

## Making Queensland Safer Bill 2024

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## The Queensland Indigenous Family Violence Legal Service (QIFVLS) submission to the Justice, Integrity and Community Safety Committee's Inquiry into the *Making Queensland Safer Bill 2024*

### Executive Summary

Queensland Indigenous Family Violence Legal Service (QIFVLS) Aboriginal Corporation ('QIFVLS') welcomes the opportunity to provide a submission regarding the Queensland Government's *Making Queensland Safer Bill 2024 (the Bill)*.

Our submission is made from the standpoint of an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) and Family Violence Prevention Legal Service (FVPLS), dedicated to ensuring that families and households are safe from violence. As a Family Violence Prevention Legal Service, a member of the First Nations Advocates Against Family Violence Forum (FNAAFV Forum) and member of the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks), QIFVLS is dedicated to achieving the priority reforms and socio-economic targets outlined in the [National Agreement on Closing The Gap](#) (the National Agreement). Together with seeking safer communities and households free of family violence, QIFVLS is also dedicated to achieving Targets 10 and 11 (reducing the overrepresentation of Aboriginal and Torres Strait Islander adults and youth in the criminal justice system) in conjunction with the remaining targets and priority reforms, most notably, Target 13 (ensuring families and households are safe and that domestic and family violence against Aboriginal and Torres Strait Islander women and children is reduced by at least 50% by 2031 as we progress towards 0). In that regard youth justice is a core component affecting the services we provide.

Given the small window in which to respond to the Bill, our submission will highlight isolated provisions amidst a call for a greater focus on early intervention and prevention. As an organisation that wholeheartedly espouses the benefits of early intervention and prevention, our early observations are that the Bill does not do enough to signal how legislation can make Queensland safer through culturally safe, holistic, early intervention and prevention measures. We would like to see the Bill and the wider *Making Queensland Safer Plan* signal to Queenslanders how early intervention and prevention initiatives can prevent children and young people from becoming offenders and recidivist offenders in a cost-effective way that achieves the community safety for all Queenslanders, irrespective of where you live in the state.

Our submission notes the concerns we have for our clients and the children of our clients. We don't just see youth offenders. We also view these young people as victim-survivors themselves who in varying circumstances may find themselves under the state's care in the child protection system, and as accused persons and offenders in the youth justice system, as identified in *Hear Her Voice – Report Two*.<sup>1</sup> Some of the provisions in the Bill regarding the amendments to the *Youth Justice Act 1992* raise serious concerns for our organisation. We would have liked to have seen a corresponding emphasis on the level of support to be provided to children and young people, especially in terms of rehabilitation and successful reintegration back into communities in Queensland, breaking the cycles that lead to recidivism.

### **Removing the principle of detention as a sentence of last resort and increasing mandatory minimum sentences**

Our initial impressions are that the provisions widen the gateway to an inevitable increase in sentences of custodial imprisonment for children and young people. We note this is expressly partly the goal of the Bill,

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<sup>1</sup> Women's Safety and Justice Taskforce (2022), *Hear Her Voice Report Two*



characterised by the Statement of Compatibility wherein the Government accepts on page 5 of the Statement that the amendments “*will lead to sentences for children that are more punitive than necessary to achieve community safety.*”

We believe that exposing children to greater risks of serving custodial terms of imprisonment will not ensure community safety but rather entrench children in the criminal justice system and exacerbate the risks of recidivism amongst serious repeat offenders, especially. This will only serve to work against the need for these children to be rehabilitated.

We further believe that the Bill does not consider nor take into account the established medical evidence that children are not *rational* actors. For a variety of reasons, mostly related to the fact that the pre-frontal cortex of their brains are still developing, children will not rationally consider increased penalties as a deterrent prior to committing offences. In a broader context, children will not consider the consequences of their actions before offending behaviour.

Responsibility is vested in us as adults to fashion a framework that ensures justice for victims of crime, and accountability of a young offender allied with the prospect that they can be rehabilitated and guided on the right course to developing into a productive member of the community.

## Summary of QIFVLS submissions

QIFVLS offers the following feedback:

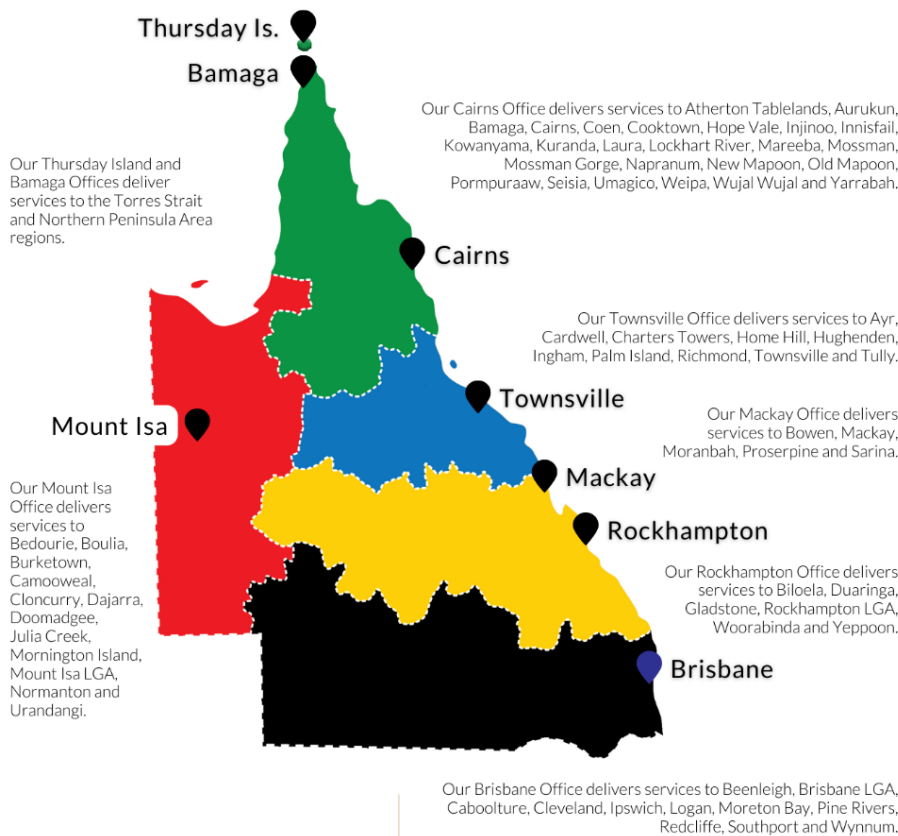
- Family safety and youth justice are closely interwoven with the experiences of our clients. Many of the children and young people using violence are themselves victim-survivors who have found themselves enmeshed within the child protection system and the youth justice system as accused persons and offenders. These children are known in the literature as the *cross over kids*.
- We believe that the Bill does not consider that children are not rational actors. For a variety of reasons, mostly related to the fact that their brains are still developing, children will not rationally consider increased penalties as a deterrent prior to committing offences.
- The Bill does not place enough of an emphasis on early intervention and prevention. An emphasis on early intervention and prevention, and rehabilitation services for children and young people and their families are pivotal to addressing community safety and preventing exposure to the criminal justice system and the likelihood of recidivism. This must be done via a whole-of-community approach.
- Strategies to reduce youth offending by Aboriginal and Torres Strait Islander children require the indelible influence of Aboriginal and Torres Strait Islander local communities, Elders, and Aboriginal and Torres Strait Islander Community-Controlled Organisations. A variety of reports highlight the benefits from empowering local communities to provide services at a local level.
- Our staff regularly observe the crossover between children in the child protection system and their introduction to the criminal justice system. We recommend the Committee investigate the intersection between children under the care of the State who are also involved in the youth justice system.
- We do not see any mention of the newly established Victims’ Commissioner in the Bill. Engaging the Victims’ Commissioner would be an opportunity to champion the rights of victims of crime, including systemic issues affecting the treatment of victims of crime.
- Although not expressly mentioned in the Bill, we support the inclusion of a provision mandating a review of the proposed legislation, including whether it has achieved its objectives of *making Queensland safer for all Queenslanders*.



## About QIFVLS

The Queensland Indigenous Family Violence Legal Services Aboriginal Corporation (QIFVLS) is a Family Violence Prevention Legal Service (FVPLS) and an Aboriginal and Torres Strait Islander Community Controlled Organisation (ACCO) that fills a recognised gap in access to culturally appropriate legal and wraparound support services for Aboriginal and Torres Strait Islander victim-survivors of family and domestic violence and sexual assault.

QIFVLS is primarily an outreach service. As can be seen from the map below, we operate out of eight offices across Queensland, delivering services to over 90 communities, from the urban south-eastern corner of the state, out west to communities surrounding Mount Isa, reaching the Northern Territory border, and north to the outer islands of the Torres Strait, neighbouring Papua New Guinea. Our services extend from domestic and family violence to family law; child protection; sexual assault and Victims Assist Queensland (VAQ) applications.



## Family violence as a cornerstone

Ensuring community safety is inextricably linked with our observations of our clients – victim-survivors of domestic and family violence, and sexual assault. We advocate for responses which are multi-faceted (and not siloed) – impacting across domestic and family violence, justice and policing, the child protection system, health, housing and education.



It may be startling for some to learn that 3 in 5 First Nations women have experienced physical or sexual violence<sup>2</sup>. This speaks to the crisis we witness as a family violence prevention legal service daily across our offices in Queensland.

Queensland Government data has revealed that at least 60% of all Aboriginal and Torres Strait Islander children in youth detention have experienced or been impacted by domestic and family violence<sup>3</sup>. If we consider the issue of child wellbeing, it should be noted that family violence was identified by the Australian Institute of Health and Welfare (AIHW) as the primary driver of children being placed into the child protection system, with 88% of First Nations children in care having experienced family violence<sup>4</sup>.

This sadly informs QIFVLS' experience that family violence is the cornerstone or intersection, that links an Aboriginal and Torres Strait Islander person's connection to the child protection system, the youth justice system, adult criminal justice system, housing and/or homelessness, health and the family law system.

We find that these 'connectors' are further compounded or exacerbated for those living in regional, rural, and remote parts of Australia, where there are restrictions on the availability of actual on the ground services to assist a victim-survivor escaping a violent relationship<sup>5</sup> (i.e., domestic violence support services and shelters; actual police presence within a community).

In contrast to siloed government responses which have long been the standard practice, QIFVLS consistently advocates for uniform, holistic, culturally safe and consistent strategies that will improve responses in the family violence, policing and criminal justice, child protection system, housing and corrective services. This approach aligns with achieving reductions in the Justice targets (Targets 10, 11, 12 and 13) of the National Agreement on Closing the Gap as well as meeting the overarching objectives of the 4 priority reform areas.

## Utilise the Office of the Victims' Commissioner

Strangely we do not see any mention of the newly established Office of the Victims' Commissioner in the Bill. This is a glaring omission which we call on the Committee to rectify. Established in response to recommendations made by the Women's Safety and Justice Taskforce, Queensland's first Victims' Commissioner has a crucial role to perform in championing the rights of victims of crime while providing for their voices to be heard within the criminal justice system, notably in addressing systemic issues impacting the welfare of victims.

## The outcomes and impacts of youth detention in Queensland

As a service dedicated to victim-survivors, family safety and community safety is important to us, given that our clients form a significant cohort of victims of crime. We believe the Bill misses an opportunity to align with our calls for a strong focus on early intervention and preventative measures.

### Queensland Productivity Commission's timeline

In their 2019 report on *Imprisonment and Recidivism*, the then Queensland Productivity Commission (QPC) helpfully created a visual timeline highlighting the stark reality of successive government policy that has focused on tertiary responses and the risk factors that gave rise to a person's contact with the criminal

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<sup>2</sup> Australian Human Rights Commission (2020), *Wiyi Yani U Thangani Report*, [https://humanrights.gov.au/sites/default/files/document/publication/ahrc\\_wiyi\\_yani\\_u\\_thangani\\_report\\_2020.pdf](https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf), page 44

<sup>3</sup> <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/youth-justice-report.pdf>

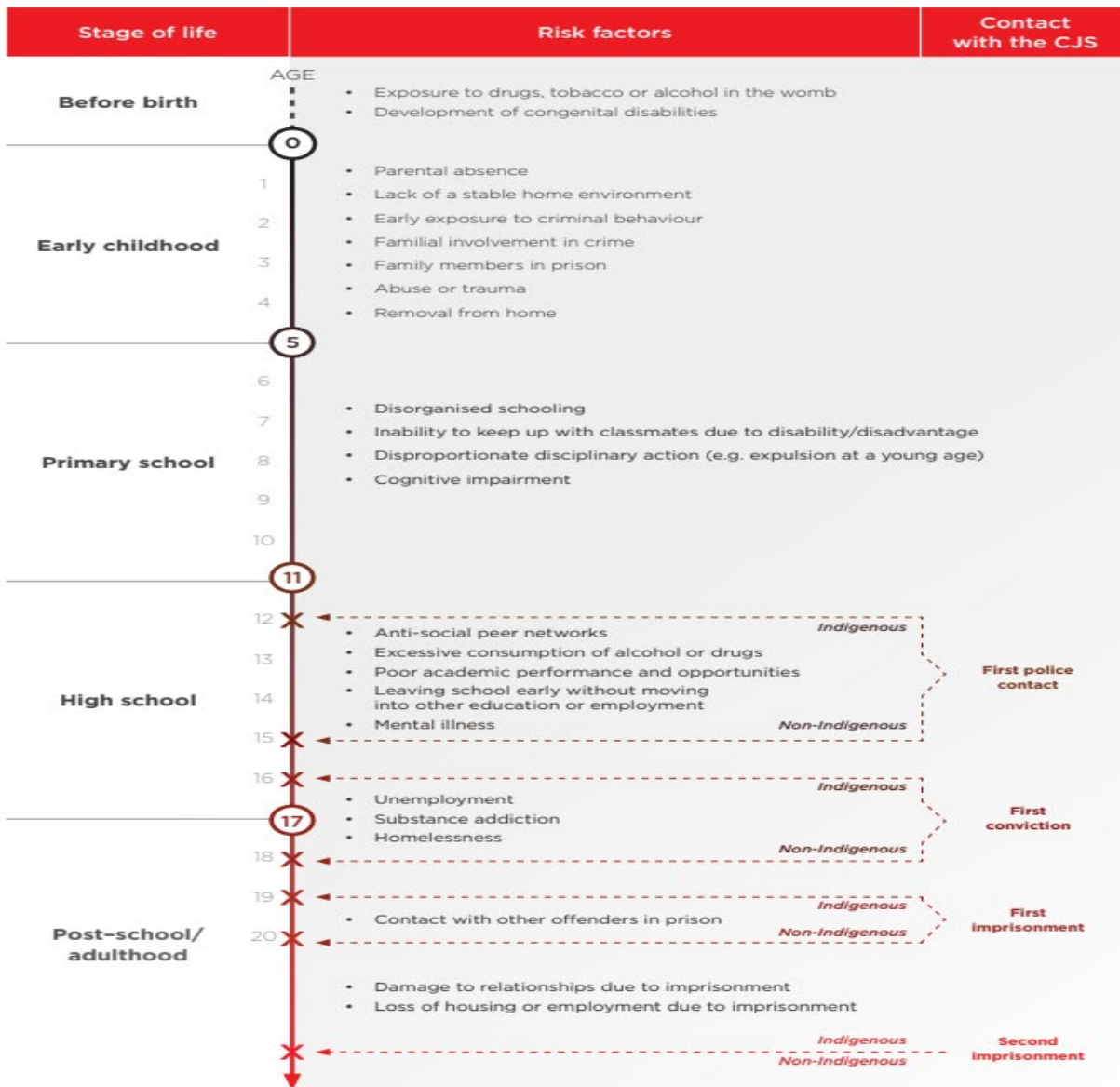
<sup>4</sup> Australian Institute of Health and Welfare (2019), *Family, domestic and sexual violence in Australia: continuing the national story*, <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>

<sup>5</sup> Australian Institute of Health and Welfare (2016-17), *Alcohol and other drug use in regional; and remote Australia: consumption, harms, and access to treatment 2016-17*. Cat.no. HSE 212. Canberra.



justice system in Queensland, especially if that person was an Aboriginal and or Torres Strait Islander person:

Figure 12 Risk factors and contact with the criminal justice system, Queensland



Source: QPC analysis.

2023 Queensland government data revealed that 20% of children are responsible for 54.5% of all child charges before the Courts. Sadly, this represents an increase from the previous year’s figure when 17% of children were responsible for 48% of charges.<sup>6</sup> This also regrettably reminds us of our submission to the [Queensland Parliament’s Economics and Governance Committee inquiry into the Strengthening Community Safety Bill 2023](#) in February 2023. At the time, we cautioned the following:

*“Without a prioritised focus on countering underlying systemic drivers of youth crime, Queensland’s average daily youth detention population will increase. The Explanatory Notes to this Bill referenced a figure of 17% as the number of serious repeat offenders. This figure will also increase without addressing the underlying causes of youth crime.”*

<sup>6</sup> [https://documents.parliament.qld.gov.au/tp/2023/5723T2106\\_255C.pdf](https://documents.parliament.qld.gov.au/tp/2023/5723T2106_255C.pdf)



We once again reiterate that without a focus on countering the underlying systemic drivers of youth crime, not only will the percentage of serious repeat offenders increase to an even higher percentage. We will also see consistent growth in the population of children and young people in detention.

## Clause 15 – Removal of detention as a sentence of last resort

Regrettably, we have not seen an evidence base offered in the Bill and accompanying material which demonstrate how removing detention as a sentence of last resort will reduce youth offending and make the community safer.

What we are not seeing in the Bill itself is a strong emphasis on rehabilitation services and on early intervention and prevention measures. We also do not see measures that go towards education for the general community about the deeply entrenched causes that lead to dysfunctional families and children committing offences. We have not heard the pivotal question – *Why are children from broken homes breaking into strangers' homes?* We cannot incarcerate our way out of these issues and must focus on addressing the underlying systemic drivers of youth crime.

Together with breaching international law obligations under Article 37 of the United Nations Convention on the Rights of a Child,<sup>7</sup> this consequential amendment also runs counter to Queensland's obligations as a signatory to the National Agreement on Closing the Gap, especially Target 11. Accordingly, this provision reflects the approach which was referred to in the Productivity Commission's Review of the National Agreement on Closing the Gap.<sup>8</sup>

## Adults vs children – detention as a sentence of last resort

We notice that by removing the principle of detention as a sentence of last resort from the *Youth Justice Act*, the corresponding principle for adults under section 9(2) of the *Penalties and Sentences Act 1992* remains untroubled. This leads us to the conclusion that by removing the principle for children, in Queensland it will now be easier for a child to be sentenced to a custodial sentence of imprisonment than it is for an adult who commits a nonviolent offence.

## Addressing the over-incarceration of Aboriginal and Torres Strait Islander children as a means of making Queensland safer

In their 2019 report on *Imprisonment and Recidivism*, the then QPC identified that:

*“The evidence about what works in service delivery in remote Indigenous settings in Australia is scant. However, the evidence that is available suggests that the active involvement of Indigenous residents is a crucial condition for success, particularly for those services attempting to address the underlying causes of dysfunction in communities”* (quoting Hunt 2016).<sup>9</sup>

The report went on to refer to evidence from research into First Nations reservations in Canada and the United States. A summary of this evidence emphasised:

- Community control of primary healthcare being associated with improved health outcomes.
- External controls imposed on communities stunt long-run income growth.
- Self-determination and strong governance structures are linked to better outcomes in Indigenous communities.

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<sup>7</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>8</sup> Australian Productivity Commission (2024), *Review of the National Agreement on Closing the Gap*, page 79

<sup>9</sup> Queensland Productivity Commission (2019), *Inquiry into Imprisonment and Recidivism*, <https://s3.treasury.qld.gov.au/files/Imprisonment-Volume-1-final-report.pdf>, page 417





The QPC noted that the key factor was to reduce Aboriginal and Torres Strait Islander communities' dependence on centrally managed service delivery and to enable Aboriginal and Torres Strait Islander peoples to take increasing responsibility for outcomes in their communities.<sup>10</sup>

## Queensland Government partnering with local communities and community-controlled organisations

With recent figures revealing that two-thirds of children in detention identify as Aboriginal and/or Torres Strait Islander children, strategies to meet Target 11 of the National Agreement require the indelible influence of Aboriginal and Torres Strait Islander local communities, Elders, and Aboriginal and Torres Strait Islander Community-Controlled Organisations, such as QIFVLS. While the Australian Productivity Commission's Review of the National Agreement firmly marks collective governments' lack of urgent action, we believe that through the Justice Policy Partnerships, it is not too late to refocus on the four priority reforms to the National Agreement.

By now it is no surprise that a variety of reports highlight the benefits from empowering local communities to provide services at a local level. Peak bodies within the Queensland Aboriginal and Torres Strait Islander Coalition (Aboriginal and Torres Strait Islander Legal Service, Queensland Aboriginal and Islander Health Council, Queensland Aboriginal and Torres Strait Islander Child Protection Peak and Queensland Indigenous Family Violence Legal Service) alongside other organisations including but not limited to, Queensland First Children and Families Board and the Queensland Family and Child Commission, are dedicated and invested in building towards a brighter future for our families.

## Links between youth justice and the child protection system

Child protection proceedings represent our largest component of legal assistance and legal representation file work. This is a sad reflection on the intersectional nature of family violence that our clients experience. Given our service's experience of assisting clients with complex and intersecting needs, the Committee would benefit from investigating the intersection between the youth justice system and the child protection system.

Our staff on the frontline observe an interconnected system whereby children are removed from their parents' (predominantly mothers) care due to concerns about family violence experienced by the parent. We see the next step being children placed in residential care. Shortly after being placed in residential care, we observe children with no criminal history or engagement with police finding themselves charged with criminal offences. Thus, we are witnessing a situation where the State is removing children from their parents/family/kinship structures and whilst subsequently in the State's care (the State acting as parent), the children are introduced to the criminal justice system.

Last year, our attention was drawn to concerns raised by a magistrate in Mount Isa about placing children in watchhouses with adult detainees. That particular case related to a 15-year-old Aboriginal girl whose introduction to the criminal justice system only began after Queensland's child safety department placed her into a residential care home full of known juvenile property offenders.<sup>11</sup>

With successive legislative and policy changes that see growing numbers of children in youth detention, this is a glaring concern. We believe the interwoven aspect of the youth justice system and the child protection system requires urgent attention.

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<sup>10</sup> Queensland Productivity Commission (2019), *Inquiry into Imprisonment and Recidivism*, page 418

<sup>11</sup> <https://www.qlsproctor.com.au/2023/02/court-life-of-youth-crime-started-while-in-care/>



## Clause 4 - Amendments to the *Children's Court Act* - who may be present at a proceeding

We understand that Clause 4 of the Bill will amend section 20 of the *Children's Court Act* such that proceedings will be open to a victim, relative of a deceased victim, victim's representative, accredited media and a person with a proper interest in the proceeding.

We query the necessity of having accredited media present in traditionally closed court proceedings in the absence of a corresponding media and education campaign about the deep, underlying causes of youth offending. While we understand the need for families to be informed of the nature of proceedings, we also consider that allowing access to Children's Court proceedings, particularly for accredited media raises issues of violation of privacy for young accused persons who may yet have chances of being successfully rehabilitated and diverted from further criminal law activity.

The current system serves to protect a child's identity from the public in order to ensure their safety. This is partly to ensure that a decision made by a child does not follow them into adulthood and thus jeopardise their prospects of becoming a productive member of their community. We note that on page 13 of the Statement of Compatibility, the government admits that removing this protection will increase the risks to safety and security and breach a child defendant's privacy.

In this regard, we inform the Committee that our clients and staff have experienced and witnessed the rise of vigilantism within the regional communities in which they live. This provision, allowing the media to report on Children's Court proceedings and sensitive information disclosed within proceedings, may have the unintended consequence of causing further vigilantism in the community. This would run counter to the desire to ensure community safety and an underlying pillar of the Bill to make Queensland safer for all Queenslanders, which includes Aboriginal and Torres Strait Islander Queenslanders.

### Lessening the ability to participate effectively

Another factor we raise is that opening Children's Court proceedings may lessen the potential for a child defendant to participate effectively in the sense that they may be less willing to disclose personal and sensitive matters during their proceedings. For example, we have observed that our child clients/young clients or the children of our clients have been greatly disadvantaged by intersecting matters characterised by histories of family, domestic and/or sexual violence.

In the course of criminal proceedings, it is relevant for a criminal defence lawyer to make submissions regarding their client's antecedents and background circumstances. This includes situations where the client has endured a history of family, domestic and/or sexual violence. This sensitive information rightly leads to closed proceedings in Child Protection courts and Domestic and Family Violence courts. Yet with this Bill, we are considering facilitating opportunities to ventilate this sensitive information before an open court and to the eyes of media. It is not unnoticed that the media's history of sensationalist reporting has partly led us to the situation where politicians feel the need to enact more punitive legislation.

## Community education and confidence in the youth justice system

We believe the manner and impact of media reporting greatly affects the public's confidence in institutions. We share the concerns of community members around crime, family violence and safety. Concurrently, it is also the case that sensationalist reporting can stigmatise a community. Although the exact figures may not be known by the wider Queensland community, there is an acknowledgment by the wider community that the majority of children in the youth justice system identify as Aboriginal and/or Torres Strait Islander children and young people. Within the last year, we have noticed negative sentiment towards Aboriginal and Torres Strait Islander children in general on social media and in the community. This has extended to innocent, law abiding children being targeted or profiled by vigilantes simply based on their appearance.



News reporting by commercial and social media is lacking in highlighting the underlying social causes and the lack of protective risk factors leading to youth offending. Thus, we observe a cycle where reporting leads to outrage which leads politicians to adopt knee-jerk tough-on-crime responses, despite available evidence demonstrating that tougher and more punitive approaches do not lead to reductions in youth offending.

In his 2022 Youth Justice Reform Review, former Queensland Police Service Commissioner Bob Atkinson recommended engaging with the Queensland community to build balanced public awareness of the drivers behind youth offending and evidence-based prevention and response actions.<sup>12</sup>

Balanced reporting and awareness also facilitate mature discussion about the exorbitant taxpayer costs associated with detaining children and young people in comparison to advocating for increased funding for investment into early intervention and prevention. This evidence base and approach was clearly demonstrated by the Queensland Productivity Commission in their 2019 report on *Imprisonment and Recidivism*

## Conclusion

We fear that rather than engaging in a considered, measured and mature examination of the complex issues, community safety and youth justice is falsely cast as a competing choice between victims' rights on the one hand and the rights of children and young people who commit offences. Our submission and the experiences of our staff demonstrate that this matter is far more complex and that there should not be a choice.

There is no silver bullet to ensuring community safety and reducing youth offending. This is a complex matter which will take mature leadership, vision, courage, time, genuine partnership and a commitment to smart investment in holistic early intervention and prevention measures. As a matter of fact, we believe it may be apt to consider this a multi-generational issue for our society.

We note that there are a multitude of organisations and groups with encouraging ideas and programs, aimed at intervening and assisting children and young people at the local level. We believe that the many community-led services, particularly Aboriginal and Torres Strait Islander-led services, programs and responses must be commensurately funded by the Government to an extent signalling the Government's intent to prioritise early intervention and prevention.

We take this opportunity to thank the Committee for considering our feedback. We trust the Committee appreciates our viewpoint as both an Aboriginal and Torres Strait Islander Community Controlled Organisation and Family Violence Prevention Legal Service.

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<sup>12</sup> <https://www.dcssds.qld.gov.au/resources/dcsyw/about-us/reviews-inquiries/youth-justice-reforms-review-march-2022.pdf>