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Youth Justice (Boot Camp
Orders) & Other Legislation
Amendment Bill 2012
Submission 005

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

BY EMAIL: lacsc@parliament.qld.gov.au

Dear Colleagues,

**RE: *YOUTH JUSTICE (BOOT CAMP ORDERS) AND OTHER LEGISLATION
AMENDMENT BILL 2012***

We thank you for the opportunity to provide a submission on the abovementioned Bill. We do however note that due to time constraints (relating to the very minimal amount of time afforded within which to provide feedback), that it is entirely possible that important considerations might have gone unidentified (or insufficiently fleshed-out). We are also aware that the decision has been made to implement the two boot camp trial programs in Queensland and that youth justice conferencing has already been disbanded, therefore these amendments are simply a rubber stamp of these decisions. Given the potential significance of the proposed amendments – such is disappointing.

Background – preliminary consideration

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (“ATSILS”) provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide

role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for almost four decades has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

Introducing a Boot Camp Order as an option instead of detention for young offenders.

It is our view that boot camp style programs are not suitable for Aboriginal and Torres Strait Islander youth. ATSILS fails to see how these boot camps will reflect the specific cultural requirements of Aboriginal and Torres Strait Islander youth and although the proposed boot camps include a therapeutic element, they fail to acknowledge the necessity of culture and respect as components for Aboriginal and Torres Strait Islander peoples of all ages. We previously suggested that cultural camps are more appropriate and relevant for Aboriginal and Torres Strait Islander youth in contact with the criminal justice system. In fact, we are of the view that resources should also be focussed upon vulnerable Aboriginal and Torres Strait Islander youth prior to any contact with the criminal justice system as a preventative mechanism.

In terms of other relevant programs, the Red Dust Healing Program¹ is an example of an excellent program which could be adapted for young people. Also, the ROBY Program, an outward bound program being trialled in northern NSW with Police and Commonwealth Government funds, is culturally inclusive for Aboriginal and Torres Strait Islander young people. While it is a challenging program in terms of assisting young people to gain and increase self-respect, to trust in themselves and others, to meet others expectations and to challenge themselves in a safe environment, it is positive and aimed at building spirit, rather than breaking it.

We disagree with military style programs and ideas that discipline, respect and values can be instilled in young people, especially young people who come from

¹ <<http://www.thereddust.com/>>

disadvantaged backgrounds. Atkinson, in referring to the disciplinary, no questions asked military style of boot camps, states that “none of this applies to young offenders” anywhere. Atkinson is critical of the appropriateness of such programs, saying that:

Many of these young people live at the margins, some of them will be substance abusers, and a disproportionate number of them will be members of minority groups. Boot camps provide a model of discipline, physical training and obedience, but there is no career path associated with it, and no attendant social welfare cocoon. Questions about the fundamental emphasis in boot camps on drill and rigour, appear as a running thread through the literature.²

The philosophy behind boot camps fails to understand Aboriginal and Torres Strait Islander peoples lived experience in colonised Australia. Aboriginal and Torres Strait Islander young people are expected to engage in a mainstream colonial education system, often experienced as irrelevant to Aboriginal and Torres Strait Islander needs and culture, oppressive and violent, resulting in a disconnect, for many often before high school. Aboriginal and Torres Strait Islander youth in the criminal justice system are mainly under-educated and have negative formal (school) learning experiences. The authoritarian approach and the coercive nature of boot camps, along with the imposition of values on young people are incompatible with addressing the needs of these young people and behaviour change.³

In contrast and on a positive note, Cunneen adapted key components of effective and successful programs for young Offenders, as identified by Ken Buttrum, a former Director-General of the New South Wales Department of Juvenile Justice, to relate

² Atkinson, L., *Boot Camps and Justice: A Contradiction in Terms?* Australian Institute of Criminology: trends & issues in crime and criminal justice: No. 46, July 1995, p. 3, <<http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dt46.pdf>>

³ Atkinson, L., *Boot Camps and Justice: A Contradiction in Terms?* Australian Institute of Criminology: trends & issues in crime and criminal justice: No. 46, July 1995, p. 4, <<http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dt46.pdf>>

specifically to Aboriginal and Torres Strait Islander Young people. Successful elements were listed as those that:

- “assist offenders to accept, rather than avoid, responsibility for their own behaviour;
- focus on helping clients to resolve problems identified as contributing to their offending;
- behaviour;
- assist young people to develop practical alternative ways of coping with stressors;
- involve, wherever possible, the young people’s families and communities in working on the issues likely to reduce re-offending;
- emphasise Aboriginal heritage, culture and law;
- focus on remediating educational deficits in the basic skills to raise social competence;
- help young people to develop market place work skills which can lead to further training;
- opportunities, qualifications and real jobs;
- assist in establishing and strengthening relationships with significant others who can become mentors and role model; and
- involve young people in the empowering experiences of assessing their own needs, building self-esteem and planning and monitoring their agreed case plans.”⁴

We acknowledge that the proposed boot camp programs include some of the above components, however we do not agree that a boot camp context is an environment in which positive change can occur for Aboriginal and Torres Strait Islander youth. We are of the view that counselling, substance abuse programs, family support and

⁴ Cunneen, C, *The Impact of Crime Prevention on Aboriginal Communities*, Institute of Criminology, Law Faculty, University of Sydney, September 2001, p. 24, <[http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/impact_of_crime_prevention_on_aboriginal_communities_chris_cunneen_sep2001.pdf/\\$file/impact_of_crime_prevention_on_aboriginal_communities_chris_cunneen_sep2001.pdf](http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/vwFiles/impact_of_crime_prevention_on_aboriginal_communities_chris_cunneen_sep2001.pdf/$file/impact_of_crime_prevention_on_aboriginal_communities_chris_cunneen_sep2001.pdf)>

support with education, training and employment can occur in a more positive manner independently of the boot camp context.⁵

Another concerning point is the inability of the proposed legislation to address the child protection needs of the young people placed in a “boot camp” environment. We suggest that the vast majority of potential Aboriginal and Torres Strait Islander clients for the boot camps are also subject to dual orders and are on child protection orders. There is no mention of how the child protection needs of a young person will be incorporated into the boot camp environment or in fact how these needs will be met once the child leaves the residential component.

In 2011 the Western Australian Premier Colin Barnett rejected the idea of re-establishing boot camps for young offenders. In 1994 the Western Australian Court Liberal Government established a boot camp at Laverton in the Goldfields at a cost of about \$3 million. However, the boot camp was closed after 18 months.⁶

In Queensland we are now observing what seems to be reminiscent of what happened in 1994 on the other side of the country. Similarly, the boot camp at Laverton was marketed to address law and order issues at a key election time. This model, similar to the proposed Queensland models was also not rigid in regard to being modelled on strict traditional military boot camp models familiar to the United States.⁷

Evidence is also lacking in terms of successful boot camp programs. Some studies have shown that in the short term boot camp programs may reduce recidivism in comparison to imprisonment, however when longer term evaluations are

⁵ Atkinson, L., *Boot Camps and Justice: A Contradiction in Terms?* Australian Institute of Criminology: trends & issues in crime and criminal justice: No. 46, July 1995, p. 6, <<http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dti46.pdf>>

⁶ ABC News, *Premier rejects boot camps and royal commission*, 9/08/2011, <<http://www.abc.net.au/news/2011-08-09/premier-rejects-climate-change-commission/2831274>>

⁷ Atkinson, L., *Boot Camps and Justice: A Contradiction in Terms?* Australian Institute of Criminology: trends & issues in crime and criminal justice: No. 46, July 1995, p. 1, <<http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dti46.pdf>>

conducted, recidivism rates diminish. Some programs, those which are highly militaristic and lack therapeutic programming have in fact been found to increase recidivism.⁸

We also note that in order to gain the maximum cost effectiveness of a boot camp program they must run at maximum capacity to make use of the allocated resources. These include high levels of supervision, counselling, training and support.⁹ We are of the view that funds could be better spent on culturally appropriate and supportive programs such as cultural camps- which is inclusive of elders, or programs of similar nature to the Red Dust Healing Program and/or the ROBY Program.

Removal of court referred youth justice conferencing

Youth Justice Conferencing is important as an option for Aboriginal and Torres Strait Islander youth to minimise their contact with the criminal justice system and in turn, reduce over-representation of Aboriginal and Torres Strait Islander youth in detention. The “Doing Time – Time For Doing: Indigenous youth in the criminal justice system” report looked at youth justice conferencing. While the report acknowledged that there was mixed evidence in terms of success, it also recognized the need for alternatives to court. This is also consistent with the recommendations made by the Royal Commission into Aboriginal Deaths in Custody to divert Aboriginal and Torres Strait Islander people from the criminal justice system.

The report¹⁰ acknowledged studies that demonstrated that conferencing had some impact:

⁸ Atkinson, L., *Boot Camps and Justice: A Contradiction in Terms?* Australian Institute of Criminology: trends & issues in crime and criminal justice: No. 46, July 1995, p. 4, <<http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dti46.pdf>>

⁹ Atkinson, L., *Boot Camps and Justice: A Contradiction in Terms?* Australian Institute of Criminology: trends & issues in crime and criminal justice: No. 46, July 1995, p. 4, <<http://www.aic.gov.au/documents/B/8/E/%7BB8E5DC4C-4F1A-4D24-ACFA-5A77B248E391%7Dti46.pdf>>

¹⁰ The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time For Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Para 7.165, p. 234.

There have been several studies conducted in New South Wales on the reoffending rates of youth who have been referred to conferencing and youth who have gone through the traditional court process, demonstrating that youth who have had the option of conferencing are less likely, or are slower, to reoffend.¹¹

The same was said¹² by Dr Teresa Cunningham, from the Menzies School of Health Research, who conducted a five-year study in the Northern Territory:

I did a five-year evaluation of the youth diversion program for the Northern Territory Police. It was to do with reoffending, obviously. It was one of the major outcomes of it. But I came from the area of restorative justice, and I was looking at the way in which diversions and conferences actually helped kids to get back on track – which they seemed to, whereas the court system had a negative impact on reoffending. In other words, kids who went through the court system tended to reoffend more quickly and also to reoffend more often than those juveniles who had gone through diversions and conferences.¹³

It has also been said that “in addition to the statistical success in reducing recidivism rates, conferencing provides young offenders with an opportunity not only to realise immediately the consequences of their actions, but to address the factors in their lives which may have led to them committing the offence.”¹⁴

¹¹ The report referred to: S Vignaendra and J Fitzgerald, *Reoffending Among Young People Cautioned by Police or Who Participated in a Youth Justice Conference*, Crime and Justice Bulletin no. 103, NSW Bureau of Crime Statistics and Research, October 2006; and G Luke and B Lind, *Reducing Juvenile Crime: Conferencing Versus Court*, Crime and Justice Bulletin no. 69, NSW Bureau of Crime Statistics and Research, April 2002.

¹² The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time For Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Para 7.166, p. 235.

¹³ Teresa Cunningham, Menzies School of Health Research, *Committee Hansard*, Darwin, 6 May 2010, p. 26.

¹⁴ The Parliament of the Commonwealth of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time For Doing: Indigenous Youth in the Criminal Justice System*, June 2011, Para 7.167, p. 235.

Also in support of youth justice conferencing the Queensland Government, Department of Communities 2010-11 Annual Report records that 691 Aboriginal and Torres Strait Islander youth were youth justice conferenced in that period and that 99% of youth justice conferencing participants (including the victim) were satisfied with the outcome of the conference.¹⁵

In the past in Queensland and overseas the youth justice conferencing program has been praised as a success in both Queensland and overseas. In 2003 the program received the Premier's Award for Excellence in Public Sector Management. In 2008 the program was a finalist in the Department of Justice and Attorney-General's Achievement Awards for Client Services. In 2007 the Hong Kong Methodist Church sought assistance to set up a similar program in Hong Kong. This included Hong Kong personnel being trained in Queensland and in 2008 and 2009 Queensland youth justice conferencing staff travelling to Hong Kong to deliver training and assess convenor candidates.¹⁶

A recent study by the NSW Bureau of Crime Statistics and Research (BOCSAR) compared the cost effectiveness of Youth Justice Conferences and Children's Court in NSW. The study found that on average Youth Justice Conferencing cost 18% less than the average cost of a comparable matter being dealt with in the Children's Court.¹⁷

Based on the above and the time and effort given by staff and all of those involved including victims, we are disappointed that the youth justice conferencing service no longer exists and that another of the few diversionary options has been removed for Aboriginal and Torres Strait Islander youth.

¹⁵ Department of Communities 2010–11 Annual Report, Appendix 6, p. 221.

¹⁶ Queensland Government, *Youth justice conferencing history*, <<http://www.justice.qld.gov.au/youth-justice/youth-justice-conferencing/history>>.

¹⁷ Webber, A., *Youth Justice Conferences versus Children's Court: A comparison of cost-effectiveness*, NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin: Contemporary Issues in Crime and Justice Number 164, August 2012, <[http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB164.pdf/\\$file/CJB164.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB164.pdf/$file/CJB164.pdf)>.

We note the speed with which these amendments are being progressed and the lack of real consultation with service providers and the broader Aboriginal and Torres Strait Islander community and Community Justice Groups that has occurred throughout the process. We view this approach as not valuing existing knowledge and experiences of services and individuals as well as ascertaining potential costs for such changes and for identifying unintended consequences.

We wish you well in your deliberations and trust that our submissions are of assistance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Shane Duffy', written in a cursive style.

Shane Duffy

Chief Executive Officer