

Making Queensland Safer Bill 2024

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Submission by Project Paradigm, IFYS to the Justice, Integrity and Community Safety Committee Inquiry into Making Queensland Safer Bill 2024.

Project Paradigm welcomes this opportunity to make a submission to the Justice, Integrity and Community Safety Committee Inquiry into Making Queensland Safer Bill 2024. Please note that our submission is set foundationally alongside The Convention on the Rights of the Child. We provide commentary in reference to the following proposed actions.

Amending the *Youth Justice Act 1992* to:

- remove the principle of detention as a last resort and that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community;

Amending the *Children's Court Act 1992* to:

- enable the media to be present during criminal proceedings by omitting the ability of a court to make an exclusion order under section 20(2).



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Background

IFYS had its inception as a youth shelter on the Sunshine Coast over 40 years ago. Much of the focus of its work in the early days was aimed at addressing what was referred to at the time as 'opportunistic prostitution' or 'child prostitution'. In the early 1990's the organisation was one of only 5 agencies state-wide, funded to provide detached outreach services to young people at risk across the Sunshine Coast region.

Today IFYS has a service footprint that covers from the Gold Coast in the South to the far North of Queensland as well as involvement in a number of national initiatives aimed at addressing child sexual abuse and exploitation. The organisation delivers a range of specialist support and intervention programmes for children, young people and families.

Our vision is a national community that acknowledges, understands and values childhood by committing to the protection of children and young people through collaboration, advocacy and support.

Nationally, through our Project Paradigm Programme, we are focusing on prevention and intervention for children and young people at risk of or experiencing child exploitation by:

1. Building the capacity of frontline professionals and communities to be able to identify and respond appropriately to child exploitation through the development and provision of training and resources.



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2. Contributing to the broader community of practice through research and advocacy activities.
3. Collaborating with stakeholders to achieve best outcomes for children and young people at risk of or experiencing child exploitation.

Fundamentally, our stance is that of ensuring that the best interest of the child is the primary consideration in all decisions captured within the proposed actions of the Making Queensland Safer Bill. As it stands, Queensland's youth justice systems are not fit-for-purpose to support the needs of children and young people. The proposed items **must** consider our nations obligations as a signatory to The UN Convention on the Rights of the Child. Intervention efforts should be rights based, trauma-informed, age-appropriate, rehabilitation and outcomes-focused and considerate of individual factors that contribute to their behaviour.

Australia ratified The UN Convention on the Rights of the Child in December 1990, committing to ensure that **all** children in Australia enjoy the rights set out in the treaty. These rights recognise children, and young people are unique and as such entitled to additional rights which recognise their specific needs to help them to thrive and develop their full potential. Special protection is afforded because of broad acknowledgment regarding their vulnerability to exploitation and abuse. This includes an acknowledgement that children who do offend, are some of the most vulnerable and disadvantaged members of our community. They often have complex and intersecting needs that include cyclical histories of maltreatment and undiagnosed disorders. It is for this reason that they should be afforded every opportunity for healing, rehabilitation and restoration.



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Media presence.

Against the backdrop of The UN Convention on the Rights of the Child (UN CRC) that we raise our concerns regarding the proposed measure of the Bill, attendance by media to be present at some Children's Court criminal proceedings.

At present, cases in the Children's Court (Magistrates Court) are always held in a closed courtroom to protect the accused child's identity, although the child's immediate family are allowed in court to support them. If a juvenile appears on an indictable offence in a higher court, even if the court is open to the public, they still cannot be identified. In Queensland, this applies to anyone aged 17 and under.

Foundationally, this proposed action impacts two Articles of the UN CRC. **Article 3 and Article 16 of UN CRC. Article 3 of the UN CRC** states that in all actions concerning children, the best interests of the child shall be a primary consideration. **Article 16 of the UN CRC** states children have an absolute right to privacy. The highest ethical and professional standards in reporting and covering cases of children must be observed such that in all publicity concerning children, the best interests of the child shall be the primary concern.

We are deeply concerned that granting media at some Children's Court criminal proceedings will not support the child's best interest and protect their privacy. Media is a powerful and influential mechanism, especially when there are few alternative viewpoints or voices expressed and is often used to generate moral panics and perpetuate negative stereotypes. Fears surrounding criminal young people are being frequently shared across social media and fuelled by mainstream media publications and a 24-hour news cycle. Dr Zahnows from University of Queensland and Professor Hickey from University of Southern Queensland have raised concerns about sensationalist reporting across community Facebook pages where young people are



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being named, shamed and doxed, positioning them as “folk devils” (Sato, 2023). Reporting inflames community tensions, distort perceptions of youth offending in incidence and severity, and drive calls for more punitive approaches (Lelliott et al, na)

Access means that children and their families could be subjected to varying levels of discrimination, hatred and community vilification, extending well beyond any penalties imposed. This in turn can have a disastrous effect on their long term emotional and physical well-being.

The fear of youth crime has seen gangs of community vigilantes observed across Queensland, rallying outside state residential care homes, calling out for children who are suspected of committing local crimes (Guenzler, 2023). Such tension has been fuelled by recent comments from politicians, media figures and social media commentators blaming children in out-of-home care for the perceived epidemic.

The criminalisation of children in out-of-home care is the subject of The Queensland Family & Child Commission 2018 publication which highlights that children living in out-of-home, especially residential care, often have complex needs resulting from abuse or neglect, including exposure to substance abuse or domestic and family violence. The impact of these experiences may manifest in an inability to regulate behaviours or difficulties with interpersonal skills. Living in out-of-home care has been shown to lead to an increased risk of negative behavioural outcomes in children. Children living in out-of-home care are often dealt with more harshly when they encounter the criminal justice system compared to children not living in out-of-home care. For example, they are more likely to be refused bail.

Research undertaken by James Cook University seeking to understand the experiences of young people in North Queensland involved in the juvenile justice



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system or at imminent risk, found themselves subject to heavy surveillance, excluded from the community and felt, physically, emotionally and culturally unsafe on public streets (Gair & Zuchowski, 2023).

It is our view that to avoid sensationalism, judgement and stereotyping, no information pertaining to the identification of children in court should be disclosed. This includes photographs, images or video footage of their faces or distinguishing features. The disclosure of any private or graphic detail of a case, including the medico-legal findings, in public, would constitute a violation of their privacy and confidentiality.

Victimising children in efforts to create 'open and transparent courtrooms', whereby the community can build 'trust' in the justice system ignores the responsibility and onus of the system being accountable to the scrutiny of the community. We would instead support the inclusion of an independent oversight committee, similar to the Child Death Review Board, that examines judicial decisions with parliamentary reporting and effective community input mechanisms for accountability. The focus of which would be to proactively uphold children's rights and addressing discrimination in sentencing.

A move to integrate media into courtrooms contravenes principle 9 of the *Youth Justice Act 1992* (Qld), which states that a child who commits an offence should be:

"(b) dealt with in a way that will give the child the opportunity to develop in responsible, beneficial and socially acceptable ways."



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We support the stance of criminal lawyer, Ms Kearney that, *"opening the doors to journalists to Children's Court has the potential to jeopardise the youth defendant's opportunities for a future and impact rehabilitation efforts."*

Detention as a last resort

Rewording youth justice principle 18 to remove the phrase "detention as a last resort," to "a child should be detained in custody, where necessary, including to ensure community safety, where other non-custodial measures of prevention and intervention would not be sufficient, and for no longer than necessary to meet the purpose of detention," leaves many questions around the application of the principle and poses certain implications.

Despite assertions in the media that Queensland is 'soft' on youth, the state currently locks up more children than anywhere else in Australia. In 2021-22, with detention centres overflowing, around 470 Queensland children – some as young as 10 – were held in adult watchhouses, inadequately equipped to provide care for children, for periods of up to 14 days (YAC, 2023). Reports indicate many watchhouses were overcrowded, children were self-harming, and a child was allegedly sexually assaulted (Lelliott et al, na).

The egregious undermining of rights for children held in detention were exposed by a damning 2020 report prepared for the Council of Attorneys-General with input from state, territory and Commonwealth justice departments, as well as 93 public submissions. Its details have not yet been publicly released (Tobin & Begley, 2022).

The report shows that children placed in detention have often experienced a life of significant disadvantage and marginalisation, with many being the victims of abuse



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and neglect (Tobin & Begley, 2022). Within this context it is also worth noting that there is an overrepresentation of Indigenous children experiencing incarceration. Young people in juvenile detention often experienced homelessness, domestic violence, substance abuse and have family members who have also experienced incarceration. Anecdotal reports reveal that children in detention experience high rates of self-harm, are confined to their cells for excessive periods during staff shortages or denied access to regular, stimulating physical activity (Orr, 2022). Aside from the potential harms of detention itself, evidence strongly shows that putting children in detention exacerbates rather than reduces rates of re-offending.

Holding children in detention facilities intended for adults is a direct contravention of **Article 37 of the UN CRC** which states, children who are accused of breaking the law should not be put in prison forever or put in prison with adults. Prison should always be the last choice and only for the shortest possible time. **Article 40 of the UN CRC** makes clear that children accused of breaking the law have the right to legal help and fair treatment. There should be multitude of opportunities to support these children become good members of their communities. Prison should only be the last resort. **Article 6 of the UN CRC** the **UN CRC** says governments must make sure that children survive and develop in the best possible way. **Article 31 of the UN CRC** says every child has the right to rest, relax, play and to take part in cultural and creative activities and **Article 19 of the UN CRC** explains that governments must protect children from violence, abuse and being neglected by anyone who looks after them.

A multidisciplinary assessment of 99 children held in youth detention in Western Australia's found 89 per cent had at least one severe neurodevelopmental or mental health disorder. These disorders included Foetal Alcohol Spectrum Disorder (FASD), intellectual disability, Attention Deficit Hyperactivity Disorder (ADHD), trauma/attachment disorders, depression, anxiety, learning difficulties, and speech and language disorders (Bower et al, 2018). The findings highlight that many, if not



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most, incarcerated children with a chronological age of 10 years are likely to have a functional age much younger, impacting impulse control and decision making.

Article 23 of the UN CRC clearly states that every child with a disability should enjoy the best possible life in society. Government should remove all obstacles for children with disabilities to enable them to become independent and be able to participate actively in the community. The ABC reported in April 2023 a story about Jordan, a disabled child of 16, held in Townsville detention over the course of three months, awaiting sentencing — not convicted of any crime (Fanning, 2023).

The Youth Justice Principles underpin the *Youth Justice Act 1992* and include two key elements pivotal to our concerns, namely that consideration should be given to a child's age, maturity and, where appropriate, cultural and religious beliefs and practices, and that the youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.

Cheryl Axleby, co-chair of Change the Record said: "All the medical evidence shows that detention only causes harm to children and young people. This harm can be life-long... Governments should be building homes, not prisons, and making sure kids and families have access to the services they need and aren't forced to live in poverty," (Orr, 2022).

Exposure to the criminal justice system from a young age is, among other things, linked to difficulties with employment, finding stable housing, lower educational attainment, and poorer health outcomes. It can also lead to children engaging with crime as a 'way of life'. Once children are engaged with the criminal justice system, this often locks them into a cycle of more serious and persistent offending and detention. In turn, this has deleterious impacts for them and for community safety (Lelliott et al, na).



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This echoes **Article 2 of the UN CRC**, that children have the right to food, clothing and a safe place to live so that they can develop in the best possible way. The government should help families and children who cannot afford this.

Clarity regarding the term 'ensure community safety' is necessary alongside what is deemed 'no longer than necessary' and 'meet the purpose of detention.' We would be seeking explicitly detailed maximum detention periods so that children are not detained for extended or indefinite periods.

Principle 9 of the *Youth Justice Act 1992* (Qld), states that a child who commits an offence should be:

(c) dealt with in a way that strengthens the child's family; and

(d) dealt with in a way that recognises the child's need for guidance and assistance because children tend to be dependent and immature.

Removing children from their families, communities and opportunities for loving, supportive guidance and assistance is in direct contravention of **Article 5 of the UN CRC** and is counterproductive to Queensland Government's plan of ensuring the development of healthy, safe, vibrant communities, where people are empowered to connect, participate, contribute and thrive.

In conclusion, Project Paradigm strongly advocates for the proposed actions of the Making Queensland Safer Bill 2024 to be rights focused, trauma-informed, age-appropriate, rehabilitation and outcomes-focused and considerate of individual factors that contribute to behaviour it is our view that the current punitive and incarceration focused policy and practice discourses undermines The UN Convention on the Rights of the Child, of which Australia is a signatory. As documented by Save



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the Children (2023), child's rights should be relevant across all aspects of youth justice system – from preventing any formal contact with youth justice to initial police contact, remand and bail, court processes and procedures, sentencing, detention and post-detention and not tokenistically in policy.

Project Paradigm supports PeakCare Queensland's *Stop Youth Crime – Get smarter not tougher* (YAC, 2023), open letter to Queensland Parliament which emphasises that whilst the community should be concerned about children who break the law, children also constitute the majority of crime victims and experience historical, environmental, institutional and service system deficiencies and failures on their journey to incarceration.

Children and young people who enter the youth justice system are often 'crossover children', who first had contact with the child protection and out-of-home care systems, before then entering the youth justice system. The current system fails to integrate justice services with other social services. Children and young people can often have difficulty in accessing trauma-informed, culturally safe and responsive services. Inadequate assessments lead to children and young people's underlying circumstances and needs not being identified and responded to – which ultimately exacerbates rates of recidivism.

In order to adequately address the issue of community safety, it is crucial that we first address the drivers - child poverty, youth homelessness, family violence, whilst increasing the number and range of specialised youth mental health services, alcohol and drug treatment services, child protection, family support, early education and mentoring programs.



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