

STRENGTHENING COMMUNITY SAFETY BILL 2023

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Committee Secretary
Economics and Governance Committee
Parliament House
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STRENGTHENING COMMUNITY SAFETY BILL 2023

Dear Sir/Madam,

I wish to make a submission to the Committee for the purposes of its inquiry into the Strengthening Community Safety Bill 2023.

I do so as a person who has extensive experience in public policy and administration, including having served as a senior policy adviser to Queensland, New South Wales and Federal Governments having worked in these roles continuously from at least 1987 to 2000.

More recently, I make this submission as a practicing barrister who works predominately within the criminal justice system.

My work in this regard has involved working as criminal defence advocate in trials, applications, sentences and appeals in Queensland's Magistrates, Childrens, District and Supreme Courts.

My practice is based in Cairns and deals with clients from as far afield as the Torres Strait, Cape York, Cairns and Townsville and surrounding regions.

Almost all my clients are from disadvantage backgrounds, many from severely disadvantaged backgrounds with a significant majority of them funded through Legal Aid Queensland or the Aboriginal and Torres Strait Islander Legal Service.

It is with this combined background in public policy and administration and the criminal justice system as a practicing barrister I make the following submissions.

I do so as an individual and **not** as a representative of the Bar Association of Queensland, Legal Aid Queensland, the Aboriginal Torres Strait Islander Legal Service, my instructing solicitors or my clients.

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Proper Policy and Legislative Development Processes

That the Government and Parliament is considering such important policy legislative reforms while providing less than a week for public submissions and less than three weeks for the Parliamentary Committee Inquiry to report, is a clear indication, in my submission, that the Government and Parliament is not genuinely interested in community consultation nor properly and thoroughly considering the proposed legislative reforms, their implications or efficacy.

Traditionally, such important and significant legislative reform would have been the subject of a Green Paper process with extensive community consultation on the public policy issues requiring reform followed by a White Paper process setting out the Government's initial intentions and reform approach before the Government would release its proposed legislative or policy changes for a final round of consultation.

It is only after this extensive, consultative, and deliberative process that the Government's actual policy and legislative reforms would be introduced and implemented.

From my experience, such an ordered and considered policy development process was commonplace in the 1980s and 1990s, but sadly public policy "development" in the current era appears to be driven by knee-jerk reactions to perceived high profile issues, media attention or perceived public outcry over particular circumstances.

Inevitably the development of public policy and legislative reforms based on such superficial consideration, as is occurring here, will be flawed, ineffective and more likely than not do more harm than good.

The first and most important recommendation of this Committee's Inquiry should be that the legislation be deferred until a proper and detailed consultation and examination of the proposals can be undertaken.

"It's A Social Welfare Problem, Stupid" - The Efficacy of the Proposed Reforms

Former United States President, Bill Clinton, famously won the 1992 Presidential Election with the campaign focus: "It's the economy, stupid".

It perhaps crudely but pointedly was designed to highlight and ensure that his campaign was singularly focus on the real cause of a range of social upheaval, disadvantage and problems that afflicted the American community was about fixing the economy.

With his successful focus on improving and fixing the economy in Government, President Clinton was able to address and turn around entrenched social and economic disadvantage.

Again, with my experience in public policy and more particular in law, it is clear that Queensland's "juvenile justice crisis" is not a law and order problem.

It is a social welfare problem.

Legal and policy practitioners considerably more experience than me have repeatedly and consistently noted that the criminal justice system generally and the juvenile justice in particular is not delivering the desired outcomes – that of deterrence, community protection and more importantly rehabilitation.

Prominent and experienced legal minds including former Queensland Court of Appeal Presidents, Supreme Court Justices, Directors of Public Prosecutions, Corrective Service Commissioners, and a myriad of legal, youth justice and welfare practitioners have made plain that the current approaches have not and do not work.

A simple exercise of desk research (Google is your friend) will reveal that there are scores of national reports, inquiries and research papers that have examined and analysed youth crime and appropriate policy responses to it.

There is no end of international examples of different approaches that better manage youth crime and criminal justice more broadly.

With the limited time available to provide a submission to this Committee, I do not seek set out those multitude of examples here.

I simply encourage the Committee and the Parliament to take the time to examine and analyse different approaches that have been effective, nationally and internationally.

What is known and universally agreed is that punitive penalties and increased incarceration rates do not work.

The Government and Parliament would do well to consider its own recent reports that clearly identify underlying issues that lead to youth crime and approaches to early intervention to prevent it.

I suggest the August 2019 *Queensland Productivity Report: Inquiry into Imprisonment and Recidivism* (<https://apo.org.au/node/273991>) is a good starting point.

In its Summary Report at page 11 in a single page (Figure 12) it highlights the known trajectory of a young person into the criminal justice system where early disadvantage is apparent and there is lack of early intervention.

The causes and trajectory of young peoples' decent into the criminal justice are known yet for decades Governments and Parliaments, of all political persuasions, have failed to truly implement the policies, programs and interventions where it is actually required.

That report, as do many others, highlight both the economic and efficacy inadequacy of the current approaches to these issues.

The current Bill before the Parliament is yet another example of a failed approached that will not address the true and real causes and will fail to deliver the desired outcome sought by the Government and the community.

With no disrespect to the current head of the Government's latest incarnation of its "juvenile crime task force", that it is headed by a police officer demonstrates the point.

The continued focus by Governments and Parliaments with its policy responses set in the context or framed as dealing with a "law and order crisis" rather than a substantial and real social welfare issue is fundamentally flawed.

Ignoring and not prioritising the known causes and solutions to the actual problem will see this Bill fail to achieve its stated objectives.

Intervention Not Incarceration

My daily experience as a barrister in the criminal justice accords with the findings of the many national and international reports.

Almost invariably those who find themselves before the criminal courts, be they Magistrates, Childrens, District or Supreme Courts, are people of disadvantaged backgrounds, typically exposed from an early age to more social, economic, racial and gender disadvantage than those who never enter our criminal law courts.

As a prominent Brisbane-based King Counsel once opined that most people in the criminal justice system are broken not evil.

This is most clearly true within the juvenile justice system.

On an almost weekly basis I deal with these young people whose level of disadvantage and tragic background would shock most Australians.

Almost universally they come from one or a number of these circumstance: single parent households; a parent(s) incarcerated or a parent(s) with an illicit drug or alcohol problem; they have been exposed to or are the victim of domestic violence and/or sexual abuse; they have not reached their early childhood developmental goals and/or disengaged with the education system; experience homelessness; neglect or mental health issues.

Ironically, many are in the care of the State of Queensland through the grossly under resourced Department of Child Safety. The legal guardian - "parent" - of these offending children is the State of Queensland yet it does not provide nor prioritise the appropriate level of resourced to care for the children in the charge.

Invariably, these young people need help not punishment.

They need intervention not incarceration.

As it most basic yet obvious, the High Court of Australia found in *Bugmy v The Queen* [2013] HCA 37 that the experience of growing up in an environment of profound disadvantage may leave its mark on a person throughout life.

The High Court noted that among other things, a background of that kind may compromise the person's capacity to mature and to learn from experience. It is a feature of the person's make-up. And the Court concludes that the effects of profound childhood deprivation do not diminish with the passage of time.

Again, there is multiplicity of research that confirms children and young people with these deprived backgrounds are significantly overrepresented in our criminal justice system, yet it is singularly not the central focus of Government and Parliament policy responses.

The Queensland Government's own Productivity Commission Report, noted above, highlights the extraordinary costs of incarcerating a person. Other reports have found the actual costs of incarceration a young person is hundreds of thousands of dollars per child per year.

One can only imagine the level of one-on-one support that could be provided to these young people in need if those funds were used to provide social work, psychological, psychiatric, youth work, care and programs rather than prison cells.

What is also clear from my daily experience is that those services put in place to assist these disadvantaged young people are hopelessly underfunded and under resourced.

More disturbingly, the Government and Parliament should be most disturbed about the sheer number and percentage of these young offenders whose legal guardian – legal parent – is the State of Queensland.

With more time I could provide this Committee with countless examples of young people and young adults who have been grossly let down by the State and rather than being rehabilitated by the current criminal justice system are harmed by it.

For example, more often than not juveniles and adult offenders are incarcerated for extended periods of time, being held on remand, only to be released once sentenced having not undertaken a single rehabilitative program.

Most disturbingly, I cannot recall in recent years a single adult prisoner charged and sentenced for serious domestic violence offences or drug offences, who having served extended periods on remand – as much as 12 months or more – having completed an appropriate course before their release from custody.

It is my experience that the current criminal justice system does not serve any real rehabilitative purpose at all for the vast majority of those who enter it.

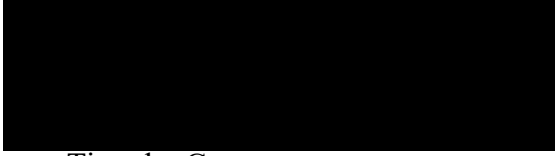
The current Bill does little to nothing to address the root cause of juvenile offending and recidivism.

Rather it will exacerbate the known problems and not achieve the stated objectives.

Further Submissions

Despite the extremely limited time frame to provide a formal submission to the Committee's Inquiry, I would welcome the opportunity to elaborate on my experience and knowledge before the Committee.

Yours sincerely



Timothy Grau
23 February 2023