

Queensland Community Safety Bill 2024

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Committee Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
Brisbane Qld 4000

Online submission

Dear Committee,

Re: Queensland Community Safety Bill 2024

Thank you for the opportunity to submit a written submission on the Queensland Community Safety Bill 2024 ("the Bill").

YFS Legal is a community legal centre based in Logan. YFS Legal provides advice, representation, and duty lawyer services to young and vulnerable people between the ages of 10 and 25 years of age in the criminal courts. YFS Legal also provides a Children's Court duty lawyer service at the Beenleigh Children's Court.

YFS Legal also provides a range of legal information, advice, and representation in domestic and family violence and family law. YFS Legal currently provides a domestic and family violence duty lawyer service in the Beenleigh and Cleveland Magistrates Courts. YFS Legal are provide both Respondent and Aggrieved duty lawyer services at these locations.

We note that this Bill was proposed by the Hon Mark Ryan MP on 1 May 2024, with the closing date of 16 May 2024. We are disappointed in the short time frame to respond to the Bills thirty-one (31) proposals, amending fourteen (14) pieces of legislation. This time period does not allow for a comprehensive and strategic review of these proposals. As a result, we are limited in our ability to review and comment on the full impact of the Bill.

Reword youth justice principle 18 to state a child should be detained in custody, where necessary, including to ensure community safety, where other non-custodial measures of prevention and intervention would not be sufficient, and for no longer than necessary to meet the purpose of detention

This politically motivated backflip by the Queensland Government of its protection of the principle of last resort in its current form and as protected by Article 37(b) of the Convention on the Rights of the Child,¹ will result in significant human rights breaches. In a statement made by Scott McDougall, Commissioner, Queensland Human Rights Commission, on 1 May 2024, “This foundational principle of international law recognises that detention is inherently harmful for children and, by extension, the community as a whole”.² This amendment will disproportionately affect Aboriginal and Torres Strait islander children who are imprisoned at disproportionate rates,³ and will see more children being detained, often in overcrowded adult watchhouses.

Enable certain persons and the media to be present at some Children’s court Criminal Proceedings

We strongly oppose the proposed amendments to s20 of the *Childrens Court Act 1992* (Qld) on the basis that they represent a gross, disproportionate, and unjustified intrusion on the following rights, as noted in the Bill’s Statement of Compatibility (“the Statement”)⁴:

- right to recognition and equality before the law (s 15);⁵
- right to privacy and reputation (s 25);⁶
- the right of children to protection in their best interests (s 26(2));⁷
- the right to fair hearing (s 31);⁸ and
- a child’s right to a procedure that takes account of the child’s age and the desirability of promoting the child’s rehabilitation (s 32(3)).⁹

The presumption of innocence is a fundamental common law principle and contained in article 14(2) of the International Covenant on Civil and Political Rights (“ICCPR”), of which Australia is a signatory.¹⁰ The UN Human Rights Committee has stated that “public authorities should refrain from prejudging the outcome of a trial by making public statements affirming the guilt of the accused, and that the media should avoid news coverage undermining the presumption of innocence.”¹¹ The proposed amendments and

¹ [Convention on the Rights of the Child | OHCHR](#).

² [2024.05.01-Statement-re-changes-to-detention-as-a-last-resort.pdf \(qhrc.qld.gov.au\)](#).

³ [Annual Report 2022–2023 \(parliament.qld.gov.au\)](#), page 29; [Atkinson Report on Youth Justice \(dcssds.qld.gov.au\)](#) page 112

⁴ [5724T724-dfd9.pdf \(parliament.qld.gov.au\)](#) page 13.

⁵ *Human Rights Act 2019* (Qld).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ [International Covenant on Civil and Political Rights \[1980\] ATS 23 \(austlii.edu.au\)](#)

¹¹ [Presumption of innocence | Attorney-General's Department \(aq.gov.au\)](#)

complementary comments made,¹² do not protect the presumption of innocence that guarantees that no guilt can be presumed until the charge has been proven beyond reasonable doubt.

We wish to highlight the acknowledgement in the Statement of the greater impact this amendment will have on the human rights of our Aboriginal and Torres Strait Islander young people. In particular, the right to equal protection of the law without discrimination and the right to equal and effective protection against discrimination in section 15(3) & (4) of the *Human Rights Act 2019* (Qld).¹³ We highlight the Queensland Government's acknowledgement that "Whilst the amendments will apply equally to all child defendants regardless of race, they will likely have a greater impact on Aboriginal and Torres Strait Islander children and young people. In 2022-23, Aboriginal and/or Torres Strait Islander young people accounted for 53 percent of all distinct defendants across the courts with a proven offence".¹⁴

This Bill does nothing to address the reasons why Aboriginal and Torres Strait Islander young people find themselves as defendants in the criminal justice system. This acknowledgement does nothing to address racist and discriminatory policing and other government practices, failures of the child protection system, the impacts of intergenerational and current trauma, failures to address mental and physical health needs, drug and alcohol problems, lack of housing and employment, and other impacts of failing to Close the Gap.

The Queensland Government has very concerningly overridden its own *Human Rights Act 2019* (Qld) previously in March 2023 in passing the Strengthening Community Safety Bill 2023, and again in August 2023 with the passing of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022. Removing the rights of children ultimately does not protect the community or uphold the rights of victims of crime. The Queensland Government should be engaging in long-term solutions that balance the wellbeing of children and community safety concerns, instead of making decisions which override human rights without sufficient community engagement or careful consideration.

Electronic monitoring (EM)

The Electronic Monitoring Trial Review as published by the Department of Children, Youth Justice and Multicultural Affairs in November 2022 has detailed that 60% of the young people assessed for electronic monitoring during the first trials were Aboriginal and/or Torres Strait

¹² Victims and their families given greater Children's Court access - Ministerial Media Statements

¹³ 5724T724-dfd9.pdf (parliament.qld.gov.au) page 12-14.

¹⁴ 5724T724-dfd9.pdf (parliament.qld.gov.au) page 14.

Islander.¹⁵ The high presence of First Nations young people involved in the trials demands greater consideration for culturally sensitive approaches. Failure to account for the unique needs and experiences of these young people risks perpetuating existing disparities within the justice system and may cause significant dislocation from cultural needs. In line with Principle 14 of the *Youth Justice Act 1992* (Qld) that if practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community,¹⁶ so too should First Nations communities be involved in meaningful consultations about these proposals. Expanding the prescribed indictable offences further risks narrowing the target group to include a higher count of First Nations people.

Expanding the prerequisite to include charges of prescribed indictable offences from the preceding 12-month period largely deviates from a just sentence. The Electronic Monitoring Trial Review claims the motivation for the EM trials have been based in improving community safety by targeting the cohort of young people who engage in persistent and serious offending.¹⁷ We maintain that rather than focusing on surveillance, interventions should prioritise rehabilitation, addressing underlying issues such as trauma, substance abuse, and socio-economic disparities. Additionally, there is a major risk that EM subjects' young people to the criminal justice system for a longer period of time, increasing recidivism and trauma.¹⁸ Further, at its core, EM introduces a form of surveillance that encroaches upon individual liberties and human rights, a concern amplified when considering its application to young people. It is evident that EM is not a single solution and other supports for young people are necessary to manage bail compliance and reduce reoffending.¹⁹

Transfer of Detainees Over 18 to Adult Custody

Previous justification for the amendments under Division 2A Transfer of detainees to corrective services facilities, the Bill, given by the Queensland Government given during stakeholder meetings, is that these changes are needed for safety and rehabilitation of 10-12 years olds, also held in custody. This proposal largely contradicts itself in attempting to prove

¹⁵ Department of Employment, Small Business and Training, *Electronic Monitoring Trial Review* (Report, November 2022) 5 <https://desbt.qld.gov.au/data/assets/pdf_file/0026/17459/electronic-monitoring-trial-evaluation.pdf>.

¹⁶ *Youth Justice Act 1992* (Qld), Schedule 1, [Youth Justice Act 1992 - Queensland Legislation - Queensland Government](#).

¹⁷ Department of Employment, Small Business and Training, *Electronic Monitoring Trial Review* (Report, November 2022) 5 <https://desbt.qld.gov.au/data/assets/pdf_file/0026/17459/electronic-monitoring-trial-evaluation.pdf>.

¹⁸ Department of Employment, Small Business and Training *Electronic Monitoring Trial Review* (Report, November 2022) <https://desbt.qld.gov.au/data/assets/pdf_file/0026/17459/electronic-monitoring-trial-evaluation.pdf>, page 3.

¹⁹ Department of Employment, Small Business and Training *Electronic Monitoring Trial Review* (Report, November 2022) <https://desbt.qld.gov.au/data/assets/pdf_file/0026/17459/electronic-monitoring-trial-evaluation.pdf>, page 3.

that removing young people who have reached the age of 18 years in custody is crucial to protecting young detainees. The concern for children being exposed to the dangers of adult detainees should instead be focused on the detention of young people in watchhouses, where there is a much greater risk of exposure to traumatic events by adult detainees who are significantly older than 18 years and who are often drunk, abusive, suicidal, or suffering other mental health conditions.

If the rationale is to uphold the human rights of children in detention, the law should be appropriately adapted to ensure children as young as 10, 11 and 12 are not held in youth detention centres generally and are under no circumstances held in adult watchhouses. It is our position that increasing the age of criminal responsibility and legislating that children under the age of 14 are not detained in youth detention or in police watchhouses is a more appropriate alternative.

Further, it has been our experience that in some instances, police delay charging a young person until the young person reaches the age of 18, which sees them automatically remanded in an adult facility. The current proposal does not address this policing practice.

Leave of Absence for Children in Watchhouses to be Taken to Nearby Youth Detention Centres

In the absence of legislative reform that would not see any young people held in watchhouses, we welcome a leave of absence scheme for young people in watchhouses to be taken to nearby youth detention centres for the purpose of accessing programs and other activities. The premise of detaining children in watchhouses raises significant concerns about their safety and wellbeing and should be addressed as a priority.

The assertion that granting access to programs and activities such as exercise could mitigate some of the adverse effects of holding young people in watchhouses, yet it fails to address the fundamental issue of why children are being held in watchhouses in the first place. It is therefore imperative to introduce reforms that instead prioritise the human rights and wellbeing of young people by removing them from watchhouses absolutely.

It is our further submission, that unfortunately the practical affect that there is a pre-condition that this would occur given the “availability of suitable transportation”, means that realistically this is not going to occur. Particularly in a state where our police service is failing to recruit and retain enough front-line police officers to meet basic community safety standards.

We are disappointed that this amendment does not go further to include a leave of absence for a young person to leave the watchhouse for funerals and approved cultural events.

Smartphones and Cameras in Youth Detention Centres

Ensuring the safeguarding and privacy of vulnerable children detained in youth justice facilities is paramount. The concerns regarding inadvertently capturing images of these children and potentially compromising the security of youth detention centres necessitate stringent regulations and protocols. This includes regulations surrounding the proposition that management should have the ability to vet any photographs or footage taken within the facility.

Expand and extend the trial of hand-held scanners in public places

It is acknowledged that the recent high-profile incidents of violent knife crime have caused significant distress, shock, and anxiety amongst the community. However, it is submitted that the expansion of police scanning powers is unlikely to achieve the desired reduction in crime. Stop and search powers already have a minimal impact on reducing crime rates and are not a particularly effective tool in guaranteeing community safety.²⁰ Widespread stop and search powers have been shown to be poorly implemented in other jurisdictions. NSW Police made headlines earlier this year following a series of unlawful stops, with most stop and searches occurring within low income, culturally and linguistically diverse or Aboriginal and Torres Strait Islander communities.²¹ Whilst the context of the proposed law is different, the expansion of the powers to shopping centres carries much of the same risks. Additionally, the confinement of the wand power to locations where there have been at least two armed crimes in the last six months suggests the effect of the power will be to provide a visible police presence, rather than actively reducing knife crime. This can be accomplished with the current powers and resources of the police force.

It must further be recognised that there remains a significant risk of over-policing and unreasonable infringements upon human rights because of these powers. Public transport and shopping centres are important community centres, and it is important they are kept safe, however there remains the risk that Indigenous or culturally and linguistically diverse communities will be over-policed, resulting in significant additional exposure to the justice system, increased community tensions and the deterioration in relationships between police and the people they serve.

The statement of human rights compatibility merely accepts that the proposed measures are effective. It does not consider the impacts of over-policing or police misconduct on the communities who police are required to keep safe.

²⁰ "Does Stop and Search Deter Crime? Evidence from Ten Years of London-Wide Data", 2018 <https://academic.oup.com/bjc/article/58/5/1212/4827589>;

²¹ "A Dangerous Numbers Game", 09/04/2024 <https://www.abc.net.au/news/2024-03-18/how-proactive-policing-quotas-sent-nsw-police-searches-soaring/103579210>

Summary - Early Intervention, Rehabilitation, and Diversion

We acknowledge that Queenslanders have the right to be and feel safe in their communities. The current approach to youth justice in Queensland is not working: it perpetuates a cycle of punitive and retributive strategies, is ineffective, and has not made any meaningful change to ongoing issues. Instead, it diminishes the effectiveness of early intervention and promotes the detainment of children and the dismissal of their human rights.


We submit that Queensland's youth justice system will continue to fail both victims and offenders and neglect to uphold community safety, unless there is a change to the implementation of legislation, policies, and programs focused on early intervention, prevention, reducing recidivism, and enhancing community safety.


An overview of youth justice services states, "The Queensland Government is focused on keeping communities safe. We know this is best achieved through early intervention strategies, such as diversionary programs, along with education, training, employment, housing, health and domestic and family violence services that wrap around at-risk young people and their families. By addressing the drivers of youth crime and better supporting young people on the transition to adulthood, young people can avoid becoming entrenched in the criminal justice system."²²


There is nothing in the youth justice proposals in the Bill that are based on principles of early intervention, rehabilitation, diversion, or trauma-based solutions, despite it being key to community safety and reducing offending. There also appears to have been little contemplation for the specific needs and impact on Aboriginal and Torres Strait Islander young people.

Thank you for your consideration.

Yours sincerely


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²² Former Department of Children, Youth Justice and Multicultural Affairs, [Services in the Youth Justice system \(dcssds.qld.gov.au\)](https://www.dcssds.qld.gov.au)