Queensland Community Safety Bill 2024

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Submission by

YOUTH ADVOCACY CENTRE INC

On the Queensland Community Safety Bill 2024

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Submission regarding Queensland Community Safety Bill 2024.

The Youth Advocacy Centre (YAC) appreciates the opportunity to provide feedback in relation to the Queensland Community Safety Bill 2024.

As you would be aware, YAC is a community legal and social welfare agency for children and young people aged 10-18, particularly those involved in the youth justice and child protection systems. Our feedback addresses specific matters that impact children and young people.

Amendment of *Weapons Act 1990* (Qld)

Part 5A Firearms prohibition order scheme in Queensland

On 26 February 2024 YAC provided a submission on this proposed legislation to the Commissioner of the Queensland Police Service. Consistent with our previous submission, YAC maintains that in the draft section 141F of the *Weapons Act 1990* (Qld) consideration should be given to the legal capacity of the child or young person to understand the nature, scope and consequences of an FPO. Consideration of capacity should be in addition to the age and maturity of the child, as is currently contained in the draft at section 141F(2)(d). This is particularly important where an FPO can impact future employment prospects such as with the armed forces or Queensland Police Service.

Where notification of service of the FPO includes the parent proposed under section 141K of the *Weapons Act 1990* (Qld), YAC recommends that consideration be given to allowing service to be effected on a lawyer or other representative in circumstances where the child and young person does not have a parent or guardian.

Amendment *of Police Powers and Responsibilities Act 2000* (Qld)

Expansion of the options available to police officers to effect document service, including electronically in certain circumstances.

YAC refers to our submission dated 22 April 2024 to the Queensland Police Service.

YAC maintains that the electronic service of notice to appear documents will only increase the rates of children failing to appear in the Childrens Court at the first mention of the matter. The safeguards proposed do not effectively address the vulnerabilities specific to children, particularly:

- Transience of a child due to lack of accommodation or volatile home environments.

- Geographical locations where children particularly Aboriginal and Torres Strait Islander children reside in remote communities where they have no or limited access to emails.
- Lack of capacity to understand service of documents due to developmental delays of a child or young person in literacy or numeracy skills.
- Diagnosed or suspected intellectual or mental impairments inhibiting a child's ability to understand court processes and provide consent for notice to appears.
- Lack of parental or adult support.

The appropriate framework for commencing criminal proceedings for children is already prescribed in the *Youth Justice Act 1992* (Qld) and the *Police Powers and Responsibilities Act 2000* (Qld).

The best safeguard to reducing the number of young people failing to appear in the Childrens Court is strict adherence to current procedures requiring personal service of the notice to appear, and ensuring parents or persons who have parental responsibility of the child are notified of their court date.

For those reasons above, YAC does not endorse the electronic service of initiating documents on children in the Childrens Court or under the *Domestic and Family Violence Protection Act 2012* (Qld). All initiating documents should be served personally on children and young people under the age of 18.

Amendment of Summary Offences Act 2005 (Qld)

Section 19C Hooning Offences

YAC refers to our submission dated 22 April 2024 to the Queensland Police Service.

YAC is concerned that the proposed amendments of 19C of the Summary Offences Act 2005 (Qld) have the unintended consequence of capturing a wider-than-intended cohort of children and young people in the vicinity of the hooning activity. The section provides that a person must not:

- participate in a hooning group activity; or
- without reasonable excuse must not spectate.

Children and young people may be transported to these events by an adult responsible for their care and could be:

- left stranded to watch the hooning event while waiting for that adult to finish their participation in the activity before they can leave; or
- forced to participate in hooning activity as a passenger in the vehicle without their prior consent or knowledge that the adult was going to participate in hooning activity.

There should be a framework within the legislation to mitigate the criminalisation of children and young people in these circumstances. We suggest amending the wording so that section 19C prohibits a person 'willingly' participating in a hooning group activity. The use of 'willingly participate' is utilised in the current provision of section 19C of the *Summary Offences Act 2005* (Qld) and should be adopted in the proposed amendments. This would ensure that children and young people who are unwilling participants in the hooning activity are not prosecuted.

In the proposed subsection 3, the definition of 'spectate' could state that it does not include involuntary spectators. This will ensure children and young people are not punished for being stranded at the event when the adult responsible for their care is participating or spectating in hooning activity.

It also maintains the legislature's intention to apply a narrow definition of spectate and capture those who purposely remain at the location to watch the hooning activity for a prolonged period or for the entirety of the hooning activity.

Amendments to the *Childrens Court Act 1992* (Qld)

Enabling certain persons and the media to be present at some Childrens Court criminal proceedings.

YAC strongly maintains the position contained in our submission of 19 April 2024 to the Office of the Director-General Department of Justice and Attorney-General.

The current scope of section 20 of the *Childrens Court Act* remains appropriate: the Court has the discretion to exclude a person if the person's presence is prejudicial to the interest of the child. The exclusion contained in the proposed s20(2) should extend to all of s20(1)(c), so the court does have discretion to exclude, when necessary, victims, relatives and representatives. This may be appropriate when hearing matters of a nature regarding the child's sensitive personal or confidential information, including information pertaining to but not limited to mental health, physical or sexual abuse, family trauma and other vulnerabilities including involvement with the Child Safety system. Closing the court when these matters are heard encourages the child to participate effectively in the legal process by disclosing relevant but sensitive matters. If the

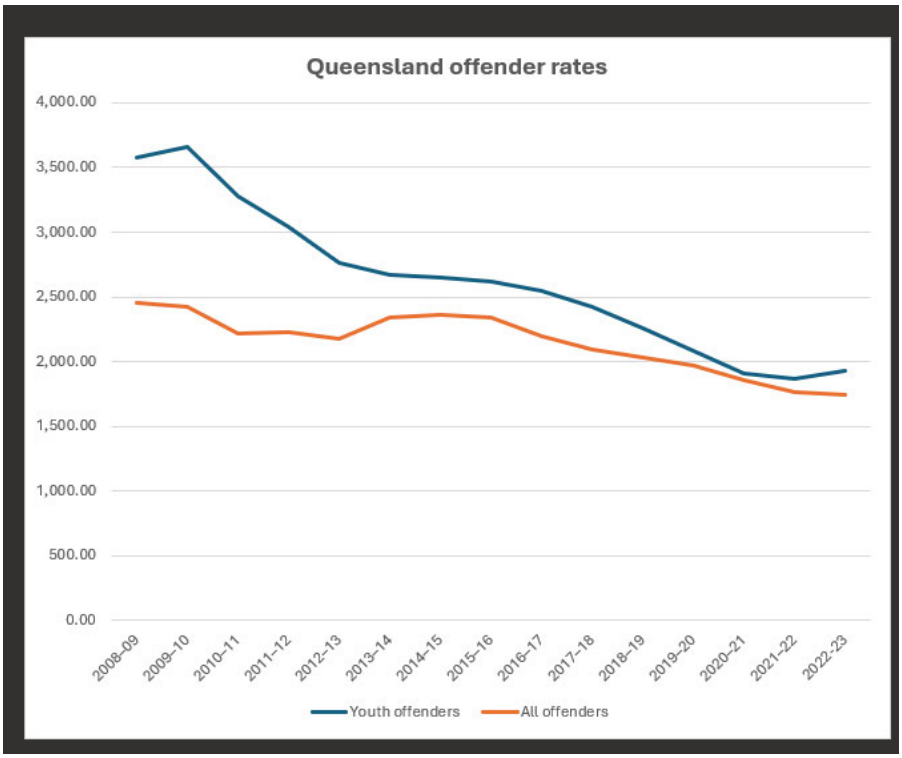
court remains open to additional parties the child may be less willing to disclose these matters even if relevant to the proceedings, compromising the capacity of the court to formulate the appropriate order to best address the child's needs and therefore maintain community safety.

YAC also stresses that parts of the Queensland media have already demonstrated a failure to provide balanced reporting on the issue of youth crime and have, on occasion, breached the prohibition of publishing identifying information. Further, in YAC's experience, in regional and rural towns, when the Children's Court is open, the local newspapers can publish less-serious crimes more frequently, with a higher likelihood of the local community knowing who the children are, leading to heightened tensions within the community, including vigilante actions and retribution.

The current legislation is therefore appropriate as it provides for open court in the District or Supreme Courts for the more serious offences alleged to have been committed by young people. As indicated above, the information provided to a court is often sensitive and relates to the young person and their parents and families. Young people are frequently reluctant to disclose highly relevant information that would assist the court for fear that their family's traumatic information of abuse, violence and substance misuse are known within their broader community. The presence of media in court is highly likely to exacerbate this concern and restrict communication. The absence of this information can inhibit the court ordering effective interventions to address the causes of the behaviour so leaving the community less safe.

The vulnerability and disadvantage of young people in the youth justice system is well established as is their or their family's involvement with child safety, domestic violence and/or sensitive family law issues. Often the same information presented in youth justice matters has been provided in the Family, Domestic and Family Violence courts or in Child Protection matters. Courts dealing with these matters recognise the vulnerabilities of the parties and prohibit the media's presence.

The dominant news agencies reporting on youth crime in Queensland have not shown a commitment to fair and accurate reporting and have contributed to a pervasive misconception that there are historically high levels of youth crime. Contrary to this misconception, the rate of young offenders in Queensland are at historic lows even taking into account an uptick over the last 18 months, as shown by the graph below:



Graph using ABS data showing rates of youth offenders and all offenders in Queensland

That the number of offenders has almost halved since 2008 shows that the youth justice system is working for the majority of children. This provides even less justification to open the courts to all cases when most young offenders will only have a limited involvement with the justice system. Queensland law contains long-established principles on media access to the Childrens Court. These principles recognise the public interest in media dissemination of fair and accurate reporting of court cases, which enables informed public discussion. It is vital, however, that reporting is fair and accurate and not distorted.

In *Queensland Newspapers Pty Ltd v Stjernqvist* Douglas J of the Queensland Supreme Court noted that the public should be able to access "fair and accurate reports" of court proceedings. The High Court has said:

> *It is not sufficient for the assurance of open justice in this country that the doors of a court should be unlocked.* ***Fair and accurate reports*** *of what occurs in courtrooms is an essential attribute of the administration of justice in Australia."* [emphasis added]

The Charter of youth justice principles in Schedule 1 of the Youth Justice Act 1992 notes that a child tends to be vulnerable in dealing with a person in authority, and should therefore be given special protection during a proceeding (principle 4) and should be dealt with in a way that will

give the child the opportunity to develop in responsible, beneficial and socially acceptable ways (principle 9(b)). These principles support the fair treatment of the child so that their prospects of rehabilitation are maximised and to avoid entrenching the offending behaviour.

In contrast to these principles, media reporting on youth crime in Queensland is often sensationalist and dramatic. Reporting can often be careless and disregard the presumption of innocence, with attention-getting headlines which verge on being misleading. Recent examples include:

- "Horror stories told at Qld youth crime crisis town hall meeting" in which the anecdotes refer to 'men' and 'masked offenders', none of whom were verified (or even asserted) as being under 18 years of age (Courier Mail 13 April 2024);
- "Youth crime Qld: Half of our worst offenders still roaming the streets" in which the only facts (rather than comment) reported included that there was a steadying or decline in the rate of offending by the serious repeat offenders (Courier Mail 12 April 2024);
- "How youth crime is changing the way we live" which includes phrases such as 'scrouge of youth crime...fearful residents seek refuge from the threat of violence...', 'teen thugs prowl suburban streets at night'. There was no data included only community perception (News Corp Australia Network, 8 April 2024 citing 'leading real estate industry voice' Michael Kollosche, who himself was the subject of numerous claims of fraud from around 2010 to 2015 and a Fair Trade investigation).
- "Queensland government has 'failed' to do anything about youth crime 'for years'" which includes 'It's about time that somebody stepped up and said, 'we are now going to tackle this crisis'". There was no data included and no mention of the low rates of youth crime (Sky News 26 March 2024);
- "Patrolling streets where law and order has gone to the dogs. What it was like riding along with a private security guard tackling youth crime" in which the only <u>fact</u> that was reported other than the security guard's unverified war stories was that "the streets were quiet" (Courier Mail 17 March 2024);
- "Youth crime 'tearing the heart and soul' out of communities: David Crisafulli" in which Mr Crisafulli is reported as saying "I see things like the youth crime crisis that's running out of control...Youth crime is absolutely tearing the heart and soul out of the communities". Again- no balance in this report (Sky News 16 March 2024);
- "Qld youth crime crisis: Carjacking victim Leonie Mulheran slams justice as kid (sic) walk free after detention", where in fact the girl referred to had spent seven months in detention and was released from court after pleading guilty to attempted robbery (Courier Mail, 15 March 2024);
- "'I still small blood': Suburban crime terrors laid bare at explosive crisis meeting" which reported that 'Brisbane residents at breaking point over spiralling crime rates have revealed the terror they're

forced to live with.' There was no data to support the assertion of 'spiralling' crime rates (Courier Mail 29 February 2024).

None of these articles reported the significant drop in the rate of youth offenders since 2008.
In the absence of sufficient balanced reporting, YAC opposes the amendments to s20 allowing media to attend the Childrens Court unless excluded. The proposed amendment does not contain a requirement to take into account the child's circumstances, including their age, background, whether or not they had previously offended and the seriousness of the charges.
A special responsibility is vested in the media to report accurately, comprehensively and responsibly, as the media is so influential in the formation of public opinion. For any crime that proceeds on indictment to the Childrens Court of Queensland or the Supreme court the media is able present in court once a prima facie case has been established and indictment presented.

Amendments of *Youth Justice Act 1992 (Qld)*

Insertion of section 56A Temporary Transfer of Child on Remand

YAC strongly maintains that children should not be remanded in custody in watch houses as it breaches their human rights, in particular their right to be treated in a way that is appropriate for their age. Since 2022, Queensland has held high numbers of children for long periods of time (over 30 days) in adult watchhouses, leading to opportunities to be mistreated or treated without humanity. These children have almost all been denied meaningful access to health and wellbeing supports and services, and programs that aids in intervention, prevention and rehabilitation.
It was noted in the Childrens Court of Queensland Annual Report 2022–23 in the past year was that over 500 children on any given month remanded in Queensland watch houses with:

> *....a significant portion of those individuals have spent a number of nights, some up to 15 or more, in the watchhouse where there are no facilities suitable for children and no programs offered to children.*[1]

The Caboolture Watchhouse (currently called the Youth Hub), presently provides some access to education and health services, but this access is very limited and arguably of little actual benefit. The Queensland Government's ongoing commitment to remanding children and young people in watch houses will continue to cause significant harm to their psychological, emotional, and physical well-being, and is counter-productive to community safety.

[1] Childrens Court of Queensland Annual Report 2022–23, page 11, paragraph 32.

In light of this ongoing commitment, YAC endorses temporary transfers from watchhouses to youth detention centres to facilitate participation in programs and physical exercise at youth detention centres. We also note the difficulties that the government has had in properly staffing detention centres and watchhouses, and urge the government to address this issue with whatever means necessary, including higher pay levels and other incentives.

Youth justice principle 18 amendment.

YAC strongly opposes the amendment of section 150(2)(e) and principle 18 of Schedule 1 of the Youth Justice Act 1992 (Qld). Queensland already has the second-highest rate of imprisonment of young people in Australia.2 The proposed amendment to principle 18 will only increase this rate.

The current wording, outlined as follows, is wholly appropriate:

> *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.*

The proposed wording for principle 18 is as follows:

> *A child should be detained in custody—*
>
> *(a) where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient; and*
>
> *(b) for no longer than necessary to meet the purpose of detention*

The points of difference between the current and proposed wording is illustrated in this table:

	Current principle 18	**Proposed principle 18**
Threshold for detention	A child should be detained in custody for an offence...only as a last resort	A child should be detained in custody where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient.

[2] Productivity Commission, 'Youth Justice Services' in Report on Government Services 2023 (released 24 January 2023). Available at: https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice

Length of detention	for the least time that is justified in the circumstances	for no longer than necessary to meet the purpose of detention

The approach to detention as a last resort differs around Australia, but no state has the positive obligation imposed by the phrase 'a child should be detained in custody where necessary', even with the caveat of the insufficiency of other measures. Every other state and territory in Australia either has detention as a last resort, or provides that detention is 'only' available if other lesser options are not appropriate. This is clearly a more restrictive test.

The language of the qualifying phrase 'where other measures would not be sufficient' does limit the scope, but not enough to negate the positive requirement of detention 'where necessary', particularly where ensuring community safety is specified as a consideration.

It would therefore open to the courts to interpret the proposed wording as no longer requiring judges and magistrates to expressly consider all other options before detention, but rather are free to consider detention as a first option.

In addition, the amendments to principle 18 could result in longer sentences as the requirement will no longer be for the 'least time', but rather for 'no longer than necessary'. Where there could be a range of lengths for a possible sentence, the court would be free to order a longer sentence than the present wording allows.

The proposed wording will likely result in increased rates of detention as well as longer stays, increasing the pressure on a system that is already not coping, continuing the overflow of children into adult watchhouses. The Childrens Court Annual Report 2022-2023 states at paragraph 32:

> *The number of children in custody in police watchhouses in the past year was over 500 on any month,71 with children as young as 10 and 11 spending time in watchhouses.*[3]

It is negligent and complacent for the Queensland Government to introduce these amendments without having a system in place to properly address early intervention and rehabilitation while in detention.

[3] Childrens Court of Queensland Annual Report 2022–23, page 11, paragraph 32.

Notably, the *Youth Justice Act* already requires that when sentencing serious repeat offenders the court must have primary regard to the protection of members of the community and the impact on public safety. These existing provisions render the proposed amendments unnecessary.

There is serious community concern that surrounds the issue of youth crime. However, all evidence shows that the 'tough on crime' approach does not reduce the occurrence of reoffending in young people. An increased use of detention of young people will actually compromise community safety in the medium to long-term and will contribute to serious psychological and other harms to young people.

The effect of the proposed rewording does not address the best or evidence-based practice in reducing the offending by children and young people. In contrast, it will result in more children and young people being remanded in custody for indeterminate periods of time to meet an ambiguous purpose.

Incarceration of children is counterproductive, and this was particularly highlighted in the decision of R v TA [2023] QChC 2, where a 13 year old spent significant periods in detention confined to a cell. Judge Fantin stated at page 5 paragraphs 3-4:

> *It is unsurprising that if you lock up a child for such lengthy periods of time with no stimulation other than access to a television, a child is likely to respond by behaving poorly. And that their behaviour over time is likely to deteriorate, including by causing damage to property, and that there is an increased risk of assault on staff or others.*
>
> *As other judicial officers in other jurisdictions in this country have observed, if you treat a child like an animal, it is unsurprising that they may behave like an animal.*

Finally, we note that the Youth Justice Reform Select Committee Recommendation 51 provided for a review into the principle of 'detention as a last resort' with input from the Departments of Justice and Attorney General and Youth Justice as well as expert legal stakeholders. It is not clear that this recommendation has been followed despite the Queensland Government Response to the Interim Report state that this recommendation was accepted.