Making Queensland Safer Bill 2024

Submission No:	137
Submitted by:	Youth Advocacy Centre Inc
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

YOUTH ADVOCACY CENTRE INC

Free, confidential legal and social support services for young people.

Level 4, 16 Peel Street, South Brisbane QLD 4101
07 3356 1002
admin@yac.net.au

Submission by

YOUTH ADVOCACY CENTRE INC

to the

Queensland Government

Making Queensland Safer Bill 2024

3 December 2024

The Youth Advocacy Centre (YAC) is a community legal and social welfare agency for children and young people aged 10-18 in Queensland, particularly those involved in the youth justice system.

Contact: Ms Katherine Hayes

CEO

(07) 3356 1002

[redacted]

[redacted]

The Youth Advocacy Centre (YAC) appreciates the opportunity to provide submissions on the *Making Queensland Safer Bill 2024.*

Introduction

YAC has extensive practical and direct experience of the issues contained in this Bill. The Centre is focused on service delivery to young people. The capacity of the Centre to provide a considered and thorough submission on the Bill has been significantly compromised by the timeframe for consultation.

The eroding of human rights should not be undertaken without proper and thorough consideration, especially when they concern children. The Bill's Statement of Compatibility does not provide prerequisite justification. The extraordinary powers contained in this bill are being justified on the grounds of a 'youth crime crisis' except none of these provisions will make the community safer, and the claims of a 'crisis' are questionable[1]. Additionally, the removal of detention as a last resort is contrary to international law that consistently affirms the principle,[2] the United Nations Convention on the Rights of the Child, and the findings of the *Royal Commission into the Protection and Detention of Children in the Northern Territory*.[3]

Taking into consideration the significant and acknowledged human rights breaches and implications for further incarceration of children, particularly Aboriginal and Torres Strait Islander children, YAC advocates for an independent review of the effectiveness and consequences of the amendments within 12 to 18 months of the implementation of the Bill. The parameters of this review and the required data should be established prior to implementation of the Bill to ensure its effect.

YAC recognises the harm that has been done to victims of youth crime and that the community expects that young people will be held accountable when appropriate. However, the provisions in this bill go far beyond the mandate given to the government by voters and what is necessary to ensure community safety.

This bill will affect more children than the most serious offenders. It will affect all children charged and convicted of crimes throughout Queensland.

Our submission reflects the paucity of time.

We also recommend that legal advice be sought on whether the Bill is invalid by virtue of offending s10 of the *Racial Discrimination Act 1975 (Cth).*

[1] See below for further discussion of this point.
[2] Lauren Meeler & Jonathan Todres, *Deprivation of Liberty as a Last Resort: Understanding the Children's Rights Law Mandate for Youth Justice*, 60 Stan. J. Int'l L. 1 (2024).

[3] *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Final Report, 17 November 2017) vol 2B. page 209; Holman, B & Ziedenberg, J, 2006, *The Dangers of detention: The impact of incarcerating youth in detention and other secure facilities*, A Justice Policy Institute Report, p. 6; Lynch, M, Buckman, J & Krenske, L, 2003, 'Youth justice: Criminal trajectories', Trends & Issues in Crime and Criminal Justice, no. 265, p. 2.

YAC's analysis of the Making Queensland Safe Bill

1. The key provision in the Bill is clause 19 which introduces a new provision - section 175A – into the *Youth Justice Act 1992*.

2. Section 175A provides that, when sentencing a child for certain offences, the Court can, amongst other things, "*order that the child be detained for a period not more than the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve*". In other words, for the relevant offences, a child could be sentenced to the same penalty as an adult.

3. The relevant offences are murder, manslaughter, unlawful striking causing death, grievous bodily harm and other and similar offences, dangerous operations of a motor vehicle, unlawful use of a motor vehicle, robbery, burglary, break and enter, and unlawful entry of a vehicle.

4. At the moment, the *Youth Justice Act 1992* provides, in effect, in sections 175 and 176 that there are "*ceilings*" for children's sentences of up to 10 years, with an exception for heinous offences for which life imprisonment may, and has been, imposed.

5. YAC maintains that the ceilings are appropriate. They recognise that children have a greater opportunity for rehabilitation, that they will almost always come from dysfunctional backgrounds, and that a civilised community that is raising children would not hold them accountable to the same extent as adults.

6. It is apprehended that the Government maintains, for its part, that it has a "*mandate*" for introducing section 175A. They contend, it is understood, that the changes to section 175A responsibly fulfil that mandate – on the one hand, the Courts have the power to impose sentences up to the maximum for adults; on the other hand, the Courts will still have a discretion after considering all the facts of a particular case as presented by the Prosecution and the Defence.

7. The proposed bill, however, goes much further than 175A.

8. ***First***, it proposes to change radically the sentencing principles which are set out in section 150 of the *Youth Justice Act 1992*[4]. That change, in YAC's view, is likely to swell the number of young people in detention throughout Queensland.

[4] http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/yja1992185/s150.html

9. Clause 15 of the Bill provides that section 150 is to be altered so that the following sentencing principles are introduced:

   A. A court "***must not*** *have regard to …. any principle that detention should only be imposed as a last resort*";

   B. A court "***must not*** *have regard to… any principle that a sentence that allows the child to stay in the community is preferable*".

   C. A court "***must have primary regard*** *to any impact of the offence on a victim…*" (bolding added)

10. The direction to courts in 9.A above clearly breaches the *UN Convention on the Rights of the Child* ("CROC") which provides relevantly that:

   (a) In all actions concerning children, the "*best interests of the child shall be a primary consideration*" (Article 3(1));

   (b) Where a child is deprived of their liberty, detention "*shall be used only as a measure of last resort and for the shortest appropriate period of time*" (Article 37(b));

   (c) Every child … recognised as having infringed the penal law has the right "*to be treated in a manner consistent with the promotion of the child's sense of dignity and worth which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age, and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society*" (Article 40(1)).

11. The direction in 9.B above offends section 33 of the *Human Rights Act 2019 Qld* which provides 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 the CROC provisions.

12. The direction in 9.C - that a court must have *primary regard* to any impact of the offence on a victim is a significant change and again offends the *Human Rights Act* and the CROC provisions.

13. The phrase "*must have primary regard*" removes the current focus on rehabilitation and reintegration into society, and importantly removes the focus on diverting children from re-offending towards a positive path. It requires that the Court focus on punishment and retribution. In YAC's view this is inappropriate and misconceived. All the available evidence in criminology shows that detention tends to lead to further offending, and that children do not respond to deterrence.[5] Put simply, youth offending is rarely preceded by the child undertaking some cost-benefit analysis of the penalty involved. It is preceded in

[5] Don Weatherburn, Sumitra Vignaendra, Andrew McGrath, 'The specific deterrent effect of custodial penalties on juvenile re-offending' (Report, Criminology Research Council, CRC02-04-05, February 2009)

our experience by trauma, anger and family violence and dysfunction. The primacy of the impact on victims will not resolve this problem.

14. It is also notable that the court's primacy regard to the impact on the victim in sentencing will give rise to the cross-examination of victims on this point, which YAC considers to be undesirable and likely to give rise to further harm and trauma, particularly on the large cohort of children who are victims of youth crime.

15. The primacy of the impact on the victim over the requirement to consider the fitting proportion between the sentence and the offence has the capacity to lead to disproportionately harsh penalties.

16. Further, the new sentencing principles, in YAC's view, will lead to much, much higher rates of detention for which the State simply does not have capacity. That course, even if implemented, will be outrageously expensive and will come at the cost of diversion strategies which, rather than after-the-event punishment of offenders, might actually prevent the offending. As it turns out, Queensland currently incarcerates more children than any other state, being approximately 280 per night. That is sometimes the equivalent of New South Wales and Victoria combined. If detention was the answer to youth offending, we should be doing very well.

17. Queensland detention centres are so full at the moment that (a) young people are being held in watch-houses for extended periods; and (b) children are regularly locked in their cells in Cleveland, not as a punishment, but because there are inadequate staff. We have not seen any evidence of the Government addressing the issues as raised in the Queensland Ombudsman's reports on Cleveland Youth Detention Centre and Cairns and Murgon watchhouses[6] (both released in 2024). YAC's experience is that there is a high rate of dysfunction and re-offending in young people emerging from detention under these circumstances.

18. The Government seems to be aware of this transgression because the Bill provides in clause 15 that pursuant to section 43 of the *Human Rights Act*, the provisions take effect "*despite being incompatible with human rights*" and "*despite anything else in the Human Rights Act 2019*". It is deeply concerning that the only time the *Human Rights Act* has been over-ridden is in relation to school-aged children.

19. ***Second***, the Bill provides that *mandatory* sentences that apply to adults will now apply to children. It does this in clause 19 of the Bill by removing section 155 of the *Youth Justice Act 1992* where it applies to the offences listed in 3 above. Mandatory sentences will apply to children charged with murder, manslaughter and repeat offences of dangerous operation of a vehicle. YAC repeats the matters set out in the preceding paragraphs. More particularly, YAC says that, in circumstances where we have highly experienced judges and magistrates who bring learning and nuance to sentencing children, it is counterproductive for politicians to mandate the penalty to be given.

[6] https://www.ombudsman.qld.gov.au/publications/detention-inspection-reports

20. ***Third***, the Bill removes the opportunity for orders of restorative justice for the offences outlined in 3 above. Restorative justice is particularly effective in reducing reoffending and assisting victims in recovering from their trauma. They provide opportunities for children to apologise, participate in counselling and education programs, or to volunteer.

21. The Bill also includes cautions and restorative justice in criminal histories. YAC expects that this will discourage children from participating in these processes which will significantly increase the workload of the court, delaying resolution of matters for victims.

22. Including those matters in a history will incorporate allegations that have not been given the benefit of judicial scrutiny. Many young people receive cautions and restorative justice processes without having obtained legal advice and without judicial consideration of the charge. It is entirely likely that, if the Bill is passed and these processes appear in the history, subsequent courts will take into account offences for which the young person was innocent.

23. The restorative justice process is an opportunity for victims to engage in the youth justice system. They are only available if a child agrees and indicates a willingness to comply. These processes have achieved significant success, because of their acknowledged benefits for victims and young people, the police are able to refer young people to this process instead of sending them to court. Allowing this diversionary process to be disclosed to a court will discourage use of the process. The disclosure of this diversion will not reduce reoffending.

24. Cautions are a means of diverting children from the youth justice system and are available to police. A caution, however, is only issued if the child admits to the offence and, for that reason, some children have made admissions without legal advice. If this admission forms part of their criminal history then it is foreseeable that children will face sentences which are unnecessarily harsh in the absence of guilt being proven in court. If the government wishes to pursue these changes, they should consider changing the law regarding when a caution can be given, instead of the child admitting the offence.

25. Detention does not act as a deterrent or reduce recidivism. Figures show that in 2020-21 91.26% of children returned to detention within 12 months of being released[7]. The conditions of their lived experiences outside of detention have not improved enough to stop their reoffending.

26. The lack of a review mechanism in transferring young people is highly alarming and could bring about injustice for particularly vulnerable young people. Young people express high anxiety about moving to adult prisons, however, once moved, they adapt to their environment and are further criminalised, making it more difficult for them to rehabilitate back into their community. They find a different community within the adult system and

[7] Australian Institute of Health and Welfare (2023). Young people returning to sentenced youth justice supervision 2021-22, page 18. Retrieved from https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/data.

see themselves as ostracised from wider society. The timeframes of this submission have not enabled us to properly respond to this issue.

27. In the public hearing on 2 December 2024 before this Committee, the Director-General of Youth Justice, Mr Bob Gee, presented data regarding re-offending rates post detention which is inconsistent with research confirming the ineffectiveness of detention to reduce recidivism for children. At best, the purported improvement to offending is too insubstantial to justify the abrogation of human rights of the most vulnerable, abused and disadvantaged children in Queensland, and cannot justify the anticipated expenditure of up to $1 billion for a new detention centre required to support these new laws. Without greater scrutiny, it would be dangerous to rely upon this information as the basis for overturning well-established and internationally recognised principles of detaining young people as a last resort. YAC would welcome the opportunity to review this data alongside comparative data for other interventions.

28. In the meantime, YAC makes the following comments in relation to the paper cited by Mr Gee, "Juvenile Jails: A Path to the Straight and Narrow or to Hardened Criminality?"[8]

    a. The paper assesses the juvenile justice system in Washington State for the years 1998 to 2000. Current Queensland data showing Queensland recidivism rates of around 90% post detention should clearly be preferred over American data, some of which is over a quarter of a century old.

    b. The paper does not address in any way the condition inside the Washinton juvenile detention centres. We therefore cannot ascertain whether the results are comparable to Queensland.

    c. The results may justify detention over diversion (but we question this conclusion in any event),but cannot be used to justify increasing the current Queensland sentences as proposed because the Washington sentencing guidelines use a 'grid' from which a sentence is determined once data (age, criminal history etc) is entered. Importantly, the sentence lengths appear to be much lower than is being proposed in this Bill, with class A felonies including arson, assault, rape, robbery having an upper limit of around 2.5 years of detention, and car theft having an upper limit of 1.25 years.

    d. The paper has difficulty accounting for whether offenders who turn 18 go on to offend. This is a significant limitation.

29. There is a united commitment to reduce youth offending. The only real question is simply "*What works?*' The Government cannot produce any evidence to show that more detention reduces re-offending. Worse, the amendments diminish an invaluable resources, namely judicial discretion in sentencing. Worse still, they represent an "opportunity cost" in terms of policies that do work. Finally, there is a simple disconnect

[8] Hjalmarsson R, Journal of Law and Economics , vol 52 (November 2009) at page 779

between the policy and the capacity: YAC believes that Queensland simply does not have the resources to detain children on the scale that the Bill will precipitate.

No room in detention centres

30. The three detention centres in Queensland constantly operate beyond their safe capacity. There is a further detention centre being built at Woodford which YAC understands will have 112 beds and will cost $982 Million. That equates to more than $8.7M per bed and, as noted, represents a huge lost opportunity in diversion strategies such as maternal health, education, supporting families in homes, domestic violence programs to assist young people, mental health intervention etc. If the evidence is right and detaining young people leads to even more offending, the new Government will be involved in a very expensive exercise because the Bill, if passed, will cause a sharp rise in young people in detention.

31. Data extracted from the Queensland Sentencing Council's Sentencing Data Hub shows that in the 2023/24 financial year at least 2,252 young people were sentenced for the offences included in the Adult Crime Adult Time laws (see below table). The new laws are designed to increase the prospects of a sentence and for a longer period of time. If the 2023/24 numbers are a guide, then the already overloaded system is nowhere near ready to cope for the law changes. This will lead to increased numbers of children held in appalling conditions in adult watchhouses, further damaging them, thereby further reducing community safety.

Focus on young offenders

32. As the Queensland Sentencing Council's Sentencing Data Hub shows, in the 2023/24 financial year adults commit much higher numbers of the targeted offences. The data also shows that over 2,000 children were sentenced to these offences. PLease see the extracted data in the table below.
33. This data may be useful in providing some guidelines for the expected numbers of children to be sentenced to longer periods under these new laws, further stretching the capacity issues that have been experience for many years. The detention system's ongoing capacity issues reduce community safety as the centres are rendered unable to properly rehabilitate the children who are held in them. Instead of compounding the capacity issues a focus on rehabilitation and early intervention more effectively addresses offending and reduces the need for hugely expensive and ineffective detention centres.

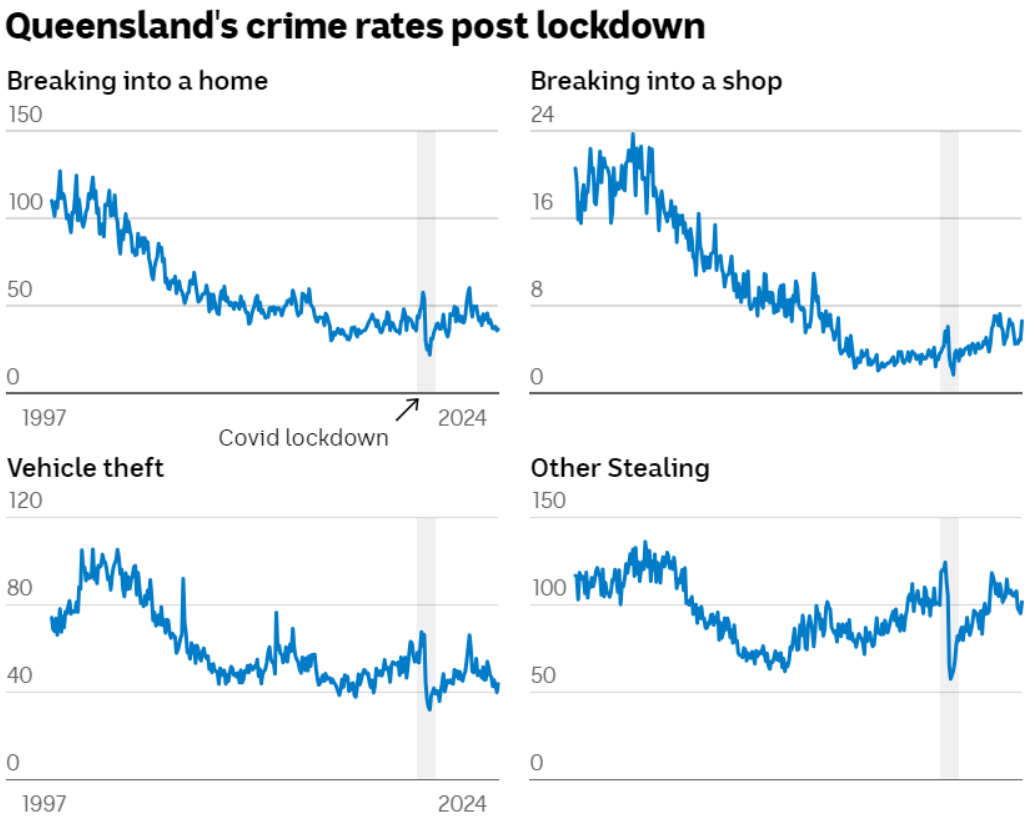
Data extracted from the Queensland Sentencing Council's Sentencing Data Hub

Offence	Sentenced child offenders 2023/24	Sentenced adult offenders 2023/24
Murder	1	16
Manslaughter	6	28
Acts intended to cause grievous bodily harm and other malicious acts	5	35
Grievous bodily harm	12	190
Wounding	25	112
Dangerous operation of a motor vehicle (non-aggravated)	143	540
Dangerous operation of a motor vehicle (aggravated)	16	235
Serious assault (all offences)	172	1,127
Unlawful use of a motor-vehicle (aggravated and non-aggravated)	874 (includes posting and boasting laws)	1,433
Robbery (aggravated and non-aggravated)	283 (robbery numbers have significantly increased since 2018)	357
Burglary (aggravated and non-aggravated)	121	210
Entering non-dwelling premises committing indictable offences (with intention, aggravated and non-aggravated)	585	1,519
Unlawful entry of vehicle for committing indictable offence (aggravated and non-aggravated)	9	48

Total	**2,252**	**5,850**

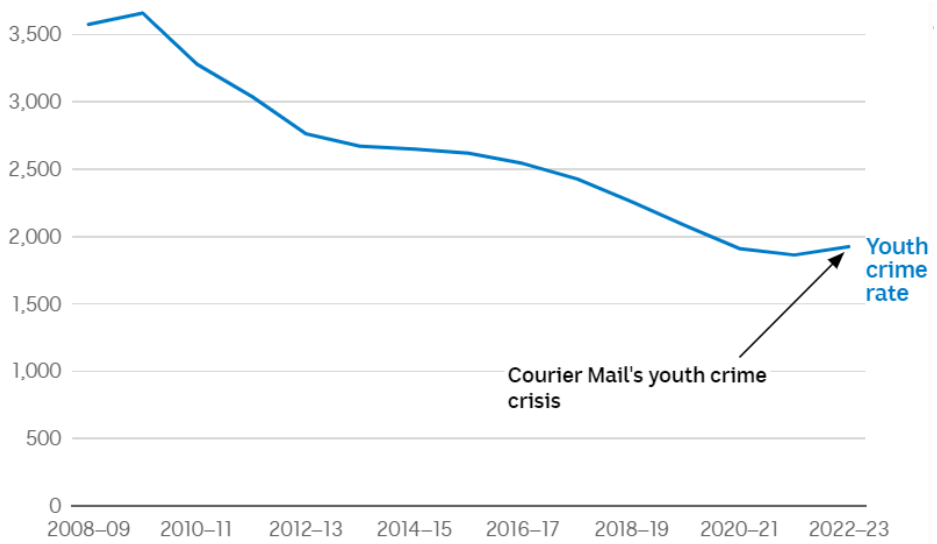
Queensland's youth crime rates

34. In the last few years we have been shocked by senseless tragedies that resulted in innocent people's deaths than should not have occurred. But it is important that the debate on how to prevent such incidents is based on facts and evidence. Here is some clarifying data:



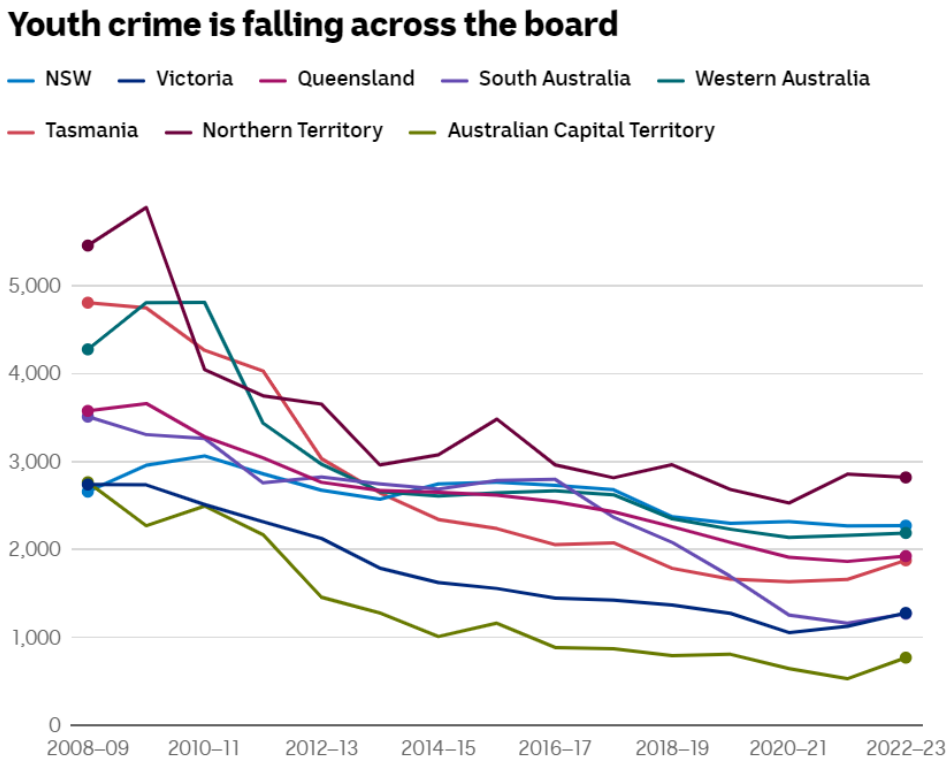
Queensland crime rates per 100,000 for selected offences

Kenji Sato / Source: Queensland Police Service / Get the data



Queensland's rate of youth offenders per 100,000 population

Kenji Sato / Source: Australian Bureau of Statistics / Get the data



Youth offences per 100,000 population

Kenji Sato / Source: Australian Bureau of Statistics / Get the data

Katherine Hayes

CEO

Youth Advocacy Centre