Making Queensland Safer Bill 2024

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ANTAR

Submission: Making Queensland Safer Bill 2024

With thanks: This submission was authored by Ms Jessica Johnston, ANTAR Research and Policy Officer.

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Email: hello@antar.org.au
Phone: 02 9280 0060
PO Box 77
Strawberry Hills NSW 2012

ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

About ANTAR

ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy, and lobbying.

ANTAR is campaigning for the implementation of the Uluru Statement from the Heart, now focused on the establishment of a Makarrata Commission to oversee national agreement making and truth-telling as well as processes that promote the agency of First Nations people. We actively support State and Territory-based voice, treaty and truth-telling processes.

We also engage in national advocacy across various policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

> **"First Nations children are disproportionately affected by the failing 'tough on crime' approach and these sloganised approaches only serve to perpetuate racial profiling and negative stereotyping."**

Katie Kiss, Aboriginal and Torres Strait Islander Social Justice Commissioner[1]

Introduction

ANTAR welcomes the opportunity to provide commentary and recommendations to the Justice, Integrity and Community Safety Committee on the Making Queensland Safer Bill 2024.

As a non-partisan advocacy organisation working for justice, rights and respect for First Nations peoples in Australia, ANTAR is extremely concerned about the many regressive and punitive legislative changes proposed in the Making Queensland Safer Bill 2024 (hereafter 'the Bill'), which we strongly oppose. ANTAR is particularly concerned about the extent to which the proposed changes in the Bill will negatively impact Aboriginal and Torres Strait Islander children, who are already grossly overrepresented in criminal legal systems in Queensland.

We are also alarmed by the unreasonably short and undemocratic timeframe granted to the Committee to properly scrutinise the legislation and reflect on the submissions from communities, organisations and individuals, in particular the voices of First Nations peoples and children who will be disproportionately and negatively impacted by the Bill.

The following submission covers ANTAR's key concerns with the Making Queensland Safer 2024 Bill, particularly as they relate to First Nations children in Queensland. We also endorse the joint submission authored by Change the Record, Australia's only First Nations-led coalition of Aboriginal Community Controlled Organisations, legal, health, and family prevention experts, together with the Human Rights Law Centre, and urge the Committee to heed the recommendations put forward by Aboriginal and Torres Strait Islander community-controlled organisations and communities. First Nations communities know what is best for their people, and must be heard and respected.

[1] "Ineffective approaches to child justice creating more problems than they solve", Australian Human Rights Commission, 10 July 2024.

Context

First Nations children make up only 7.7 percent of those aged 10–17 years old in the general population in Queensland, but 66 percent of those of the same age under youth justice supervision (which includes detention as well as supervised community-based sentences, such as probation).[2] The over-representation of First Nations children aged 10–17 in detention in Queensland is even worse. On an average day in 2022-23 in Queensland, 71 percent of First Nations children aged 10–17 were in detention, which is 29 times the rate of non-Indigenous children of the same age.[3]

The Statement of Compatibility for the Bill acknowledges and accepts the disproportionate negative impact this Bill will have on First Nations children, as well as the already crisis-level overrepresentation of First Nations people more broadly in the criminal legal system in Queensland. In the statement, Attorney-General and Minister for Justice and Minister for Integrity Deb Frecklington states that the amendments do not directly or indirectly discriminate based on race.[4] In the same paragraph, Minister Frecklington admits that "the amendments are expected to have a greater impact on Aboriginal and Torres Strait Islander children, who are already disproportionately represented in the criminal justice system", and that they "could result in more Aboriginal and Torres Strait Islander children being imprisoned for periods of time."[5]

ANTAR wishes to remind the Minister, and the Committee more broadly, that the Royal Commission into Aboriginal Deaths in Custody more than thirty years ago found that the disproportionate overrepresentation of First Nations people in criminal legal systems across Australia, including children, is a direct consequence of 'structural, systemic injustice to a disadvantaged minority rather than in a propensity in this group to increased criminality'.[6] This structural injustice, stemming from colonisation, includes systemic racism at all levels and stages of the criminal legal system, including policing, as well as in law and policy making. It is thus both incorrect and misleading to suggest that the Making Queensland Safer Bill 2024 will not discriminate based on race.

[2] Youth Justice in Australia 2022-23, Queensland Factsheet (Tables S130a and S143), Australian Institute of Health and Welfare, 28 March 2024.
[3] Youth Justice in Australia 2022-23, Queensland Factsheet, Australian Institute of Health and Welfare, 28 March 2024. See Tables S131b and S131c for detention rates.
[4] Statement of Compatibility, Making Queensland Safer Bill 2024 (2024): 5.
[5] ibid
[6] Royal Commission into Aboriginal Deaths in Custody, Final Report, 1991.

The proposed changes in the Bill are and will be, in no uncertain terms, a continuation (and in fact worsening) of systemic racism toward First Nations people, including through discriminatory law making such as the Bill. Taken together with other regressive policy making in Queensland – including the low minimum age of criminal responsibility and the recent repeal of the Truth-telling and Healing Inquiry – Queensland is sending a loud and clear signal that the inherent rights of Aboriginal and Torres Strait Islander people, including their right to self-determination, are not a priority for the Queensland Government.

Many First Nations children at risk of involvement with the criminal legal system face unique challenges of intergenerational trauma, institutional racism and social disadvantage in addition to the larger range of issues affecting children engaged with criminal legal systems. These systems often trap First Nations people in cycles of re-imprisonment.[7] This is particularly true and damaging for children, for whom contact with the so-called 'justice' system in early life exacerbates and increases the likelihood of poverty, instability and incarceration.[8]

This early contact of children with the criminal legal system also fails to make communities safer. It is widely established in research on recidivism and youth justice that the younger a child is at their first sentence, the more likely they are to reoffend (with any offence),[9] to reoffend violently, and to continue offending into the adult criminal jurisdiction.[10] These children are also more likely to be imprisoned in adult prison before their 22nd birthday.[11] A recent research report on recidivism found that of the children who are sentenced to detention, 80 percent will return to youth justice supervision within 12 months.[12]

What this means is that the punitive and harsh amendments proposed in the Making Queensland Safer Act 2024 will in fact make Queensland communities *less* safe, creating the conditions for children who are not met with appropriate supports and

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[7] Chris Cunneen, 'Surveillance, Stigma, Removal: Indigenous Child Welfare and Juvenile Justice in the Age of Neoliberalism', *Australian Indigenous Law Review*, vol. 19, no. 1, (2015): 42

[8] Donald, B. B. 'Effectively addressing collateral consequences of criminal convictions on individuals and communities' *Criminal Justice*, vol. 30, no. 4 (2016): 33.

[9] 'Review of the age of criminal responsibility', Australian Human Rights Commission (26 February 2020): 11.

[10] Children Who Enter the Youth Justice System Early Are More Likely To Reoffend, Sentencing Advisory Council, 2016.

[11] ibid

[12] Walsh, Tamara, Beilby, Jane, Lim, Phylicia, and Cornwell, Lucy, *Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system*. Brisbane, QLD Australia: The University of Queensland (2023)

rehabilitation to grow into adults who are more likely to be trapped in cycles of offending.

Summary of Recommendations

ANTAR strongly recommends the Making Queensland Safer Bill 2024 should not be passed.

Instead of overriding the *Human Rights Act 2019*, removing the principle of detention as a last resort and sentencing vulnerable and at-risk children as if they were adults, ANTAR recommends the Queensland government commit to truly comprehending and treating the root causes of youth crime by enacting the following evidence based recommendations:

1. Raise the minimum age of criminal responsibility (MACR) from 10 to at least 14 years old with no exceptions, as well as the minimum age of detention to at least 16. As part of this, ensure all children under the age of 14 are not incarcerated or otherwise criminalised under the legal system, consistent with current medical understanding of child development and contemporary human rights standards;
2. Urgently fund and implement an alternative, community service-led response to children under the age of 14 years old who are interacting with the criminal legal system. This alternative response model, where it concerns First Nations children, must be designed and led by Aboriginal and Torres Strait Islander community-controlled organisations (ATSICCOs) and First Nations communities themselves;
3. Immediately cease using watchhouses to detain children under court ordered custody in Queensland;
4. Prioritise holistic and comprehensive early intervention services and supports through expansion of the Gold Standard Early Intervention investment, including community-led programs focused on prevention and culturally responsive diversion that are evidence based, trauma informed, culturally safe, therapeutic, rehabilitative and non-punitive;
5. Increase investment in place-based and community-led justice reinvestment, with funds currently allocated to increasing capacity of or constructing new youth

detention centres instead redirected toward early intervention community programs using principles of justice reinvestment;

6. Provide sustainable long-term funding to and power-sharing with ATSICCOs, as per Priority Reform 1 and 2 of the National Agreement on Closing the Gap;
7. Renew investment toward Community Justice Groups (CJGs) and expand Murri Courts across Queensland, including providing sustainable funding for operation of the existing Courts;
8. Amend legislation to favour and invest in culturally appropriate pre-charge diversion programs and measures including warnings, cautions and 'On Country' programs in order to ensure that all First Nations children at risk of criminal legal system contact across Queensland have an opportunity to participate.

If the Bill is to be passed, ANTAR recommends the Queensland government:

9. Amend the Bill to remove all non-violent offences, including burglary and unlawful use of a motor vehicle, from the list of offences for which a child can be sentenced as an adult under the 'Adult Crime, Adult Time' category;
10. Failing that, amend the Bill to ensure that restorative justice orders remain an available option for all non-violent offences under the 'Adult Crime Adult Time' category, including under under Sections 175(1)(da) or (1)(db) of the *Youth Justice Act 1992*;
11. Amend the Bill to ensure that the new maximum penalties for 'Adult Crime, Adult Time' offences therein only apply to kids aged at least 14 years and older;
12. Amend the Bill to ensure that the principle of detention as a last resort is retained under the *Youth Justice Act 1992*; and
13. Include a sunset clause to facilitate a 12-month review of the impact and appropriateness of the amendments that result from the passing of the Bill.

Adult Crime, Adult Time

There is very good evidence to suggest that the punitive sentencing principles of the kind proposed in the Bill are at odds with the way children make decisions, and thus do not work to deter children from crime.[13] This research – backed up by decades of

[13] Crofts, T., Delmage, E., & Janes, L. Deterring Children From Crime Through Sentencing: Can It Be Justified? *Youth Justice*, 23(2) (2023): 182-200.

evidence from legal, criminological and neuroscientific perspectives – should be of particular interest to the Queensland Government, as they state numerous times in both the Statement of Compatibility and the Explanatory Notes to the Bill that they are "committed to implementing a range of measures to deter young people from committing serious crimes in the community, and reducing the number of victims that are caused harm by these young offenders."[14]

While we have no doubt that the Queensland Government are committed to treating youth crime as a serious issue and wish to demonstrate to the community that youth offending will be treated seriously, the proposed 'Adult Crime, Adult Time' changes in the Bill – including the amendment of s 150 (Sentencing principles) in Division 2 Section 15 that propose that during sentencing, courts must not have regard to (a) any principle that a detention order should only be imposed as a last resort; or (b) any principle that a sentence that allows the child to stay in the community is preferable – will in fact work against the Government's stated aim to deter children from committing crimes.

We acknowledge that many Queenslanders are concerned about crime rates and want to see action from the Queensland Government that will improve community safety. ANTAR strongly believes, however, that many Queenslanders would not support the Bill in question if they were properly educated on what works to reduce crime, including the many evidence-based First Nations and community-led alternatives to incarceration. Furthermore, we believe the public would withdraw their support for the proposed legislation if they knew the extent to which harsher sentences and detention for children as young as ten are proven to make communities more vulnerable to further crime. While the vast majority of children who commit crimes will 'age out' of offending once they reach adulthood, research demonstrates that bringing children into criminal legal systems in fact increases the chances that they will reoffend (including into adulthood).[15]

It is ANTAR's position that courageous political leadership includes the responsibility to raise awareness among the wider community on evidence-based solutions and policymaking, not to capitulate to uninformed demands and contribute to

[14] Statement of Compatibility, Making Queensland Safer Bill 2024 (2024): 1.
[15] Walsh, Tamara, Beilby, Jane, Lim, Phylicia, and Cornwell, Lucy, Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system, The University of Queensland (2023): 4.

misunderstanding and fear-mongering through slogans and punitive lawmaking like 'Adult Crime, Adult Time'.

While ANTAR unequivocally does not support the amendments in the Bill – and does not support the incarceration of any child for any crime – we are particularly concerned about the inclusion of certain non-violent crimes in the thirteen offences that have been listed in the Bill relating to 'Adult Crime, Adult Time'. We note that the inclusion of non-violent offences are not what the Crisafulli Government campaigned on prior to the Queensland state election with respect to community safety. Furthermore, we are gravely concerned that the inclusion of these non-violent offences – in particular burglary and unlawful use of a motor vehicle – will contribute to 'net-widening', drawing more children with non-serious offending behaviours (for example, being in the backseat of a motor vehicle during unlawful use or joy riding) into punitive systems that exacerbate, rather than deter, future offending and diminish their human rights.

To ensure the proposed Bill does not inadvertently result in the overuse of detention for non-violent offending and 'net-widening', both of which will threaten community safety over the short and long term, ANTAR recommends the Bill be amended to remove all non-violent offences from the list of offences for which a child can be sentenced as an adult, including within burglary and unlawful offence categories.

If the Government insists on keeping non-violent crimes in the list of offences in the Bill, ANTAR supports the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)'s recommendation that restorative justice orders remain an available option for non-violent offences under the 'Adult Crime Adult Time' category. This ensures accountability and rehabilitation while reducing the overuse of detention for offences that can be effectively addressed through restorative justice solutions.

Removing restorative justice as an option for non-violent offences classified as 'Adult Crime Adult Time', as the Bill proposes, undermines evidence-based approaches that have been proven to reduce reoffending and foster meaningful accountability in transformative and rehabilitative ways. This also denies opportunities for victims to engage constructively in restorative justice processes.

Human rights-based approach

It is of particular concern to ANTAR that the proposed changes in the Bill are – as the Statement of Compatibility so clearly articulates – incompatible with human rights.[16] The Statement further admits that the Bill's amendments will lead to sentences for children that are more punitive than necessary to achieve community safety.[17] ANTAR challenges the Committee, and the Queensland Government more broadly, to defend the need for lawmaking that not only directly deprives children of their basic human rights, but does so in full admission that it is in fact delivering more punishment than is necessary to be effective.

This kind of excessive punishment ventures into the territory covered by the categories of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and runs contrary to Australia's obligations under Article 7 of the International Covenant on Civil and Political Rights (ICCPR), Articles 1, 2, 3, 13, 14, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).[18]

ANTAR is particularly alarmed by the Bill's proposal to not only disregard the principle of detention as a last resort for children, but to prohibit courts from having any regard to the principle. The principle of detention as a last resort is enshrined in the United Nations Convention on the Rights of the Child (UNCRC), which Australia ratified in 1990. Likewise, ANTAR is deeply concerned by the Bill's proposal to amend the *Youth Justice Act 1992* (YJ Act) to remove the current restrictions on minimum or mandatory sentences for children for thirteen offences under the *Criminal Code Act 1899* (the Criminal Code). These amendments will mean that children who are found guilty of these offences – which include certain non-violent offences – will be subject to the same minimum, mandatory and maximum sentences which currently apply to adult offenders in the Criminal Code.[19]

Australia's human rights obligations under the UNCRC set out that children should only ever be arrested, detained, or imprisoned as a measure of last resort, for the shortest

[16] Statement of Compatibility, Making Queensland Safer Bill 2024 (2024): 2.
[17] Statement of Compatibility, Making Queensland Safer Bill 2024 (2024): 5.
[18] Prohibition on torture and cruel, inhuman or degrading treatment or punishment. Public sector guidance sheet, Attorney-General's Department, Australian Government, nd.
[19] Statement of Compatibility, Making Queensland Safer Bill 2024 (2024): 3.

period of time, and that all efforts should be made to apply alternative measures.[20] Queensland's own *Human Rights Act 2019* stipulates that a child who has been convicted of an offence must be treated in a way that is appropriate for the child's age, as well as taking into account the promotion of the child's rehabilitation.[21] The amendments contained in the Bill could not be further from respecting these principles. Overriding these human rights principles is not only a breach of Australia's obligations under international law, it is a deeply disturbing moral and ethical failure. Proposing to sentence and punish children as adults at the same time as federal legislation is introduced to prevent children under the age of 16 from using social media in order to prevent mental and physical harm – based on the evidence that children's cognitive and emotional development differs significantly from that of adults – is both contradictory and absurd.

Article 37(c) of the UNCRC states that 'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age'. The Bill's 'Adult Crime, Adult Time' amendments are in direct contravention of this right, of the principles contained in the UNCRC more broadly, and of the Beijing Rules. The Bill's accompanying Statement of Compatibility again clearly admits and accepts this when it states that "Increasing the prospects of detention and increasing the length of detention limit the rights of a child to protection in their best interest (section 26(2) of the HR Act) and the right to liberty (section 29(1) of the HR Act)" and that "the amendments are in conflict with international standards regarding the best interests of the child".[22]

The proposed amendments in the Bill are also in direct contravention of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which outlines that:

> States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.[23]

[20] United Nations Convention on the Rights of the Child, arts 37(b), 40(3)(b); Human Rights Act 2019 (Qld), s 26(2).
[21] *Human Rights Act 2019* (Qld), Division 2, 32(3) and 33(3).
[22] Statement of Compatibility, Making Queensland Safer Bill 2024 (2024): 4.
[23] United Nations Declaration on the Rights of Indigenous Peoples, Article 21, United Nations.

UNDRIP also recognises "in particular the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child".[24] It is ANTAR's view that culturally safe and community-led pathways of restorative justice, rehabilitation and reintegration of First Nations children who have committed offences or are at risk of doing so are fundamental aspects of the 'upbringing, training and education of children', and are thus ultimately the right and responsibility of First Nations communities and families to determine, consistent with the rights of the child. Decisions about the discipline and rehabilitation of First Nations children should be made by their communities, consistent with their rights under UNDRIP, and the Queensland Government must adhere to the principle of free, prior and informed consent (FPIC) at all times when engaged with First Nations communities.

Addressing root causes: early intervention and diversion

Queensland detains more children each day and overall than any other state or territory and has the highest youth recidivism rate in Australia.[25] This alone is evidence of the fact that the largely punitive responses of the criminal legal system in Queensland are not addressing the root causes of crime and recidivism. Doubling down on this broken system, as the Bill proposes, will not produce better results. So what does work?

We know that children are less likely to engage in reoffending behaviours if they are given access to long term, flexible, holistic, trauma-informed and culturally responsive early intervention programs, as well as to system responses that prioritise maximum diversion and minimal intervention.

ANTAR notes that the newly elected Queensland Government plans to introduce 'Gold Standard Early Intervention' programs as part of its commitment to improving community safety and tackling crime, including the investment of $100 million for community-led initiatives with a focus on reducing crime, boosting education, training or employment.[26] The Queensland Liberal National Party (LNP) acknowledge the importance of these approaches, with their Gold Standard Early Intervention programs designed to "work with young people demonstrating early signs of criminal behaviour,

[24] ibid
[25] Report on Youth Justice Services, Report on Government Services 2023, Productivity Commission, 24 January 2023. See also: Walsh, Tamara, Beilby, Jane, Lim, Phylicia, and Cornwell, Lucy, Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system, The University of Queensland (2023): 4.
[26] LNP announces $100 million boost for Gold Standard Early Intervention, LNP, 30 September 2024.

providing holistic intervention to put them back on the right path."[27] The Bill in question, however, will weaken the diversionary and early intervention options available to many children in Queensland, punishing them before they have a meaningful opportunity to access and benefit from these Gold Standard Early Intervention programs that are proven to work.

There has been extensive research on the root causes driving young people's involvement in criminal legal systems, as well as the driving factors contributing to recidivism and re-incarceration. These include disability, trauma, exposure to child protection systems and family violence, social disadvantage and poverty, low education, as well as structural racism, none of which are adequately addressed by the 'tough on crime' amendments contained in the Bill. Jailing children will not solve trauma, poverty or structural disadvantage, and is not keeping our communities safe. Likewise, there is much research on protective factors against criminal legal system involvement for children, as well as evidence to suggest that First Nations children in particular do not have protective services readily available and accessible when they need them.[28]

Many children in criminal legal systems have at least some form of neurocognitive disability,[29] and have often experienced trauma – including being victims/survivors of domestic and family violence (itself a symptom of the intergenerational trauma that has been caused by the ongoing structure of settler-colonialism in Australia).[30] There is also significant crossover between criminal legal systems and child protection. Among children aged 10-13 years old, Queensland had the highest number nationally of children under youth justice supervision in 2022-23 who had interactions with the child protection system in the 10 years prior.[31] Of 2,557 children who were under youth justice supervision in 2022-23 in Queensland, 1,863 of these children had prior interaction with the child protection system.[32]

As Queensland Family and Child Commissioner Luke Twyford has previously submitted, the best way to keep the entire community safe is to make every effort to

[27] ibid
[28] Tamara Walsh et al, 'Safety through support', 20.
[29] Nine out of ten young people in detention found to have severe neuro-disability, Kids Research Institute Australia, February 2018.
[30] 'Intergenerational trauma & family violence in Aboriginal & Torres Strait Islander communities', Professor Victoria Hovane, and Dr Mark Wenitong, ANROWS keynote address, 2018.
[31] Crossover Cohort: Young people under youth justice supervision and their interaction with the child protection system Data Insights: Australian Institute of Health and Welfare, Queensland Family & Child Commission (November 2024): 2.
[32] Crossover Cohort, 3.

address the underlying factors of adversity and disadvantage that drive most offending.[33] Acknowledging these underlying factors leading children and young people into contact with the criminal legal system does not let them off the hook for their behaviour or de-prioritise the needs of victims. Rather, it moves beyond a punitive response to understand *why* children are making the choices they do, and how best to develop appropriate consequences and responses that will ensure they have the best chance at rehabilitation and restoration in order to prevent future offending. This honours the often grave impacts of crime on victims and ensures that the drivers of future crime are being properly anticipated and addressed.

Thus it is ANTAR's position that the Queensland Government's focus on Gold Standard Early Intervention strategies for children should be prioritised over the harsh and ultimately ineffective amendments proposed in the Bill, and that these early intervention strategies must be focused on the development and resourcing of social supports and programs that address root causes of social disadvantage as informed by First Nations children, families and communities themselves.

Further, ANTAR recommends the Queensland government increase resourcing to Aboriginal and Torres Strait Islander community-controlled organisations, who see only limited support for early intervention, prevention and diversion programs. A robust evidence base proves that intervention, prevention and rehabilitation are far more socially and cost-effective than continuing to imprison the most marginalised members of our communities.[34]

Justice reinvestment and community-led solutions

Recent data from the Productivity Commission shows that in Queensland, the cost of incarcerating a child has risen to more than $2,000 a day, with $218 million spent on children's incarceration each year in the state.[35] These costs will continue to skyrocket under the Making Queensland Safer Bill 2024, with more children sentenced to detention or detained while awaiting sentencing, despite existing capacity concerns. Queensland is building two new youth detention centres in addition to the already increased spending on youth detention centre capacity in 2019, with $150 million spent

[33] Inquiry into Youth Justice Reform in Queensland, Queensland Family & Child Commission Submission, 11 January 2024.
[34] Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Australian Law Reform Commission Report 133 (2017): 131.
[35] Alternatives to Incarceration in Queensland Full Report, Justice Reform Initiative (May 2023): 8.

on building the 32-bed West Moreton Youth Detention Centre and $27 million spent on expanding the Brisbane Youth Detention Centre.[36]

By contrast, there are many evidence-based justice reinvestment and community-led initiatives that have proven to be effective alternatives to incarceration, including holistic anti-violence programs, community restorative justice groups, Elder-led circle sentencing[37] and First Nations courts such as Murri Court, as well as self-policing initiatives such as barefoot patrols. These are self-determined, culturally appropriate initiatives that empower communities – and they work.[38] For example, the North Stradbroke Island Youth and Social Justice Working Group in Terrangeri, Queensland create justice reinvestment and restoration initiatives for the local community. The community-controlled initiative was founded by Elders and focuses on promoting self-pride, self-worth and belonging in Quandamooka youth through culturally-based models.[39]

Community Justice Groups (CJGs) currently operate successfully in over 41 Queensland communities. The $19.4 million invested into CJGs over four years to increase their capacity will expire soon.[40] ANTAR strongly recommends this funding is expanded and renewed. Murri Courts, which hold widespread community respect and have been proven to positively change lives, operate in 15 locations across the state but are still lacking in certain communities. In Logan, for example, there is no Murri Court despite the region having the fourth highest First Nations population in Queensland.[41] ANTAR calls for the establishment of new Murri Courts as well as increased and consistent funding, resourcing and support.

The funding of community-led solutions must also include upfront investment in place-based and community-led justice reinvestment, with the redirection of funds currently allocated to increasing capacity of youth detention centres toward early intervention community programs that address known risk factors for First Nations

[36] ibid
[37] Ivan Potas, Jane Smart, Georgia Brignell, Brendan Thomas and Rowena Lawrie 'Circle Sentencing in NSW: A Review and Evaluation' (2003)
[38] Dr Rhiannon Parker, Rethinking Australia's youth justice system by embracing child rights, Centre for Social Impact, 27 April 2023. See also: Community Strengthening Evidence Review: Evidence to Action Note, The Evidence Portal, NSW Government (December 2022)
[39] Alternatives to Incarceration in Queensland Full Report, Justice Reform Initiative (May 2023): 85.
[40] Grace Nakamura, 'Queensland Indigenous elders fed up with lack of support in current Logan court system', ABC News, 14 July 2023.
[41] ibid

children, where "their issues with the law are either as a direct result of, or compounded by, the issues they face in their daily lives".[42]

A more complete list of case studies that offer alternative approaches to the criminal legal system (including evidence-based alternatives to policing, mainstream court processes and remand, as well as recommendations for early intervention, crime prevention and in-prison programs) can be found in the Justice Reform Initiative's comprehensive report, Alternatives to Incarceration in Queensland.[43] We strongly recommend the Queensland Government is guided by and invests in these alternatives.

ANTAR urges the Queensland Government to adequately fund and expand a justice reinvestment approach consistently across the state, including by ensuring that funding is made available for early-stage community-led processes aimed at determining justice reinvestment readiness.[44] It is also critical that funding decisions and allocation are guided by First Nations perspectives and framed by First Nations definitions of reinvestment, led and informed by direct input from First Nations children and young people.[45] The Queensland Government must trust and invest in the capability of First Nations communities to deliver solutions, and adhere to the principle of free, prior and informed consent (FPIC) in all of its partnerships with First Nations communities and organisations.

International case study: Glasgow, Scotland

A 'whole-systems' approach (sometimes also referred to as a public health approach) has recently been adopted by Scotland's youth justice system which promotes the welfare of children and young people by taking a child-centred approach and successfully integrating the framework of the United Nations Convention on the Rights of the Child.[46] With an emphasis on prevention and early intervention, including prioritising the needs of children and addressing the social determinants of violence, this approach is an effective model that is consistent with principles of justice reinvestment currently practised in the Australian context and that should be scaled up.

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[42] Report: Koori Court effective for young offenders, Western Sydney University (2018)
[43] Alternatives to Incarceration in Queensland Full Report, Justice Reform Initiative (May 2023)
[44] ibid
[45] Fiona Allison, Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW, Final Report, Just Reinvest NSW (2022)
[46] Hannah Klose, Re-Thinking Approaches to Youth Justice: A Public Health Model Approach to Respond to Young People's Involvement in Violence in Australia, *Court of Conscience* Issue 14 (2020): 23.

As the progressive site of this public health approach, the Violence Reduction Unit in Glasgow utilises a multi-agency approach based on a 'risk and protective factor paradigm', which focuses on reducing potential risk factors for children (e.g. social exclusion or disconnection from parents) and enhancing protective factors (e.g. access to social support and educational services). Such an approach recognises that most cases of criminal legal system involvement for children are due to social determinants and structural disadvantage, including family and community factors, exposure to violence and trauma. Importantly, the approach also recognises that many perpetrators of violence might already have been the victims of various forms of violence (including structural violence) themselves.[47]

Remove children from watchhouses

First Nations children are disproportionately exposed to Queensland watchhouses, which are an inadequate place to keep young people for any period of time.[48] Conditions in watchhouses include exposure to aggressive adult detainees, a lack of appropriate facilities for girls, sensory deprivation including 24-hour artificial light and no access to sunlight, lack of access to showers or clean clothes and young people sleeping on yoga mats in shower stalls.[49] [50] At times, children have been held for up to 40 days in cells designed to hold adults for less than 24 hours.[51]

ANTAR is very concerned that the use of watchhouses in Queensland may increase under the Making Queensland Safer Bill 2024, as pressure grows on existing detention facilities and more children are processed through the criminal legal system.

The harsh conditions in watchhouses contribute to and exacerbate the root causes of youth offending. As Ricky, a 14 year old First Nations person from Cairns who has been incarcerated 15 times, explains:

> "[Being in solitary confinement] made me into a very violent person towards people, the way I talk to them, the way I act around them... It's just made me feel

[47] Fraser A & Irwin-Rogers K, A public health approach to violence reduction, Dartington: Research in Practice (2021): 3.
[48] Who's responsible: Understanding why young people are being held longer in Queensland watch houses, Queensland Family and Child Commission (November 2024): 5.
[49] 'Advocates say children are being held in adult watch houses in Queensland for weeks at a time', ABC News, 7 Feb 2023.
[50] 'Magistrate grants girl bail amid concern she would join dozens of children held in adult watch houses for weeks', The Guardian, 8 Feb 2023.
[51] 'Court orders urgent transfer of three children detained unlawfully in Queensland watch houses', The Guardian, 4 August 2023.

> like it's the end of the world, I don't really care. I just want to hurt people, that's the feeling I get, because I'm a very hurt person too when I'm in there for that long. I hurt a lot in there too, you know."[52]

ANTAR calls for an immediate end to the use of watchhouses for children in Queensland.

'On Country' diversion programs

ANTAR strongly supports the use of diversionary programs, both at the point of policing (pre-charge) and court as well as on release from custody. Research suggests that pre-court diversionary measures such as cautioning and court-based diversionary methods such as Youth Justice conferencing can be effective both in keeping First Nations children out of detention and reducing recidivism.[53]

Access to culturally responsive diversionary programs for First Nations children, however, remains a challenge, and First Nations children are less likely than their non-Indigenous counterparts to receive a police caution and more likely to be referred to court.[54]

Research from the Jumbunna Institute on diversion and youth cautioning for First Nations individuals suggests that diversionary mechanisms are more powerful when they are delivered in a culturally appropriate way.[55] This includes not only how the cautions are delivered but also the location in which it is delivered.

As such, ANTAR recommends that culturally responsive pre-charge diversion programs are more significantly invested in and developed in order to be available to First Nations children across Queensland, and that legislation is amended to favour pre-charge measures for First Nations children, including referral to 'On Country' diversion programs.

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[52] 'Violent and vulnerable: Ricky, 14, has been to jail 15 times. In Queensland's youth justice system, he lost hope', The Guardian, 7 June 2023.
[53] 'Doing Time - Time for Doing - Indigenous youth in the criminal justice system', House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system Final Report (June 2011)
[54] ibid
[55] Professor Chris Cunneen, Dr Amanda Porter, Professor Larissa Behrendt, 'Discussion Paper: Aboriginal Youth Cautioning', Jumbunna Institute for Indigenous Education and Research University of Technology, Sydney (2018): 7.

Conclusion

Evidence shows that children in contact with the criminal legal system – especially those who commit serious offences, or several offences over time – are some of the most vulnerable and disadvantaged members of our community, and often the victims of violence themselves.[56] Instead of seeing these children as hurting and in need – as is the case with those who engage in behaviour that harms others – the Making Queensland Safer Bill 2024 (along with much sensationalist and irresponsible media reporting) misleadingly frames them as dangerous and delinquent criminals who target innocent Queenslanders for fun and deserve punishments designed for adults.

In fact, the rate of youth offending in Queensland has been steadily decreasing since 2008, with criminologists in unanimous agreement that youth crime rates are in fact not spiraling out of control in Queensland.[57] Jailing and torturing children will not solve trauma, poverty or structural disadvantage, and is not keeping our communities safe. In fact, harsh 'law and order' responses of the kind proposed in the Bill are themselves a cause of future offending, creating a vicious merry-go-round cycle of violence and punishment that disproportionately harms First Nations kids as young as ten, disconnects families and disempowers communities. There is a better way.

ANTAR urges the Committee, and the Queensland government more broadly, to be led by the evidence, which is that trauma-informed, culturally safe, rehabilitative, restorative and needs-based responses and early intervention programs work where punishment, fear and violence do not. Care works, where cruelty does not.

ANTAR thanks the Committee for the opportunity to comment on this Bill. We urge the individuals of the Committee, as well as those involved with the Bill at large, to be led by the evidence and not by fear-based slogans and reactive, punitive law making that would have us believe that children are a debilitating threat to our collective safety. Above all, we urge those with decision making power to ask themselves this: if we as a community cannot love and care for our youngest members without abandoning them to punishment and prisons – even and perhaps especially when they have gone off track – who will?

[56] Walsh, Tamara, Beilby, Jane, Lim, Phylicia, and Cornwell, Lucy, Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system, The University of Queensland (2023): 4. See also: Inquiry into Youth Justice Reform in Queensland, Queensland Family & Child Commission Submission, 11 January 2024.
[57] Kenji Sato, 'Criminologists debunk claims of 'youth crime crisis' as data shows dramatic declines', ABC News, 13 October 2024.

For further questions or assistance on any issues raised in this submission, please contact:

Blake Cansdale
ANTAR National Director