

## STRENGTHENING COMMUNITY SAFETY BILL 2023

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**Submitted by:** Aboriginal and Torres Strait Islander Legal Service (Qld)  
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**Submitter Comments:**



**ATSILS**  
Aboriginal and  
Torres Strait Islander  
Legal Service (Qld) Ltd

**Brisbane Office** | ABN: 1111 6314 562

Level 5, 183 North Quay, Brisbane Qld 4000  
PO Box 13035, George Street, Brisbane Qld 4003  
07 3025 3888 | Freecall 24/7: 1800 012 255  
07 3025 3800  
info@atsils.org.au  
www.atsils.org.au

24th February 2023

Committee Secretary  
Economics and Governance Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [EGC@parliament.qld.gov.au](mailto:EGC@parliament.qld.gov.au)

Dear Secretary,

**Re: Submission in relation to the Community Safety Bill 2023**

We refer to the current consultation on the Community Safety Bill 2023 (Bill). We feel compelled to comment that given the significance of certain of the proposed changes, that we are disappointed by the short timeframe which has been provided for consultation. As the Queensland government would be well aware, the proposed measures will disproportionately affect Aboriginal and Torres Strait Islander children who are already grossly overrepresented in the criminal justice system. Such is particularly disheartening in a context of Closing the Gap and Treaty, and where Queensland's youth detention centres are already bursting at the seams such that children are being held in unlawful conditions in adult watch houses for weeks at a time in breach of their human rights.

While we acknowledge that there is a place for youth detention (provided there is a rehabilitative component), consistent with our advocacy position over many years, we reiterate that evidence-based, community-led prevention and early intervention initiatives that address the root causes of youth offending is the correct way to address the youth justice crisis along with impactful investment in housing, employment, education and health to address the upstream drivers of offending behaviour and the related social and economic iniquities that Aboriginal and Torres Strait Islander families face.

## Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by nearly five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

## Introductory comments

As Bob Atkinson AO, APM stated in his Report on Youth Justice (2018) (**Atkinson Report**),

*In any civilised society the aim should be to have safer communities alongside the lowest possible number of children in youth detention. These mutual ambitions are not incompatible.*<sup>1</sup>

And yet, as we know, youth detention centres in Queensland are at capacity with children being held in adult watch houses as an overflow solution and Aboriginal and Torres Strait Islander children are grossly overrepresented in the numbers of children held in detention.

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<sup>1</sup> Youth Justice Taskforce, Department of Child Safety, Youth and Women, *Report on Youth Justice* (2018) page 115, available at <<https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>>.

In the June quarter of 2021:

- half (or 410 of 819) of all young persons in detention on an average night were Aboriginal and/or Torres Strait Islander persons despite making up a mere 6% of the Australian population aged 10–17<sup>2</sup>.
- Aboriginal and Torres Strait Islander persons aged 10–17 were 20 times as likely as young non-Indigenous Australians to be in detention on an average night and this figure fluctuated between 16–25 times the non-Indigenous rate over a 4-year period dating back to 2017<sup>3</sup>.

With respect to Queensland’s figures, as reported in the 2021-22 Queensland Childrens Court Annual Report:

*It is disturbingly familiar that First Nations young peoples continue to be substantially overrepresented in the younger age groups with 86 percent in the 10-11 age group, 81 percent in the 12-year-old group, 65 percent in the 13-yearold group and 58 percent in the 14-year-old group.*

*They are over 21.4 times as likely as other young people to have been in youth detention in 2021-2022 although this rate has decreased since 2018-2019.*<sup>4</sup>

It is very difficult to reconcile the reforms proposed by the Queensland government with its Closing the Gap commitments to drive down the rate of Aboriginal and Torres Strait Islander children in detention.

We agree that serious repeat offending is concerning and community safety is important, however, we fundamentally disagree with certain of the proposals that will exacerbate the incarceration levels of children and funnelling tax payer funds into the construction of new multi-million dollar youth detention facilities which will be used to detain even more children when those funds could and should be channelled into properly staffing existing youth detention centres, investing in upstream drivers of youth crime and funding prevention and early intervention initiatives which address the root causes for youth offending and which have been shown to work.

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<sup>2</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia* (2021), page vi, available at <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/contents/summary>>.

<sup>3</sup> Ibid, page 11–12.

<sup>4</sup> Queensland Childrens Court Annual Report 2021–22.

## Core drivers and root causes of youth offending

### *Social, economic and cultural disadvantage*

Aboriginal and Torres Strait Islander children are amongst the most vulnerable children in Australia.

As expressed in the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) submission to the Public Consultation on the Queensland government's 10-point plan, Aboriginal and/or Torres Strait Islander young people may face:

- *intergenerational trauma, which has been proven to affect their neurological psychological and even physical development;*
- *high rates of exposure to domestic violence, sexual abuse and neglect;*
- *high rates of intellectual disability and cognitive impairment, which research links to being more likely to have police contact, be charged, be imprisoned and receive longer sentences;*
- *frequent out-of-home care placements which disrupt or prevents access to treatment and support, resulting in placement breakdown and sometimes homelessness (and consequently extended periods of time in youth detention). The latest data available from the Australian Institute of Health and Welfare suggests that nationally almost 30 percent of Aboriginal and Torres Strait Islander in detention had been in out-of-home care in the five years prior;*
- *a high prevalence of diagnosable trauma related mental illness;*
- *high rates of substance misuse with research suggesting drug use and crime can both develop in response to a range of other factors such as poverty, trauma, mental health issues and a lack of engagement with education and employment.*<sup>5</sup>

Additionally, Aboriginal and Torres Strait Islander young persons may be exposed to overcrowded housing and high rates of homelessness, generational unemployment, complex health needs, identity confusion, literacy and numeracy challenges due to interrupted schooling or disengagement with schooling and significant life skills deficiencies.

And aside from the extensive list of trauma and disadvantage that these children may experience as set out above, First Nations youth also have to contend with racial profiling in

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<sup>5</sup> QATSICPP Response to Stronger Laws Consultation Submission available at <[https://www.qatsicpp.com.au/wp-content/uploads/2023/02/2023-February\\_QATSICPP-Submission\\_Youth-Justice-Stronger-Laws.pdf](https://www.qatsicpp.com.au/wp-content/uploads/2023/02/2023-February_QATSICPP-Submission_Youth-Justice-Stronger-Laws.pdf)>.

policing and the remnants of systemic racism which contribute to their gross overincarceration.

### *Schooling*

Lack of participation, disruption or exclusion from education are drivers for youth offending. Recent Right to Information applications made to the Queensland Department of Education revealed that between 2015-2019, students identifying as Aboriginal and/or Torres Strait Islander received approximately one quarter of all recorded student disciplinary absences (i.e., suspensions or exclusions from school) despite only representing 10.6% of all Queensland full-time state school enrolments in August 2020<sup>6</sup>. Additionally chronic understaffing in detention centres has resulted in children within youth detention not being able to attend classes (not due to a shortage of teachers, but a shortage of corrections staff to escort the children to their classrooms). As a result, these children, some of which have cognitive impairments and/or disabilities, have had to self-direct learning in their cells which is completely unsuitable and impairs their ability to reintegrate back into schooling once released from youth detention.

### **General comments on the proposed changes**

#### *Incarcerating children creates 'better' criminals – reducing community safety*

The proposed changes will increase the number of children that are locked up in detention and watch houses and increase how long they spend there.

While locking up young offenders may provide the community with short-term protection, evidence shows that:

- in the year comprising 2020-21, notwithstanding any tightening of youth justice laws in the years preceding, 90% of children released from youth detention in Queensland reoffended within 12 months of release<sup>7</sup>;
- longer stays in confinement do not reduce recidivism rates and often raise them<sup>8</sup>;

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<sup>6</sup> Department of Education and Training (November 2020) State school enrolments, 2016-20; <https://qed.qld.gov.au/our-publications/reports/statistics/Documents/enrolments-summary.pdf>

<sup>7</sup> Refer to Queensland Parliament Tabled Paper 1270-2022, Question on Notice asked by Mr T Nicholls of the Hon. Leanne Linard, Minister for Children and Youth Justice and Minister for Multicultural Affairs, found at <<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/1270-2022.pdf>>.

<sup>8</sup> Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, (2022) page 14, available at < <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>>; Charles E. Loeffler and Daniel S. Nagin (2022) The Impact of Incarceration on Recidivism. *Annual Review of Criminology* 2022 5:1, 133-152.

- children that end up in detention are likely to become ‘better’ criminals as they will be associating with and influenced by a cohort of more seasoned offending peers, some of whom might be serious repeat offenders;
- incarceration during youth reduces the likelihood of good educational outcomes, for example, graduation from high school and, therefore, compromises the quality and type of work that an individual may be able to obtain in the future<sup>9</sup>;
- incarceration during youth leads to poorer health in adulthood, mental and physical<sup>10</sup>; and
- children that are incarcerated have an elevated risk of being a victim of trauma/abuse in custody (e.g., physical and/or sexual abuse, inappropriate use of restraints, the use of solitary confinement, etc.) and this severely impacts their ability to function in society and thrive once released.

#### *Proposed construction of two new detention centres*

We oppose the proposed construction of two new detention centres in Queensland on the basis that:

- it is in direct contradiction with Queensland’s commitments to drive down the rates of youth incarceration under Closing the Gap;
- for the reasons outlined earlier in this submission, incarcerating children does not reduce youth offending, rather, it increases the chances of the child reoffending;
- doing so will require an immense financial commitment, where money would be better spent on:
  - better resourcing community-led prevention and early intervention initiatives which are evidence-based and proven to reduce youth offending;
  - addressing upstream drivers of youth offending by making impactful investments in housing, employment, education and health; and
  - addressing the current severe shortage of staff in existing youth detention facilities.

Since 2015, the Queensland government has expended over \$200 million on youth justice infrastructure.<sup>11</sup> It now intends to spend \$332 million on these proposed new measures which include the construction of two additional youth detention centres, elevating the amount spent on youth justice to \$1.1 billion since 2015.

Additionally, the Queensland government:

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<sup>9</sup> Ibid, page 14.

<sup>10</sup> Ibid, page 16.

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<[https://statements.qld.gov.au/statements/89883#:~:text=Completion%20of%20the%20new%20bed, and %20Cleveland %20Youth%20Detention%20Centres.](https://statements.qld.gov.au/statements/89883#:~:text=Completion%20of%20the%20new%20bed, and %20Cleveland %20Youth%20Detention%20Centres.;)>; Justice Reform Initiative: Alternatives to Youth Detention Briefing.

- spends more than any other state and territory in Australia on youth detention-based services, at \$218 million per year<sup>12</sup>; and
- spends \$7.4 million each year to maintain staffing levels within existing youth detention centres.<sup>13</sup>

As has been our view for many years, along with numerous other esteemed advocacy organisations, taxpayer dollars are better spent on addressing upstream drivers of crime including inequalities in housing, education, health and employment and supporting these children via prevention and intervention initiatives which will engage our most vulnerable children, support them, and help them become thriving and productive citizens of our community. This will give young people the best chance at life and simultaneously improve community safety, detaining them will not.

#### *Evidence-based approaches that work*

In our view, the Queensland government needs to change its lens to youth offending from a policing lens to a therapeutic lens. A *safety* response is required as community safety encompasses safety of the community *and* the safety of young persons. These are not mutually exclusive.

Safer communities are something we all aspire to – but with youth offenders in general, and perhaps more specifically with the serious repeat offender cohort, we are largely dealing with children that have suffered severe trauma. Such includes physical and sexual abuse; mental health challenges; foetal alcohol spectrum disorder and so forth. Placing already traumatised children in a detention environment which will exacerbate their trauma, will, upon their release, lead to higher rates of re-offending – with less safe communities the outcome. The research is clear on this point.

We support the following approaches which involve both mainstream services and community-controlled services which work to make children accountable for their offending and also support them in a therapeutic way to help get their lives on track:

- Restorative justice, for example, bringing victims and perpetrators together to help perpetrators take responsibility for their behaviour and consider how they may make good the harm that they caused;

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<sup>12</sup> Report on Government Services 2023. Youth Justice Services. Table 17A10

<sup>13</sup> Justice Reform Initiative: Alternatives to Youth Detention Briefing.



- Diversion of children away from the criminal justice system, in particular, children under the age of 14 - children need guidance and support, not incarceration which increases the likelihood of entrenching a child into a cycle of criminality;
- Providing essential supports to children with disability – given the prevalence of undiagnosed cognitive and/or behavioural disorders amongst Aboriginal and Torres Strait Islander children, it is critical that the Queensland government implements systemic screening practices at critical intersections of a child’s life with government services, for example, upon enrolment at school and upon contact with the justice system. This will allow a window for providing contemporaneous supports for those children at the early intervention stage and avoid those children falling through the cracks;
- increasing the minimum age of criminal responsibility to 14 years of age in line with the benchmark set by the United Nations;
- embedding On-Country responses to youth offending as a diversionary pathway which gives cultural agency to First Nations communities to guide their youth within the cultural safety of their community;
- a critical review of rehabilitative programs within youth detention to ensure that they are effective and culturally safe, and to ensure that children on remand are able to take advantage of such programs;
- systems reforms to address social, economic and cultural iniquities that First Nations communities experience (consistent with Closing the Gap commitments); and
- policy initiatives that focus on:
  - increasing supports for vulnerable children in schools to increase school engagement and attendance, given many have experienced trauma and carry these burdens with them and some may have cognitive impairments which may be undiagnosed;
  - reducing the numbers of First Nations children that have been excluded from school by suspension or otherwise given that First Nations children have been found to be overrepresented in the cohort of children subject to school disciplinary absences; and
  - increasing supports for First Nations children who are receiving education in youth detention (e.g., overcoming the current severe shortage of staff in youth detention centres which is resulting in children not being taken to class and being required to undertake self-directed learning in their cells);
  - increasing supports for a child transitioning from youth detention schooling back into mainstream schooling.

Additionally, we draw your attention to recommendation 236 of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) which remains true today:

*236. That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding. (4:177).<sup>14</sup>*

Justice reinvestment initiatives internationally and within Australia have shown that early intervention and diversion really works and it does so at a fraction of the economic and human cost of youth detention. Some examples of excellent initiatives that have been proven to have positive results in addressing youth offending are as follows:

- The *Maranguka Justice Reinvestment Project* based in Bourke, New South Wales which is a grassroots community-based initiative that aims to redirect resources that would otherwise be spent on prisons into community to address underlying drivers of imprisonment and support vulnerable children and families with a focus on justice, employment, education, service delivery, youth engagement, drugs and alcohol, mental health, early childhood, out of home care, housing and family violence.
- *The Lighthouse* which is an after-hours youth diversionary service operated by the Townsville Aboriginal and Islander Health Service where children that do not have adequate adult supervision, do not feel safe at home, are in trouble or need someone to talk to can have a safe place to be, have a meal, access shower facilities, have a bed for rest, be able to engage in sport and creative programs and importantly allow a safe place for children to form cultural connections.<sup>15</sup>
- *Youth Justice Family-Led Decision Making* which involves Aboriginal and Torres Strait Islander families, community stakeholders (including community-controlled organisations) and Youth Justice officers coming together to make positive decisions with the aim of improving a young person's behaviour, safety and ongoing cultural and practical support needs.
- *Communities That Care (CTC)* which is an evidence-based program based in community for reducing youth problem behaviours such as harmful substance use, low academic achievement, leaving school early, sexual risk taking and violence<sup>16</sup>.

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<sup>14</sup> Report of the Royal Commission into Aboriginal Deaths in Custody.

<sup>15</sup> <https://www.taihs.net.au/taihs-services/youth-services/the-lighthouse-youth-after-hours-diversionary-service/>.

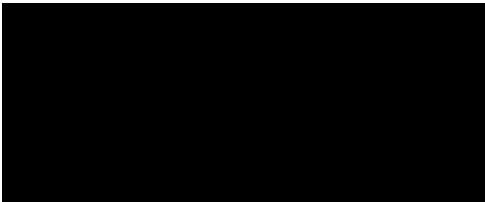
<sup>16</sup> Toumborou, J., Rowland, B., Williams, J., Smith, R., 'Community Intervention to Prevent Adolescent Health Behavior Problems: Evaluation of Communities That Care in Australia', *Health Psychology*, 2019, Vol. 38, No. 6, 536 –544; J. Hawkins, D., Oesterle, S., Brown, E., Abbott, R., Catalano, R., Youth Problem Behaviors 8 Years After Implementing the Communities That Care Prevention System A Community-Randomized Trial, *JAMA Pediatrics*, 2014;168(2):122-129. doi:10.1001/jamapediatrics.2013.4009.

## Conclusion

We do not support “tough on crime” measures which will be counter-productive to addressing offending levels. Consequently, we would not support increasing of sentences for youth or the creation of an offence of breach of bail conditions or the widening of the net of ‘prescribed offences’ (relating to the reverse onus regarding a grant of bail) - as incarceration of children has been proven not to work in reducing youth crime. The Queensland government’s proposal will, without doubt, disproportionately affect Aboriginal and/or Torres Strait Islander children who are already amongst the most vulnerable in our community. Instead of spending millions of dollars on constructing new youth detention facilities, the Queensland government needs to focus upon addressing the root causes and upstream drivers of youth offending. We need to do better by our children and give them a chance at becoming productive and thriving members of our community. In short, we need to support them to overcome disadvantage and to reintegrate as productive members of society.

I close by re-iterating our disappointment at such a truncated period within which to respond, such of itself has meant that our submission has been largely confined to generalities which might well miss the mark.

Yours faithfully.



Shane Duffy  
Chief Executive Officer