

Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

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Submitted by: Shane Cuthbert and Pat O'Shane AM
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Former Magistrate Pat O'Shane AM & Youth Justice Reform Advocate Shane Cuthbert
Joint Submission to the Youth Justice Reform Select Committee

16 November, 2023

Dear Committee Secretary
Youth Justice Reform Select Committee
Parliament House
George Street
BRISBANE
QLD 4000

Former Magistrate Pat O'Shane AM

Youth Justice Reform Advocate Shane Cuthbert

Joint Submission to the Youth justice Reform Select Committee

November 20, 2023

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Dr Pat O'Shane AM

Pat O'Shane AM¹ needs no introduction, having served twenty-seven years on the Bench as a Magistrate and nine years as Chancellor of the New England University. Pat O'Shane AM is most well known as being the first female indigenous school teacher in Queensland, the first Indigenous person to successfully complete a law degree, the first Indigenous Barrister² and Magistrate but also, the first female and indigenous individual in Australia, to lead a Government Department. Pat O'Shane AM became the head of the New South Wales Ministry of Aboriginal Affairs having been invited by then Premier, Neville Wran to implement the first Land Rights Legislation in Australia. Former Prime Minister Gough Whitlam spoke very highly of O'Shane, having provided her, a remarkable and positive Character Reference.

Shane Cuthbert

Shane Cuthbert is currently President of the Central Queensland University Law Society and a community advocate, with lived experience in the youth justice, prison, mental health and addiction spaces³. Shane Cuthbert, who has recently completed a degree in Law and will complete his final Psychology subject later this year, has spoken with various Queensland Parliamentary Committees in relation to support for victims of crime⁴ and decriminalising public offences⁵.

Our Story

Shane Cuthbert and Pat O'Shane first met in 2009. Cuthbert was a young offender now reformed, sentenced by the former Magistrate in Blacktown Local Court⁶. Both O'Shane and Cuthbert have reconnected and joined forces to tackle the issues of youth crime, justice and prison reform, addressing offending behaviour and prevention⁷. Together, they share their unique perspectives with the Youth Justice Reform Select Committee with the hopes of preventing crime, increasing understanding and support for young people and supporting the Committee to address these issues.

¹ https://en.wikipedia.org/wiki/Pat_O%27Shane

² <https://www.naa.gov.au/students-and-teachers/learning-resources/learning-resource-themes/government-and-democracy/activism/aboriginal-activist-and-barrister-pat-oshane>

³ <https://shanecuthbert.com/shane-cuthbert-who-is-shane-cuthbert/>

⁴ <https://documents.parliament.qld.gov.au/com/LASC-C96E/ISVC-98C6/submissions/00000054.pdf>

⁵ <https://documents.parliament.qld.gov.au/com/CSSC-0A12/IDCPOHWR-FA50/submissions/00000022.pdf>

⁶ <https://www.sbs.com.au/ondemand/tv-series/rebel-with-a-cause/season-1/rebel-with-a-cause-pat-oshane-s1-ep1/2262534723544>

⁷ <https://www.news.com.au/lifestyle/real-life/former-criminal-shane-cuthbert-teams-up-with-the-magistrate-who-once-sentenced-him/news-story/ee9ad0debf869f301aba7eb0bddfdb7a>

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Terms of Reference

The terms of reference for the inquiry are:

- 1) select committee, known as the Youth Justice Reform Select Committee be established to examine:
 - a) ongoing reforms to the youth justice system; and
 - b) support for victims of crime.
- 2) In undertaking the inquiry, the Committee consider:
 - a) the prevention of entry and diversion of youth offenders from the justice system with specific consideration of risk and protective factors that reduce crime;
 - b) effective ways to stop recidivism and protect the community from offending and the opportunity for community-controlled organisations with specific reference to the role of First Nations peoples to provide support solutions and services;
 - c) the efficacy of:
 - i) justice programs including on-country programs, education, health and housing services;
 - ii) reducing people carrying weapons;
 - iii) evidence-based early intervention and prevention programs;
 - iv) reducing the numbers in custody on remand;
 - v) alternatives to detention;
 - vi) detention and other consequences of offending;
 - vii) the most suitable infrastructure used for custody, detention or residential components necessary to reduce crime; and
 - d) systems and processes to provide immediate and ongoing support for victims of crime.
- 3) The Committee:
 - a) has the power to call for persons, documents and other things;
 - b) may present reports to the Legislative Assembly as it determines;
 - c) ceases at the dissolution of this parliament.
- 4) Standing Order 203 does not apply and a question before the Committee is decided by a majority of the votes of the members present and voting, plus one member.
- 5) The Committee consists of seven members.

The Problem(s)

Sadly, we write to you this week, having lost another young man in Logan, shot by Queensland Police and as an unsentenced young person has taken their life, whilst on remand in youth detention, in Western Australia. We should avoid (where possible) criminalising children and placing more young people into youth detention facilities.

Pat O'Shane AM wrote a letter to The Australian recently condemning the actions of Corrective Services officers in WA who were *'busy watching television, having*

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disregarded the young persons cries for help, telling the officers he wanted to take his life and he was ignored, the Minister should have immediately taken the officers in charge to hand”.

The last person executed in Australia was Ronald Ryan, who was accused of having shot a Warder at/of Pentridge Prison, Melbourne. There was a major reaction of citizens who marched in protest at his execution.

Pat O'Shane AM remembers *“that I was in High School & listened to the broadcast of his execution, it certainly electrified the entire Australian community”.*

There were several aspects of the execution which raised many questions about the lawfulness of the execution. Executions have been outlawed in Australia however, Governments and their systems, continue to execute our young people.

“I believe that were the case to be repeated, the community would again protest as they did at the time! It cannot be again said that if it were alleged that any youth - especially Indigenous Youth were sentenced to execution, there would be an outcry! Yet every year we read that Indigenous Youth are imprisoned in grossly unlawful circumstances”. Pat O'Shane AM

The Queensland Government should consider the terms of the *International Convention of Rights of the Child*⁸ to which, Australia is a signatory. The Australia-wide practice of confinement, isolation and a lack of contact with family goes against well established principals. The Queensland Government has twice in the last year suspended its own *Human Rights Act*⁹ in order to introduce new legislation relating to youth crime¹⁰ and indefinite detention in watch houses¹¹.

Aboriginal Deaths in Custody

On 10 August 1987 Prime Minister Hawke announced the formation of a Royal Commission to investigate the causes of deaths of Aboriginal people who were held in state and territory gaols. The Royal Commission was established in response to a growing public concern that deaths in custody of Aboriginal people were too common and poorly explained. The Letters Patent formally establishing the Commission were issued by the Governor-General on 16 October 1987. Similar Letters Patent were issued by the states and the Northern Territory.

The Commission examined all deaths in custody in each state and territory which occurred between 1 January 1980 and 31 May 1989, and the actions taken in respect of each death. The Commission's terms of reference enabled it to take account of social, cultural and legal

⁸ International Convention on Rights of the Child (1989) *United Nations Treaty Series*. Vol. 1577, p3.

⁹ *Human Rights Act* (Qld) 2019

¹⁰ *Strengthening Community Safety Bill* (2023)

¹¹ <https://www.theguardian.com/australia-news/2023/aug/23/absolute-dog-act-queensland-labor-pilloried-for-shock-move-to-override-states-human-rights-act>

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factors which may have had a bearing on the deaths under investigation¹². The report made 339 recommendations of which, this committee should consider.

Since the Royal Commission into Aboriginal Deaths in Custody, 556 indigenous deaths have been reported with 16 indigenous deaths being reported this year alongside 65 non-indigenous deaths, 81 in total.¹³ Non-Indigenous people have died in custody in greater numbers and at a higher rate than Indigenous people, since 1991; however, with the much higher numbers of imprisonment of Indigenous people, there are more deaths as a proportion of their total population¹⁴.

As of June 2018, Indigenous Australians aged 18 years and over were approximately 2% of the total adult population, while Indigenous prisoners accounted for 28% of the adult prison population¹⁵, meaning that Indigenous adults are 15 times more likely to be imprisoned than non-Indigenous adults¹⁶.

Indigenous youth are 26 times more likely to be placed in detention¹⁷. According to the Australian Institute of Health and Welfare, in the June quarter of 2019 there was an average of 949 young people in detention per night: 90% of these were male, and 63% not yet sentenced. Sadly, Indigenous people who died in custody are significantly younger than non-indigenous people.¹⁸

Queensland Aboriginal Deaths in Custody

Following the Royal Commission into Aboriginal Deaths in Custody the Queensland Law Society, in consultation with First Nations stakeholders, actively advocated for law reform to address the overrepresentation of Aboriginal and Torres Strait Islander people in Australia's justice system however, Aboriginal deaths in custody are not the result of this overrepresentation¹⁹.

When you consider each case, you will find that these deaths were mostly preventable and only occurred because of Police not following procedures, often whilst in the watchhouse. Aboriginal deaths in custody are not prevented by taking less people into custody, although that may contribute to a reduction statistically, the prevention will only occur because of Police officers following the internal processes and procedures. Shane Cuthbert has

¹² <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody>

¹³ <https://www.aic.gov.au/statistics/deaths-custody-australia>

¹⁴ <https://www.theguardian.com/australia-news/2020/jun/09/black-lives-matter-protesters-referred-to-our-count-of-432-aboriginal-deaths-in-custody-its-now-437>

¹⁵ Prisoners in Australia, 2018: Aboriginal and Torres Strait Islander Prisoner Characteristics". *Australian Bureau of Statistics*. 6 December 2018.

¹⁶ <https://www.theguardian.com/australia-news/2020/jun/06/aboriginal-deaths-in-custody-434-have-died-since-1991-new-data-shows>

¹⁷ *ibid*

¹⁸ <https://humanrights.gov.au/our-work/indigenous-deaths-custody-report-summary>

¹⁹ Inquiry into the Decriminalisation of Certain Public Offences, and Health and Welfare Responses Submission No. 022, Shane Cuthbert (2022)

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personally experienced poor treatment in the watchhouse and witnessed the inhumane treatment of indigenous individuals²⁰.

Miss Dhu

The Miss dhu case is an example where failure of the Police to adequately fulfill their responsibilities, led to a death in custody, the death of Julieka Ivanna Dhu. In 2014, Miss Dhu was a 22-year-old Aboriginal Australian woman arrested in relation to unpaid fines.

Whilst in custody, Miss Dhu complained of pain and was taken to the hospital where hospital staff told Police that her complaints were exaggerated and associated with drug withdrawal. 2 days later Miss Dhu again complained to the police about her pain and could no longer stand. Police officers accused her of faking her condition and handcuffed her to the back of a prison van where she later died.

The official cause of death was an infection caused by an untreated fractured rib however, an internal Police investigation found that 11 officers had failed to comply with Police regulations and were guilty of misconduct, receiving written and oral warnings. A coronial inquest later found Miss Dhu had suffered “unprofessional and inhumane” handling by police and “deficient” treatment from the hospital staff. The Inquest also established that Police had been influenced by “pre-conceived ideas about aboriginal people” and recommended individuals no longer be imprisoned for unpaid fines.

In 2020, six years after the death of Miss Dhu, the Government of Western Australia ceased jailing people for unpaid fines.

Mr Cuthbert says “My friend Debbie Kilroy recently flew to Townsville to represent the family of Selesa Tafaiifa who lost her life in prison due to the use of a spit hood, this in similar circumstances to Miss Dhu in that, staff did not take the woman’s requests for an asthma puffer seriously and by the time medical attention was sought, it was too late”.

Indigenous Access to Legal Representation and Human Rights

Pat O’Shane AM was a member of the judiciary during a time when the Aboriginal Legal Service was first established.

“It was established by Indigenous communities. Redfern was the first one and that was done with the assistance of lawyers, professors and lectures from the University of NSW.”

“It started off really keeping a cop watch. Watching police bashing up blacks at Redfern every weekend. So that’s where it started and then it grew.”

²⁰ Inquiry into the Decriminalisation of Certain Public Offences, and Health and Welfare Responses Submission No. 022, Shane Cuthbert (2022)

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Many Indigenous Australians are unable to read or write and are not provided with the support they need to attend Court. When they do attend Court, Indigenous and other disadvantaged individuals are not provided with adequate support such as mental health assessments, drug and alcohol referrals.

Article 26 of the ICCPR states that,

*'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit and discriminate against and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.'*²¹

The Australian Human Rights Commission defines discrimination as,

*'Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'*²²

Is Racial Discrimination a Breach of the Law?

It is submitted that the indirect discrimination applied in relation to the offences above, violate both the *Racial Discrimination Act 1975 (Cth)*²³ and the *Anti-Discrimination Act 1991 (Qld)*²⁴ with this Act prohibiting laws that indirectly or directly discriminate based on race, disability, or age.

FASD (Foetal Alcohol Syndrome Disorder)

Foetal alcohol spectrum disorder (FASD) is characterised by severe, pervasive neurodevelopmental impairment due to prenatal alcohol exposure (Stratton, Howe & Battaglia)²⁵. Impairment in executive function, memory, language, learning and attention in young people with FASD can result in a range of difficulties including understanding cause and effect, learning from past experiences and decision making (Connor, Sampson & Bookstein)²⁶, (Cook, Green & Lilley)²⁷. These impairments can, in turn, lead and contribute

²¹ International Covenant on Civil and Political Rights, Article 26 (Office of the High Commissioner on Human Rights)

²² International Covenant on the Elimination of all Forms of Racial Discrimination, Article 1 (Office of the High Commissioner for Human Rights)

²³ *Racial Discrimination Act 1975 (Cth)*

²⁴ *Anti-Discrimination Act 1991 (Qld)*

²⁵ Stratton, K., Howe, C., Battaglia, F. *Foetal Alcohol Syndrome: Diagnosis, Epidemiology, prevention, and Treatment*. Institute of Medicine. Washington DC: National Academy Press, (1996).

²⁶ Connor, P, D., Sampson, P, D., Bookstein, F, L et al. *Direct and Indirect Effects of Prenatal Alcohol Damage on Executive Function*. *Dev Neuropsychol* (2000). 18, 331-354.

²⁷ Cook, J, L., Green, C, R., Lilley, C, M. et al. *Foetal Alcohol Spectrum Disorder: A Guideline for Diagnosis Across the Lifespan*. *CMAJ* (2016). 188. 191-197.

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to problems at school and with employment, mental health, social exclusion, substance misuse and early and repeated engagement with the law (Streissguth, Bookstein & Barr)²⁸

The prevalence of FASD in Aboriginal youth was 47% (Bower, Watkins & Mutch et al)²⁹ more than twice that of the highest population estimate of FASD in Australia of 19%, reported in a remote, mainly Aboriginal, population aged 7–8 years (Rojas, Gretton, Background)³⁰. There is increasing concerns regarding the implications of FASD in Australia (Douglas, Hammill & Hall)³¹ and the criminal justice/ Forensic Psychology (Freckelton)³² spaces.

Pat O'Shane's last brief was a case where a young person, diagnosed with FASD, was before the Courts. O'Shane was asked to defend this young person having been contacted by the child's parents.

Anti-Social Personality Disorder (APSD)

Most children currently engaging with and/or whom have had experience with the judicial, criminal justice and prison systems are likely to be diagnosed with APSD (Anti-Social Personality Disorder). APSD is characterized by maladaptive patterns of behaviour, irresponsibility, impulsivity, reckless behaviour, a disregard of the rights of others, a lack of remorse and may include substance abuse symptoms (*Diagnostic and Statistical Manual of Mental Disorders* (5th ed.; DSM-5 American Psychiatric Association, 2013).³³

Antisocial behaviour can develop prior to age 8 with more than 80% of cases developing symptoms prior to age 11, peaking in individuals aged 24-44 and decreasing in those aged 45 and above (Black)³⁴.

Antisocial behaviour is a very broad term and encompasses many types of destructive behaviours such as violence, physical and psychological harm to others, the destruction of property, rule breaking, manipulation, lying and deception and tends to occur with other

²⁸ Streissguth, A. P., Bookstein, F. L., Barr, H. M. et al. Risk Factors for Adverse Life Outcomes in Foetal Alcohol Syndrome and Foetal Alcohol Effects. *J Dev Behav: Pediatr*, (2004) 24. 228-238

²⁹ Bower, C., Watkins, R. E., Mutch, R. C., et al. *Foetal Alcohol Spectrum Disorder and Youth Justice: A Prevalence Study Among Young People Sentenced to Detention in Western Australia*. (2018).

³⁰ Rojas, E. Y. Gretton, H. M. Background, G. H. M. *Offence Characteristics, and Criminal Outcomes of Aboriginal Youth who Sexually Offend: A Closer Look at Aboriginal Youth Intervention Needs*. *Sex Abuse* (2007) 19, 257-283.

³¹ Douglas, H., Hammill, J., Hall, W. et al. Judicial Views of Foetal Alcohol Spectrum Disorder in Queensland's Criminal Justice System. *J Judi Administ* (2012). 21. 178-188.

³² Freckelton, I. Sentencing Offenders with Foetal Alcohol Spectrum Disorder (FASD): The Challenge of Effective Management. *Psychiatry, Psychology and Law* (2016). 23. 815-825.

³³ American Psychiatric Association. *American Psychiatric Association DSM-IV-TR Diagnostic and Statistical Manual of Mental disorders*. Washington, DC: 2004

³⁴ Black DW, Baumgard CH, Bell SE. A 16- to 45-year follow-up of 71 men with antisocial personality disorder. *Compr Psychiatry*.1995;36:130–140.

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behavioural problems such as substance abuse (Miles, Van den Bree, & Pickens, 2002)³⁵, ADHD, depression and anxiety (Kim-Cohen, & Maughan, 2006)³⁶, unstable relationships, poor parenting and work instability (Moffitt, Caspi, & Harrington, 2002)³⁷.

(Niv et al. 2013)³⁸ focused on aggressive (violence) and non-aggressive (rule-breaking) behaviours finding that, both are influenced by latent common antisocial behaviour factors. The childhood-age common antisocial behaviour factor was influenced by 41% genetics, 40% shared environment and 19% non-shared environment, indicating that environmental factors (59%), more greatly influence the disposition of antisocial behaviour over genetic factors (41%).

Environmental factors such as education, peer groups and experiences with violence, sexual abuse, drugs and alcohol use/abuse such as FASD (Foetal Alcohol Syndrome Disorder) are influenced heavily by socio-economic status. We know that children of lower socio-economic status are at a greater risk of experiencing the above, therefor placing them at greater risk of an APSD diagnosis³⁹.

Protective Factors - iQ

Biosocial research, integrates biological and social factors to understand why some individuals, as opposed to others become antisocial in the presence of high and low social risk. (Portnoy et al. 2013)⁴⁰ found that high IQ, is the best replicated protective factor among all the neuropsychological factors. Studies into the development of IQ and specifically, whether IQ is inheritable or influenced by environmental factors have concluded it is environmental factors that have the greater influence.

A key determinant in the IQ of children is the level of cognitive stimulation received at home. The ratio of positive reinforcement and encouragement versus reprimands, punishments and negative reinforcements influences the child's IQ. Researchers further conclude that the quality of mother-infant relations during the child's infancy influences the child's IQ.

Improving the environments of children such as education, health and wellbeing increases a child's iQ and decreases the likelihood of APSD. The Queensland Government must focus on improving the health, education and environmental outcomes of children to see positive

³⁵ Miles DR, Van den Bree M, Pickens RW. Sex differences in shared genetic and environmental influences between conduct disorder symptoms and marijuana use in adolescents. *American Journal of Medical Genetics (Neuropsychiatric Genetics)* 2002;114:159–168.

³⁶ Kim-Cohen J, Caspi A, Moffitt TE, Harrington H, Milne BJ, Poulton R. Prior juvenile diagnoses in adults with mental disorder: developmental follow-back of a prospective-longitudinal cohort. *Archives of General Psychiatry*. 2003;60(7):709–717.

³⁷ Moffitt TE, Caspi A, Harrington H, Milne BJ. Males on the life-course persistent and adolescence-limited antisocial pathways: follow-up at age 26. *Development and Psychopathology*. 2002;14:179–207.

³⁸ Niv S, Tuvblad C, Raine A, Baker LA. Aggression and Rule-breaking: Heritability and stability of antisocial behaviour problems in childhood and adolescence. *Journal Criminal Justice*. 2013;(special issue)

³⁹ Cuthbert, S, C. *Adverse Childhood as: Determinant of APSD (Anti-Social Personality Disorder)* Forensic Psychology. Central Queensland University (2023).

⁴⁰ Portnoy J, Chen FR, Raine A. Biological Protective Factors for Antisocial and Criminal Behaviour. *Journal Criminal Justice*. 2013;(special issue)

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changes in this space⁴¹.

Protective Factors - Age

(Robins 1966)⁴² found most children with APSD improve as they grow older and do not become adults with APSD which is also supported by (Moffitt et al. 2008)⁴³ who traced the outcomes of 1037 children aged 3-32 years as part of a longitudinal study in New Zealand. Most antisocial youth with behavioural problems are shown to have an adolescent-limited form of APSD.

(Glueck 1950)⁴⁴ who concludes that those with APSD who remitted later in life had stronger family ties, were more involved within their communities and were more likely to live with their spouses consistent with Glueck's findings that linking marital attachment with improvement, only brief incarceration, and job stability.

(Black et al. 1995)⁴⁵ and his Iowa Anti-Social follow up study, showed that of those hospitalised for APSD 29 years earlier (on average) concluding that 27% had remitted completely, 31% had improved and only 42% were remained the same or worse.

Most children diagnosed with APSD do not go on to become adults with APSD and of those that do, only a small percentage (42%) fail to remit or improve. Studies show that supportive family ties, positive relationships, job stability, High IQ and minimal incarceration act as protective factors and increase the likelihood of remittance and reduce the likelihood of recidivism⁴⁶.

Cuthbert concludes, *“that the most important determinant of an individual's disposition to developing a psychopathology specifically, antisocial personality disorder is their environment, both shared and non-shared environmental factors”*.

No Prisons

Placing adults and children specifically, into prisons reduces the likelihood of rehabilitation and increases recidivism rates. (Brendgen et al. 2013)⁴⁷ reported that peer group influences (non-shared environmental factors) were more likely to influence aggression where peer group norms were more favourable and concludes that peer group influences condoning or

⁴¹ Cuthbert, S, C. *Adverse Childhood as: Determinant of APSD (Anti-Social Personality Disorder)*. Forensic Psychology. Central Queensland University (2023).

⁴² Robins LN. *Deviant children grow up*. Baltimore (MD): Williams & Wilkins; 1966.

⁴³ Moffitt TE, Caspi A, Harrington H, Milne BJ. Males on the life-course persistent and adolescence-limited antisocial pathways: follow-up at age 26. *Development and Psychopathology*. 2002;14:179–207.

⁴⁴ Glueck S, Glueck E. *Unravelling juvenile delinquency*. Cambridge (MA): Harvard University Press; 1950.

⁴⁵ Black DW, Baumgard CH, Bell SE. A 16- to 45-year follow-up of 71 men with antisocial personality disorder. *Compr Psychiatry*.1995;36:130–140.

⁴⁶ Cuthbert, S, C. *Adverse Childhood as: Determinant of APSD (Anti-Social Personality Disorder)* Forensic Psychology. Central Queensland University (2023).

⁴⁷ Brendgren M, Girard A, Vitaro F, Dione G, Boivin M. Do Peer Group Norms Moderate the Genetic Expression of Physical and Relational Aggression? *Journal Criminal Justice*. (2013) Special Issue

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penalising aggressive behaviour in children can influence a child’s predisposition to aggression later in life. Young people are more easily influenced by peer groups than adults, particularly in regards to aggression. Where possible, young people should be kept out of watch houses and prisons where it is more likely young people will become more aggressive⁴⁸.

Mr Cuthbert says, “*locking kids in watchhouses and prisons is not the answer, placing children into prisons increases the prevalence and seriousness of crime, especially violence*”.

We have much to learn from the United States of America, a nation with the largest rate of incarceration and recidivism. We have nothing to gain, following what has come to be known, per Angela Davis, Cornel West, and Talib Kweli, as the “*prison-industrial complex*.”

We have the opportunity in Australia and Queensland to reduce recidivism and increase rehabilitation and support, we have an opportunity to avoid, what we would suggest are horrific mistakes made by the United State of America, to incarcerate 1% of the population and an opportunity for better outcomes.

America’s War On drugs

When President Ronald Reagan signed the *Anti-Drug Abuse Act* in 1986, he effectively criminalized drug addiction which led to the mass incarceration of primarily non-violent drug offenders, disproportionately from disadvantaged populations. More than 65% of those incarcerated in America identify as African-American or South American (Latino).

The political ‘Tough on Crime’ and War on Drugs rhetoric has cost more than 2.5 trillion dollars and has led to the largest rate of incarceration in the world. No country in the world incarcerates more of its citizens than does the United States.

In the United States, we are seeing a cycle of incarceration linked to generational trauma, the two go hand in hand. When the United States introduced the War on Drugs, they locked up a large population of disadvantaged (mostly African-American males) from poor regions and communities and they gave them exceptionally long prison sentences.

What we are seeing in the United States is the inter-generational effects of incarceration, the children and grand children of those sentenced as part of the war on drugs. The children of these adults, have grown up in similar circumstances, fatherless homes, raised by single mothers on a single and (often low) income, experienced a lack of education and access to

⁴⁸ Cuthbert, S, C. *Adverse Childhood as: Determinant of APSD (Anti-Social Personality Disorder)* Forensic Psychology. Central Queensland University (2023).

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healthcare, violence and poverty. With poverty and trauma, comes drug and alcohol abuse, often followed by crime and imprisonment.

Arnold Swarzenegger has recently spoken about his experiences with Austrian and German fathers, who returned from the Second World War with a propensity for violence⁴⁹, drug and alcohol abuse. These men carried the trauma of the war with them and took it into their family homes, often abusing their partners and children.

Generational Trauma and Crime

In Australia, mental health professionals social workers and those working in community spaces have recognised the importance of lived experience in healing and identified the significant role 'intergenerational trauma' plays in increasing risk factors for families who have experienced trauma.

Generational trauma begins when an individual or group collectively experience a horrific event, sexual and physical abuse, discrimination, natural disasters, racism and war. These events lead to anxiety, depression and PTSD and can be transferred from parents to children.

In Australia, we recognise this cycle and speak often about 'breaking the cycle', although we provide funding for many programs and organisations to support breaking that cycle, the reality is that as long as we have prisons, poverty, a lack of education and opportunity, we will continue to see young people engaging in crime and anti-social behaviours.

In Australia, although we incarcerate less people overall, we do still disproportionately lock up indigenous people. Due to disadvantage, indigenous Australians are more likely to be locked up as they are more likely of low socio-economic areas and these environmental factors, education, trauma and lack of opportunities play a huge role. If Queensland is to stop its own 'war on drugs' style incarceration cycle, it is to be **BOLD** and end the imprisonment of children. In making these decisions, the Government will likely be criticized but it is the right thing to do and it must have the courage to do so.

No Watchhouses

In the last 12 months, the Cairns Watch House reported a total of 1131 children were held⁵⁰. 21 young people were held for more than 15 days with one child spending 21 days in the

⁴⁹ <https://www.dailymail.co.uk/tvshowbiz/article-12165575/Arnold-Netflix-Schwarzenegger-opens-abusive-childhood-Nazi-father.html>

⁵⁰

https://www.cairnspost.com.au/subscribe/news/1/?sourceCode=CPWEB_WRE170_a_GGL&dest=https%3A%2F%2Fwww.cairnspost.com.au%2Ftruecrimeaustralia%2Fpolice-courts-cairns%2Fchildren-spending-22-hours-a-day-in-cells-and-sleeping-on-floor-as-cairns-watch-house-numbers-swell%2Fnews-story%2Fe18f2410f181bdf62d5008f36744ce2a&memtype=registered&mode=premium&offerset=cp_truecrime_premium

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watch house. This is unacceptable and inhumane. A total of 8030 children were admitted to watch houses or detention across the State of Queensland in 2021-2022⁵¹.

Consider that often, those in watch houses do not have access to education, programs and yard access, there is limited access to health care (mental and physical) and sunlight. There are no Televisions, iPads or any other devices that may stimulate and entertain children, consider also that most of these children have been the victims of horrific crimes.

Mr Cuthbert told the Victims of Crime Committee this year *"Victim's, when not given adequate support, can become perpetrators"*.

These children, are often in need of support and interventions that address their offending behaviours and also the underlying issues such as trauma, abuse and mistreatment. Many of these children have adverse childhood experiences and experience APSD symptoms.

Mr Cuthbert's experiences are not isolated and although the mistreatment detailed above occurred in adult facilities, the same regularly occurs in youth detention facilities.

Mr Cuthbert says, *"Most of the blokes I met in prison had experienced youth detention and were subjected to inhumane treatment and abuse, physical and sexual at the hands of other inmates and quite often, prison officers."*

Holding Children in Watch-houses is Unlawful

Caxton Legal Centre acting for Youth Empowered Towards Independence Incorporated (YETI Cairns), challenged the Queensland Government's decision to detain children in Watch-houses recently⁵².

"If we must detain children at all, we need to do so in places where they have the chance to be rehabilitated, that means education programs, cultural support and especially contact with family, and access to disability, health and drug and alcohol treatment services. Our communities can't be safe while the system is making children angrier and more disconnected. Inhumanely detaining children creates crime and makes us all less safe," said Genevieve Sinclair, CEO of YETI.

The case was to test the lawfulness of the Queensland Government's practice of holding remanded children in police watch houses for extended periods of time, rather than in youth detention centres.

The Queensland Government conceded that there was no order permitting detention in a police watch house. The Supreme Court ordered that these children be transferred to youth detention facilities immediately⁵³.

⁵¹ Queensland Family and Child Commission Queensland Child Rights Report 2023

⁵² *Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* (2023) QSC

⁵³ https://www.gratafund.org.au/detention_of_children

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“The detention of children is extremely serious and must occur only according to law. The Department of Youth Justice has been overseeing the unlawful detention of these three children and potentially many other children over a substantial period of time. This is a serious breach of the human rights of children, and frankly quite shocking.” said Bridget Burton, Director, Human Rights and Civil Law Practice at Caxton Legal Centre.

The practice of detaining children in police watch houses, sometimes for excessive periods of time alongside serious adult offenders, has been criticised by law experts, human rights groups and children’s advocates⁵⁴.

Personal Experience

In 2022, Mr Cuthbert was arrested in relation to a public nuisance offence (discontinued by Police) and spent a night in the Cairns Watchhouse where he witnessed Police Officers breach the *Human Rights Act*⁵⁵ and the *Police Powers and Responsibilities Act*⁵⁶.

Mr Cuthbert was placed into a small holding cell with two indigenous males in their 50s/60s, one of the indigenous males was experiencing chest pains. Mr Cuthbert informed the Police via the intercom in the cell, (installed for medical emergencies), that this individual was experiencing chest pain and in need of medical attention and was told to ‘shut up and go to bed’ before disconnecting the intercom.

Mr Cuthbert began banging on the cell door to get the attention of officers nearby, who told him to ‘pull his head in’ and asked ‘who do you think you are? a humanitarian?’. After responding in the affirmative and continuing to bang on the door, officers finally approached the cell and indicated they would enter.

Upon entering the cell, Cuthbert was told to ‘sit down’ and ‘shut up’ and complied officers directions. The officers approached the man experiencing chest pains and began to force his confession, for a theft offence, whilst he was under medical duress. Mr Cuthbert informed the officers that this type of treatment and forced confession was wrong, was not admissible in any Court and that he was a witness.

He was then taken by the group of officers to another cell where he claims to have been assaulted, his head slammed into the concrete wall and his arm twisted and folded behind his head. Mr Cuthbert was taken into custody following an attempt to prevent an altercation between indigenous groups in the Cairns CBD.

A group of indigenous individuals were arguing and two of those individuals raised their fists and were threatening to assault each other. Mr Cuthbert placed himself (at risk) between the two individuals and convinced them not to fight one another.

⁵⁴ https://www.gratafund.org.au/detention_of_children

⁵⁵ *Human Rights Act* (Qld) 2019

⁵⁶ *Police Powers and Responsibilities Act 2000* (Qld)

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Cuthbert says, *“I had asked both whether they had ever spent time in Lotus Glen (local correctional facility) of which they affirmed, and I told them that to avoid going back there, they would need to stop”*.

Shortly afterwards, local Police arrived at the scene and began threatening the group with the use of Capsicum spray if they did not disperse, before arresting one of the instigators. Mr Cuthbert made attempts to explain the circumstances to the Police, was told he was being a ‘public nuisance’ and arrested.

Having reviewed the Cairns City Safe CCTV footage and the Queensland Police Body Worn Camera footage, Cairns Magistrate Suzette Coates condemned the actions of the Cairns City Safe Security Guards and the Queensland Police over the way in which *‘they handled the indigenous members of our community’* and expressed her concerns over the mistreatment to the Police Prosecution.

The Queensland Police Prosecution told the Court, *‘They had not yet received any complaints from the individuals involved and would be happy to investigate further should complaints be made to the Police’*. Magistrate Coates added that *‘It is those fellows (Cairns City Safe Security Guards and Queensland Police) who should be hauled in before the Courts for the disgusting behaviour’*.

Mr Cuthbert adds, *“What is most concerning is the footage, almost 30 minutes in length is being observed by Officers without intervention until a white person.. myself approaches the group.. the Police seemed more than happy to let these indigenous members of our community argue and endanger themselves but the moment a white person approaches, three police crews arrive in less than 2 minutes, that is no coincidence, consider further that I was arrested to prove a point, the main instigator was taken away without the need for force, yet here I am, an innocent bystander and I with my hands in the air and I had to be taken down by force to the ground, that is how the Queensland Police treat those who make their job more difficult, or hold them to account”*.

Mr Cuthbert provides in Annexure A, an introduction to and personal experiences within the Queensland Justice System, also included with his submission to the *Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*⁵⁷ and in part, to the *Inquiry into Support Provided to Victims of Crime*⁵⁸.

Why Is It Important for Police to Act Only Within Their Powers?

Police are not above the law or immune to the law and are just as accountable before the law as anyone else. Firstly, because individuals have rights at common law and the courts place great importance on those rights.

⁵⁷ Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2023. Submission No. 019. Shane Cuthbert (2023)

⁵⁸ Inquiry into Support Provided to Victims of Crime Report No. 48. 57th Parliament (Qld) Legal Affairs and Safety Committee Submission No. 054. Shane Cuthbert (2023)

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Personal liberty was held by Blackstone, to be an absolute right vested in the individual by the immutable laws of nature and had never been abridged by the laws of England 'without sufficient cause.

In the case of *Toobridge v Hardy*⁵⁹ Justice Fullagar stated that the;

'Right to personal liberty is the most fundamental, elementary right at common law.'

This fundamental right was also referred to by Mason and Brennan JJ in their joint judgment in *Williams v The Queen*⁶⁰.

Whilst Justice Dean in *Cleland v The Queen*⁶¹ says;

'It is of critical importance, to the existence and protection of personal liberty that the restraints the law places on police officers are scrupulously observed'.

In other words, it is held by the courts at common law that, courts will not look too kindly on Police officers ignoring technicalities of law.

The International Covenant of Civil and Political Rights⁶² provides; '*People shall not be detained arbitrarily*'.

Pat O'Shane regularly challenged Police Officers in her Courts and on one occasion, helped expose a Police led drug operation between Manly and Barenjoey on Sydney's northern beaches.

Pat O'Shane says "*Police had pulled over this young person one night, he had taken his mothers car out to go get something to eat, alone and by himself the officers arrested him and gave him a bit of a roughing up and a trashing as they would do*".

This young person overheard the officers speaking about their drug smuggling operation and, with a smart lawyer, presented this information to the Court.

Pat O'Shane says "*he had a good solicitor, he was an older guy and this whole thing come out in my Court and I issued an order to the Police officer to be arrested and brought before the Court, of course they didn't want to do that (the prosecution) and his senior officer told the Court that actually he was in bed and I said, I don't care and issued an arrest warrant for this copper*".

"The great thing about being on the bench is having power, having that power and at first they denied beating up the young boy but then the real story did come out, Police just lie basically".

⁵⁹ *Trobridge v Hardy* (1955) 94 CLR at 152

⁶⁰ *Williams v The Queen* (1986) 161 CLR 278 at 292

⁶¹ *Cleland v The Queen* (1982) 151 CLR at 26

⁶² International Covenant of Civil and Political Rights Article 9

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The Need for Balance

Police must balance the rights of individuals with their responsibility to protect themselves and the wider community. Where these needs are not balanced effectively, the result can endanger life.

Let's consider a spectrum. At one end of that spectrum, individual rights are temporarily breached however, no serious violation, injury, or assault against an individual takes place. Consider however, the other end of the spectrum, where the result of this breach is death⁶³.

Solutions

In addressing the issues of Youth Crime, we feel it is important for us to provide real solutions to this community, based on our unique perspectives and experiences apart from criticizing the Government and/or pointing out that which is not working.

Former Magistrate Pat O'Shane was well known among other things, for not incarcerating enough individuals, especially children. Although O'Shane was criticized by some, her methods and programs were later implemented by other Magistrates and Judges.

*Pat O'Shane says "I wasn't there to please shock jocks. I wasn't there to please politicians. I was there to do justice and I did it with it without fear or favour. I certainly didn't do it with fear, I can tell you."*⁶⁴

Court Based Programs

We suggest implementing more Court based/monitored programs, often, children remanded in custody can not access valuable programs, courses and employment. Even children whom are under community based orders may not be able to access such programs and it is important for the Courts, to be given the resources they need to better oversee and implement such programs.

Pat O'Shane was the first to establish a version of what is now, the drug Court in New South Wales, where individuals can address their substance issues prior to being sentenced and also their mental health.

O'Shane says "I kept a lot of young people out of gaol. And in fact, I talked about alternatives to gaol, especially for example, for minor drug matters, which is what you get in the Local Court. I believe in rehabilitation and believe it or not, it was my initiative that eventually led to the Drug Court".

⁶³ Shane Cuthbert (2022) Inquiry into the Decriminalisation of Certain Public Offences, and Health and Welfare Responses Submission No. 022

⁶⁴ <https://www.smh.com.au/national/nsw/fearless-oshane-defender-of-justice-plans-for-life-after-the-bench-20130208-2e3yk.html>

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"The thing one of my colleagues said to me was, I'm very impressed with what you've done with this young woman and I said, I didn't do it," as I used to say to these young people, and even older people. "You did it. I gave you the opportunity to do it."

Pat O'Shane approached mental health in the same way, changing attitudes and providing ideas around how best to deal with those defendants at the Local Court levels experiencing mental health issues, always with an emphasis on rehabilitation. The former Magistrate was also involved in changing the Courts approach to child care and protection.

Pat O'Shane says "I believe that children should stay in their communities, with their families if possible. I always recommend that they undergo training programs. And in fact, that's been adjusted now by the Family Court, which sends people off to do parenting courses".

Mr Cuthbert reflects on being sentenced by the former Magistrate in 2009 and says *"you know Pat really gave my mum a dressing down and I don't think she liked that but Pat was saying look, these young people come into my Court all the time and I've seen where they end up and it's not nice having a son or daughter locked up in jail with adult men"*

"she didn't have to take that time to do that really, she could have sentenced me and moved onto the next case but she made sure that either my mum was going to keep me out of trouble and the threat of prison was not lost on me either".

Dealing with Young People in Courts

Pat O'Shane would also approach the sentencing of all young people in a similar fashion, addressing the needs of the offenders. She would place the individual on a series of bonds, Four in total whereby, satisfied with the facts and the offence proved, she would place them on their first bond.

Firstly, an individual would be placed on a bond that would require them to obtain a psychology assessment, addressing the mental health of and support required for the young person. The Psychologist would be tasked with preparing a report for the Court where O'Shane would assess the report and If satisfied, the young person would be placed on a second bond and what Pat O'Shane refers to as the 'Second Stage'.

Secondly, an individual would be placed on a bond requiring a report from a health professional, often requiring the young person engage in physical health training and activities and similarly, if satisfied, O'Shane would place the individual on a third bond whereby they would need to address their drug issues, engaging in rehabilitative programs.

Finally, O'Shane would place the young person on a bond where they would need to obtain some type of employment and would seek a report from their employer. If satisfied, O'Shane would discharge the individual from their bonds and with a sense of purpose, having addressed their issues, young people were less likely to reoffend.

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The program was designed to address the issues of the young person supervised by the Courts, reliant on professional reports during each stage, that would inform the next. Rather than sentencing a young person to a term of imprisonment or community program where there may be some rehabilitation, this style of program ensured that each step of the young offenders journey required the young person be held accountable for their actions, for their offending behaviour but also their behaviour during the rehabilitation period.

Could they move on to the next stage? Was there a barrier that needs to be addressed? Or was the young person in need of a stricter regime?

Pat O'Shane was criticized for not locking up enough kids, especially when they committed serious offences but O'Shane was more interested in seeking Justice than applying the law.

Pat O'Shane says *"In the world, there is Justice and there is Law, and the two don't always meet in Australia's Court rooms"*.⁶⁵

These programs have since been used by other Magistrates and Judges in New South Wales. Mr Cuthbert suggests the committee consider these programs and extending them into bail programs, if an offender is given bail, perhaps the Courts could implement some of these assessment/rehabilitative style conditions into the bail program.

Pat O'Shane suggests to the Committee, that any adult working with young people should have some psychological training, whether that be Police, youth support, Corrective Services and lawyers.

Access and Visits to Prisons and Youth Detention Centres

Pat O'Shane's first brief as a Barrister in New South Wales, saw her visit every prison and youth detention centre in the State. Working alongside a dedicated team of Barristers tasked with preparing a report of inquiry into the prison systems. Later, Pat studied penology, a sub-field of criminology dealing with the philosophy and practice of various methods of punishment and imprisonment.

We suggest members of the legal profession, judiciary and politicians, take part in visits to these prisons and youth detention centres in order to learn, through first hand experience and knowledge, what these facilities do, how they do it and gain an understanding for the realities of imprisonment.

Mr Cuthbert says *"as a representative of my University and the Law Society in particular, I have attended many local law events and spoken to a great many Barristers, Prosecutors and Lawyers that don't seem to know the first thing about prisons, they are out of touch"*.

"They (the legal profession) seem to believe in these magical places where rehabilitation happens and as someone with lived experience in this space, I know the

⁶⁵ <https://www.smh.com.au/national/nsw/fearless-oshane-defender-of-justice-plans-for-life-after-the-bench-20130208-2e3yk.html>

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realities, rehabilitation and programs are almost non-existent or impractical for most, I've spent a total of 16 months in prison during four different periods, only once sentenced. Whilst on remand, you are ineligible for courses and programs"

"If an individual spends six months in prison on remand, without addressing their behavioural or drug issues for example, is later sentenced to time served or released due to lack of evidence or some other circumstance, we are releasing this individual back into the community without having addressed those issues or completed anything at all, no skills or education for that matter".

As members of the legal profession are required to earn CPD points, (usually gained by attending boozy lunches with guest speakers) it is suggested the Queensland Government consider running/mandating compulsory prison/watch-house visits for those associated with the criminal justice system specifically, prosecutors, criminal lawyers and those working with young offenders in some capacity.

Mr Cuthbert has completed a law degree with the Central Queensland University and must complete PLT (Practical Legal Training) before applying for admission as a lawyer, perhaps in future lawyers specialising in criminal law and youth justice should be required to undergo additional specialist training that we hope, shall include visits to these centres.

Mr Cuthbert says, "There are lawyers here in Cairns who have never travelled 45mins to Lotus Glen (Prison) to speak directly with their client, they don't understand the frustrations of not being able to make calls freely, I've tried getting lawyers on the phone from prison myself and the receptionist has told me they will call me back... Call me back?!? How the hell can they call me back?"

"Likewise, they don't know that when your sitting in the video link room on a dodgy internet setup, you can't hear your lawyer, the person trying to help you secure your freedom.. Or that because some bloke is yelling next door you can't hear anything, or that you had to spend all day in a shoebox for a call your lawyer forgot to attend, this is where lived experience comes in, I expect to be a ridiculously popular lawyer".

24 Youth Centre

Mr Cuthbert has been advocating over the last four years, for a 24-hour youth centre in Cairns and has successfully established a charitable foundation in order to apply for grants and funding however, has so far been unsuccessful.

Mr Cuthbert says "There is real desire and support for this in Cairns right now given the youth crime crisis, I have been inundated with requests from members of the community who would like to volunteer their time and support such a centre"

We suggest the Queensland Government consider funding a 24-hour youth centre, with remand rates rising, an announcement to spend 500 million dollars across two new youth detention centres and growing community outrage with the youth crime epidemic, this type of centre should be considered a necessity. The Queensland Government has funded 'bail houses' and other similar facilities in the past however, a 'one-stop shop' for young people

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experiencing abuse, poverty and engaged in criminal activity would provide a safe place for children, access to food and water and social services.

Mr Cuthbert's program proposes to operate from 9pm until 9am week nights and 24 hours over the weekend. The program will operate within a functional program space using case management to provide much needed support and address the needs of the child and refer the individual to day time programs.

The program will aim to work over the weekends and peak times that criminal activity is noted to spike (12am-2am) with outreach a key component.

Mr Cuthbert says "I had a meeting with Michael Healy MP some years ago where he presented me with a bunch of programs the Queensland Government was funding at the time however, none of these programs operated past 11pm when crime peaks between 12am and 2am, it beggars belief that this has not been considered before."

This program is designed for disengaged young people who are at risk and needing a safe space throughout the night. The program aims to be a culturally capable, holistic and targeted community program, aiming to keep kids safe during the night and reduce criminal activity.

The program is designed to assist and enhance the development of existing case plans with outside stakeholders whilst reducing the number of unsupervised young people out on the streets at night. The services 'aims' provide a framework for holistic and wrap around delivery of services.

It is estimated that presently, 30-40 individuals will frequently use this service and there will be anywhere up to 50 individuals present during any one particular period of time, according to the latest watchhouse statistics and relevant market research.

These children are currently falling through the cracks. For some of these children, psychological and physical abuse is inflicted upon them frequently. There is a growing rate of domestic violence in these areas/suburbs where the youth are residing. We believe that children are in desperate need of a safe space and somewhere to go at night to avoid toxic households, abuse, drug misuse, alcoholism and alcohol related crime, sexual abuse and extreme violence.

Services such as police, FACS and other government organisations are unable in many cases to intervene. The cooperation rate with police over domestic violence is in particular low. Children are often fearful and remain silent and do not cooperate with police and FACS. Because there is simply nowhere for these kids to go at night they resort to wandering the streets where they are committing crimes, stealing cars and finding themselves arrested and brought before the courts. Our aim is to reduce youth homelessness and as a result, youth crime.

Such a facility can also serve as a hub for various programs such as the Durumbal Youth Network Drop-In Centre that operates a regional youth support service and bail support funded by Department of Children, Youth Justice and Multicultural Affairs, Reconnect

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funded by Commonwealth Government – Department of Social Services, indigenous drug and alcohol program funded by the Queensland Government – Department of Health, PaCE funded by Commonwealth Government – National Indigenous Australians Agency, Buderoo House funded by the Australian Government – Department of Housing and Public Works and many others. What this shows is that a hub, can be established to support many community based programs and support services. In Cairns, Perri Conti is seeking to establish a hub to provide a safe place for children and Sabrina Tooley a 24-Hour gaming centre, Along with Mr Cuthbert who seeks to establish his youth centre, neither has been successful in obtaining funding or location for such a facility.

The Committee could consider recommendations to the Government to establish such hubs in Queensland that local organisations and Not-for-profits can apply to use.

Durumbal Youth Network

Mr Cuthbert had the pleasure of visiting the Durumbul Youth Network Drop-in Centre in Rockhampton, engaging with at-risk youth whilst working alongside Dr Linda Lorenza of the Central Queensland University.

The Rockhampton community, Durumbul Youth Network and Youth Justice conducted Aboriginal and Torres Strait Islander community consultation meetings to create community led discussions about community needs. From that, a sub-committee was established to address the issue of Youth Crime in the region.

One of the elders, stated that he had concerns about the discrepancy between what young people knew or believed they knew about dealing with police and what the parents/carers knew. Central Queensland University was approached and asked to work with community groups on the LawToks project.

The LawToks project began creating short, accessible, informative videos around the rights and responsibilities of young people in Rockhampton whilst in custody, attending court or under arrest, informed by Shane Cuthbert.

Although not currently operating 24-hours, the Durumbul Youth Network Drop-in Centre operates every Thursday, Friday and Saturday from 5pm to 10pm and can provide transport. Whilst in Rockhampton, Mr Cuthbert was able to accompany Durumbal staff who had received a call from security guards at the local shopping centre in regards to some kids they were excluding from the centre for loitering and theft deterrence, instead of allowing the kids to roam the streets, they had asked them if they wanted to be picked up and taken to the drop-in centre where they could 'have a feed' and engage in activities with other kids.

Mr Cuthbert says "What is really great about not only what the service provides, but how it engages with the police, community members like the security guards etc, allows them to pick these kids up before getting into trouble and provides supervision".

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“Whilst at the centre, I saw staff talk to kids and ask why their friend was not there, ‘Oh he’s with X’ was the reply, and the staff then knew (having built relationships with these kids) that X’ was known to steal cars and inhale deodorant and they could pass the information to police to prevent crime and bring the pair into the centre, preventing crime and addressing the drug and alcohol issues of the young people”.

This kind of relationship building and information sharing is vital in the prevention of crime and better supporting children.

Mr Cuthbert says *“Who knows where kids in Cairns are each night besides the Police? No-one because they are home in bed, if we had such a 24-hour service that communicated with Police, Security, Child Safety etc, we can better monitor, supervise and provide for these kids whilst reducing crime, at the moment its all up to the Police and I guess they track their phones or something, wouldn’t it make their jobs easier partnering with such a service that could give them real-time and accurate information? Not to go and lock them up, just to pick me up and drop them into the centre where they can get all the support they need.”*

Community Information Sharing

As mentioned above, community information sharing is vital and in Victoria with regards to domestic and family violence reforms, they are promoting information sharing and Mr Cuthbert recently took part in the information sharing training provided by the Victorian Government. Mr Cuthbert undertook the training in Victoria, as ‘There’s no other similar training in Queensland, we don’t share information’.

There are barriers to information sharing and those barriers are being removed by the Government in Victoria however, the Victorian Government proposed that if these barriers were to be removed, there must be mandatory training undertaken by those who will share information, as a safe-guard.

Victorian homeless shelters, DFV shelters, support services, Court programs and any other organisation that may work with victims of DFV are undertaking this important training so that they can identify risks to their clients and provide improved safety around that. It means that victims do not need to keep retelling their story and that services, having access to this information can be aware of signs of violence and/or prevent known offenders locating them etc.

Mentorship and Purpose Building

We suggest young people disengaged within their communities could benefit from those with lived experience such as the likes of Mr Cuthbert.

Mr Cuthbert says *“Young people love me, they push me and challenge me from time to time but for the most part I can relate, I know what they are dealing with and where they are coming from”.*

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We suggest investment in a joint program between Corrective Services, Probation and Parole and Youth Justice, supporting the collaboration between young people and adults currently engaged within the criminal justice system could be advantageous. Where suitable adults with lived experience and an ability to engage with children, are partnered with/ teamed up with children to address offending behaviours.

What this will provide to an adult offender is a second chance to do good and empower themselves through the mentorship process, providing them with a purpose. In New South Wales there is an organisation funded by the State Government and NGOs which provides employment opportunities to adult offenders and mentorship to young at-risk Youth.

The program, dubbed 'Confit' provides a pathway for former criminals to obtain a degree in partnership with UNSW in fitness training, allowing them to earn an income as fitness trainers running fitness programs. In addition, a program whereby former offenders, now rehabilitated fitness trainers visit Youth Detention Centres in New South Wales providing mentorship to young offenders in custody, followed up with mentorship post release. The program now employs a formerly incarcerated youth offender.

Barriers

There are barriers to obtaining employment as a young person and an adult leaving the criminal justice/prison system even though research shows that an individual who has not reoffended in three years is just as at risk of reoffending as every other member of the public. Spent Convictions schemes provide some protections however, Mr Cuthbert suggests they are out dated and do not go far enough.

Spent Convictions

Out-dated spent convictions schemes provide barriers for youth and adult offenders. Mr Cuthbert has published a spent convictions guide on his website and is actively engaged in spent convictions reform across Australia.

There are actual and implied criminal histories which must be considered, currently in Queensland, the Spent Convictions (Rehabilitation of Offenders Act 1989 only provides protection for actual criminal convictions. Mr Cuthbert believes given the rise and popularity of social media and google, our 1989 Act could do with an overhaul.

An 'actual' criminal history is when an individual's criminal history is recorded by the Courts and Police. In most jurisdictions it is possible to obtain a check of the records held by the State police service, or to obtain a National Police Certificate which includes a check of all records held in all jurisdictions⁶⁶. A person may be required to undergo a criminal record check for a variety of reasons, including employment screening, volunteer work, preparing for a court appearance, visa applications, firearms licensing, or to satisfy a statutory requirement. A working with children check, also requires a criminal history check be completed.

⁶⁶ The process of completing a National Criminal History Record Check is managed through a national agency called CrimTrac.

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Implied criminal history

An 'Implied' criminal history may be where an individual is charged with an offence however, no conviction is made against them or in some circumstances, no conviction is recorded. For example, if an employer refuses to offer an individual a job where they have been charged and not convicted, the employer would be 'implying' that the individual has a criminal history and discriminating against them. Implying the individual is guilty because of a criminal charge.

Mr Cuthbert claims he has been discriminated against due to 'implied' criminal history, where organisations have relied on media reports of 'alleged' criminal behaviour to justify dismissal, when no criminal charges were presented against him, and no convictions have been recorded. In these cases, every single organisation has relied on an 'implied' criminal history, it is not an 'actual' criminal history recorded by the police.

Those with 'actual' criminal convictions have access to rights under various 'spent' convictions schemes in Australia however, individuals discriminated against because of their 'implied' criminal history, do not have access to the rights provided in this legislation.

The media have a right to report on matters of 'public interest' and are protected. For example, the media writes an online article about you, as you have been charged with a criminal offence. The media is allowed to report on criminal proceedings as they are considered matters of 'public interest' and are exempt from most 'spent' conviction legislation. You may later be acquitted of the offence and therefore, your 'actual' criminal history does not contain the entry/offence however, you are refused a job some years later because an employer has conducted a 'google' search and found this article which mentions you, charged with a criminal offence. In most instances, the employer does not consider your innocence and you are not considered for this employment opportunity.

For the most part, the 'spent' convictions legislation is outdated, pre-dating internet search engines and social media. We believe that the legislation should be updated to consider these recent technological advances and ensure that media companies remove their articles when 'spent' or when an individual is acquitted. These companies could consider the 'spent' period and have their articles removed automatically or by application.

The Right to Be Forgotten

A colleague of Mr Cuthbert's Tina McPhee, provides that, The "right to be forgotten" is an adapted concept from France's *droit a l'oubli* – "right to oblivion"⁶⁷. The French acknowledgement of a right to live a life in dignified privacy is born out of a valued history of protecting citizens reputations from the media⁶⁸.

⁶⁷ E Chow, 'Learning From Europe's 'Right to Be Forgotten'', *HuffPost*, 2013, accessed 15 October 2020 https://www.huffpost.com/entry/learning-from-europes-rig_b_3891308

⁶⁸ R K Walker, 'The right to be forgotten: right of individuals to have their personal information permanently removed from online databases', *Hastings Law Journal*, Vol.64, No.1, 2012, p.270, accessed 16 October 2020, https://heinonline-org.ezproxy.flinders.edu.au/HOL/Page?collection=journals&handle=hein.journals/hastlj64&id=272&men_tab=srchresults,

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A long-held mantra associated with the criminal sanction is “you do the crime, you do the time”, yet, the rise of digital records and data-driven policing has made any recorded infraction a life sentence. Once relegated to locked filing cabinets, data-driven policing and digital criminal records have not only placed entire communities under the eye of the state with little in the way of due process, they have also limited opportunities and curtailed the liberties of criminalised citizens⁶⁹.

Whilst individual data rights relating to the handling and accuracy of personal data exist under the Australian Privacy Principles (APP)⁷⁰, there is no explicit “right to be forgotten” that would encourage second chances for criminalised citizens. In this digital age, the right to be forgotten has never been more pertinent given the amount of personal data stored and commercially exploited on the internet⁷¹.

The concept of personal erasure has gained global attention following the 2014 landmark decision in the EU Court of Justice that paved the way for amendments to Europe’s General Data Protection Regulation (GDPR)⁷². Legislation in France upholds ‘*le droit a l’oubli*’ – the “right to oblivion” – for formerly incarcerated and rehabilitated citizens⁷³, and the 2018 Clean Slate Legislation in the United States automatically seals and erases criminal records for millions of American citizens⁷⁴. With its own burgeoning prison population and heavy reliance on criminalisation⁷⁵, Australia runs the risk of being left behind and further disenfranchising tens of thousands of its own citizens⁷⁶.

Where this relates to adults and youth offenders, some youth offenders have their name published by the media when they turn 18, many of them associate with other young offenders who may be offenders and guilt by association may negatively impact on that young persons ability to engage in employment and meaningful activities⁷⁷.

Blue Cards

⁶⁹ McPhee T. 2020. A Right to be Forgotten: A Roadmap for Second Chances in a Digital Age. Justice Reform and Advocacy. Tina McPhee, Bachelor of Criminology - Flinders University of South Australia.

⁷⁰ Office of the Australian Information Commissioner (OAIC), ‘APP 6 – Use or disclosure of personal information’, *Australian Privacy Principles Guidelines*, 2020, accessed 15 October 2020, <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-6-app-6-use-or-disclosure-of-personal-information/>

⁷¹ McPhee T. 2020. A Right to be Forgotten: A Roadmap for Second Chances in a Digital Age. Justice Reform and Advocacy. Tina McPhee, Bachelor of Criminology - Flinders University of South Australia.

⁷² J Bayliss-McCulloch, ‘Does Australia Need a “Right to be Forgotten”?’’, *Community Law Bulletin*, Vol.33, No.1, 2014, accessed 15 October 2020, <http://www5.austlii.edu.au/au/journals/CommsLawB/2014/2.pdf>

⁷³ J Rosen, ‘The Right to Be Forgotten’, *Stanford Law Review*, Vol.64, 2012, accessed 15 October 2020, <https://www.stanfordlawreview.org/online/privacy-paradox-the-right-to-be-forgotten/>

⁷⁴ The Clean Slate Initiative 2020, accessed 16 October 2020, <https://cleanslateinitiative.org>

⁷⁵ Australian Bureau of Statistics, *Prisoners in Australia, 2019*, accessed 16 October 2020 <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2019>

⁷⁶ McPhee T. 2020. A Right to be Forgotten: A Roadmap for Second Chances in a Digital Age. Justice Reform and Advocacy. Tina McPhee, Bachelor of Criminology - Flinders University of South Australia.

⁷⁷ McPhee T. 2020. A Right to be Forgotten: A Roadmap for Second Chances in a Digital Age. Justice Reform and Advocacy. Tina McPhee, Bachelor of Criminology - Flinders University of South Australia.

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Obtaining a Blue Card, for those with criminal histories can be a barrier to working in this space. The Federal Government is considering Australia wide reforms to Blue Card Services as the Queensland Government also reconsiders its processes in regards to the care of indigenous children.

In Queensland, the family and child commissioner has called for an overhaul of Blue Card Services for First Nations carers following a report finding “irrelevant information, over policing and subjective assessments” takes place. The (QFCC) has found that blue cards create additional barriers to placing Aboriginal and Torres Strait Islander children with their families⁷⁸.

If the Queensland Government considers reviewing its Blue Card practices for Indigenous Kinship Care, perhaps this committee could consider a recommendation to review also, the barriers placed on those with lived experience seeking a Blue Card.

Mr Cuthbert says “After two and a half years waiting for my application for a Blue Card to be decided, I have just been issued with a ‘Negative Notice, despite not having any ‘disqualifiable’ or ‘serious’ offence entries on my criminal history, the Deputy Commissioner has made a ‘special decision’.

Mr Cuthbert now seeks to have this decision reviewed in the Courts who have listed the matter for on a date TBA however, it will be some time after April given the directions allow for submissions to be made prior to April 10. This means that in all, Mr Cuthbert’s simple Blue Card application will have taken more than three years to finalise. This time frame is most unacceptable not to mention the disadvantage not allowing Mr Cuthbert to work with children will be, as someone who cares about these children and has the life experience to relate to, engage with and help these children finding the right pathways.

Pat O’Shane told Fairfax Media in 2013 that, “I tell you, the law is a two-edged sword, ‘It can be used to do considerable injustice to people and it can be used to do considerable justice to people. It’s value-laden from beginning to end. My principles in life were to do justice to all manner of people, and particularly people who hadn’t had justice in the past”.

“I’ve seen many cases where the judicial officer was very, very good about black letter law but not very good about justice. Law is not the same as justice and justice is certainly not the same as law. My priority was in fact to get justice according to the law.”

Lived Experience

This committee should consider supporting those with lived experience in the criminal justice space and implementing and supporting programs designed and managed by them. There are a number of reformed offenders raising awareness around issues relevant to this committee,

⁷⁸ <https://www.theguardian.com/australia-news/2023/nov/02/scrap-blue-cards-for-first-nations-kinship-carers-queensland-family-and-child-commissioner-says>

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sharing their personal stories and advocating for change such as Russell Manser, Ron Isherwood and Jeffrey Morgan, an indigenous nutritionist and life coach⁷⁹.

Having spent 18 years, confined to maximum security prisons, Jeffrey now travels the globe teaching 'high performance habits' to the corporate sector.

Jeffrey told the indigenous times *"I would work in an aboriginal community every single day if I had the opportunity, however it is challenging relying solely on Government funding to run programs"*.

Russell Manser served 23 years in Northern Territory, New South Wales and Queensland prisons for armed robberies. A young offender sentenced as an adult and placed into an adult prison, Russell Manser was sexually assaulted and introduced to the drug Heroin. Leaving his life of crime behind having received adequate support following the Royal Commission into Institutional Abuse, Russell now runs the Voice of a Survivor, supporting other victims of physical, emotional and sexual abuse at the hands of institutions as they seek justice⁸⁰.

After 42 years working with recovering addicts and various rehabilitation clinics, including a prison program. Ron Isherwood was tasked with putting together the first prison treatment/rehabilitation program in Australia by Guy Baulf, Director of the Borallon Correctional Centre whilst incarcerated there.

Ron grew up in a family associated with the Painters and Dockers in Melbourne, a Union that had become notoriously associated with major organised crime. Ron's upbringing was filled with violence, aggression and domestic abuse. At just 16 years of age, Ron shot his first man, by 17 he had been charged with multiple attempted murders and spent years in and out of prisons before turning his life around and dedicating it to helping drug addicts⁸¹.

Mr Cuthbert reached out to each of these outstanding individuals earlier this year, to discuss putting together a form of collective network however, as each participant resides interstate it has been difficult to organise although, there is considerable support amongst them for working together, especially on issues addressing youth crime and in particular the youth justice space.

Mr Cuthbert has been asked to participate in a Federal 'lived experience' collective being established with the aim of bringing those around Australia with lived experiences of the criminal justice system together to inform State and Federal Governments and to establish a peak body that will provide frameworks for government agencies employing those with lived experience, obtaining advice from those with lived experience and supporting those with lived experience. This project is currently underway with funding secured for a conference in Brisbane or Sydney next year.

⁷⁹ <https://nit.com.au/12-07-2023/6765/indigenous-entrepreneur-jeffrey-morgan-is-using-lived-experience-to-mentor-others>

⁸⁰ <https://www.dailymail.co.uk/news/article-12309325/Bank-robber-turned-TikTok-star-Russell-Manser-shares-bad-news-charity-Voice-Survivor.html>

⁸¹ <https://www.thetruthaboutaddiction.com.au/team/>

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We propose the Queensland Government support the establishment of something similar, a voice for those who have experienced the criminal justice systems, to speak to this Committee and inform the Queensland Government. Many of us will be making submissions to this inquiry, a friend of Mr Cuthbert's, Debbie Kilroy and her organisation Sisters Inside among others, it would be advantageous to support some form of Queensland based collective, for such individuals to make recommendations on all criminal, justice and youth matters.

Additional Funding Youth Justice

We suggest this committee propose recommendations to better fund Youth Justice to allow case workers to 'hold the hands' of youth offenders. Currently, young offenders do not get adequate support. Some children, remanded in Custody and released by the Courts, are released without adequate transport or financial support to allow them to return home, most are required to attend appointments they cannot get to due to lack of funding or 'missing the bus's and a transport program to ferry children to and from appointments with healthcare professionals, school and their youth justice appointments would be beneficial.

Similarly, of those children who return to school after incarceration, there is insufficient support for the students and/or the teachers. Some schools have support staff but it is not adequate. Schools would also benefit if case workers at youth justice were better funded to support children.

Pick them up from their homes, take them to school, assist them whilst at school if necessary, take them to appointments and essentially 'hold their hands'. There are many young offenders that have been expected to conduct themselves as adults. Most do not have the education and development capacity necessary to undertake even the most simple of tasks.

We must rethink the way in which we do youth justice and stop treating young people the way in which we treat adults subject to community based orders. Where police are called when offender fail to attend an appointment or pass drug and alcohol tests, we must better support these children.

There shall be cost savings in terms of reducing the need for police during the location and follow up, less arrests and time spent in Courts. Youth Justice officers and case workers if better funded and allowed to spend more time managing each case, will allow for better outcomes. Officers will know where the children are and be in a position to better support them accessing the help they need.

Minister Portfolio Too Large

Given the urgent need to address the issue of youth crime, the committee may consider whether the Minister would be in a position to provide better outcomes if they were not juggling multiple portfolios. Being able to focus on this important issue alone would free up valuable time and allow the Minister to better understand this issue and implement supports and solutions.

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On Country/Prison Farm Programs

Having visited every prison, farm and 'On Country' program in New South Wales in the past, Pat O'Shane holds the view that 'On Country' programs are exploitative and we have seen examples of these types of programs cancelled in the past, because of their exploitative nature. Some of these programs have been established to secure lucrative Government grants and funding whilst others have made profits from the forced labour of children.

O'Shane instead supports prison farms. Prison Farms, managed by the State, providing increased oversight and accountability, safety and programs that support young people in partnership with Tafe and Queensland Universities.

As Chancellor of the University of New England, O'Shane visited most tertiary education providers such as Tafe and Universities in Australia and understands the importance of educating young people but also collaboration with these organisations.

Request to Speak to the Committee

We respectfully request to speak with the Committee if the Committee should visit Cairns. Pat O'Shane is unable to travel long distances and Shane Cuthbert has been excluded from the Parliamentary precinct indefinitely by the Speaker of the Legislative Assembly, the Honourable Curtis Pitt MP. Mr Cuthbert has not been provided with any reasons for the exclusion and provided Mr Cuthbert has been invited to speak with various Parliamentary Committees in the past, it did come as quite a shock.

Conclusion

Cuthbert and O'Shane AM discuss the problems facing the youth in great detail, supported by research before making a long list of suggestions to the Committee. They discuss Aboriginal deaths in custody, the risks and protective factors such as education, environment, anti-social personality disorder and FASD. Pat O'Shane's last brief was a case where a young person, diagnosed with FASD, was before the Courts. O'Shane was asked to defend this young person having been contacted by the child's parents.

Both O'Shane and Cuthbert suggest implementing more Court based programs. The pair also suggest Mandatory training which includes (mandatory prison visits) for the legal profession and the judiciary, specifically those practising criminal or family law where they work with children.

In addition, both O'Shane and Cuthbert suggest removing barriers to employment such as blue cards for former criminals like Cuthbert who have reformed and would like to work with at risk children and steer them on the right path but also, reforming the spent convictions legislation to have criminal histories removed from the internet and media sites when expired.

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O'Shane states firmly that she is against exploitative 'on Country programs' but supports prison farms where, children can grow food, seek education and employment that is not for the benefit of private companies and open to exploitation.

Finally, they suggest Youth Justice receive more funding in order to 'hold kids hands' and that the Ministers portfolio is too large and given this is such an important issue effecting Queenslanders right now it could use some additional attention.

Mr Cuthbert says "My friend Debbie (Kilroy) told me that we will still be here long after the politicians have lost their seats and journalists have moved on, we will still be here and this Government has an opportunity right now, this committee has an opportunity right now to be BOLD and courageous in its recommendations, long after the Committee is disbanded and the October election has passed, these recommendations will be here".

"Injustice anywhere is a threat to Justice everywhere"

– Martin Luther King Jnr

Signed

Signed

Pat O'Shane AM
Former Magistrate and UNE Chancellor

Shane Cuthbert
President CQU Law Society

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ANNEXURE A

Shane Cuthbert - Introduction to, and experience with the Queensland Prison System

Mackay - Police Watchhouse

I was arrested and refused bail in 2016 for a string of offences which, on their own were not very serious offences but on my own admission, I was quite out of control at this time and in need of help and support. Offences related to alcohol abuse, drink driving, evade police, trespassing, resist arrest and bail offences. When I was arrested, I had attempted to hang myself in a tree behind my home, this was in a school and in doing so, I fell out of that tree breaking my right leg.

Whilst in the watchhouse I attempted to take my own life multiple times with any means possible. I attempted to stab myself in the neck with a pen when asked to sign something, sever my main artery with a plastic juice cup, cut my wrists with a plastic spoon and other quite disturbing methods. I was held in the watchhouse for a period of two weeks as the suicide attempts and also medical attention required for the leg prevented moving me to another facility.

The day I was finally transferred to Rockhampton Prison, I was due to have surgery performed on my leg as the tibia had fractured down the centre, from my knee downwards and required surgical pins, placed to pull it all back together.

Rockhampton (Capricornia) Correctional Facility - Medical Unit

When I was accepted as a prisoner into the Rockhampton based Correctional Centre, I was told by officers that I had received quite a lot of negative media attention whilst in custody and for that reason, would be treated as a 'high profile' and 'protection prisoner'. Shortly after mentioning this to me, the officer handed me some razors and soap before telling me to 'finish the job' whilst in the shower. I immediately removed the razor blades from the razor and although contemplating suicide at this time, I took the razor blades and hid them in the splint I had been given at the Mackay Hospital, when in Police custody.

I was taken into an interview room where I was assessed in relation to my mental health, thoughts of self-harm/suicide and discussed some of the recent attempts to end my life that had taken place in the Mackay watchhouse. During this session I presented the razor blades to the Psychologists, and I was placed into an observation cell with harm prevention dress and two officers were to sit at my bedside 24/7 until I was reassessed as lower risk.

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Rockhampton Hospital

I was taken to Rockhampton Hospital by Corrective Services staff, one in particular, a dog squad officer sent as an escort began telling me how he would love for me to get up and run so that he could put a bullet in my back as I was just like a dog and bragged about his shooting skills, he had been practicing. Whilst at the Hospital, I was informed that although the Mackay Hospital had suggested a surgery, given my 'High Profile' and 'Protection' status and likelihood of assault in prison, an operation would not be a suitable option as it would require daily dressings from nurses and if I was to be assaulted whilst in prison and the wound open, I could get an infection in my leg and require amputation. As I was on remand and not sentenced, it was decided that I have my leg placed into a cast instead. As an individual identified as 'high risk' and 'with 'protection' status, I could not get the medical treatment I required.

Rockhampton (Capricornia) Correctional Facility - Medical Unit

Whilst being held in the medical unit on observations I was regularly verbally abused by staff members and physically assaulted on one occasion when an officer took a rolled-up towel and whacked me on my broken leg telling me how, he could not wait to get me into the unit and see how long I would last.

After two-three weeks in the medical unit of the prison, I satisfied staff that I was mentally stable and that the risk of self-harm was low, and I was escorted to a protection unit in the prison. When I left the medical unit, I was escorted by two officers, I was handcuffed which was difficult as I could not walk without the aid of crutches. There was an officer there who made a phone call to the unit manager to let them know that I was coming down and joked about how I was not expected to last very long and that he was hoping to win the bet. I was then escorted to an office known to me as the supervisor's office where the supervisor asked me questions and gave me a short run down of the expectations and requirements whilst I was in prison before being taken into the unit.

Rockhampton (Capricornia) Correctional Facility – Protection Unit

I spent 4 days in a protection unit with other prisoners before I was violently assaulted in a laundry. An officer (the same officer who used the phone to notify the unit manager I was coming down and who had, spoken about how long I was going to last and suggested he would win a bet) asked me to see him at the officer's station where he told me that I was required to go to the laundry to get some clothes. I went into the laundry where I was assaulted by at least three other prisoners. When they were finished assaulting me the leader of the group pulled me up off the ground and told me the guards wanted me raped however, they felt bad because I had a broken leg and was on crutches mentioning that I should consider myself lucky and that I would need to start paying this prisoner \$50 a week in order to prevent ongoing assaults.

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Two of the offenders were later charged in relation to this assault after an investigation by the Queensland Corrective Services Investigation Unit and one confessed and told the officers that the request for the assault had come from the prison officers, in return for special privileges however, the second individual charged, had provided two statutory declarations from other prisoners to say that he was not there at that time and the Police were unable to take this matter any further.

After the assault I was taken back to Hospital for x-rays and additional medical treatment. I could no longer use my crutches due to my injuries and was placed into a wheelchair.

Rockhampton (Capricornia) Correctional Facility - Detention Unit/Solitary Confinement

It is after returning from hospital on this occasion that I was placed into the Rockhampton Detention Unit on a safety order. A safety order places a prisoner in solitary confinement for the safety of the prisoner and/or others. When I arrived in the Detention Unit, the officer running the unit on that day was the same officer that had previously hit my broken leg with the towels in the medical unit however, he on this occasion treated me with respect and did not assault me again.

Whilst in the Detention Unit in Rockhampton I had nil complaints; I was happy to be kept safe and had no further issues with staff or prisoners. What I loved most about the Rockhampton Detention Unit in particular is that the Prison Manager of the prison at the time, a female woman, would do a weekly inspection. The Prison Manager would ask us directly if we had any complaints, needed any medical treatment or any support at all. This treatment was nothing but humane and I would recommend other Prison Managers do the same as I cannot say that the Detention Units in other prisons are so well kept, safe and humane.

I was notified by the Prison Manager personally that, my placement within the centre had been assessed and that it was unlikely I could be kept safe. I was placed onto a waiting list for a prison transfer. I was transferred to Townsville (Stuart Creek) Correctional Centre.

Townsville (Stuart Creek) Correctional Centre – Harold Gregg Protection Unit

Whilst at Townsville Correctional Centre I was placed again, into the protection unit. I was safe here, still on remand, unsentenced. I remained in this unit for quite some time however, one day I was asked to change cells, and this was a problem because the cell that the officers wanted me to go to had a bunk bed with an extremely overweight and elderly prisoner already in this cell. It was impossible for me to climb up onto the top bunk in this cell as I still had a broken leg and used crutches.

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Because I had refused the direction of staff, the Prison Manager of this jail came down into the unit with extra officers and locked every prisoner away except for me. The Prison Manager told me this was prison, and I was expected to do as I was told and if I refused any of the officers' directions and/or disobeyed any commands I would be taken to the detention unit. I was asked if I understood, and I said 'yes'.

Shortly afterwards I was asked again by a prison officer to change cells and again, I told the officer that I could not for medical reasons. The officer smiled and told me I would be going to the detention unit. The Prison Manager again returned with additional officers who took my crutches, forcing me to walk without them on a broken leg.

Townsville (Stuart Creek) Correctional Centre – Detention Unit/solitary Confinement

I spent maybe two weeks in the detention unit for failing to obey the officers' orders where I was mistreated, physically and verbally abused, was not allowed access to necessities such as toilet paper and on one day in particular I was not given any food. This treatment was 'punishment for continuing to disobey the directions of officers' whilst in the detention unit. As I had a broken leg, I was required to keep my leg in a medical brace. Each morning officers would come into my cell (routine) and ask me to remove my leg brace and I refused. The officers told me that they had spoken to the doctors and nurses, and they were told I no longer needed the leg brace. I told them that I had not yet been provided with medical advice regarding the removal of the brace and if the officers could organise a visit to the medical unit or the hospital to confirm, then I would be happy to remove it. This was never organised. One day I was taken out of the cell and into an interview room within the detention unit. I was in the room with two supervisors, one sat adjacent to me in a chair, and another stood over me to my right-hand side. I was told that if I so much as flinched or moved a muscle it would be seen as a sign of aggression and that the supervisor standing over me would assault me. I was then told that I would be removing my leg brace, or I would be spending the rest of my life in solitary confinement. I told the supervisor that I preferred the detention unit as I was safe and that until I received medical clearance, I would not remove the brace. I was threatened some more before being placed into a cell without any of my reading materials, paper, pens, diaries and toilet paper. Everything had been removed. I was told that I would get my things back when I started complying.

The following day a female officer was on duty and was handing out the daily meals to each cell one by one however when the officer got to my cell, the officer said that I did not deserve to eat and continued only to provide meals to each of the other prisoners. I did not receive any food this day because I had refused to remove my leg brace. Eventually, I was placed back into the protection unit.

Townsville (Stuart Creek) Correctional Centre – Harold Gregg Protection Unit

I remained in the same unit for a few weeks until, perhaps coincidentally the same officer in

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charge of the unit the day I refused to move cells, requested that I move units. Again, I refused as I had been threatened by other prisoners who shared a prison yard with our bedroom windows. The officer smiled and told me that I was in jail and would do as I was told.

I used the prison phone to call prison intel who arranged to meet with me. I told prison intel about my situation, the 'high profile' and 'protection' status, the prison assaults, transfers, threats and basically everything that had happened up to and including that point. The intel officers recommended that I remain in the unit, and I did so, for a few more weeks until the same officer was again on shift.

I called prison intel again as they told me I would not be moved because of the risks to my safety but they did not answer, and I left a message. (I found out from the officers later that they had asked a supervisor to speak with me and return me to my original unit) this did not occur.

Townsville (Stuart Creek) Correctional Centre – Medical Unit

In order to remain in the unit, I used the intercom to threaten self-harm and I was instead taken to the medical unit for observation. I was not allowed access to my crutches and as I could not walk without them, I had to crawl and hop like a kangaroo to the toilet. One day (it was a weekend) the officers were all standing around pointing and laughing at me, I felt humiliated, they were saying 'look he's a kangaroo'. I was allowed a phone call and used this call to phone my mother who then called the jail and asked to speak with the supervisor, this supervisor apologised and told her he did not know why I was in the medical unit or why I was forced to move units if I was on a 'protection' order.

The supervisor came to see me, apologised and told me he would send me back to the unit.

Townsville (Stuart Creek) Correctional Centre – Harold Gregg Protection Unit

I remained in this unit for some time until the same officer came into the unit again and told me that I would be moving again and smiled. I was certain that by now this officer was setting me up for some kind of assault or torture and that it was more than a coincidence that every time this particular officer was rostered on in the unit that I was to move to another unit. She smiled and asked me if I was going to slash up today or whether I was going to call intel (to save me) again?

This time I refused. The officer then took me into an interview room where she read the prison rules verbatim, a rather large document that took between 20 and 30 minutes to read. Still, I refused to move and had a panic attack. Additional officers were called in to remove me by force and all began verbally abusing me, laughing and pointing whilst one officer said, 'I'm going to film this and send it to his wife'. I was dragged from the unit physically, still

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with a broken leg and my crutches removed. I was dragged until an officer began complaining the officer had hurt his back. (This officer later filed a complaint in relation to the damage to his back as a result of dragging me through the prison). I was placed into a wheelchair and taken back to the detention unit.

Townsville (Stuart Creek) Correctional Centre – Detention Unit/solitary Confinement

Whilst in the detention unit on this occasion I experienced more verbal abuse and attempts of officers to have me remove my leg brace which I refused. Whilst in the detention unit I witnessed verbal and physical abuse. There was a prisoner who was kept in the yard all day and refused access to the toilet. He was begging guards for hours to let him use the toilet, but they refused, and he defecated outside in the yard. Later, officers went into his cell and forced him to put his face into his own faeces before leaving him there handcuffed without access to a shower or wash basin. This was one of the more severe 'inhumane' acts I witnessed. On occasion prisoners were not fed, were denied yard access, toilet access and necessities such as toilet paper almost on a daily basis.

Prisoners were routinely mistreated in this facility.

One day we were visited by an 'official visitor' and told we could make complaints. The official visitor reports back to the 'Prison Manager', (a system that needs overhaul). I began making complaints to the official visitor who was taking notes one day, when she became distracted by the guards mistreating another prisoner. She never came back and finished listening to my complaints. The Prison Manager never once visited this detention unit in this prison.

Townsville (Stuart Creek) Correctional Centre – Harold Gregg Protection Unit

After returning to the unit for a short time and after, attending Court and being sentenced to six months imprisonment for the offences I was charged with, I was again asked to move, by the same officer who had attempted to have me move on each of the previous occasions and this time, broken, worn down and helpless I complied.

I was placed into a cell with an indigenous man, a violent offender who was on remand charged with the manslaughter of his child, having previously served time for rape. I was abused verbally and physically abused daily and each night by this man. It started as 'I'm just toughening you up' because he considered me weak. Other inmates and officers were aware but did nothing and I felt so low and vulnerable that I did not speak up. I had tried on many occasions to avoid this by threatening self-harm, calling prison intel and outright refusing to move, that I figured there was no point in trying to protect myself, I became extremely depressed.

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Eventually this offender would rape me with a 'shiv' or 'prison knife' (an orange Colgate toothbrush with razor blades melted into it). That night I screamed and cried out in pain, but the other inmates just kept telling me to shut up. I was actually threatened by an inmate the next day who told me if I ever acted like that again, waking people up he would 'fuck me up'. I remember telling him what was happening and although he looked sympathetic, he said that sounds like a me problem and I would need to stand up to this guy and because I couldn't fight, I would have to stab him to death or at least to a point where he could do me no more harm. I am not a violent person; I was not in prison for any violent offences, and I was terrified. I did nothing.

One day, about a week or so after this incident I was asked to speak with an officer at the officer's station who informed me I would be taken to the hospital for another x-ray. I returned to the table and when I told my cell mate, I was going to hospital he told me that I wasn't and demanded I go back and tell the officer that I could not go. I followed his direction, and the officer told me that I had no choice, I had a broken leg, and it was time to go to hospital. My cell mate then assaulted me while the officer was watching. The officer then pulled me out and asked what was going on and I told him nothing was going on, 'in any event' he said, 'you're going to the hospital'. Before leaving for hospital, I was required to undergo a strip search. It was during this search that officers noticed that my entire body was covered in bruises and that I had been assaulted on more than one occasion. I broke down.

I had spent weeks, trying to be 'tough' and not say a word. I could not hold it in anymore and I broke down. Officers then began taking photographs with one officer telling me that my cell mate was going to rape me and had been abusing me more and more incrementally each day in order to condition me into being his 'bitch'. I have been through a lot in my life, but this was one of those moments I will never forget, the fear and absolute helplessness I felt in that moment cannot easily be explained.

I was taken to hospital and once returning, I was taken out of that unit and that cell and placed onto a safety order for the remainder of my time in custody (a week or so). Upon leaving prison on this occasion, I contacted the Corrective Services Investigation Unit and also the Crime and Misconduct Commission. Both agencies were limited in what they could do, I found out that footage is only kept for a period of three months and otherwise destroyed, other prisoners were not likely to talk and the police told me there was no point pursuing charges against the cell mate because he was already going down on manslaughter and any sentence for the rape and torture would run concurrently meaning, he would not serve any additional time and that I would be placing myself and my family at unnecessary risk of retaliation in the future.

Mareeba/Cairns (Lotus Glen) Correctional Centre

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I was later held on remand in Lotus Glen on two separate occasions for six and two months in 2017/2018 before being released for the final time.

Whilst in Lotus Glen I also spent a great deal of time in solitary confinement for various reasons. For the most part, the treatment was pretty good however there were incidents where I was assaulted by officers and mistreated all documented since. I had on this occasion begun making direct complaints in the form of 'blue letters' to the Prison Manager and on one occasion the Prison Manager through the head psychologist, through my personal psychologist told me that if I were to withdraw all of my formal complaints against them, that my life would go back to normal, so I did however, I was still kept in the detention unit for a considerable amount of time. I experienced more of the same treatment in this prison including for example, my belongings being taken and misplaced by officers, resulting in a reimbursement from the prison upon release.

One thing that stood out in this detention unit was how the indigenous were treated, Cairns is closer to the Cape communities and has a higher rate of indigenous prisoners and I regularly witnessed the mistreatment of these indigenous prisoners, some left out in the yard without toilet access or drinking water all day, guards would become frustrated with language barriers and ignore them when they were trying to ask for access to food, toilets and other facilities.

Ongoing Medical Issues

As a result of poor medical treatment in 2016, my right leg is still much smaller than the left, I am currently having my leg examined by a specialist because of the constant pain associated with bending my knee. The cartilage has deteriorated, and my leg never properly healed. I spent six months in custody and received no physio at all.

Generally speaking, a broken leg is required to be in a cast for 6 weeks before beginning physio with full movement expected within three months. I spent the whole six months without the ability to walk and I am considering taking legal action against the state for this injury and also, some of the abuse I suffered. I am now outside of the personal injury claim period and considering tortious damages instead.

I am sure that there are other Queenslanders suffering similarly and I would like to see the Queensland Government investigate this further.

Ongoing Psychological Issues

As you can imagine, the physical, verbal, psychological and sexual abuse I suffered has caused me considerable ongoing pain and mental health issues such as PTSD, depression and on occasion anxiety. I am fortunate for the care and support from Dr Jeff Nelson over the last 5-6 years as without his support, guidance and belief in me, I would not be the person I am today. For the most part, I am healing and contributing a great deal within my local community of Cairns.

Former Magistrate Pat O'Shane AM & Youth Justice Reform Advocate Shane Cuthbert
Joint Submission to the Youth Justice Reform Select Committee

16 November, 2023