

Making Queensland Safer Bill 2024

Submission No: 29
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Publication: Making the submission and your name public
Attachments: No attachment

Submitter Comments:

The "Making Queensland Safer Bill" was introduced to the Queensland Parliament yesterday and is subject to an urgency motion which will see it debated in December. The Bill, if passed, will amend the Youth Justice Act to impose a range of measures including:

- mandatory life sentences for young people convicted of certain offences;
- removing the requirement for the court to have regard to the best interests of the child;
- removing the principle that a custodial sentence should be a measure of last resort; and
- providing for Children's Court proceedings to be heard in public.

Key Concerns

1. The purported justification for the Bill, and the measures it seeks to introduce, are contrary to available evidence.
 - Firstly, offending by young people in Queensland is in fact very low compared with historical rates (see data on page 8 of the Queensland Commissioner for Children & Young People's report on detention of young people in watch houses, available at <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who%27s-responsible>).
 - Secondly, the measures the Bill seeks to introduce are likely, based on available criminological evidence, to increase recidivism and reduce community safety. Further, the measures increase the risks to children and young people (see below), who are themselves part of the "community" and are also entitled to safety.
2. Significant human rights violations

According to the Statement of Compatibility with the Human Rights Act 2009 (Qld) tabled in conjunction with the Bill (available on the Queensland Parliament website at <https://documents.parliament.qld.gov.au/bills/2024/3232/Making-Queensland-Safer-Bill-2024---Statement-of-Compatibility-c348.pdf>), the Qld Attorney General expressly acknowledges that the legislation will:

- "directly discriminate" against children, by limiting their "protection from cruel, inhuman or degrading treatment";
- "have a greater impact on Aboriginal and Torres Strait Islander children, who are already disproportionately represented in the criminal justice system";
- increase the number of children in state watch houses resulting in "limitations to the protection from cruel, inhuman or degrading treatment ... and the right to humane treatment", while acknowledging that "[w]atchhouses are not appropriate or humane places in which to detain children (particularly for any lengthy period of time)";
- eliminate the longstanding legal principle of detention as a last resort – but only for children. "The amendments will treat children less favourably than adults in the same circumstances and therefore directly discriminate on the basis of age, limiting their right to enjoy their right to liberty without discrimination, their right to equal protection of the law without discrimination and their right to equal and effective protection against discrimination." "This will, in essence, create a sentencing system where adults are better protected from arbitrary detention than children";
- the Bill "will lead to sentences for children that are more punitive than necessary to achieve community safety", and
- "according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation".

Racial discrimination

The Statement claims that, despite the acknowledged disproportionate impacts on Aboriginal and/or Torres Strait Islander young people, "the amendments do not directly or indirectly discriminate based on race. The increased sentences will be applied equally to all children who are convicted of an offence." This assertion disregards the significant gate-keeping role played by police in determining what matters to investigate, who to arrest, and what to charge them with. The report of the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence (2022) found: "Racism is a significant problem within the Queensland Police Service. It manifests in discriminatory behaviours directed towards First Nations employees, employees from other cultural backgrounds, and members of the community" (Part 4, Chapter 13, page 235, available at

<https://www.qpsdfvinquiry.qld.gov.au/about/report.aspx>). In this context, there is a significant risk that racism will influence the exercise of discretion by police when dealing with Aboriginal and/or Torres Strait Islander young people who are suspected of offending, as well as police interactions with Aboriginal and/or Torres Strait Islander people who are the guardians, legal representatives, and other support people. Contrary to the assertion by the Qld Attorney General, direct and indirect discrimination on the basis of race is very likely to occur if the Bill is passed.

Disability discrimination The Statement does not address the disproportionate impacts the Bill will have on children and young people with disabilities. It has been estimated that 12% of children in detention in Queensland have foetal alcohol spectrum disorder. Perhaps a third have at least one disability (see Queensland Family and Child Commission Queensland Child Rights Report 2023, pages 39-40, available at https://www.qfcc.qld.gov.au/sites/default/files/2023-08/QFCC_Child_Rights_Report_1_YouthJustice_1.pdf). Undermining community safety – placing children and young people at risk of death or serious harm

The detention of children and young people in police watch houses, often for extended periods and in overcrowded settings, poses significant risk to their health and safety. Young people have already suffered serious harm including sexual assault by fellow inmates (see <https://www.theguardian.com/australia-news/article/2024/jul/09/concerns-over-13-year-old-in-queensland-watch-house-ignored-days-before-alleged-sexual-assault>). It will surely be only a matter of time before a young person suffers dies in a Queensland watch house, whether from violence or by suicide (see <https://www.theguardian.com/australia-news/article/2024/sep/11/queensland-children-police-watch-houses-watchdog-report>). Finally, by publicising the names of young people being tried for serious offences, as well as the demonisation of young people that is inherent in the Bill, increases the risk of violence arising from vigilantes, further reducing community safety. Vigilantism has already been occurring in Queensland and has been directed against innocent parties (see eg <https://nit.com.au/05-01-2024/9210/alleged-vigilantes-charged-denied-bail-for-assaulting-three-indigenous-children-in-north-queensland>).

Conclusion These outcomes cannot be acceptable in 21st century Australia. Laws and policies should be evidence-based, and in particular should not be made *contrary* to the available evidence about what actually works to improve community safety (including the safety of children and young people in the community).