Making Queensland Safer Bill 2024

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SUBMISSION IN RESPONSE TO

THE MAKING QUEENSLAND SAFER BILL 2024

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Submission in response to the Inquiry into the Making Queensland Safer Bill 2024

Dear members of the Justice, Integrity and Community Safety Committee,

Thank you for this opportunity to respond to the Making Queensland Safer Bill 2024, which was introduced into the Queensland Parliament on 28th November 2024.

This submission has been prepared by Professor Kate Fitz-Gibbon (Monash University, Sequre Consulting) and Dr Hayley Boxall (The Australian National University). The submission raises serious concerns about this Bill, and draws on our recent community-based research in Queensland as well as prior research on youth justice and mandatory sentencing to do so.

We would welcome the opportunity to discuss any aspects of this submission with members of the Committee to support your Inquiry.

Kind regards,

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[1] This submission is authored by Professor Kate Fitz-Gibbon in her capacity as Professor (Practice) in the Faculty of Business and Economics at Monash University, and as Principal Consultant, Sequre Consulting. It is wholly independent of Kate Fitz-Gibbon's role as Chair of Respect Victoria.

Submission overview

This submission is focused specifically on three key aspects of The Making Queensland Safer Bill 2024:

1. The proposed introduction of 'adult crime, adult time',
2. The proposed removal of the principal of detention as a last resort,
3. The proposed amendments to 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).

Throughout our submission we draw on findings from our recent research conducted for the Queensland Law Reform Commission (see Boxall et al., 2024). We also draw upon the findings of earlier research conducted by Prof Kate Fitz-Gibbon in collaboration with Associate Professor Wendy O'Brien from Deakin University (Victoria, Australia). This research was focused on examining the human rights implications of punitive youth justice measures adopted in Australia and elsewhere. Our research supports the concerns already raised by the Queensland Human Rights Commissioner Scott McDougall that the proposed Bill 'will not make the community safer and are a clear breach of human rights obligations' (as cited by Kilroy & Lean, 2024).

We have provided references for this work as well as other research and legislated cited in this submission at the conclusion of the submission. We would be very happy to provide the Committee with full copies of any this research upon request.

Given the incredibly short timeframe in which to prepare this submission we have not provided comments on all aspects of The Making Queensland Safer Bill 2024. As part of this, while we have not had time in preparing this submission to provide details on alternative solutions to promote community safety in Queensland, we support calls that have been made elsewhere for evidence-based and trauma-informed solutions that:

- uphold children's rights,
- replace the terminology of 'child offenders' with 'child/children in conflict with the law' in all legislation and policy discourse,
- involve an upscaling of educative youth programs and initiatives,
- involve an upscaling of age-appropriate and culturally-safe therapeutic community-based programmes, and
- support and empower community-led solutions that work with young people to promote healing and recovery from intergenerational harm.

There is a significant body of evidence-based research and community expertise available to the Queensland government which highlights the value of evidence-based primary, secondary and tertiary initiatives to reduce children's contact with the criminal justice system. In addition, we highlight the need for a public education strategy to be developed and a state-wide public education campaign introduced to challenge the current punitive culture, including the perception that community safety requires that children face the full force of the state's criminal law.

1. The proposed introduction of 'adult crime, adult time'

The Bill introduces 'Adult time for Adult Crime' for 13 offences which we note with great concern includes mandatory sentencing for children aged 10 to 17 years old. This is in contravention of international human rights law, specifically Australian states obligations under the United Nations Convention on the Rights of the Child (UN CROC), of which Australia has been a signatory since 1990. While we note that there are no national measures in place to ensure the upholding and protection of children's rights in Australia, we hold grave concern as to the Statement of Compatibility provided on 2 December 2024 which clearly outlines where the proposed Bill is not compatible with the human rights protected by the *Human Rights Act 2019*. This incompatibility is justified by the Minister on the basis that 'youth crime in Queensland is 'exceptional'. The Minister's statement acknowledges:

> I accept that 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. (Statement of Compatibility, 2024, p.4)

We respectfully disagree that the incompatibility of the proposed Bill with the *Human Rights Act 2019* can be justified. The proposed Bill contravenes children's rights, does not protect the best interests of the child, and ***is contrary to research on evidence-based solutions required to meaningfully address youth offending.***

We note the significant body of Australian and international research which has consistently found that children in conflict with the law are disproportionally from disadvantaged backgrounds and have experienced adversity and trauma, including domestic and sexual violence, family disruption and poverty, prior to their first interaction with the juvenile justice system. These children are at heightened risk of having also been in contact with the child protection system (so-called 'cross-over kids') and/or having experienced substance misuse. ***We outline this to emphasise the significant vulnerability of young persons who come into conflict with the law, and the need to move away from reaction and punitive justice system strategies as the primary response.***

We urge the Queensland government to ensure that attention to the needs of children is the primary consideration in the reform of youth justice policies and practices. Evidence based reform is essential to ensure that the reasons for children's disadvantage and vulnerability are addressed rather than introducing reforms which seek to criminalise such children. This is supported by an international body of evidence, which emphasises the importance of services engaging with young people who are in conflict with the law (or who are at risk of doing so), to address their criminogenic needs (e.g., trauma and poor familial relationships). ***The state government should work in close consultation with children's and community advocates, practitioners and experts to inform the development of, and long-term resourcing for, such reform.*** A principled, and expert led, approach is required to ensure that children with welfare needs receive the supports they require within the community, so that the criminal justice system does not serve as the welfare system of last resort – as is a significant risk under the proposed Bill.

Under the commitment to deliver 'Adult time for Adult Crime' the Bill introduces a mandatory life detention for murder, with a non-parole period of 20 years. Our research, completed this year for the Queensland Law Reform Commission (Boxall et al., 2024), while not focused specifically on juvenile offenders – found that ***the most recent evidence we have strongly shows that Queenslanders do not support the mandatory penalty of life imprisonment for murder.*** Instead, the community expects sentencing to reflect the individual culpability of murder defendants. Our research drew upon the findings of a state-wide survey of 2,500 people living in Queensland, and focus groups with 58 members of the Queensland community. **We urge the Government to avoid the introduction of new legislation which directly contradicts community views.**

The political commentary surrounding the Bill and the introduction of mandatory sentences for children has focused on the objective of making the community safer. We emphasise to the Committee that research in Australia and internationally has consistently evidenced that detention does not equate with safety nor do longer terms of imprisonment achieve specific or general deterrence. Comparable evidence has shown that ***'hard on crime' interventions, such as 'boot camps', are not effective in reducing reoffending among young people. Rather, the evidence suggests that 'hard on crime' interventions can actually increase the risk of reoffending,*** due to the deleterious impacts of these interventions on the wellbeing of young people (Wilson, MacKenzie & Mitchell, 2005).

The long-term harms and intergenerational impacts of imprisonment are substantive. These are acknowledged by the Minister themselves in the Statement of Compatibility:

> I also recognise that, 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.

While the Minister's statement goes on to disregard the significance of this, this is partly justified on the basis that the amendments are 'clearly supported by Queenslanders'. ***The findings of our recent community-based research (Boxall et al., 2024) – as outlined above - highlights that this is not the case – the community overwhelmingly does not support mandatory sentencing.*** The incompatibility of the Bill with the Human Rights Act should therefore not be justified upon this basis in lieu of wider evidence that this approach is supported by the Queensland community.

2. The proposed removal of the principal of detention as a last resort

The proposed Bill includes the removal of the principle of detention as a last resort. This is justified with the objective of prioritising community safety. Article 37(b) of the UN Convention on the Rights of the Child (UN CROC) establishes that detention or imprisonment of a child shall be used only as

a measure of last resort and for the shortest appropriate period of time. The proposed Bill contravenes this, as acknowledged in the Minister's statement of compatibility.

This Bill will have disproportionate impacts on Aboriginal and Torres Strait Islander young people in Queensland. This is acknowledged by the Minister in the Statement of Compatibility (2024) which states:

> 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. The amendments could result in more Aboriginal and Torres Strait Islander children being imprisoned for periods of time … I am of the view that the amendments do not directly or indirectly discriminate based on race. The increased sentences will be applied equally to all children who are convicted of an offence. (p. 4-5)

We support the criticisms of the Bill that have been raised by First Nations experts in Queensland, including Debbie Kilroy and Tabitha Lean (2024). In 2023, Queensland alongside the Northern Territory, recorded the highest imprisonment rates of Aboriginal and Torres Strait Islander children aged 10 to 17 years old (Australian Institute of Health and Welfare, 2023). This proposed Bill will further entrench the disproportionate incarceration of Aboriginal and Torres Strait Islander children and young people in Queensland.

The disproportionate impact of mandatory imprisonment laws upon Aboriginal and Torres Strait Islander young people was evidenced through the operation of the Western Australian (WA) 'three strikes' mandatory sentencing laws which were introduced in the 1990s for property offences. These laws were shown to disproportionately impact Aboriginal children in the state of WA who comprised the majority of young people sentenced under the laws. We also note that there is no evidence to support that these laws reduced property crime offending by young offending.

3. The proposed amendments to 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).

We note that the Bill proposes to amend 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). The proposed amendment impact upon the protection of the child's right to privacy and reputation (as contained in section 25 of the Human Rights Act). At international law, the proposed amendment is incompatible with Action 40(2) of the UN CROC which provides that child offenders should be 'treated in a manner consistent with the promotion of the child's sense of dignity and worth' and that their privacy be 'fully respected at all stage of the proceedings'. Furthermore, Rules 8.1 and 8.2 of the Beijing Rules set out that no identified information about a child offender should be published in order to 'avoid harm being caused to them by undue publicity or by the process of labelling'. That the proposed Bill contravenes these requirements of domestic and international human rights law is not justifiable and should not be supported.

This contravention is justified in the Statement of Compatibility (2024, p. 14) on the basis of supporting:

> the rights of victims of crime and their families to access to, and understanding of, the criminal justice system, as well as to support open justice and transparency.

There is a significant body of research in Australia and internationally which evidences the limits of this approach. Specifically, research in England and Wales has documented the risks associated with publicly naming children in conflict with the law and the need to avoid 'naming and shaming' policies (Fitz-Gibbon & O'Brien 2016). This research sets out the dangers of 'naming and shaming' policies, including the breach of the child's right to privacy, increased stigmatisation, reduced prospects of rehabilitation and social integration, and sabotage of future employment opportunities. Drawing from the findings of empirical research conducted in England in 2015, we document legal practitioner and policy stakeholder views on the need to avoid using naming and shaming policies as a secondary form of punishment beyond the criminal sanction imposed (Fitz-Gibbon & O'Brien, 2016).

Children's courts should always be closed courts to the media, and journalists should not identify any child involved in legal proceedings in their reporting. We draw attention to Green's (2008) comparative research of a UK and Scandinavian case study demonstrates that when children's identities are protected and they are not imprisoned, compared to 'naming and shaming' and incarceration, they are less likely to reoffend.

Conclusion

The proposed Bill has been justified on the basis on two key points: that it will make the community safer; and that it is what Queenslanders want. Neither of these points are supported by evidence and research.

First, there is no evidence that imprisonment of children and young people contributes to community safety through general or specific deterrence; in other words, it does not prevent reoffending among young people already in conflict with the law, and it does not stop other at-risk young people from committing their first offence. Instead, it has the opposite effect; children and young people in conflict with the law who are imprisoned are more likely to reoffend when released, and become entrenched in the adult criminal justice system.

Second, our recent large-scale study for the Queensland Law Reform Commission has shown that Queenslanders *do not* support mandatory life sentencing in cases of murder; instead, they expect the law to take an individualised approach to determining appropriate sanctions.

The incompatibility of the proposed Bill with the *Human Rights Act 2019*, which has been acknowledged by the Minister, cannot be justified.

Relevant references

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