Aboriginal & Torres Strait Islander
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Mr Peter Russo MP,
Chair,
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: LASC@parliament.qld.gov.au

9th July 2019

**RE: YOUTH JUSTICE AND OTHER LEGISLATION AMENDMENT BILL 2019**

Dear Peter,

We thank you for the opportunity to make a submission in relation to the Youth Justice and Other Legislation Amendment Bill 2019 and the consequential amendments to the *Youth Justice Act* 1992, the *Bail Act* 1980 and the *Police Powers and Responsibilities Act* 2000. We note the many important issues that this Bill seeks to address.

**Preliminary Consideration: Our Background for Meaningful Comment**

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst 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). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore 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.

**COMMENT**

We welcome the adoption of the four pillars put forward in the Atkinson 2018 *Report on Youth Justice*, namely to:

a) intervene early;
b) keep children out of court;
c) keep children out of custody; and
d) reduce reoffending;

and the proposed amendments contained in this Bill to remove legislative barriers that may contribute to children being refused bail, breaching bail conditions or remaining in detention on remand for extended periods of time.

**Proper attempts to contact a parent of a child**

In particular, we welcome the amendment of Section 392 of the *Police Powers and Responsibilities Act* 2000 (PPRA) to require police to make all reasonable inquiries to promptly contact a parent of a child who has been arrested or served with a notice to appear and record when this has not occurred.

Section 392 of the PPRA presently requires a police officer who arrests or serves a notice to appear on a child, to promptly advise a parent of the child about this.

We welcome the strengthening of the provision which further requires a police officer to make all reasonable inquiries to promptly contact a parent and to keep a record of inquiries made to do so, when contact could not be made. This requirement is administratively reasonable and will help ensure that all reasonable inquiries have in fact been made to notify a parent.

We also welcome the expanding of the definition of parent in section 392 to bring it into line with the definition of parent as provided for in the *Youth Justice Act*.

**Proper Attempts for Legal Assistance for a Child and the Proposed Section 421**

We also welcome the new provision in the PPRA requiring police, before questioning a child in relation to an indictable offence, to contact a legal aid organisation to advise that child is in custody for the offence and to encourage legal representation to be arranged early for the child; however, we would seek to have that provision expanded to include all offences, not just indictable offences.

In our view the key attributes of the child which call for additional legislative protection is that they are a child, they are in police custody and they are about to be questioned without legal assistance. In our view there should be no distinction between whether the charges are indictable or summary charges.

The proposed section 421 of the *Police Powers and Responsibilities Act* 2000 ("the PPRA") is limited by the operation of section 414 of the *PPRA* which provides that that part of the legislation, including section 421, only applies to indictable offences. We would seek for that restriction to be removed from the operation of section 421.

Where the distinction between summary and indictable offences does become important is when police fail to contact a legal aid organisation in accordance with the new section 421(1A). Under section 29 of the *Youth Justice Act* 1992, a statement made by a child in the absence of a support person will generally not be admissible as evidence. Section 29 is in addition to the protection provided by the common law discretions that may be exercised by a magistrate or judge to exclude confessions, including in circumstances where a support person is unsuitable for the role.

In very limited circumstances, Section 29(3) does envisage circumstances when a child charged with an indictable offence may be deprived of a support person. As noted in *Hidden J in R v H (a child)* (1996) 85 A Crim R 481 at 486 on the role of support persons :

> "*...the primary aim of such a provision is to protect children from the disadvantaged position inherent in their age, quite apart from any impropriety on the part of police. That protective purpose can be met only by an adult who is free, not only to protest against perceived unfairness, but also to advise the child of his or her rights. As the occasion requires, this advice might be a reminder of the right to silence, or an admonition against further participation in the interview in the absence of legal advice... further, within appropriate limits, the adult might assist a timid or inarticulate child to frame his or her answer to the allegation. For example, the child might be reminded of circumstances within the knowledge of both the child and the adult which bear upon the matter.*"

Section 29 should be amended to include a requirement that for a child deprived of a support person, a statement should be excluded unless the prosecution satisfies the court there was a proper and sufficient reason that a legal representative or legal aid organisation was not contacted or present.

**"Attempt to notify" and "Legal aid organisation"**

ATSILS is presently a legal aid organisation as presently defined in Schedule 6 to the PPRA, namely an organisation declared under a regulation to be an organisation that provides legal assistance to Aboriginal people and Torres Strait Islanders. As the amendments apply to all children in Queensland, Clause 45 amends Schedule 6 (Dictionary) to provide that a legal aid organisation also includes an organisation that provides legal assistance to persons.

ATSILS operates a 24 hour 7 day a week hotline service for Aboriginal and Torres Strait Islanders arrested and detained by police.

The importance of proper attempts to notify legal aid organisations by police for people held in custody cannot be overstated. In commenting on similar provisions in New South Wales, Wood CJ at CL stated in *R v Phung and Huynh* [2001] NSWSC 115 at paras [38]-[39]:

> *It is important that police officers appreciate that the regime now established is designed to secure ethical and fair investigations, as well as the protection of individual rights, of some significance, which attach in particular to children. Those rights, obviously, are of great importance when a child is facing [serious charges]. The provisions need to be faithfully implemented and not merely given lip service or imperfectly observed.*

Our concern is that the provisions fail to address the situations where the requirement to contact legal aid organisation is merely given lip service and/or imperfectly observed.

In our view, the simplest protection would be an obligation for the Queensland Police Service to record their attempts to contact the legal aid organisation. Similar to the requirement for contacting parents under section 392, we would seek strengthening of the provision to requiring a police officer to make all reasonable efforts to contact the legal aid organisation and to keep a record of inquiries made to do so when police say contact could not be made.

Such a requirement would sit with the existing duties of a police officer when making and recording all other inquiries made in connection with an investigation.

**Department of Youth Justice**

We are also given to understand that the newly created position of Director General of the Department of Youth Justice (Mr Bob Gee), is presently looking at proposed amendments relating to police notification requirements (youth suspects in custody). Aside from working in tandem to strengthen notification protocols, we would imagine that such will also give rise to cost implications for certain service providers – including our own.

We thank you for the opportunity to provide comment and thank you for your careful consideration of these submissions.

Yours faithfully,

Mr. Shane Duffy
Chief Executive Officer
ATSILS (Qld) Ltd.