

Making Queensland Safer Bill 2024

Submission No: 126
Submitted by: Public Health Association of Australia
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:



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3 December 2024

The Public Health Association of Australia (PHAA) is Australia's peak body on public health. We advocate for the health and well-being of all individuals in Australia. We believe that health is a human right, a vital resource for everyday life, and a key factor in sustainability. The health status of all people is impacted by the social, commercial, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the root causes of poor health and disease. These determinants underpin the strategic direction of PHAA.

PHAA welcomes the opportunity to provide input to the Justice, Integrity and Community Safety Committee inquiry on the *Making Queensland Safer Bill 2024*. We note that the Queensland Government frames this bill as a response to community concern, and contains measures it hopes will deter youth offending, as well as emphasise the rights of victims.

However, we are very concerned that to pursue these policy goals, the rights of Queensland children and youth will be increasingly violated, and the root causes of crime will go unprevented, while the burden of cost on our justice, health and social services systems only increases over the long-term. We cannot support these legislative steps.

Introducing 'adult crime, adult time'

Whose rights matter?

The first premise of this legislation is based on putting the rights of victims of crime 'front and centre' at the expense of the rights of children and youth which are set out in the [United Nations Convention on the Rights of the Child](#) and other international instruments, to which Australia is a signatory. It is important to note that even the expression 'victims of crime' begs fundamental questions about the appropriate description of aberrant behaviour by children, the circumstances in which children can correctly be convicted of criminal offences, and the ages at which managing children through the courts is appropriate.

The Australian Human Rights Commission recently highlighted in the [Help Way Earlier](#) report, [1] that: **"Australia is not protecting the rights of children... Australia's lawmakers and decision-makers have obligations to take all possible measures to help all children in Australia realise their rights."**

Taking an 'adult crime, adult time' approach for young offenders, will only further violate the rights of children and youth in Queensland's justice system, for example by directly contravening the Human Rights Act 2019 (Qld) [2] which outlines a child's right to treatment appropriate to the child's age when they are convicted of an offence.

A rights respecting approach to youth justice, [3] is important because:

1. *It is more effective in reducing crime* - A child rights approach aligns with international best practice principles and what the evidence base says works for reducing crime and offending behaviour.
2. *It provides a long-term solution to offending behaviour* - A child rights approach provides a long-term solution to youth offending by addressing the root causes of crime.
3. *It is an effective way to increase public confidence in the system* - Child rights are fundamental tenets of our democratic society and help to protect unjustified incursions, ensure that the law is applied to each child and young person equally, and foster public trust and confidence.
4. *It is more cost effective than taking a punitive approach* - There is substantial evidence that illustrates that investing in early intervention programs is much cheaper than spending money on custodial measures.
5. *It recognises the specific needs of children and young people* - Children and young people who have contact with youth justice are a vulnerable population, often with complex and intersecting needs. Special protections, over and above the rights of the general population, are important.

Prevent not just deter

The second premise of this legislation is that imposing harsher penalties for offences will act as a deterrent, an approach that fails to acknowledge the real drivers of crime. As the *Help Way Earlier* report highlights [1, pgs. 18-19], the key drivers of child offending include:

- *Mental health conditions* – “...about two thirds had at least one mental health disorder. As many as 23% had attempted suicide, nearly six times as high compared with their peers in the general population, and 14% reported that they had made a suicide attempt in the past 12 months.”
- *Poverty and unstable or unsuitable accommodation* – “...almost 2 in 5 children (38%) under youth justice supervision on an average day in 2022–23, were from the lowest socioeconomic areas, compared with about 1 in 20 young people (4.9%) from the highest socioeconomic areas.”
- *Education deprivation* – “... as many as 48% of young people coming under youth justice supervision surveyed [in Queensland] were not enrolled in education, in training, or in employment.”
- *Maltreatment and abuse* – “a large proportion of children who do offend have a history of child abuse and neglect, and this is particularly so for children in detention. ..., the Queensland Youth Justice Census survey showed that 53% of the young people surveyed had experienced or been impacted by domestic and family violence.”
- *Neurodisabilities, including Fetal Alcohol Spectrum Disorder* – “...89% of young people in youth detention between May 2015 and December 2016 had at least one domain of severe neurodevelopmental impairment and 36% had Fetal Alcohol Spectrum Disorder (FASD)”; see also Elliott and Robards, 2024. [4]
- *Family history* – “25% of the young people surveyed [in Queensland] had at least one parent who spent time in adult custody.”
- *First Nations children* – “First Nations children were over-represented under youth supervision in every state and territory.”
- *History of involvement in child protection* – “A high proportion of children are considered ‘crossover’ or ‘dual system’ involved, which means they are in both the criminal justice and child protection systems.”

None of the above factors involve elements of personal responsibility that can be attributed to the children themselves. There is no deterrent value in punishing a child for actions driven by these factors.

Removing the principle of detention as a last resort

Detention perpetuates crime

There is abundant evidence that the impact of incarceration is extremely negative. Commencement of justice system entanglement often begins when the detainee is a child, and the earlier that entanglement with the criminal justice system begins, the worse long-term outcomes become. The individuals in question become less economically productive and secure, less capable of contributing to society financially, and in many other ways are more prone to a variety of physical and mental harms. These consequences create a greater cost burden on public services including the justice system, the health system, and social security.

The involvement of young people in the child justice system is also tragically self-perpetuating. Children who first encounter the justice system at age 10-13 are more likely than other justice-involved children to experience future criminal justice involvement. [1, pg.19] Placing young people, especially those under 14, into detention greatly increases the likelihood of further criminal offending, and much more serious offending, over the individuals' lifetimes.

Rates of re-offending once involved in the Australian criminal justice system are astonishingly high, with 42% of incarcerated people returning to prison within two years in Australia. [5] The recent *Safety through support* [6] report explored recidivism, finding that of children sentenced to detention 80% return to youth justice supervision within 12 months, and of children aged 10 to 12 years who receive a supervised sentence, 94% will return to youth justice at some point.

The future conduct of repeat offenders impacts victims of crime in many ways, including higher rates of physical violence, and causes other forms of property and financial damage. The administration of the law in respect of future activities needlessly expands the demands on the justice system including law and order services, legal processes, and repeated incarceration. The cycle perpetuates its harms.

The public expenditure costs of operating prisoner incarceration in Australia are around \$305 per person per day. [7] But the costs of child detention are a staggering \$2,827 per child per day. [8] By incarcerating children, our society is paying heavily to generate more crime, more expense and further consequences into perpetuity.

The Queensland government has acknowledged that the removal of the principle of detention as a last resort, from the Charter of Youth Justice Principles in the Youth Justice Act [9], is not compatible with human rights. This proposed amendment, and other recent amendments, contradict the UN Convention on the Rights of the Child, from which this principle is derived.

Recommendations

The literature analysing child justice problems, and the costs of the proposed approach, is vast. Helpfully, the very recent (June 2024) *Help Way Earlier* report of the Australian Human Rights Commission's National Children's Commissioner, summarises the issues and makes clear recommendations. [1] PHAA strongly supports the Commission's recommendations, which are designed to reform the child and youth justice system and address the root causes of crime, and urges the Queensland Government to adopt those measures relevant to the state jurisdictions, in particular:

- provide integrated, place-based health, education and social services for both children and their families.
- increase the level of income support payments for children, young people and families.
- prioritise access to safe and affordable housing for children and families, including those in the child protection and justice systems.
- prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.
- resource schools to be community hubs integrated with health services and providing flexible learning options.
- prioritise investments in prevention and early intervention through Aboriginal Community Controlled Organisations and privileging of the voices of Aboriginal and Torres Strait children, families and communities in all policy and service delivery decisions.
- improve availability of free and accessible community sport, music, other social activities, and cultural programs, addressing barriers such as lack of public transport.
- resource and expand the availability of evidence-based diversionary programs for children, including those by Aboriginal and Torres Strait Islander Community-Controlled Organisations, and other culturally safe programs.
- raise the age of criminal responsibility in all jurisdictions to 14 years and undertake a review of the application of the presumption of *doli incapax*.

Conclusion

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

Yours Sincerely,



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