people, because contact with the youth justice system is a strong predictor of incarceration as an adult – 86% of Aboriginal and Torres Strait Islander young offenders enter the adult correctional system, with 65% serving prison terms.
We have been aware of this situation for decades, with the over-representation of Aboriginal and Torres Strait Islander people in prison being a key element of the 1991 Royal Commission into Aboriginal Deaths in Custody. Yet the situation has not improved. Being removed from community and support networks is a negative consequence of any detention stay, but particularly so for Aboriginal and Torres Strait Islander people. Visits from family are beneficial for prisoners, and are related to reduced re-offending up to 5 years later. The distances to prisons and youth detention centres can often be prohibitive for families and loved ones, adding to the existing logistical and emotional difficulties in visiting. Increasing the provision of suitable, local and culturally appropriate community-based sentencing options would help alleviate the problems caused by the separations of families through imprisonment and detention.

The PHAA supports the addition of Justice Targets to the Closing the Gap Targets to reduce the over-representation of Aboriginal and Torres Strait Islander peoples’ contact with the criminal justice system. Such targets at State and Territory level would also be helpful in prioritising this reduction and focusing policy decisions towards achieving the target.

**Recommendation:** That the Government set annual targets for progress towards long-term goals for reducing the over-representation of Aboriginal and Torres Strait Islander children at multiple points in the criminal justice system, including a) children charged with offences; b) children under community-based supervision; c) children remanded in custody and d) children subject to detention

PHAA supports this recommendation.

There are many factors contributing to the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, with these factors affecting various points in the criminal justice system. Dominant societal attitudes, the legacy of colonialism and disadvantage, intergenerational effects of contact with the criminal justice system, the role of police and alternative legal solutions, punitive attitudes in policy responses, disadvantage upon release from detention, and diversion programs unintentionally net-widening have all been commonly invoked as contributing to the over-representation problem. This diversity of issues which need to be addressed suggests that targets should be set at various points in the criminal justice system process, to enable identification of change resulting from policy and program responses.

**Recommendation:** That the Government consider a program of community consultation in Aboriginal and Torres Strait Islander communities experiencing high levels of concern about youth offending to encourage local solutions to youth offending

PHAA supports this recommendation.

There needs to be a greater focus, in collaboration with Aboriginal and Torres Strait Islander communities and organisations, on the underlying social issues which lead to higher levels of contact with the criminal justice system of Aboriginal and Torres Strait Islander youth. Investment in locally developed interventions to prevent offending and subsequent incarceration could provide significant social and economic benefits. Early intervention programs, identifying and addressing social and health behaviours likely to lead to contact with the criminal justice system are required, particularly in the areas of mental health, substance use and dependence, and violence. Evidence-based education and vocational programs targeting disaffected youth should be implemented. Culturally appropriate and effective alternatives to incarceration such as court diversion programs, Circle Sentencing, youth drug courts and magistrates’ referrals into treatment are required. Genuine consultation and engagement with communities to develop such programs will ensure they are appropriate as local solutions.
Recommendation: That staff of key agencies who engage with child offenders undertake cultural competency training and development

PHAA supports this recommendation.

All staff of agencies supporting young people at risk of offending should undertake cultural competency training and development.

Conclusion

PHAA supports the broad directions of the review of the Queensland Youth Justice Strategy. We are particularly keen that the following points are highlighted:

- Early intervention with support in the community is essential
- Detention must be a true last resort only, and not used because of a lack of suitable community support services such as accommodation
- The age of criminal responsibility should be increased to at least 12 years
- Justice Reinvestment approaches should be expanded
- Full physical and mental health, disability and educational assessments should be routine
- Eliminating the over-representation of Aboriginal and Torres Strait Islander young people in the criminal justice system must be prioritised

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to improving outcomes for young people in Queensland.

Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

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References


