Making Queensland Safer Bill 2024

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Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Email: JICSC@parliament.qld.gov.au

Dear Committee Secretary

RE: Making Queensland Safer Bill 2024

We welcome the opportunity to make a submission to this inquiry. We make this submission jointly, as individual members of the University of Queensland's TC Beirne School of Law, School of Social Science, and Institute for Social Science Research.

We note the extremely limited time provided to make written submissions to the Making Queensland Safer Bill 2024 (three business days). As a result, this submission is briefer and less detailed than it might otherwise have been. Given the significance of the changes to youth justice in this Bill and their likely severe impacts for child offenders, this is regrettable.

Introduction

Like most members of the Queensland community, we believe that youth offending is a serious issue. The impacts of such offending on victims of crime and their families, together with the need to ensure the safety of the broader community, requires an effective response. In our view, the Making Queensland Safer Bill 2024 does not present such a response. Victims of crime, young offenders, and the broader Queensland community deserve better.

Put simply, we do not support this Bill, its general aims and purposes, and the means by which it seeks to achieve these purposes. We disagree with the purported reason for its existence—that there is an 'exceptional crisis situation' of youth offending in Queensland—and strongly urge the Government to reconsider some of its harshest provisions.

Youth justice in Queensland should be consistent with this State's own human rights legislation, the international human rights obligations by which Australia is bound, and basic and long-standing common law principles. It should be informed by the extensive and evidence-based best practice in the field of youth justice, including strategies that seek to address the factors that lead to and perpetuate offending by children, reduce recidivism, and promote the successful reintegration of offenders into the community. These strategies are the means by which a community can really be made safer, for all its members.

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There is overwhelming evidence that imposing harsher penalties on offenders, including children, does little to reduce offending. On the contrary, interaction with the criminal justice system is criminogenic: it makes it more likely that children will commit offences. In particular, the use of detention on children does not deter them from future offending. Youth offending is driven by a range of complex factors (individual, societal, environmental etc). Overly lenient judges are not key contributors to youth offending, nor are the numerical penalties attached to offences in the *Criminal Code* or the length of detention that follows a criminal conviction the key means by which offending is reduced.

We make brief specific comment on the following aspects of the Bill:

1. The 'exceptional crisis situation' that it addresses;
2. Provisions that reflect the Government's 'adult time, adult crime' policy;
3. Removal of detention as a last resort;
4. Prioritising the consideration of victims at sentence; and
5. Opening of the Children's Court.

The 'Exceptional Crisis Situation'

The Government's Statement about Exceptional Circumstances attempts to justify the overriding of the *Human Rights Act* (Qld) due to 'the current situation with respect to youth crime in Queensland', which it claims presents 'an exceptional crisis situation constituting a threat to public safety'. Some statistics are cited in support of this statement, together with an acknowledgement that a 'smaller number of young people' are offending.

The statistics cited fall far short of demonstrating 'an exceptional crisis situation'. They do not indicate a need to suspend the application of certain human rights to (all) children. While it is true that a small number of recidivist young offenders are committing more offences, the overall rate of youth crime in Queensland has dropped substantially in the past decade. On a longer view, it has dropped even further. Queensland Police Data shows that the rate of offending by children fell by 2% in 2023-2024 and the number of offences fell by 6.7%.[1] In 2022, the rate of offending by children in Queensland was the lowest it has ever been in recorded history.

It is also questionable whether the proffered justification for the measures should satisfy ss 43 and 44 of the *Human Rights Act 2019* (Qld). That fundamental rights, including the right against cruel, inhuman or degrading treatment, could be violated on the basis that 'these measures and the purposes to which they are directed are clearly supported by Queenslanders and are a direct response to growing community concern and outrage over crimes perpetrated by young offenders'[2] raises significant questions about what constitutes an 'exceptional case' for the purposes of s 43 of the Act. Certainly, from the perspective of international law, it is inconceivable that popular support would legitimate the violation of such fundamental rights.

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1 Queensland Police, 'Queensland Police Service release latest crime statistics for 2023/24 financial year' (26 July 2024) <https://mypolice.qld.gov.au/news/2024/07/26/queensland-police-service-release-latest-crime-statistics-for-2023-24-financial-year/>.

2 Making Queensland Safer Bill, Statement of Compat bility, 5.

Adult Crime, Adult Time

Children are to be subject to the same penalties as adults for certain offences in the *Criminal Code*. This includes offences with mandatory penalties, such as murder under ss 302 and 305. The imposition of the same minimum, maximum, and mandatory sentences on children as are applied to adults is completely inconsistent with international human rights standards. As the UN Committee on the Rights of the Child has stated:

> Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede proper application of international standards.[3]

Such a course of action departs from widely recognised best practice in relation to juvenile justice.[4] As the Attorney-General and Minister for Justice and Integrity says herself in the statement of compatibility to the Bill:

> according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation. The amendments 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, set out above, which provides that sentences for a child should always be proportionate to the circumstances of both the child and the offence – mandatory sentencing prevents the application of this principle.

The statement further acknowledges the 'greater impact on Aboriginal and Torres Strait Islander children, who are already disproportionately represented in the criminal justice system'. The foreseeable incarceration of greater numbers of First Nations children as a result of these amendments is a matter of serious concern and a setback to ongoing efforts to Close the Gap in Australia.

Consistent with our observations above, simply imposing longer and harsher penalties on children is very unlikely to have any positive effect on offending or re-offending rates. On the contrary, placing more children in detention, for longer periods, is more likely to have a deleterious impact on their ability to rehabilitate and reintegrate into the community. The community will not be safer as a result.

Good election slogans do not necessarily translate into good law.

Removal of Detention as a Last Resort

The 'adult crime, adult time' policy aims to punish children equally to adults for some offences. The removal of detention as a last resort for children goes even further and treats children less favourably than adults. It constitutes discrimination against young offenders. It means, as the Attorney-General's Statement of Compatibility to the Bill acknowledges, 'clear and deep limitations' on children's rights to liberty and to protection in their best interests, and limits to their right to equality. It creates, in the Attorney-General's own words, 'a sentencing system where adults are better protected from arbitrary detention than children' and cuts against a basic proposition of common law and international law: 'that children should only be detained as a last resort'.

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3 UN Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [78].

4 UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, UNGA Res 40/33 (29 November 1985) Rule 19.

The removal of this principle is completely untargeted. It applies to all young offenders and all offence types. It applies equally to a 16 year old child who commits a serious violent offence (such as unlawful striking causing death) and to a 12 year old child who commits a minor theft.

It is hard to conceive of law reform in the area of the youth justice more at odds with established legal principle and human rights. We are not aware of any jurisdiction in the world that treats children in conflict with the law in this manner. There is no possible legitimate justification for treating children *more harshly than adults*.

Prioritising the Consideration of Victims at Sentence

The Bill will elevate existing s 150(1)(j) of the *Youth Justice Act* and make the impact of offending on a victim a standalone sentencing consideration; one that a Court must have 'primary regard' to. This change is being made in tandem with a change to the Charter of Youth Justice Principles to specifically recognise the impact of offending on victims as the second principle (thus relegating 'the rights of children'). The first principle is that '[t]he community should be protected from offences and, in particular, recidivist high-risk offenders'.

We acknowledge that being the victim of crime can be a devasting experience, and we do not wish to negate or minimise the impacts that this can have on individuals, families, and communities. We agree that consideration of victims is an important part of sentencing and that there is a need to better consider how to ensure that victims' voices are appropriately heard and supported. Nonetheless, elevating consideration of victims as a factor separate to and above the best interests of children and their need to rehabilitate and reintegrate into society is inappropriate. It is inconsistent with international human rights law and, as the Attorney-General observes in her Statement of Compatibility, makes it 'foreseeable that children who commit offences that cause considerable harm, will be subject to more punitive sentences, including longer periods of detention'. Again, this is criminogenic, making the community less safe in the long run.

Sentencing is a complex process that requires careful consideration of a range of relevant factors. There is a longstanding commitment to individualised justice in Australian law (underpinned by appropriately regulated judicial discretion) to ensure that factors can be adequately weighed and to safeguard against injustice. As it stands, the existing sentencing regime and established precedent already places weight on the circumstances of the offence, including its seriousness, the harm it causes, and the impacts on victims.

Opening of the Children's Court

The amendments in the Bill remove the ability of the Children's Court to make an exclusion order for a victim's representative (which may include relatives of a victim), a person who, in the court's opinion, has a proper interest in the proceeding, or a person who holds media accreditation from the proceeding. This applies even in circumstances where there may be a risk to the safety of a person or where it may prejudice the proper administration of justice.

The removal of the ability of the Court to make such an order is unjustified and we do not support it. There is no reason to limit the Court's discretion in such an absolute fashion.

Final Comments

We note that young offenders are often some of the most vulnerable and disadvantaged members of the community. Department of Youth Justice statistics show, for example, that 53% of young offenders have been impacted by domestic and family violence, 44% have a diagnosed or suspected mental health or behavioural disorder, 44% have a disability, and 25% have at least one parent who has spent time in adult custody.[5] Many young offenders have also experienced childhood physical abuse, sexual abuse, emotional abuse, and/or neglect, and are themselves victims of crime. Violating their human rights and incarcerating them for long periods is not the way forward. It will not make the community safer.

We thank you for your consideration.

Yours sincerely

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[5] See Department of Youth Justice and Victim Support, 'Data' <https://www.youthjustice.qld.gov.au/our-department/data>.

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