**Submission No 55**

# INQUIRY INTO YOUTH JUSTICE

**Name:** Ms Alissa Moen

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**SUBMISSION TO NSW SELECT COMMITTEE ON YOUTH JUSTICE**

**INQUIRY INTO**

**EVIDENCE-BASED APPROACHES TO REDUCING THE NUMBER OF CHILDREN IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM**

## INTRODUCTION

1. I am a criminal defence barrister of almost 30 years standing. I have had a range of experience where children are involved in court proceedings. From 1996 until 2008 I appeared for many young persons facing criminal proceedings in the Children's Court. From 1999 until 2007 I appeared for various parties to proceedings in the care and protection jurisdiction, including as separate representative for the subject children. In the District and Supreme Courts, a handful of my clients have been children. I regularly cross-examine children who are witnesses in criminal proceedings. I have a particular interest in the neurobiology of child development and its impact on criminal trials, sentencing and how defence lawyers work with their clients.

2. Childhood adversity and the biological responses it generates are at the root of much criminal behaviour. I am enthusiastic about science-based solutions, particularly trauma-transformative systems, reducing childhood adversity and building resilience. In 2018 I travelled to the US state of Oregon to study ACE Interface, an American innovation that addresses childhood adversity. In 2019 I was working on a project to bring ACE Interface to NSW.

3. These submissions are not intended to address all the Inquiry's Terms of Reference.

4. My goal is to encourage the Select Committee to consider a paradigm shift, from the status quo, to a narrative of healing for children in our youth justice system. I support raising the age of criminal responsibility to 14. In my view, replacing juvenile detention with therapeutic models of care is possible and supported by the science of childhood development. The approach adopted by the Australian Capital Territory is a good example to follow.

## CHILDHOOD ADVERSITY: A SIGNIFICANT UNDERLYING DRIVER OF CHILDREN'S CONTACT WITH THE CRIMINAL JUSTICE SYSTEM

5. The human brain develops in response to the environment surrounding a child. Ninety percent of physical growth in the brain occurs in the first four years of life. Throughout childhood there are periods during which the brain is especially sensitive to certain kinds of nurturing or threatening experiences. Even in adolescence, young people are developing critical executive function skills that help them control impulses and prioritise behaviours.

6. Structural and functional changes occur in the brains of maltreated children as their biology adapts to survive in a hostile and chaotic world.[1] Neuro-imaging of children with documented child maltreatment histories has provided irrefutable evidence of this phenomenon. Fourteen years ago Australian paediatrician Professor Graham Vimpani co-authored a paper analysing this evidence.[2] Seventeen years ago then Sydney neuropsychologist Hayley Bennett (now Justice Hayley Bennett of the NSW Supreme Court) linked this evidence to moral culpability for criminal behaviour.[3]

7. The 2024 Report of the Australian Capital Territory's Therapeutic Support Panel for Children and Young People outlines the impact of adverse childhood experiences (ACEs) and trauma on the development of children and the conditions that increase the likelihood of involvement in harmful behaviours.[4]

8. ACEs is a well-known term in scientific literature on child development. It originated with the ACE Study co-authored by Dr Robert Anda and Dr Vincent Felitti[5]. The ACE Study was a survey of over 17,000 mostly white, college-educated Californians, published in 1998 by the Centers for Disease Control and Prevention and Kaiser Permanente. The researchers asked adult respondents about their childhoods and counted up how many "adverse" experiences they had. They selected ten of the most common adverse childhood experiences and focused on them with direct questions. The ten categories of childhood adversity included in the questionnaire were physical abuse and neglect, emotional abuse and neglect, sexual abuse, parental separation, parental mental illness, parental substance abuse, incarceration of a family member and exposure to domestic violence. Each time a respondent answered "yes" they were allocated 1 point, resulting in a total ACE score of anything from 0 to 10. Results of this survey were then combined

with data on a wide range of health and social problems experienced by the survey participants. Statistical correlations between participants' ACE scores and risks of adverse health and social outcomes were charted. The results of the study astonished Anda and Felitti and demonstrated ACEs are a major public health issue.

## AVAILABILITY OF EVIDENCE-BASED RESPONSES THAT PREVENT OFFENDING

9. Trauma-transformative systems and reducing childhood adversity could reduce crime on a scale well beyond what has been achieved with traditional policy approaches. In the words of Don Weatherburn from the NSW Bureau of Crime Statistics and Research: *"If you want to produce a lasting reduction in offending you need to start by improving developmental outcomes in infancy and adolescence."*[6]

10. Dr Anda has described the ACE Study as a trojan horse. It enables audiences to think and talk about childhood adversity, recognise it as a public health problem and change how we deal with it. Learning about the ACE Study can generate a paradigm shift in audience members who have a history of childhood adversity.

11. American paediatrician Dr Nadine Burke Harris' book *The Deepest Well*[7] came four years after her famous TED talk.[8] Burke Harris demonstrates how and why an understanding of ACEs can be life-changing and provide hope to those who have experienced them.

12. Jack Shonkoff is Professor of Child Health and Development at Harvard's School of Public Health, Professor of Pediatrics at Harvard Medical School and Boston Children's Hospital, and founding director of Harvard's Center on the Developing Child[9]. He chairs the National Scientific Council on the Developing Child[10], whose mission is to bring credible science to bear on public policy affecting children and families. In 2011 Shonkoff launched Frontiers of Innovation, a multi-sector research and development platform committed to achieving breakthrough outcomes at scale for young children facing adversity. Shonkoff advocates for building adult capabilities to improve child outcomes.[11]

13. Paediatricians and child and adolescent psychiatrists work at the coalface of child protection. They witness the worst cases of child abuse and neglect. They are familiar

with the devastating impact of childhood trauma and deprivation. They know how frustrating it can be to work with parents who themselves carry the legacy of childhood exposure to violence, abuse, neglect, attachment disruption and household dysfunction. And yet Shonkoff delivers an inspiring message of hope[12]:

> *"We have a whole new body of knowledge now that could open up new ways of thinking about what we have until now been seeing as intractable unsolvable problems… It's there. It's possible. And a defeatist kind of attitude, or a sense of futility, is completely disconnected from what 21st century science is telling us….*
>
> *"If I had to boil it down to one thing for people to learn from this science, it's to totally put to bed forever this sense that children who are born under disadvantaged circumstances are doomed to poor life outcomes. The science is saying that's just not true."*

14. Dr Bruce Perry is an American child and adolescent psychiatrist and neuroscientist who founded the Child Trauma Academy. Dr Perry explains the science behind his opinions in his books *The Boy Who Was Raised as a Dog*, *Born for Love* and *What Happened to You? Conversations on Trauma, Resilience and Healing*. Perry's remarks at pages 308-309 of *The Boy Who Was Raised as a Dog* (2017) provide a glimpse of just how much positive impact is possible for children with backgrounds of adversity, if many of us apply what has been learnt from the neuroscience:

> *These days, the buzzword in neuroscience is "neuroplasticity", which refers to the capacity of neurons and their networks to be altered by experience.*
>
> *There are some promising clues to the concept of therapeutic dosing in the study of how new synapses – those connections between neurons that link them into networks – are formed and altered to create or change memories. One of the most studied and most important areas of the neurosciences has to do with what is called Long-Term Potentiation (LTP). Basically, this refers to the strengthening of synaptic connections, which occurs in response to a brief pattern of intense stimulation. The resulting cascade of cellular changes following this intense stimulation leads to enduring neuronal changes all the way to the chromosome, altering gene expression. It is widely believed that LTP is an important factor in learning and memory formation.*
>
> *This has important implications for the dosing of therapy: it suggests that even really short experiences can have a big impact. Indeed, long-term and enduring changes in neuronal networks*

*can be created by an intense period of stimulation that lasts less than a minute. Synaptic splitting, which is one way these connections can change, can occur in mere seconds of intense stimulation – and if the intense experience is repeated four times within an hour, the change will be maintained long term.*

*Just as traumatic life experiences can alter a life in an instant, so too can a therapeutic encounter. Unfortunately, for positive "doses" of interaction to lead to long-term change, much more repetition is needed. Consequently, the pattern and spacing required to ensure long-term maintenance of any therapeutic change is going to require a density of therapeutic interactions that our current mental health model of fifty minutes each week cannot provide. For children like Tina to truly benefit from therapy, it needs to be embedded in a context of safe and positive interactions.*

*The good news is that anyone can help with this part of "therapy" – it merely requires being present in social settings and being, well, basically, kind. An attentive, attuned, and responsive person will help create opportunities for a traumatized child to control the dose and pattern of rewiring their trauma-related associations. For people who have been sexually abused, like Tina, just being acknowledged in a supportive, respectful, and non-threatening way aids healing. The more we can provide each other these moments of simple, human connection – even a brief nod or moment of eye contact – the more we'll be able to help heal those who have suffered traumatic experience.*

15. In the 2017 *Academic Pediatrics Supplement*, Dr Robert Anda and Laura Porter presented evidence for their theory that culture change can solve social problems that are widespread, complex and intergenerational.[13] They describe a new paradigm created by scientific discoveries in epidemiology, neuroscience, epigenetics, and network and systems theory. In their experience, cultural change occurs when communities are empowered to recognise their own ability to make change, engender hope that what they do will make a difference, and challenge unexamined patterns that prevent realisation of the community's aspirations. This is possible through processes that build community capacity.

16. Anda and Porter's approach avoids stigma and shame and focuses on strengths rather than weaknesses. They speak of engaging communities across multiple sectors - child welfare, criminal justice, health, and education. Their strategy targets multiple goals. Reduce each child's dose of adversity. Enhance the ability of every caregiver to provide a

safe, stable and nurturing environment. Enhance the ability of each caregiver to regulate his or her own physiology so they can biologically buffer their child's stress response.

17. Two documentaries showcase the results of this type of innovation: *Paper Tigers*[14] and *Resilience – The Biology of Stress and the Science of Hope*[15]. *Paper Tigers* is the story of a high school in Washington State that introduced trauma-informed practices. The school's principal learnt about the science of childhood trauma when he attended one of many public talks being delivered across the community in his local region. *Resilience* is the story of pioneers using the ACE Study framework as a prevention tool. Paediatricians Jack Shonkoff and Nadine Burke Harris, and child and adolescent psychiatrist Victor Carrion, as well as Robert Anda and Laura Porter, all feature in *Resilience*. *Paper Tigers* and *Resilience* each come with a package of educational materials designed to mobilise audience members to get involved within their spheres of influence.

18. Anda and Porter designed an initiative called ACE Interface[16]. It builds the capacity of at-risk communities to become environments where adults can heal and children can thrive. ACE Interface incorporates the Self-Healing Communities Model (SHCM)[17]. Communities in Washington state that implemented the SHCM for at least eight years saw substantial improvements in key indicators of health and social function. These communities measured a 95% reduction in youth suicide and suicide attempts, a 50% reduction in youth arrests for violent crime and a 50% reduction in high school dropout rates.[18]

## ALTERNATIVE YOUTH JUSTICE MODELS AND FRAMEWORKS

### Scotland's Embrace of Brain Science

19. Scotland's Whole System Approach to youth justice is featured in the Australian Human Rights Commission's October 2025 Report *Evidence-based approaches to child justice - Supplementary paper to 'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing*. The Report does not explore the context within which that approach developed. Scottish volunteers invested considerable time and effort building government and community awareness of the science of childhood adversity.

20. In September 2018 Glasgow hosted a conference titled *Making Scotland the World's First ACE-Aware Nation*.[19] The Scottish ACE-Aware movement grew out of grassroots

enthusiasm following screenings of the film *Resilience*. In September 2017 Scotland's First Minister attended a screening of *Resilience*. Nicola Sturgeon was inspired by the experience. Her immediate thoughts included[20]:

> *"Sitting listening to that you do get a sense that a massive discovery has been made and that if we do the right things we have it within our grasp to change things, and change things really fundamentally."*

*21.* In January 2018 Connected Baby[21] hosted a screening of *Resilience* for members of the Scottish Parliament. Later that month the Scottish Parliament held a debate on ACEs.[22] In November 2018 Scotland's Deputy First Minister outlined how the science of ACEs is being used across government services.[23] In psychologist Dr Zeedak's view: *"the grassroots movement is attracting the energy of ordinary people and that is giving government courage and impetus."*

22. In August 2017 Chief Superintendent Paul Main of Ayrshire Police in Scotland attended his first screening of *Resilience*. Chief Superintendent Main thereafter took on responsibility for ensuring Ayrshire Police became the first police division in Scotland that was both trauma-informed and ACEs-aware. He showed the *Resilience* documentary to 850 officers and staff and asked them for ideas on what difference police could make by being trauma-informed and what processes could be changed. Chief Superintendent Main said in July 2018:[24]

> *"My first viewing of Resilience was last August. I've almost got a date in the diary as kind of that penny-dropping moment to be perfectly honest… There's been a common view in every single showing. The first view is, from every single person, 'I wish I had seen that earlier in my police career and earlier in my life on the planet.' The second thing that comes out is 'Every new probationer should see this.' And we've started doing that at the Scottish Police College. The third view that comes out is people then turning their thoughts into 'How can we make this work in practice?' Rather than just watching a documentary and thinking it very powerful."*

23. In September 2018 Chief Superintendent Main was quoted by BBC Scotland:[25]

> *"I am fed up putting people into custody. I'm fed up sending people to court. I'm fed up with the judges sending people to prisons… what we've got is more homelessness, more drug-related deaths, more suicides and more people at risk of harm. We need to do something different. We may still be arresting people. We may still be putting them to court. But actually we need to look collectively and say 'So what. How can we prevent this happening again?'"*

24. Tens of thousands of people throughout Scotland became curious about how childhood adversity changes a person's biology. Knowledge of the ACE Study, screenings of *Resilience*, and foundations laid by Scotland's Violence Reduction Unit[26] and Chief Medical Officer Sir Harry Burns combined to generate a groundswell of interest among the public. Individuals went on to share their own stories of transcendence and resilience. The impact was empowerment, hope and the prospect of profound change.[27]

**Therapeutic Support Panel in the Australian Capital Territory**

25. The ACT has raised the age of criminal responsibility to 14, in tandem with introducing a Therapeutic Support Panel. The TSP, supported by a Therapeutic Case Management Team, draws on a range of approaches that support desistance – the reduction in harmful behaviours – by addressing the underlying causes of the children and young people's behaviours in therapeutic, trauma-informed and holistic ways. Such an approach and framework are worthy of consideration by New South Wales.

**OTHER RELEVANT MATTERS**

26. Expert witnesses who could provide valuable evidence to the Select Committee's Inquiry include child and adolescent psychiatrist Dr Yolisha Singh[28], Peta MacGillivray[29] and Janice Mitchell, co-editor of the *Handbook of Trauma-Transformative Practice: Emerging Therapeutic Frameworks for Supporting Individuals, Families or Communities Impacted by Abuse or Violence* (2024) and CEO of the Australian Childhood Foundation.[30]

***Alissa Moen*** ***13 March 2026***

Barrister-at-law

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