

Making Queensland Safer Bill 2024

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Justice, Integrity and Community Safety Committee
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Dear Committee

Making Queensland Safer Bill 2024

Legal Aid Queensland (LAQ) notes the Justice, Integrity and Community Safety Committee's invitation to provide written submissions on the *Making Queensland Safer Bill 2024* (the Bill) by 12:00 noon Tuesday 3rd December 2024.

LAQ recognises that the Government is committed to delivering on its key election promises to Queenslanders regarding youth crime and community safety within 100 days of being elected. However, LAQ is unable to provide comprehensive feedback noting the very limited window for consultation and the nature and magnitude of the amendments being proposed.

In light of the timeframes LAQ feedback relates to the aspects of the Bill that will have the effect, as acknowledged by the Government, of increasing the number of children incarcerated and being inconsistent with human rights.

As a sector leader in the representation of children in the criminal justice system LAQ welcomes innovative, evidence-based early interventions and effective rehabilitation programs that serve to increase community safety but also provide children with an opportunity to develop in responsible, beneficial, and socially acceptable ways.

Children within the youth justice system are often disadvantaged and vulnerable. Over 53% have experienced or been impacted by domestic and family violence, 44% have a mental health and/or behavioural disorder (diagnosed or suspected) and 44% have a disability (diagnosed or suspected).¹

¹ *Youth Justice Pocket Stats 2023-2024*, Department of Youth Justice.

LAQ therefore welcomes the proposed investment in early intervention and rehabilitative programs outlined by the Government.

In LAQ's view, the positive impact of the abovementioned investment into early intervention and rehabilitative programs will be potentially outweighed by the negative effects of this legislative reform. An increase in the incarceration of children in detention centres and watch houses, is unlikely to have a positive effect on community safety, rehabilitation, and recidivism in the long term. It runs the risk of achieving the opposite.

It is clear that incarceration is failing to rehabilitate children within the youth justice system. LAQ maintains that the solution is not to incarcerate more children and impose longer periods of incarceration.

Longitudinal studies and expert evidence into youth offending consistently demonstrate that the incarceration of children can exacerbate a child's vulnerabilities² and have a 'crime-causing' effect.³ It also disproportionately impacts those in the community already experiencing vulnerability, marginalisation, and disadvantage, particularly First Nations children.

First Nations children are already significantly overrepresented in the criminal justice system – making up 63% of the children imprisoned by State and Territory Governments in Australia.⁴ Queensland has the highest number of children on remand than any other State or Territory,⁵ with First Nations children being 25 times more likely to be on remand compared to non-Indigenous children.⁶

The Australian Institute of Health and Welfare (AIHW) found that 66% of children released from sentenced detention returned to sentenced supervision within 6 months, and 85% returned within 12 months.⁷

In the experience of LAQ, children in the criminal justice system are frequently the victims of crime themselves and require significant interventions, particularly in the areas of poverty and homelessness, family violence, mental health and disability, education and employment, and drug and alcohol dependency. Longer stints in watch houses, detention centres and potentially prisons will interfere with effective intervention and/or rehabilitation. Children currently have almost no ability to access these supports in watch houses. Conditions in recent years in Queensland detention centres have also impacted on meaningful delivery of such programs to children while on remand or serving a sentence. Increasing the number of children at these

² G Clancey, S Wang and B Lin, 'Youth Justice in Australia: Themes from recent inquiries' (2020) 605 *Trends & Issues in Crime and Criminal Justice* (Australian Institute of Criminology).

³ Walsh, T, 'Safety Through Support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System' (2023).

⁴ On any average night in the June 2023 quarter. Australian Institute of Health and Welfare. (2023). *Youth detention population in Australia 2023*.

⁵ See figure 2.4: First Nations young people in detention, by state and territory, June quarter 2019 to June quarter 2023 (number, rate and ratio): Australian Institute of Health and Welfare. (2023). *Youth detention population in Australia 2023*.

⁶ *Youth Justice Pocket Stats 2023-2024*, Department of Youth Justice.

⁷ Australian Institute of Health and Welfare (2023) *Young people returning to sentence youth justice supervision 2021-22*, AIHW, Australian Government.

locations will mean a significant injection of resources will be required to overcome current limitations as well as address the increase in numbers.

The *Human Rights Act 2019* (HRA) is a fundamental cornerstone to protect the rights of all Queenslanders and ensures that public authorities are appropriately accountable in this regard. This Bill will seek to suspend the operation of the HRA and thereby frustrate or obviate the purposes for which the HRA was enacted in several ways - this is of deep concern.

The statement of compatibility acknowledges the suspension of the HRA, the infringement upon international standards including the *Convention on the Rights of the Child* and the *Standard Minimum Rules for the Administration of Juvenile Justice* ('Beijing Rules'), and the direct negative impact on one of the most vulnerable and marginalised groups within Queensland – First Nations children. Namely:

- implementing 'adult crime, adult time' and abolishing the principle of detention as a last resort for children is incompatible with human rights
- the reforms are in conflict with international standards regarding the best interests of the child with respect to children in the justice system
- the Bill will lead to sentences for children that are more punitive than necessary to achieve community safety. This is in direct conflict with international law standards ... that sentences for a child should always be proportionate to the circumstances of both the child and the offence
- will expose some young offenders to mandatory minimum sentences, meaning the considerations of a child's best interests will not form part of the court's consideration of an appropriate sentence
- will, at least in the short term, further strain capacity in youth detention centres in Queensland, and may result in children being held in watch houses for extended periods of time ... having regard to the fact that it is widely accepted that watch houses are not appropriate or humane places in which to detain children (particularly for any lengthy period of time)
- are expected to have a greater impact on Aboriginal and/or Torres Strait Islander children
- could result in more Aboriginal and/or Torres Strait Islander children being imprisoned for periods of time
- will treat children less favourably than adults in the same circumstances and ... create a sentencing system where adults are better protected from arbitrary detention than children.

These are concerning infringements of the rights of often vulnerable members of the community.

Through LAQ's experience in the adult jurisdiction, law reforms that increase penalties and particularly those that impose mandatory minimum and/or maximum terms of incarceration can have cost implications for the system, in addition to the actual cost of incarceration. Particularly in the more serious cases matters are more likely to be contested both at first instance and in appeals due to the increase in penalties. This has flow on cost effects to all criminal justice stakeholders including LAQ.

Youth justice is a complex area that needs long term best practice approaches, and the development of culturally informed and evidence-based solutions that will not only increase community safety but support the future and well-being of disadvantaged Queensland children. This is not inconsistent with the Government's communicated aim of being a stable, generational government. LAQ would welcome the opportunity in the future, to work with the Committee and the Government to develop such measures. The timeframes in respect of this Bill unfortunately do not permit it at this stage beyond the feedback outlined above.

LAQ hopes this information is of assistance.

Yours sincerely

A solid black rectangular box redacting the signature of Nicky Davies.

Nicky Davies
Chief Executive Officer
Legal Aid Queensland