



Queensland
Family & Child
Commission

Inquiry Submission

Youth Justice Reform Select Committee - Phase 2

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Commissioner Natalie Lewis
Queensland Family & Child Commission

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Commissioner Natalie Lewis
Queensland Family & Child Commission

PO Box 15217
Brisbane City East QLD 4002
qfcc.qld.gov.au

For any information about this submission please contact:

Email: commissioner@qfcc.qld.gov.au

Phone: 07 3900 6000

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Acknowledgement of Country

The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

Summary of Commissioner's Position

Our youth justice system, despite varied efforts, is failing Queensland children at unacceptable rates. It requires an aspirational restructure, a foundational rights-affirming approach and a strategy embedded within a Children's Plan for Queensland that starts with a *promise*.

The administration of justice is complex and hard – but this is no excuse for breaching human rights obligations and failing our children. If there is no social justice and equity within our services, there is no justice at all. The way forward lies well beyond another strategy providing rhetoric without any significant structural change – *it starts with coming together to make a promise to Queensland children and young people:*

We need to promise Queensland Children and Young People that we will:

Be unwavering in **upholding and affirming** their rights

Listen to their views and take their voices seriously

Be curious about their **best interests as human beings**, not offenders

Embed child-centred relational and developmental beliefs that see and support their identity and belonging **without** deficit and welfare-based **discrimination**

Ensure there is **one plan** for them if they come into contact with child protection, law enforcement, health/mental wellbeing and justice systems – led by family and respecting important relationships

Value, respect and support their **families, communities and connections**

Be wholly accountable to systemic challenges, barriers and abuses through **authentic accountability mechanisms**

Scaffold this promise with **real and courageous systems, processes and funding** that finds a way to keep it, **co-designed** with children and families.

Consequences for offending behaviour are an important aspect of arriving at a just outcome for victims and young people in conflict with the law, however they must not be administered without regard for the consequential erosion of a child's fundamental human rights. Just outcomes can be achieved without sacrificing or discarding the rights of victims or young people in the process and that is far more likely to achieve community safety for everyone.

Priority Area 1 – Youth Justice Strategy

This promise is not idealistic. Nor is it unaware of strategic, structural and operational challenges – it provides a solid foundation within which to deal with them.

On an average day in 2021–22, there were *275 children and young people aged 10 years and over in youth detention in Queensland*¹. This figure was significantly higher than every other state in Australia and an increase from 2020-21.

Detention of children in watchhouses of 5 to 7-days has increased by 78 percent between 2019 and 2022 and the half-year numbers for 2023 (January to June) surpassed the full-year numbers for 2022 with *108 detentions in watch houses lasting more than two weeks*.

In 2021–22, *86.6% of the young people who were released from a youth detention centre in Queensland reoffended within six months*. That figure was 87.2% for Aboriginal and Torres Strait Islander children and young people². First Nations children and young people are drastically over-represented at every point of the youth justice system, and this disparity continues to worsen.

Twice during 2023, the *government asked parliament to override the application of the Human Rights Act 2019*. The *Strengthening Community Safety Bill 2023* was introduced, signalling a sharp departure from the government's *Youth Justice Strategy 2019–2023* and significantly undermining any possibility of realising the strategy's goals, including keeping children and young people out of court and out of custody³.

Our system continues to:

- demonise children as offenders not humans;
- prefer 'offence' and 'offender-centred' interventions over person and child-centred approaches;
- prioritise archaic punitive approaches and punish children because of overstated assumptions about their responsibility;
- ignore the over-representation of children from low income families and the effect on families of a lack of access to appropriate health, housing and education;
- base policy on political point-scoring and populism rather than evidence and a sustained commitment to a transformational change agenda; and
- routinely ignore Queensland's legal and ethical obligations under the *United Nations Convention on the Rights of the Child* (UNCRC) and *Queensland's Human Rights Act 2019*.

¹ The average daily number of young people in youth detention is calculated based on the number who were physically located in a detention centre at 11:59pm on each day during the period.

² Children's Court Queensland. (2022). Annual report. <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>

³ Queensland Government. (2023). Strengthening Community Safety Bill: Statement of Compatibility. <https://documents.parliament.qld.gov.au/tp/2023/5723T166-F46A.pdf>

A Youth Justice strategy needs to:

- form part of a long-term Children’s plan for Queensland, with specific attention and responsibility to their particular circumstances as young people in conflict with the law;
- be founded on an unwavering affirmation of children’s rights;
- ensure children’s views are listened to and acted upon;
- replace ‘offender’ based ‘corrective’ interventions with ‘person-centred’ interventions;
- work to support identity and belonging without deficit or welfare-based discrimination;
- connect to a ‘one plan’ approach for Queensland children and young people – where they are not subjected to multiple case plans, interventions and action plans as they shift through siloed systems;
- value, respect and support the role of families and community leaders in cultivating safe, inclusive environments for children and young people to grow up in;
- be wholly accountable to systemic challenges, barriers and abuses through authentic accountability mechanisms, and;
- keep the promise with courageous systems, processes and localised funding, co-designed with children, families and their local communities.

A Youth Justice strategy needs to be founded upon the key elements of the UNCRC and the *Queensland Human Rights Act 2019*. Children are not ‘incomplete adults’ waiting for adulthood and without critically important feelings and perspectives. They aren’t passive, their identity and wellbeing are not dependent solely on adult welfare or protection and their capacity to participate meaningfully in society must not be mediated by adults’ conceptions of childhood. They have rights that they deserve to enjoy universally, and inalienably. A child’s right to express themselves and have that expression meaningfully connected to and acted upon is not dependent on someone’s conception about whether they have the ‘maturity’ or the ‘morality’ – it is unconditional.

A Rights-Affirming approach for Youth Justice in Queensland

A Rights-Affirming approach:

- begins with a shared agreement and aspiration that all children are entitled to enjoy their basic rights and a desire to collectively work towards realising this;
- structures aims and action around five guiding UNCRC principles – anti-discrimination (article 2), best interests (article 3), life and development (article 6), child participation (article 12/13) and guiding relationships (article 5);
- uses rights articles to measure outcomes;
- replaces deficit narratives and approaches with an emphasis on accountability of government, services and communities as duty-bearers, and rights-holders as experts in their own lives;
- ensures collaborative service and supports integration;
- addresses power imbalances by organising around the inalienability and interdependence of a person’s rights, and;

- can help us to reframe Queensland's relationship with its children – rather than children being simply passive, powerless, needing protection and subject to adults' interpretations of 'what's best'.

Through a rights-affirming approach, we can shift contexts and outcomes, resist assumptions that children are passive, naïve recipients, increase service provider accountability and harness authentic and collaborative voices and contributions to policy and practice.

Priority Area 2 – Prevention & Early Intervention

Children need to flourish throughout their early development and their families and communities need to be supported where they identify a need – taking a rights-based approach means supporting children and families by spotlighting and addressing systemic barriers, including housing crises, cost of living pressures and other systemic challenges that create poverty.

Underlying social factors

Children impacted by the effect of intergenerational, colonialist practices and structures, or experiences of developmental trauma, substance overuse, familial violence and cultural disruption are more likely to encounter law enforcement and the justice system⁴. Being in out-of-home care, with many systemic challenges that make that care inappropriate for children also makes contact more likely. Market-driven, individualist approaches to social policy lead to increasing numbers of families and children in poverty⁵. In 2020-2021, children living in poverty were nearly five times more likely to be subjected to youth justice supervision. This is because the youth justice system “effectively selects vulnerable, at-risk, traumatised children and young people”⁶.

A Queensland Youth Justice strategy needs to seriously and meaningfully address these underlying factors that make contact with the youth justice system more likely.

When these underlying factors emerge, a multi-disciplinary social approach must be employed to ensure children and families have meaningful access to holistic education, health, housing, domestic and family violence services and mental health and wellbeing services. Rather than siloing child protection, youth justice and other services, consistent holistic service provision should remain with a child throughout their experiences of statutory systems.

⁴ Family Matters 2011 No. 89. The link between child maltreatment and adolescent offending: Systems neglect of adolescents

⁵ Hancock, C. (2023). Ideologies of poverty and implications for decision-making with families during home visits. *Linguistics and Education* (78). <https://doi.org/10.1016/j.linged.2023.101231>.

⁶ Kinner, S. (2024). ABC Radio Interview. <https://www.abc.net.au/listen/programs/healthreport/0915-youth-justice-system/103497794>

When children come into contact with police

'Offending' behaviour is not just 'anti-social, lack of respect' behaviour as is commonly assumed within our communities. Particularly for children, 'worrying' behaviours occur on a spectrum, from completely developmentally appropriate curiosity to complex developmental and relational trauma.

The UNCRC recognises the need for diversionary measures to prevent young people from entering the criminal justice system. General Comment No. 24 (2019) on children's rights in the child justice system emphasises the importance of diversion as a preferred approach for most cases. The General Comment also stresses the need for diversion to be an integral part of the child justice system, and the importance of protecting children's human rights and legal safeguards in diversion processes and programs (in accordance with Article 40 of the UNCRC). This includes recognising the need for alternative measures for children under the age of criminal responsibility and setting the minimum age of criminal responsibility to at least 14.

Children and young people who are first arrested before the age of 14 may be three times more likely to become chronic adult offenders than those first arrested after the age of 14⁷.

Community-designed and community-based diversion programs have proven to be highly effective in reducing reoffending rates and providing positive outcomes for children and young people. These programs prioritise a holistic approach, addressing underlying issues and engaging with local communities.

Recognising the significant challenges created by continuing interstructural colonialist systems that First Nations children and young people face, First Nations-led place-based approaches have successfully reduced crime, criminal justice system contact, and youth justice contact⁸. They help to restore cultural authority and promote positive cultural identity and connection which are recognised protective factors for First Nations children. These approaches have also yielded significant cost savings, and notable improvements in cultural, social, and health and wellbeing. By adopting community-driven strategies, positive outcomes can be achieved across multiple domains. These initiatives involve community elders and leaders promoting cultural connections, healing and accountability. First Nations-led diversion and intervention programs, when appropriately resourced can significantly reduce the risk of reoffending among children and young people and achieve cost savings which can be reinvested into creating more social justice outcomes.

When children are referred to the court system

In Queensland, custody has been demonstrated as consistently and predictably ineffective in preventing offending and reoffending. The more courts impose custodial sentences on Queensland children, the more likely they are to reoffend. Children who are in out-of-home care or have had significant interactions with the child protection system are significantly over-represented within groups of children who commit offences and First Nations children are over-represented even more so. Consistently, our legal obligations to protect and affirm children's rights are not being met.

⁷ Amnesty International. (2018). The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility. <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

⁸ Allison, F. (2022). Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW. Just Reinvest NSW. <https://www.justreinvest.org.au/wp-content/uploads/2022/10/JRNSW-I-Reinvestment-Forum-I-Report>

The more Queensland court processes focus on and implement prevention, early-intervention, diversion and shared accountability with services connected to a child, the less likely offending behaviour becomes. The Queensland Family and Child Commission (QFCC) proposes a Child-centred Court Panel (CCP) pilot program for children aged 10-15 who offend in Queensland. This pilot includes an evaluation of its effectiveness in reducing youth offending and recidivism (see *Addendum 1 – Ref: D24/1704*).

Priority Area 3 – Reimagining Infrastructure

Queensland needs to work critically to adopt contemporary, non-colonialist approaches to ‘justice’, including decommissioning youth detention centres.

Queensland is locking up children at alarming and increasing rates. We must reimagine how we see and value children and young people in our community. If ‘tough laws’ worked, Queensland would have seen a decrease in reoffending, which is consistently not the case. We incarcerate children because of our short-term satisfaction with ‘punishment’.

The practice of detention has been shown consistently to:

- adversely affect children’s mental health and wellbeing;
- break critical attachments and relationships;
- reduce or eliminate the effectiveness of social and therapeutic work already being completed with the child, and;
- significantly increase the likelihood of future offending.

As outlined in *Youth Justice Act 1992*, ‘a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances’ (Principle 18: Charter of youth justice principles). Queensland needs to acknowledge and address its’ permissive and desensitised attitude to the incarceration of children. Normalisation of custody approaches for children has become entrenched alongside custody law changes – we routinely see 50+ children in watchhouses every day across the state – with no alarm going off for governments and policy makers. Our system has become desensitised to the catastrophic impact of incarceration on children. We must collaboratively decommission youth detention centres, underpinned by an urgent need to rid ourselves of the ‘need’ for detention centre capacity⁹ and use them only as an *extreme* last resort in rare and individual instances where there are significant community safety worries.

⁹ Atkinson, B (AO). (2018). Report on Youth Justice. <https://desbt.qld.gov.au/youth-justice/reviews-reports/atkinson-report>

Priority Area 4 – Improving engagement

Queensland needs to rethink what we mean by ‘positive’ programs.

Whilst it is critical we urgently reduce incarceration of children and young people in Queensland, it is equally important to listen to the voices of children and young people to learn how to design and implement ‘positive programs’ that work for them.

Over six months, the QFCC yarned with Aboriginal and Torres Strait Islander children and young people about their experiences of the Queensland youth justice system and presented their voices in the *Yarning for Change: Listen to My Voice* report¹⁰. Young people said that access to programs while in detention depended on factors such as peer conflicts, resourcing and staffing. They advised that the programs they had participated in, or enjoyed, were cultural programs and physical activities, such as hospitality training, bricklaying, football, gym, pool and landscaping. Young people identified factors that kept them strong while in detention:

- contact with family members in the community;
- peer support;
- family members in detention; and
- detention centre staff.

Young people advised that being sentenced helped to ease their minds in detention — they knew what they were working with and working towards. However, being on remand was mentally hard. Uncertainty around transitioning to community was also a frustration for young people.

The current Youth Justice system employs poorly evidenced assessments regarding a child’s ‘attitude’ and ‘level of remorse’ which, for many of these children, are ineffective and developmentally inappropriate. Interventions such as ‘aggression-replacement’ are archaic in principle and ineffective. Our child detention structures are based on historical ideas and policies that simply apply adult incarceration ideals to how we treat our children. Whilst our youth detention centres have teachers, youth workers and other staff who often ‘do their best’ with relational practices with children, the system and structure they work within make it difficult to have a more positive impact on a child’s life.

¹⁰ Queensland Family & Child Commission. (2022). *Yarning for Change: Listen to my voice*. <https://www.qfcc.qld.gov.au/sites/default/files/2022-11/Yarning%20for%20Change.pdf>

Priority Area 5 – Operation of the Act

The concept of ‘serious repeat offender’ needs to be amended, and children’s rights need to be upheld within sentencing principles.

We know that children with experiences of developmental trauma are significantly more likely to encounter our justice system. Children’s isolation, lack of access to health treatment and education and neglect of other rights within the youth justice system, further exacerbate cyclic offending. If we combine this knowledge with an 80-90% reoffending rate for children who have been incarcerated, then we need to carefully readdress the concept of a ‘Serious Repeat Offender’ declaration.

Where the criteria for this declaration are met under the current legislation, it should be seen and acted upon as a ‘High Priority Support List’ instead, meaning the urgency is placed on addressing their assessment and support needs rather than surveillance and suppression activities. Our response should be to focus our collective accountability as *duty-bearers* to affirm the rights of these children. This declaration should increase the need to employ long-term treatment, non-punitive strategies and accountability of key services to uphold the rights of children. We must respond to the systemic impacts on a child that lead to ‘serious repeat offending’ rather than further punishing the child.

Children should only ever be arrested, detained, or imprisoned as a measure of last resort, for the shortest period, and all efforts should be made to apply alternative measures. A Youth Justice Strategy for Queensland needs to implement meaningful mechanisms that reflect ‘all efforts’ being made, including urgently increasing the age of criminal responsibility to 14 and removing unsentenced detention in watchhouses.

Queensland’s renewed focus on detention practices including commissioning new remand and detention centres for children is significantly contributing to youth offending and has profound psychological impacts on children. Community safety and collaboration must remain a focus, but the most effective way to protect communities is to avoid non-evidenced ‘tough-law’ approaches – a child-centred, compassionate response has been shown to significantly decrease offending and reoffending.

Principle two of the Youth Justice Act 1992 Charter states, ‘the system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing’¹¹. The development of a new Youth Justice strategy makes it imperative that we re-structure our systemic approach to Youth Justice to make this principle a reality.

¹¹ Youth Justice Act 1992. <https://www.legislation.qld.gov.au/view/pdf/inforce/2017-03-30/act-1992-044>

Priority Area 6 & 7 – Public Confidence & Support

A community's authentic and perceived safety is critical. Supporting communities to feel safe as they live their lives is important. Kneejerk reactions to community concerns must be replaced with consistent, thorough, robust processes and long-term resourcing.

Any personal crime has a major effect on anyone who has experienced it. This includes their rights not being upheld. However, a Youth Justice strategy *must* stay true and consistent with evidence, ensuring a plan is collectively agreed upon and actioned. Despite certain narratives driven by media reporting and social media conversations, it is important to remember two critical points:

- offending by children in Queensland has decreased¹², and;
- 'tough law' approaches including increases in law enforcement zero-tolerance, electronic monitoring, punitive incarceration strategies, isolation and remand detention in adult watchhouses have made future offending more likely from children subjected to them.

This makes it more critical that we 'stay on course' and avoid what has habitually been, and continues to be, a race to the bottom with Youth Justice policy. Tough laws and archaic approaches have made communities less safe– it's time to end this short term policy-making so we can all make our communities safer.

Increasing meaningful support for those who experience crime should be a focus of a Youth Justice strategy. If the government is committed to reducing offending, it needs to fundamentally transform systems (health, housing, education etc) to implement evidence-based legislation, policies and programs. An actual test of its commitment would be to introduce an insurance scheme for victims of crime. That is, those who experience crime by young people in Queensland should be compensated because the government fails to implement, action and monitor an evidence-based Youth Justice strategy. Victims of crime should be able to access financial compensation due to government policy failure.

A promise to our young people is a positive way to bring the entire Queensland community together in support and action.

¹² Australian Bureau of Statistics. (2022-2023). Recorded Crime – Offenders. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>