

STRENGTHENING COMMUNITY SAFETY BILL 2023

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NTRCA is a national alliance providing advocacy, research, and cross-jurisdiction engagement about the quality of care offered to children and young people in residential care. The NTRCA members include major providers from every State and Territory. NTRCA does not receive any government funding. In Queensland, a very active chapter of the NTRCA meets monthly to support each other and share best practices. As an Alliance, we have deep experience in working with the most vulnerable and traumatised young people and we would like to offer this experience and knowledge to your deliberations. We would also request to be involved in further deliberations as providers of therapeutic care with the direct daily experience of what does and does not work. We are objective and unaligned to any particular organisation or political party. Many children who become involved in crime are children who have been removed from their families by the State and placed in out-of-home care. They are or have been the responsibility of the State Government that is, or has been, in-loco parentis to these children. The children and young people who end up in youth justice are among the most vulnerable individuals in our community and have been exposed to multiple traumas in the form of family violence, alcohol and drug abuse, numerous failed foster placements, sexual, physical and emotional abuse, and often homelessness since they were very young. We know because we care for these children and young people - they have been the victims of very serious crimes - often far more serious than any offences they have or may go on to commit. These children have had serious harm and disruption to their attachment development as children – attachment is the foundation of any capacity to develop as contributing members of the community. Therapeutic care not punishment or incarceration will provide a much greater return on investment for the whole community. Across Australia, including Queensland, young people who have been under youth justice supervision are highly likely to have also been involved in child protection (excluding New South Wales). Just over 1 in 2 young people who had been under community-based supervision, and 3 in 5 () young people who had been in detention, had also received a child protection service. A recent study funded by the Australian Institute of Criminology, the Victorian Department of Justice and Regulation, and with the support of the Victorian Children’s Court found that 22% of all children appearing before the criminal division of the Children’s Court had current or historical child protection involvement (Baidawi & Sheehan, 2019). These children, referred to as ‘cross-over’ children due to their transition from OOHC to the juvenile justice system, had experienced significant and severe adversity. Almost 50% of the ‘cross-over’ children had a diagnosed neurodevelopmental or neurological disorder (Baidawi & Piquero, 2021; Baidawi & Sheehan, 2019). Children with both child protection and juvenile justice involvement are typically younger, have experienced significant levels of adversity throughout the childhood, are more likely to have neurodevelopmental disorders, and are more likely to be identified as having high complex needs associated with developmental trauma (Baidawi & Ball, 2022; Malvaso et al., 2019). These children are also more likely to be charged with serious violent offences (Baidawi & Ball, 2022).

There is ample evidence that punishment does not serve the justice ideals of specific or general deterrence. Punishment does not, and cannot, equate to rehabilitation. Punishment, particularly in the context of harsher penalties and the deprivation of liberty, exacerbate the trauma that many of these children have already experienced (Webb, 2016). This in turn increased the risk that these children will continue to offend upon release, entrenching a pattern of disadvantage and marginalisation. All Australian states and territories recognise the developmental vulnerabilities

associated with childhood and adolescence through the establishment of specialist youth justice systems. These systems are meant to be grounded on the incontrovertible scientific evidence that with the right supports, children and young people can in fact make significant and lasting changes.

The proposed changes to the Bail Act will not result in increased community safety. As the recent Coronial Inquest into the Death in Custody of Veronica Nelson has demonstrated, punitive bail laws that are not evidence-based can lead to tragic outcomes (ref). The proposed amendments to the QLD Bail Act will undoubtedly result in a significant increase in the number of children remanded to custody pending sentencing. These children may not have access to the range of supports and services that they require. The proposed amendments represent a costly exercise that will have no impact on community safety. Further, the proposed amendments to the Bail Act are a direct contravention of QLD's human rights obligations, specifically its obligations under the United Nations Convention on the Rights of the Child (UNHRC, 1989). As the Australian Human Rights Commission has identified (n.d., para 3), when dealing with juvenile offenders the Convention on the Rights of the Child is informed by and must be read alongside, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules", UN 1985), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN, 1990). Specifically, article 13.1 of the Beijing Rules states that: Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. This is reiterated in the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), where article 17 stipulates that: Juveniles who are detained under arrest or awaiting trial ("untried") are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from convicted juveniles. The experience of being incarcerated only increases the likelihood of children offending. The incarceration of children is the single biggest predictor of children entering into a lifetime of crime.

While we agree there is a profound responsibility to protect the community, the government also has a primary duty of care to protect these young people from harm. This should not be traded off against other responsibilities. It is very hard to understand how the Government can be reconciled with overriding its own Human Rights Act 2019. It is also important to consider the impact of detaining children, especially for bail offence or in watch houses for extended periods of time and how this aligns with The Queensland Child Protection Act 1999 11 standards of care including :the child's dignity and rights will be respected at all timesthe child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regardQueensland communities deserve evidence-based solutions to crime prevention. While we understand the desire for a bi-partisan approach, we implore you to remain committed to an evidence-based policy that will produce better outcomes for everyone in keeping communities safe.. References: Australian Human Rights Commission. (n.d). Human Rights Brief No. 2: Sentencing juvenile offenders. <https://humanrights.gov.au/our-work/human-rights-brief-no-2> Baidawi, S., & Piquero, A.R. (2021).