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Making Queensland Safer Bill 2024

Commissioner Natalie Lewis



Queensland
Family & Child
Commission



Queensland
Government



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.

Queensland Family & Child Commission

PO Box 15217

Brisbane City East QLD 4002

qfcc.qld.gov.au

For any information about this submission please contact

[Redacted contact information]

The proposed ‘Making Queensland Safer Bill 2024’ erroneously separates government obligations to uphold children’s rights from community safety and will not make anyone safer. Evidence avoidance in the development and consideration of these laws is neither in the interests of victims nor justice.

Known consequences

I share a commitment to reduce crime, increase community safety and create an effective youth justice system. The evidence is clear that criminal justice responses will not deliver these results. The evidence is also clear that making laws without appropriately scrutinising the unintended consequences of those decisions, will ultimately have far reaching implications. These actions lack transparency and accountability. The Bill will deliver consequences that, will be labelled unintended, but are predictable and known, and apparently acceptable. I call on the government to be fully accountable and transparent about the effects of these laws into the future. While community safety is a critical goal, it must not come at the expense of fundamental rights and freedoms. These are not mutually exclusive. We can create safer communities whilst simultaneously promoting and protecting the rights of victims and young people who have offended.

The impact of this legislation will certainly result in the overcriminalization of Aboriginal and Torres Strait Islander children and:

- overtly violates Article 37(b) of the UNCRC which states that detention should only be a measure of last resort
- violates Article 2 of the UNCRC which requires non discrimination in the application of rights
- breaches developmental rights including Article 40 of the UNCRC which emphasises rehabilitation and reintegration over punitive measures.
- violates the National Agreement on Closing the Gap, specifically Target 11 which seeks to reduce the over representation of First Nations children in detention.

Restricting children’s rights

*The Making Queensland Safer Bill 2024 (Bill) perpetuates a worrying trend by successive Queensland governments to turn their back on Australia’s commitment to the United Nations Convention on the Rights of the Child.*¹ The necessity to override the *Human Rights Act 2019* should be of the greatest concern for every Queenslanders. Minimum mandatory sentencing laws are contrary to the fundamental principles of Australia’s legal system and consequently further erodes judicial discretion, limiting the courts consideration of the unique circumstances of a child e.g. developmental maturity, disability and

¹ UNCRC General Comment 24, para. 30 (2019) on children’s rights in the child justice system: *The Committee recommends that those States parties that limit the applicability of their child justice system to children... by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence.*

experiences of trauma. The inter-dependent nature of rights means that when even just one section of the Human Rights Act 2019 can be overridden all rights are potentially undermined. In a youth justice context such laws should be seen as undermining the principles of the Youth Justice Act 1992, and the sentencing principles outlined in section 150. I am outraged by the governments demonstrated lack of care and duty to the rights and safety of all Queensland children via the overt discrimination contained in the Bill.² By the governments own admission this situation will inevitably lead to increased incarceration of children.³

More Costly

The cost per average day per young person subject to detention-based orders has risen from \$1347 (2018-19) to \$2086 (2021-22).⁴ On an average day there were 287 young people in detention-based supervision (2021-22).⁵ The Bill will cost the Queensland public significantly more in the coming years. This is in light of the evidence proving the expenditure will be less effective at reducing re-offending.⁶ However, these are just the known cost to the system. In 2020-21 the Northern Territory government expenditure on detention increased by \$35 million due to legal settlements with former Youth Detainees.⁷ The financial costs of subjecting children to cruel, inhumane and degrading experiences will continue to mount on the youth justice system. I note that a number of legal experts have raised the potential for challenges to these laws, including constitutionally and future compensatory actions. The human costs are incalculable.

More Cruel, Inhumane and Degrading Experiences

Mandatory sentencing is shown to disproportionately affect the most marginalised.⁸ Children who progress deeper in the justice system are more likely to have experienced abuse and neglect, have mental health problems and be developmentally delayed.⁹ A 13-year-old child who suffered from foetal alcohol syndrome and attention deficit hyperactivity disorder who spent 139 days in juvenile detention, was confined in his cell for 20 hours or more on 78 of those days and on a further 10 days, he was held in his cell for 24 hours a day.¹⁰

² Queensland Government (2024). Statement of Compatibility: Making Queensland Safer Bill 2024 (p. 6).

³ Queensland Government (2024). Statement of Compatibility: Making Queensland Safer Bill 2024 (p. 4).

⁴ ROGS (2023). Table 17A.21

⁵ Ibid.

⁶ https://www.abc.net.au/news/2024-10-13/criminologists-debunk-youth-crime-crisis-claims/104445432?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

⁷ ROGS (2023). Table 17A.21

⁸ Cumaraswamy, Dato' Param "Mandatory sentencing: the individual and social costs" Australian Journal of Human Rights, Dec 2011, 7(2); Ward, A. "Mandatory sentencing and the emergence of regional systems for the protection of human rights", Dec 2011, Australian Journal of Human Rights, 7(2)

⁹ Cashmore, J. 2011. *The link between child maltreatment and adolescent offending: Systems neglect of adolescents*, Australian Institute of Family Studies available from: https://aifs.gov.au/sites/default/files/fm89d_0.pdf

¹⁰ CC – AR (2022-2023), p. 2-3.

The UN's Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, found that isolation will exacerbate any existing mental health conditions.¹¹

Further I note the public statement from the Chair of the UNCRC Committee, Ann Skelton in relation to proposed changes. She expressed deep concern regarding mandatory minimum sentencing and stated the suite of measures demonstrated a flagrant disregard for children's rights.

Less safety

I am concerned about the haste with which these laws have been progressed given their seriousness. It is a curious decision to set forth laws for greater safety while simultaneously *making amendments to remove the ability of the Children's Court to make an exclusion order even in circumstances where there may be a risk to the safety of a person or where it may prejudice the proper administration of justice*.¹² That the government has rushed this Bill based on their knowing that it will lead to greater levels of incarceration, in the face of a detention system struggling with capacity borders on reckless. This is in the face of unanimous expert consensus that youth crime in Queensland has been declining since 2008.¹³ I hold grave concerns that will lead to more preventable deaths as the result of children experiencing cruel, inhumane or degrading treatment in Queensland youth detention centres.^{14 15}

I continue to advocate for a holistic and collaborative approach to youth justice that focuses on early intervention and family support, addresses the key risk factors for youth offending behaviours and recognises that for many children and young people they themselves are victims - they experience higher rates of domestic and family violence and higher rates of abuse and subsequent removal by child protection. A youth justice response will not address those risk factors and therefore not reduce youth offending.

More victims

I am extremely concerned about the impact of Legislative amendments and policing policies on the sharp increases in the number of victims. There has been increased numbers of victims with the average number of proven offences per young person rising from 7.8 (2019) to 14.1 (2023-24).¹⁶ The QHRCs submission to

¹¹ United Nations, 2011, *Interim report of the Special Rapporteur of the Human Rights Council of torture and other cruel, inhuman or degrading treatment or punishment*, available from <https://digitallibrary.un.org/record/710177?ln=en#record-files-collapse-header>

¹² Queensland Government (2024). Statement of Compatibility: Making Queensland Safer Bill 2024 p. 12

¹³ https://www.abc.net.au/news/2024-10-13/criminologists-debunk-youth-crime-crisis-claims/104445432?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

¹⁴ QFCC Child Death Review Board: Annual Report 2022-2023 (p. 22).

¹⁵ https://www.abc.net.au/news/2024-03-15/youth-detention-child-death-review-board-queensland-preventable/103589782?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

¹⁶ Queensland Government (2024). Statement of Compatibility: Making Queensland Safer Bill 2024 (p. 2). The statement makes the assertion that offences per unique offender are sounds indicator for number of victims.

Senate Legal and Constitutional Affairs Committee (2024) provides an informative timeline demonstrating how legislative, and policy implementation in Queensland has been closely correlated with increasing victim numbers (proven offences per young person):

- 10 March 2020: five-point plan announced to crack down on youth crime, including tougher action on bail, a ‘police blitz’ on bail, and more resources to appeal court decisions.¹⁷
- 30 April 2021: legislative amendments introduced a presumption against bail for youth offenders for certain offences.¹⁸
- 22 March 2023: legislative amendments to make breach of bail an offence and establish a new serious repeat offender regime, which override the application of the Human Rights Act until 22 March 2028.¹⁹
- 20 May 2023: a joint Department of Youth Justice and Queensland Police Service initiative, Taskforce Guardian was launched, in which ‘rapid response teams’ are deployed to ‘youth crime hot spots.’²⁰
- Queensland Police Service announces 100th deployment of *Taskforce Guardian*, and reports that, over the course of 103 deployments across Queensland, 2093 children have been charged with 6167 offences and 980 children have been diverted from the youth justice system.²¹

Data provided to QFCC by Queensland Police shows that the 3 offence types with the greatest average number of offences per unique young person charged by TFG over the most recent 12-month period were:

1. Juvenile breach of bail – 3.6
2. Bail Act (breach) / fail to appear 2.2
3. Offender Management Warrant/s – 2

The vast majority of the increase in victims as indicated by the rise in offences per young person are for offences against the Crown. Young people continue to experience vastly more harsh treatment at the hands of the law than adults. This is leading to significant criminalisation of children and is likely to have the adverse effect of increasing offending behaviour.

More pathways

For too many children contact with the child protection system is the precursor to youth justice. So many of these children have never had their rights respected or their needs met. Recent data shows that for all

¹⁷ Anastasia Palaszczuk, Mark Ryan and Di Farmer, ‘Hard Line on Youth Crime’ (Joint Statement, Queensland Government, 10 March 2020).

¹⁸ Amendments to the *Youth Justice Act 1992* (Qld) by the *Youth Justice and Other Legislation Amendment Act 2021* (Qld).

¹⁹ Amendments to s 29 of the *Bail Act 1980* (Qld) and ss 150A, 150B of the *Youth Justice Act 1992* (Qld) by the *Strengthening Community Safety Act 2023* (Qld).

²⁰ The Honourable Di Farmer, ‘First of five new 24/7 Co-responder teams rolled out’ (Media Release, 20 May 2023) <<https://statements.qld.gov.au/statements/97762>>.

²¹ Queensland Police Force, ‘Taskforce Guardian marks 100th deployment’ (Press Release, 15 October 2024) <<https://mypolice.qld.gov.au/news/2024/10/15/taskforce-guardian-marks-100th-deployment/>>.

young people under youth justice supervision in 2022-23, Queensland had the highest number (n=1,863) in the nation, and the second highest proportion (72.9%) in the nation of children who had previous contact with the child protection system in the 10 years between 1 July 2013 to 30 June 2023.²² For children aged 10-13, Queensland had the highest number (n=686) nationally of children under youth justice supervision in 2022-23 who had prior interactions with the child protection system in the 10 years between 1 July 2013 to 30 June 2023. This highlights the importance of early intervention - both early in life and early in the pathway.

There is clear pipeline between child safety and the youth justice system. While children on a child protection order are under the guardianship of the government, they still often miss out on care and support, especially mental health, and education.

More racism; less voice

Aboriginal and Torres Strait Islander children continue to be disproportionately affected in this regard. Of young people 10-13 years, Queensland has more First Nations children aged 10-13 (n=539) under youth justice supervision that had prior contact with the child protection system, than the entire country had of non-Indigenous 10–13-year-olds (n=498) under youth justice supervision who had prior contact with the child protection system.²³ The impact of systemic racism on the over-representation of Aboriginal and Torres Strait Islander children was a central finding in Victoria’s Yoorook Justice Commission’s examination into the historical and current systemic injustices in the child protection and criminal justice systems.²⁴ There are no reasons to suggest the context for Queensland is any different. The amendments will have a greater impact on Aboriginal and Torres Strait Islander children, who are already disproportionately represented in the criminal justice system. To be clear, any systemic interventions that have inequality in effects, impacts or outcomes are discriminatory, regardless of their motivations or intentions.²⁵

“Laws, policies and decisions are made and administered by people: from Ministers and senior public servants creating the laws and policies through to the public servants, police officers and others implementing them. All, in their respective roles, have the power and responsibility to address systemic injustice. They have human and cultural rights obligations to do so”.²⁶

This Bill is yet further evidence of the ongoing failure to deal with structural racism in Queensland. The past is present in this new Bill which maintains the unbroken line between colonisation and the disproportionately negative impact government-led systems have on Aboriginal and Torres Strait Islander Peoples. **Self-determination** for Aboriginal and Torres Strait Islander Peoples to create and reinstate

²² QFCC 2024. AIHW data report key findings.

²³ Ibid.

²⁴ Yoorook Justice Commission (2023). Report into Victoria’s Child Protection and Criminal Justice System (p. 15).

²⁵ Commonwealth of Australia (2010). Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice. Purdie, Dudgeon and Walker (Eds.) p.82

²⁶ Yoorook Justice Commission (2023). Report into Victoria’s Child Protection and Criminal Justice System (p. 15).

communities of care and cultural authority marks a key point of difference between the system that exists and the system that is required.

Reduced wellbeing

The failure to address domestic and family violence within family and community settings are key contributors to youth offending behaviour. We know that the more adverse childhood experiences, and maltreatment in adolescence, the greater the likelihood of participation in youth offending.

The ground-breaking 'Banksia Hill study' (2018) found that 9 out of 10 children in Western Australia's Banksia Hill youth detention centre had severe neurodevelopmental impairment. These included problems with executive function, self-regulation, memory, cognition, attention and social skills.²⁷ There is no reason to expect the data for Queensland children in youth detention would be significantly different. An analysis of "adverse childhood experiences" and trauma among young people under youth justice supervision in South Australia (2022) also found 9 in 10 experienced a combination of maltreatment and household dysfunction.²⁸ For a small number of children, committing crimes and being arrested are a direct result of living with these impairments.

In Queensland it is reported that 33 percent of children in the youth justice system (including community-based supervision and youth detention) have a suspected or diagnosed mental health or behavioural disorder and 27 percent a suspected or diagnosed disability.²⁹ Currently in Queensland there is no way for children in the youth justice system who have been diagnosed with an intellectual impairment or developmental delay to be exited from the criminal system into health or disability support. Children with developmental disorders, or disabilities should not be in the youth justice system at all.

Less education

Disengagement from education and low educational attainment are further risk factors for youth offending behaviour. Despite a focus on youth disengagement, the education system is still failing to provide educational opportunities for all children, including First Nations children (retention rates from Year 7 to Year 12 is only 63 percent) and those in out-of-home care (child protection). These failures are evident in

²⁷ Bower C., Watkins R., Mutch R., et al, 2018, *Prevalence of Foetal Alcohol Spectrum Disorder Among Young People in Youth Detention in Western Australia*, Telethon Kids Institute, available from <https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/>

²⁸ Malvaso C., Day A., Cale J, et al, 2022, *Adverse childhood experiences and trauma among young people in the youth justice system*, Australian Institute of Criminology, available from https://www.aic.gov.au/sites/default/files/2022-06/ti651_adverse_childhood_experiences_and_trauma_among_young-people.pdf

²⁹ Department of Youth Justice, 2022, *Youth Justice census summary*, available from https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17086/census-summary-statewide.pdf

Queensland, with 48 percent of those in youth justice system, totally disengaged from education, training, or employment.³⁰

We know that for many of the children in the youth justice system, they have had or are experiencing multiple and compounding factors, which a juvenile justice response will not address, nor will youth justice responses prevent contact with the system and reduce further escalation.

An emphasis on addressing root causes before involvement in the justice system is key to achieving long term decline in youth crime. The solutions and responsibilities for promoting and protecting the rights of children, young people and victims and the safety of communities exists largely outside of the youth justice portfolio and the formal criminal justice system.

Urgent need for strengthened oversight

The previous government frequently referenced that youth detention centres in Queensland have a broad range of oversight. This includes actions taken to review and monitor youth detention and youth detention centres, including policies to make sure they are compliant with laws, regulations and ethical standards.

Internal oversight takes place separately and outside of everyday youth detention operations and includes:

- internal audit
- internal practice and improvement reviews
- operational performance reviews
- professional standards
- Youth Detention Team visits which involve:
 - quarterly visits; and
 - inspection report with independent assessments on (I) the security and management of detention centres and (II) the safety, custody and well-being of young people.

Eight agencies are currently involved in overseeing different aspects of a child's experience in the criminal justice system:

- [Crime and Corruption Commission](#)
- [Inspector of Detention Services](#)
- [Office of the Public Guardian](#)
- [Queensland Audit Office](#)

³⁰ Youth Justice (2023-24). Pocket Stats.

- [Queensland Family and Child Commission](#)
- [Queensland Human Rights Commission](#)
- [Queensland Ombudsman](#)
- United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Civil society and human rights organisations have provided clear, consistent, evidence based and unequivocal advice on the proposed measures in the *Making Queensland Safer Bill 2024*. The measures are discriminatory and over-criminalise children. The measures will exacerbate the existing overrepresentation of First Nations children in detention, disregard children’s developmental rights, erode procedural safeguards, fail to address the root causes of crime and will not result in increased community safety. Should the Queensland Government proceed with intended changes there must be corresponding and immediate efforts to strengthen and clarify quality oversight to protect the rights of children in detention.