Making Queensland Safer Bill 2024

Submission No:	103
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Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

The Queensland government does not need to choose between kids and community safety : Submission to the Justice, Integrity and Community Safety Committee on the Making Queensland Safer Bill 2024

Who has endorsed this submission

This submission is endorsed by the First Nations Non-Government Alliance, OzChild, Mackillop, Act for Kids, Key Assets and Life Without Barriers

Recommendation

We recommend that the legislative changes in the Making Queensland Safer Bill 2024 (the changes) not be made.

The Queensland government understands justice involved children have often experienced social and economic disadvantage and can be disengaged from school and carry scars from adverse childhood experiences. The Queensland government has invested in early intervention programs and diversionary and restorative justice schemes. Such initiatives can build stronger families and communities and more resilient, hopeful kids. We recommend that the Queensland government look deeply at what is working – both in Queensland and other jurisdictions – and focus resources on expanding and enriching existing non-punitive, community driven approaches to youth offending. Strengthening and growing alternative, trauma-aware responses to antisocial behaviour by children enables detention as a last resort to remain embedded in legislation and practice.

The consultation timeframe has prevented us from providing further detail as to what we understand to be currently working in the youth justice space across Australia, however, we can provide further information should the consultation period be extended.

Issues raised in relation to changes

Supporting communities to be safe is preferable to promising community safety.

We recognise that the government's analysis of recent youth offending shows that while the rate of youth offending has decreased, there has been an increase in children and

young people committing more serious and violent crimes. We note that the source data for the analysis is not readily publicly available.

The Statement of Compatibility recognises that there may be less restrictive options and that the changes are in direct response to "growing community concern and outrage". We submit that the rate of youth crime and its effects have been conflated through media reporting and public debate. Some critics of media coverage report it to demonise vulnerable children.[1] No real attempt has been made to deescalate community fears fuelled by misinformation, and other common worries about cost of living and housing affordability. We note that the rates of youth offending are not as alarming as the rates of domestic and sexual violence, particularly that experienced by women and children within their homes. That youth offending is an easy target does not make it a worthy target.

An opportunity is being missed to make communities part of the solution, including through investing in programs which discourage youth offending by giving children somewhere to go, mentors to trust and jobs to do or work toward. Consideration needs to be given to the root causes of offending, and resources committed to addressing them. As said above, the Queensland government has already progressed such work, and we enthusiastically call for it to be continued and expanded.

The changes do not reflect current research and understanding around offending behaviour in children.

Punishment and accountability as represented in the Bill will not reduce youth crime. The effectiveness of justice supervision and detention as responses to offending behaviour in children has long been disproven, particularly for children with some disabilities. A punitive approach has limited value in reducing reoffending and deterring others.

Due to their developing brains, children are impressionable, with impulse-control, empathy and understanding of consequences still developing past their 18th birthday. United Nations General comment No. 24 was reissued in 2019 due to "promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice".[2]

It is unhelpful for records of all youth justice events to follow a person into adulthood. The changes as they relate to records of youth justice involvement effectively continue to punish older children and adults for experiences had when they were less accountable

[1] ABC News, "Media sensationalism is demonising vulnerable children, UQ Researcher says", Media sensationalism is demonising vulnerable children, UQ researcher says - ABC News, accessed on 1 October 2024

[2] General comment No. 24 (2019) on children's rights in the child justice system

for their behaviour, more vulnerable and facing different challenges. By way of example, homelessness, poverty and undiagnosed disability are drivers of youth offending, and it is unfair for a person to continue to be judged on behaviour predicated by such trauma.

The changes do not recognise that children between 10 and 17 can be subject to Queensland's youth justice system. We submit that maintaining 10 as the minimum age of criminal responsibility for *any* offence contravenes human rights and disregards child development. We reiterate that we do not support the application of adult sentencing rules to **any age child**, for any offence. However, if this approach is adopted, the availability of adult sentences for children should only apply to children 14 and up. We submit that if the bill is proceeded with, it should be amended to raise the minimum age of criminal responsibility from 10 to 14 for **all offences**.

The changes are inconsistent with Australia's commitment to key international Human Rights instruments and Queensland's human rights framework.

The Statement of Capability observes:

"The amendments are in conflict with international standards regarding the best interests of the child with respect to children in the justice system, and are therefore incompatible with human rights."

Australia is signatory to 7 international human rights treaties, however progress toward comprehensively embedding these in domestic law has been slow. Queensland is one of three states and territories with a human rights framework underpinned by legislation. In December 2023 the Australian Human Rights Commission (AHRC) issued its Free and Equal Report, recommending a Federal Human Rights framework, and in May 2024, the Parliamentary Joint Committee on Human Rights supported AHRC's recommendations. AHRC's report Help way earlier![3] raised concerns that Australia's youth justice systems do not adequately recognise, promote or protect the human rights of children. Following this, youth justice was referred to a Senate Inquiry to be considered through a human rights lens, with the outcome due in February 2025. It is curious the changes require the QLD HRA to be overridden against the backdrop of these inquiries and the current human rights dialogue.

While the anticipated Federal model, and each of the State instruments, does not allow the human rights framework to invalidate another law, the expectation is that legislators will in good faith strive for consistency. Failing to recognise the importance of human rights in youth justice discourse undermines Australia's commitments to the

[3] Australian Human Rights Commission 2024, *'Help way earlier!':How Australia can transform child justice to improve safety and wellbeing*. Sydney, Australian Human Rights Commission.

international community. To continually legislate against Queensland's own Human Rights Act is to dismiss the goal of a fairer Queensland.

Of significant concern is the complete removal of the principle of detention as a last resort. The Statement of Capability reflects that removing the principle not only contravenes the UN Convention of the Rights of the Child and its reflection in the Human Rights Act 2019, it "creates a sentencing system where adults are better protected from arbitrary detention" and "will likely have greater impact on Aboriginal and Torres Strait Islander children". We challenge the conclusion that making "offenders more accountable for their offending" is a legitimate purpose given that doing so is unlikely to address youth offending in a meaningful way.

The principle should not be seen as a barrier to an effective youth justice response. Rather the incompatibility is an invitation to invest in sourcing more effective alternatives to detention. The principle is a call to action and the changes represent a failure to rise to the challenge.

The changes do not consider factors which make a child more likely to become justice involved.

The "Adult time for adult crime" approach fails to recognise that many children experiencing the youth justice system have life experiences which impact their capacity to avoid offending behaviour and then understand the subsequent youth justice processes. The ineffectiveness and unfairness of such an approach to youth offending increases where a child experiences additional challenges and vulnerabilities. Queensland Department of Youth Justice reports that of the 3281 youth offenders in the 2023-2024 financial year, 53% have experienced domestic violence, 44% have a mental health or behavioural disorder and 44% have a disability. The University of Queensland reported in 2023 that of children in custody in Queensland, 26% were subject to a child protection order, 44% had been in unstable or unsuitable accommodation, 18% had a cognitive or intellectual impairment, 17% diagnosed post-traumatic stress disorder; and 5% had autism[4]. The changes serve to punish children who have become offenders due to unsafe childhoods or facing barriers to engaging positively in their communities.

The changes ignore lack of capacity in the current justice system.

Queensland has the highest rate of children in detention in Australia, with 5 children per 10,000 detained, compared with 3 per 10,000 Australia-wide and the highest number of

[4] Tamara Walsh, Jane Beilby, Phylicia Lim, Lucy Cornwell, University of Queensland, *Safety Through Support : Building safer communities by supporting vulnerable children in Queensland's Youth Justice System, 2023, p 4*

children on remand.[5] For some children being on remand limits their access to educational, vocational or rehabilitation programs.

There is a review almost completed into the use of watch-houses in Queensland, with the outcome due on 11 December 2024. This review was prompted by the recognition that 75,000 people were managed in watch-houses each year, and that around 10% of these were children. People are being held in watch-houses for multiple nights, sometimes up to two weeks. These facilities are not designed as places of detention and are not fit for how they are currently used. This is occurring due to current corrections facilities being at capacity and understaffed and the justice system being overwhelmed with the matters needing to be managed.

The AHRC found that Australia's youth justice systems are not fit for purpose. The AHRC addressed as barriers to systemic reform: systemic racism; lack of coordination and collaboration between services and systems; limited workforce capacity and use of punitive responses; pervasive tough on crime rhetoric; failure to prioritise the rights and wellbeing of children. These barriers were identified across Australian jurisdictions. We are concerned that the Queensland youth justice system is struggling to appropriately and effectively manage the currently detained offenders and does not have the capacity to appropriately manage increased rates of youth detention.

The changes will see more Aboriginal and Torres Strait Islander children detained for longer periods of time.

We cannot understand how the Statement of Compatibility refers to the disproportionate impact of the changes on Aboriginal and Torres Strait Islander children 7 times yet does not find the changes to be discriminatory on the ground of race. We do not agree with this construction of the human rights protections, nor the proposed changes. The current rate of justice involvement for Aboriginal and Torres Strait Islander children is unacceptable, and a harder youth offending approach will see this rate increase. The changes undermine the Queensland Government's Closing the Gap commitment to reduce Aboriginal and Torres Strait Islander children entering the youth justice system.

Non-Aboriginal or Torres Strait Islander children and young people are twice as likely as Aboriginal or Torres Strait Islander children to receive diversionary responses from police such as fines or cautions. This means Aboriginal and Torres Strait Islander children who offend are more likely than similarly offending non-Aboriginal or Torres Strait Islander peers to be before a court and subject to the amended legislation. In Queensland 50% of children before the Court are Aboriginal or Torres Strait Islander, and 70% of the children

[5] Walsh et al, p 4.

in detention are Aboriginal or Torres Strait Islander.[6] We call on those examining the changes to recognise that a contributor to the overrepresentation of Aboriginal and Torres Strait Islander children and young people in youth justice is 'indirect racial discrimination or bias' within the criminal justice system, and the changes compound this.[7] We are additionally concerned that the changes do not adequately recognise the lack of cultural safety afforded by youth justice systems, and the impact on the welfare of Aboriginal and Torres Strait children of being detained away from community and country.

Investing in alternatives to detention to enable it to remain a last resort and concerning the opportunity to make communities part of the solution are imperative for Aboriginal and Torres Strait Islander children. We encourage further consideration of research and thinking such as that of Cunneen et al with Jumbunna Institute for Indigenous Education and Research which speaks to the benefits of Aboriginal sovereignty and shared jurisdiction and the benefits of partnering with local organisations, including collaborations between police and Aboriginal organisations[8].

The changes curtail judicial discretion to accommodate youth.

The "Adult Crime for Adult Time" approach and the expectation that media, victims and other interested parties attend proceedings position the offender as "bad" and the victim as needing "justice". The proposed model assumes media and bystanders are responsible and open in their agendas. However, offending is nuanced, youth offending more so. Currently the legislation operates to provide that where a child commits a serious or violent offence, they can be sentenced to a maximum of 10 years *unless the Court finds the offence particularly heinous*. Currently the legislation enables the court to determine who is present, considering any vulnerabilities of the offender. The changes undermine the Court's expertise in considering the circumstances of each case, *including both the nature of the offence, the experience of the victim and the age of the offender.*

The changes are unlikely to reduce the long-term costs of youth offending.

It is widely understood that punitive measures do little to deter offenders, and experiencing prison significantly and negatively impacts the social, educational and vocational opportunities that inform a child's life outcomes. The longer any person, child or adult, is detained, the harder it is for them to re-enter the community and lead productive lives. The changes are built on a response to community fears which will offer

[6] Walsh et al, p 4.
[7] Chloe Boffa and Anita Mackay, "Hyperincarceration and human rights abuses if First Nations children in juvenile detention in Queensland and the Northern Territory", *Current Issues in Criminal Justice*, 2023
[8] Professor Chris Cunneen, Dr Amanda Porter, Professor Larissa Behrendt Jumbunna Institute for Indigenous Education and Research University of Technology, Sydney. 2018 Discussion Paper : Aboriginal Youth Cautioning.

little more than the illusion of something being done and will put further strain on an already challenged system.

Conclusion

We welcome the Committee's inquire into the Making Queensland Safer Bill and trust the above is helpful. We recognise that experiencing crime is a terrible thing, and that the community has worries in relation to youth offending, however we submit that the proposed measures will not make a long-term difference to the social and economic impacts of youth crime. We call on the Queensland government to reconsider its approach and recognise the importance of investing in ways to address the root causes of youth offending.

Should you have any questions about this submission, or would like to discuss youth justice generally, please email Sophie Clarke, Senior Policy and Advocacy Lead, Life Without Barriers at [redacted].