

## **Making Queensland Safer Bill 2024**

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# Making Queensland Safer Bill 2024

Submission to the Queensland Government  
Justice, Integrity and Community Safety Committee

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**Contact:** Tammy Lloyd, A/Chief Operating Officer, Children Youth and Families,  
Anglicare Southern Queensland

**Phone:** [REDACTED]

**Email:** [REDACTED]

**Author:** Leanne Wood, Manager, Research Evaluation and Advocacy



# Acknowledgement

We acknowledge Aboriginal and Torres Strait Islander peoples as the first Australians and recognise their culture, history, diversity and deep connection to the land. We acknowledge the Traditional Owners and Custodians of the land on which we serve and worship today.

We pay our respects to Aboriginal and Torres Strait Islander Elders both past and present; and also extend that respect to our Aboriginal and Torres Strait Islander staff, clergy, clients, parishioners and partners (past, present and future).

We acknowledge the past and present injustices that First Nations people have endured and seek to understand and reconcile these histories as foundational to moving forward together in unity.

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## Executive summary

Anglicare Southern Queensland (Anglicare SQ) and the Anglican Church Southern Queensland Social Responsibilities Committee (SRC) welcome the opportunity to make a joint submission to the Queensland Government Justice, Integrity and Community Safety Committee's consultation on the Making Queensland Safer Bill 2024 (the Bill).

We have, however, deep concerns about the human rights incompatibility, lack of evidence base and unintended consequences of the Bill, and therefore do not support the proposed legislation.

### Human rights compatibility

Children are developmentally different to adults, do not have the same decision-making capacity as adults, and experience different vulnerabilities. Well-known drivers for youth offending, including experience of poverty, family violence, cultural disconnection, homelessness, disengagement from education and other factors, have human rights implications related to our care for children, and their right to special care in the protection of their human rights.

The proposed legislation disregards multiple elements of both international human rights standards, including the United Nations Convention on the Rights of the Child; as well as Queensland's own Human Rights Act 2019.

### The evidence base for youth incarceration

Key elements of the Making Queensland Safer Bill 2024 depend upon the effectiveness of detention as a deterrent and punishment in order to steer children and young people away from crime. These include 'Adult Crime, Adult Time', and removing the principle of detention as a last resort.

There is, however, extensive evidence demonstrating that incarceration of children does not have the desired effect of reducing youth offending.

- Detention increases young people's vulnerability and disadvantage, and therefore the likelihood that they will return to the prison system over and over, both as youth and as adults
- The largest proportion of children and young people represented in the youth justice system are there because they have made poor or impulsive decisions or engaged in risk taking as a result of normal developmental processes. Exposing these children and young people to the trauma of time in detention is counter-productive: diversion is much more effective.
- Detention is eye-wateringly expensive. Recent Productivity Commission data shows that the annual operating cost of imprisoning a child is \$2,068.32 a day and \$761,507 each year, in addition to the infrastructure costs of building new detention centres.
- High rates of incarceration have significant long term social costs. As the social and family bonds that guide individuals away from crime break down, communities become less capable of managing social order through family or social groups, and crime rates go up.
- The impact of detention on Aboriginal and Torres Strait Islander children is trauma reinforcing. For First Nations children who are disproportionately represented in

prison, trauma is amplified by the removal from Country and community, and disconnection from culture.

## **Unintended consequences**

### *Safety, stigma and procedural fairness*

- The proposed amendment to further open the Children’s Court will remove the ability for the Children’s Court to make an exclusion order, even where there may be a risk to the safety of a person or where it may prejudice the proper administration of justice. This change represents a significant departure from the principles of procedural fairness and judicial discretion that are fundamental to ensuring just outcomes in youth justice proceedings.
- Enabling broader access to the court by the media is equally concerning given existing levels of media negativity and sensationalism. Such reporting encourages stereotyping of young people and influences community perceptions, as well as ‘Facebook vigilantism’ that further alienates young people from their communities. The inability to exclude individuals or entities in sensitive or high-profile cases may expose children to situations where their safety is at risk or where the integrity of judicial processes is compromised.
- The negative narrative often perpetuated by the media can also undermine community ties and support acting as key protective factors for young people in steering them away from potential offending behaviours. There is extensive literature on the harmful impacts of social exclusion on adolescents. The experience of being an outsider, particularly for a teenager, is deeply harmful, and research shows that young people often respond with harmful behaviours.
- The issue facing the Queensland Government is therefore twofold: to address both youth offending and the community’s perception of it. If the Bill is passed in its current form, ongoing discussion of a ‘youth crime crisis’ will suggest that people continue to have something to be afraid of, thereby undermining the community’s perception of the legislation’s effectiveness. We suggest that one important strategy for helping community members feel safer is to share more stories about young people who have turned their lives around.

### *Overcrowding in detention centres and watch houses*

A more punitive approach, whereby more young people are caught up in the youth justice system, will put further pressure on an already struggling system. The unplanned, flow-on effects of overcrowding in detention centres and watch houses have serious and wide-ranging impacts including from human rights breaches, staff shortages and Workplace Health & Safety concerns.

## **Holding children accountable**

We believe children should be accountable for the consequences of their actions. As in countries such as Sweden, France, Norway and Scotland, however, we believe that the anti-social and offending behaviour of children is more successfully dealt with through the child welfare system rather than the justice system.

Anglicare’s work with young people at risk of involvement in the youth justice system is based on a restorative practice approach that focuses on helping young people to understand the impact of their actions, accept responsibility and make reparation. The

framework is culturally appropriate and embedded across the whole spectrum of a child's experience, and at every touchpoint with the justice system. The statutory element of this practice framework — a restorative justice approach — sees offending as a violation of people and relationships, and thus 'creates obligations to make things right'.<sup>1</sup> It addresses the needs and harms experienced by victims, offenders and the community.

#### *Immediate actions to reduce youth offending*

##### 'Red flags' in education: school suspensions

Research published by the Australian Institute of Criminology has demonstrated positive associations between repeat school suspensions and the problem behaviour of teenagers, even taking into account other known risk factors for such behaviours.

There is also a significant body of evidence that suggests that the younger a student is when they are first suspended, the more likely it is they will end up involved in the juvenile justice system.

Aboriginal and Torres Strait Islander children (particularly boys) are suspended or excluded from schooling at much higher rates than non-First Nations children.

Addressing the suspension rates of Queensland children is a strategy that this Government could implement also immediately in two ways:

- Providing extra resourcing and support specifically at the primary–high school transition point.
- Focusing on children aged 6-9 years to reduce short and long suspensions.

Focusing on reducing the educational exclusion of children in early primary school could contribute, with other initiatives, to a reduced 'pipeline' of children in the 10-13-year-old cohort of alleged child offenders within the first term of this Government.

##### 'Red flags' in health: undiagnosed disability

A further cohort of children over-represented in both educational exclusion and the youth justice system is that of children with a disability. The statistics for children with disability in the juvenile justice system are variable, but regardless reflect gross over-representation and significant potential for individual harm.

Recent Australian research noted that disabilities were frequently undiagnosed for children charged with early offending, resulting in school disengagement and lack of early intervention.

Disability-related behaviours, particularly where undiagnosed, can be misidentified by youth detention staff as non-compliant behaviour and met with responses aimed to 'maintain order' or as punishment. The Disability Royal Commission also points out that many First Nations people, in particular, may have an undiagnosed or unidentified disability, yet no Australian corrective services or youth justice agency uses a culturally-validated screening tool to identify disability in First Nations people.<sup>2</sup>

Given that disabilities often first present themselves in the early years, there is a strong argument for expansion of a public health approach to early childhood screening for health, development and disability.

Researcher Tim Moore outlines the value of an integrated tri-level health system that addresses the need for universal, targeted and tertiary services.<sup>3</sup> Given the over-

representation of children with a disability in the youth justice system, as mentioned above, Anglicare and the SRC advocate for strengthening of preventative services at each of these levels. We particularly emphasise the need to supplement (often bottle-necked) tertiary treatment services with a stronger public health approach and increased focus on universal health services during the early years, as well as greater investment to enable children and families to access supports to meet identified needs, regardless of their location in Queensland, or socioeconomic, cultural or other factors.

### **Amendments to the Bill**

Anglicare and the Social Responsibilities Committee do not believe that the Making Queensland Safer Bill 2024 in its current form will achieve its objective. Existing evidence suggests that the legislation is in fact likely to generate harm to children, their families and communities. If the Bill is set to be passed by Christmas 2024, however, we urge consideration of amendments addressing current issues in the youth justice system, including:

- With the likely increase in numbers of children in detention, we recommend changes to the staffing structure in detention centres that clearly separate the functions of ‘guard’ and ‘therapist’. It is psychologically unsafe for children when the staff member fulfilling a mentor role is also the person with authority to place children in solitary confinement or impose other punishment.
- Further, we recommend a progressive shift in staff ratios between these two types of role: as increased investment in therapeutic roles is embedded in the system, there will be a corresponding decrease in the need for guard roles.
- A stronger emphasis on mentorship will support the Government’s desire for a ‘laser-like focus on rehabilitation’.<sup>4</sup>
- We strongly recommend that solitary confinement practices, including ‘lockdowns’, and the use of isolation as punishment be prohibited.
- All non-violent offences (eg burglary and unlawful use of a vehicle) should be removed from the proposed legislation because these two offences are outside the scope of the Government’s election promise.



## Summary of our recommendations

**That the Queensland Government implement the following recommendations:**

### *The Bill*

- Given its major human rights incompatibilities, the Bill if passed should be amended to limit the override declarations and extensions of the declarations to 12 months from commencement. This will ensure accountability and transparency in terms of the ongoing contravention of the *Human Rights Act 2019*.
- That the Bill retain provisions allowing the Children’s Court to make exclusion orders in cases where the presence of certain individuals or entities could risk the safety of a person or prejudice the proper administration of justice. Judicial discretion is critical to safeguarding fairness and protecting the rights of children.
- That solitary confinement practices, including ‘lockdowns’, and the use of isolation as punishment be prohibited.
- That all non-violent offences (eg burglary and unlawful use of a vehicle) should be removed from the proposed legislation because these two offences are outside the scope of the Government’s election promise.

### *Prevention and early intervention*

- That the Queensland Government invest in a restorative approach consistent with the recommendations of the recent Australian Human Rights Commission report, *Help Way Earlier! How Australia Can Transform Child Justice to Improve Safety and Wellbeing*<sup>5</sup>, and specifically the following recommendation, that:

*Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.*

- That the Queensland Government pay especial attention to the suspension rates of Queensland children, particularly by:
  - Providing extra resourcing and support specifically at the primary–high school transition point.
  - Focusing on children aged 6-9 years to reduce short and long suspensions.

Focusing on reducing the educational exclusion of children in early primary school could contribute, with other initiatives, to a reduced ‘pipeline’ of children in the 10-13-year-old cohort of alleged child offenders within the first term of this Government.

- That the Queensland Government invest in a stronger public health approach and increased focus on universal health services during the early years, as well as greater investment to enable children and families to access supports to meet identified needs, regardless of their location in Queensland, or socioeconomic, cultural or other factors.

# 1 Introduction

Anglicare Southern Queensland (Anglicare SQ) and the Anglican Church Southern Queensland Social Responsibilities Committee (SRC) welcome the opportunity to make a joint submission to the Queensland Government Justice, Integrity and Community Safety Committee's consultation on the Making Queensland Safer Bill 2024 (the Bill).

We have, however, deep concerns about the human rights incompatibility, lack of evidence base and unintended consequences of the Bill, and therefore do not support the proposed legislation.

The core objective of the Bill is to reduce youth offending by increasing the punitive consequences attached to a range of offences.

We support the goal of reducing youth offending, while recognising that a decade of statistics demonstrate that the issue is far from the 'youth crime crisis' position of the mainstream media and others.<sup>6</sup>

Reducing youth offending is a complex undertaking that will not, however, be achieved by increasing consequences for children to a level that is, as the Attorney-General notes in the Bill's Statement of Compatibility, "more punitive than necessary to achieve community safety".<sup>7</sup>

Rather, it requires cross-sectoral commitment and action, a strong evidence base and appropriate investment by government in holistic prevention and early intervention support programs for children and families, addressing the risk factors that can result in youth offending in the first place.

In addition to delineating our views on the Bill, this submission outlines some alternate immediate and short-term actions the Queensland Government could take to reduce youth offending by "holding young people accountable for their actions and breaking cycles of reoffending"<sup>8</sup> in ways that genuinely contribute to making Queenslanders safer.

### *Anglicare's experience*

Anglicare's comments in this submission reflect the direct expertise and experience of our organisation over decades of service delivery, working directly with many thousands of children, young people, and their families.

In 2022–23, Anglicare supported 1,695 carers to provide 383,863 nights of foster and kinship care for children and young people, and 46,511 hours of support and accommodation for women and young people experiencing homelessness. We operated 29 residential homes for children and young people in need.

Anglicare offers an Intensive Bail Initiative (IBI), which includes a range of programs that provide early intervention and diversionary support to young people. Participants include many first-time offenders who have actively chosen to participate in the program in order to change their behaviors and improve their life outcomes. We work with both the individual and their family and provide practical support, such as mentoring, parenting programs, counselling and assistance in finding employment and secure housing.

Anglicare also ran Supervised Community Accommodation (SCA) Services in partnership with the then Department of Child Safety, Youth and Women for young people who had been granted bail by a court, and did not have a safe home to go to. Independent evaluation of the program noted the high quality of service delivery, including the effectiveness of the wrap-around framework, strong case management and positive feedback from young people in the program.

We also draw on experience that includes operating child and family programs and services across a geographic footprint double the size of the United Kingdom. This includes programs such as Family Intervention Services; Intensive Family Support; Secondary Family Support; Supported Independent Living Services; and, Assessment Support Connect. In Gympie, we also operate the Next Steps Plus and extended care programs for young people transitioning out of care.

### *Anglican Church SQ Social Responsibilities Committee*

The Social Responsibilities Committee of The Anglican Church Southern Queensland allows the Anglican Church to contribute to the building of a just society and flourishing planet through education and advocacy.

It seeks to allow the Church to respond to the 4th and 5th Marks of Anglican Mission:

- To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation
- To strive to safeguard the integrity of creation, and sustain and renew the life of the earth

## 2 Human rights incompatibility

The drivers for youth offending across Australia are well-known and clearly identified by research: clusters of risk factors that include experience of poverty, family violence, cultural disconnection, unstable accommodation or homelessness, disengagement from education, exposure to alcohol and substance misuse and histories of familial offending and/or involvement with the child protection system; as well as early contact with the justice system, which is one of the key predictors of future re-offending.

All these factors have human rights implications related to our care for children, and their right to special care in the protection of their human rights. Children are developmentally different to adults, do not have the same decision-making capacity as adults, and experience different vulnerabilities.

The United Nations Convention on the Rights of the Child outlines that children in contact with the justice system should 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." <sup>9</sup>

Like every other Australian jurisdiction consulted when we, as a nation, ratified the Convention on the Rights of the Child in 1990, Queensland is responsible for fulfilling our obligations under that Convention.

Equally, Queensland's own *Human Rights Act 2019* includes rights that have been explicitly disregarded in the drafting of this legislation, including that:

1. A child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation.
2. A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

This is directly addressed by the Attorney-General and Minister for Justice and Minister for Integrity in the human rights Statement of Compatibility on the Bill. The Attorney-General notes:

*I recognise that **there may be less restrictive options available to achieve the stated purpose**, such as by increasing maximum penalties for specific offences to mirror the maximum penalties for adult offences, without also exposing children to mandatory minimum sentences, or by providing courts with sufficient discretion to impose a sentence that fits the crime and circumstances of the offender.*

*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 [our emphasis].<sup>10</sup>*

Given the major human rights breaches raised above, the Bill if passed should, therefore, be amended to limit the override declarations and extensions of the declarations to 12 months from commencement. This will ensure accountability and transparency in terms of the ongoing contravention of the *Human Rights Act 2019*.

### **3 The evidence base: outcomes and impacts of youth incarceration**

Key elements of the Making Queensland Safer Bill 2024 depend upon the effectiveness of detention as a deterrent and punishment in order to steer children and young people away from crime. These include **'Adult Crime, Adult Time', and removing the principle of detention as a last resort.**

There is, however, extensive evidence demonstrating that incarceration of children **does not have the desired effect of reducing youth offending.**

A recent report by the Justice Reform Initiative, an Australian coalition of justice system experts, was straightforward about the efficacy of detention:

*Prison does not work to reduce crime; it does not work to build safer communities; and it does not work to address the social drivers of contact with the criminal justice system.<sup>11</sup>*

The evidence for this verdict is clear: on an individual, social and economic level, detention as *anything but* a last resort is a failing system:

- Making it easier to imprison children and young people does not make the community safer. Detention increases young people's vulnerability and disadvantage, and therefore the likelihood that they will return to the prison system over and over, both as youth and as adults.<sup>12</sup> Children and young people who have been imprisoned often experience disengagement from education and employment, disrupted positive relationships, social exclusion, and poorer health outcomes.
- The largest proportion of children and young people represented in the youth justice system are there because they have made poor or impulsive decisions or engaged in risk taking as a result of normal developmental processes.<sup>13</sup> Exposing these children and young people to the trauma of time in detention is counter-productive: diversion is much more effective,<sup>14</sup> and most will simply 'age out' of the justice system as they become more mature.<sup>15</sup>
- Detention is eye-wateringly expensive. Recent Productivity Commission data shows that the annual operating cost of imprisoning a child is \$2,068.32 a day and \$761,507 each year. This is in addition to the two new youth detention centres at Woodford and Cairns; a new youth remand centre at Wacol; and,

nearly \$200 million spent less than five years ago on expanding capacity at the West Moreton and Brisbane youth detention centres.<sup>16</sup>

- In terms of social costs, the Australian Government Senate Legal and Constitutional Affairs Committee report, *Value of a justice reinvestment approach to criminal justice in Australia*, cites evidence that the social costs of imprisonment are “almost impossible to calculate”, in that high rates of incarceration:

*...break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system. As a result, as communities become less capable of managing social order through family or social groups, crime rates go up.*<sup>17</sup>

While the comment is not specific to youth detention, it is equally relevant given the impact of early imprisonment across the life trajectory of young people who engage in offending behaviours.

- The impact of detention on Aboriginal and Torres Strait Islander children, and the effect of disconnection from kin and culture, is described in uncompromising terms in a 2024 report from the Justice Reform Initiative, *Children, Youth Justice and Alternatives to Incarceration in Australia*:

*Incarceration for all children, including First Nations children, is trauma reinforcing. Children are removed from their carers, kin and communities, and often unable to participate in meaningful activities, or further education, employment, or vocational training. For First Nations children who are disproportionately represented in prison, trauma is amplified by the removal from Country and community, and disconnection from culture.*<sup>18</sup>

## 4 Unintended consequences

### 4.1 Safety, stigma and procedural fairness

Anglicare SQ and the SRC are also deeply concerned about the unintended consequences of the Bill. This **includes the amendment to further open the Children’s Court** by ensuring victims, victims’ representatives and relatives, the representatives of relatives of a deceased victim, and persons holding media accreditation cannot be the subject of an exclusion order.

The proposed amendments in the Bill will remove the ability for the Children’s Court to make an exclusion order, even where there may be a risk to the safety of a person or where it may prejudice the proper administration of justice. As the Queensland Council of Social Services (QCOSS) notes in its submission, this change represents a significant departure from the principles of procedural fairness and judicial discretion that are fundamental to ensuring just outcomes in youth justice proceedings.

Enabling broader access to the court by the media is equally concerning given existing levels of media negativity and sensationalism.<sup>19</sup> Such reporting encourages stereotyping of young people and influences community perceptions, as well as ‘Facebook vigilantism’ that further alienates young people from their communities. This occurs particularly, but by no means exclusively, in smaller communities where anonymity is difficult to preserve; and the risk is heightened for First Nations children, who often come from tight-knit communities where such exposure can have far-reaching consequences. The inability to exclude individuals or entities in sensitive or high-profile cases may in fact expose children to situations where their safety is at risk or where the integrity of judicial processes is compromised.

The negative narrative often perpetuated by the media can also undermine community ties and support acting as key protective factors for young people in steering them away from potential offending behaviours. The constant refrain of negative language impacts how community members think about youth, their views of alleged youth offending, and their willingness to support and engage with young people who are at risk of taking a pathway that is harmful both to them and to the community.

There is extensive literature on the harmful impacts of social exclusion on adolescents. The experience of being an outsider, particularly for a teenager, is deeply harmful, and research shows that young people often respond with substance use/abuse, risky behaviors and school disengagement, as well as develop increased mental health concerns, such as depression. They also often search out a peer group where they can feel they belong.<sup>20</sup>

The issue facing the Queensland Government is therefore twofold: to address both youth offending and the community’s perception of it. If the Bill is passed in its current form, ongoing discussion of a ‘youth crime crisis’ will suggest that people continue to have something to be afraid of, thereby undermining the community’s perception of the legislation’s effectiveness.

At some point, the community will need to regain confidence that young people are not (as one of Anglicare’s young clients put it), *‘malicious’ and ‘evil’ — and they think that’s all young people will ever be’*.

We suggest that one important strategy for helping community members feel safer is to share more stories about young people who have turned their lives around. Anglicare programs, current and past, have had significant success helping young people and their families to address the underlying causes of their offending (see Sally and Rangi’s stories over page).

### **Sally's story: case study from the INSYNC program<sup>21</sup>**

Sally, 25, entered INSYNC's crisis accommodation as a 16-year-old after her mother's relationship breakdown and imprisonment left her on her own.

It's no surprise she ended up dealing with mental health challenges.

"I woke up one morning to find mum had been arrested and I was in the house all by myself. Even though I had a part-time job, I couldn't afford the rent and I didn't want to give up school," she said.

However, with support, Sally achieved her goals, gaining qualifications that led to her employment in a local hospital.

As a lead tenant in INSYNC's transitional accommodation, her deep understanding of youth homelessness helped her mentor the other young people in the house.

"When I was younger, INSYNC was there to help me when I had nothing else. And living there gave me a sense of having a family that cared and wanted to help," she said.

### **Rangi's story: case study from the Intensive Bail Initiative program**

Our young client, Rangi, aged 13, was on remand and being held in BYDC. When his bail was not granted, Anglicare connected with Rangi's family, who identified as Samoan, and linked them with a culturally appropriate youth worker. Meetings with the family and the child identified that:

- Rangi didn't have a bedroom and was sleeping in the garage, making supervision difficult and increased his opportunity to leave home at night.
- The parents struggled with Rangi's behaviours and how to manage these.
- The parents had significant medical concerns of their own.

Rangi recognised that he offended when he was bored. He wasn't attending school, but he had interests in football, church and boxing.

Anglicare's youth worker worked regularly with Rangi to create plans and goals for when he was released and to ensure that he maintained a connection with the youth worker upon his release. The Anglicare coordinator and youth worker worked alongside the family to:

- Identify a bedroom space and a rebuilt TV and game console to increase motivation for Rangi to stay home at night.
- Plan youth worker support for the afternoon/early evenings to model and support the family with behaviour management.
- Provide advocacy around Rangi's return to school/sporting activities
- Link Rangi's parents with an organisation who could assist with an NDIS application.

Legal representation at Rangi's bail hearing stated it was very unlikely that he would be granted bail due to his very high number of offences. Anglicare supported the family at court and assisted his mother in preparing to address the Magistrate. Anglicare also prepared a letter detailing the supports in place for Rangi. He was granted bail with strict conditions and was successfully completing programs and attending school.



## 4.2 Overcrowding in detention centres and adult watch houses

It stands to reason that a more punitive approach, wherein more young people are caught up in the youth justice system, will put further pressure on an already struggling system. The 'Adult Crime Adult Time' legislation, for example, casts a wide net for offences for which children can be charged as adults, with thirteen offences listed.

The unplanned, flow-on effects of overcrowding in detention centres and watch houses have serious and wide-ranging impacts.

### 4.2.1 Detention centres

Chronic staff shortages in Queensland youth detention centres have already been at the core of human rights and Workplace Health & Safety issues for many years.<sup>22</sup> Recent figures and events reveal that this is a continuing problem.

- In July 2023, workers at the Brisbane and West Moreton youth detention centres walked off the job after serious incidents attributed to an 'unsafe' workplace, where 'routine confinement of children due to staff shortages ultimately put workers at greater risk of violence when young people were allowed out'.<sup>23</sup>
- Staff shortages at Cleveland Youth Detention Centre in Townsville have also led to a situation in which children are regularly locked alone in their rooms when minimum safe supervision ratio are unable to be met.<sup>24</sup> Recent Queensland Audit Office figures reveal that Cleveland has the highest rates of lockdown, increasing from 12 per cent of the year in 2018–19, to 81 per cent in 2022–23 — equivalent to 294 days in lockdown.<sup>25</sup> The response to a Queensland Parliament Question on Notice revealed that in the 2021–22 financial year, children were locked alone in their rooms:
  - 30,255 times, for between 6 and 12 hours;
  - 519 times, for between 12 and 24 hours;
  - 83 times for more than 24 hours.<sup>26</sup>
- As a human rights issue, 'separation' (isolation or solitary confinement) has impacts on the psychological wellbeing of children, their access to services, and the rights of children under multiple human rights standards.<sup>27</sup> The *Child Death Review Board Annual Report 2022–23* (Queensland Family and Child Commission) notes that:

*Periods of separation, isolation, or solitary confinement can impact a child's health and wellbeing in severe, long-term and irreversible ways. ... Being confined in a cell for extended periods of time, without interaction with peers, family, culture, and support networks creates an environment of re-traumatisation. Research has shown pre-existing mental health problems are likely exacerbated by experiences during incarceration, such as isolation, boredom and victimisation.*<sup>28</sup>

#### 4.2.2 Watch houses

Youth Justice Principle 19 in schedule 1 of the Queensland *Youth Justice Act 1992* clearly states that “A child detained in custody should only be held in a facility suitable for children”.<sup>29</sup>

Overcrowded conditions in watch houses were addressed in the September 2024 Queensland Ombudsman Inspector of Detention Centres report focusing on the detention of children in Cairns and Murgon watch houses. The report detailed conditions incompatible with human rights in both locations.

##### Key observations

The infrastructure at the watch houses in Cairns and Murgon is not suitable for detaining children, especially for longer periods of time. Prolonged detention of children in this type of environment can significantly affect their wellbeing.

At the Cairns watch house there is:

- a lack of any natural light in accommodation areas
- a lack of a consistently available area for boys to interact, leading to them being locked in their cells for substantial periods of time
- significant overcrowding of cells at times
- a lack of privacy regarding access to toilets and showers.

At the Murgon watch house there is:

- absolutely no access to fresh air during the period of detention, as there is no usable outdoor exercise yard
- a lack of privacy regarding access to toilets.<sup>30</sup>



Figures 1 and 2: Accommodation cells in the Boys' unit at the Cairns watch house (Sept 2024)<sup>31</sup>

## 5 How do we hold children accountable?

Given the incompatibility of the proposed Bill with Queensland's own *Human Rights Act*, as well as international human rights conventions, such as the Convention on the Rights of the Child; an evidence base clearly indicating that punitive approaches to child justice are ineffective and harmful both now and in the future; and, a range of expensive, unsafe and potentially litigious unintended consequences from overcrowded detention facilities, the question arises: how then do we hold children accountable for their offending behaviours?

We in no way intend to imply that children should be exempt from the consequences of their actions. In countries such as Sweden, France, Norway, Scotland<sup>32</sup> and others, however, the anti-social and offending behaviour of children is successfully dealt with through the child welfare system rather than the justice system.<sup>33</sup>

In a thoughtful policy paper, the Child Rights International Network (CRIN) notes the need for a more holistic approach that separates 'responsibility' from 'criminalisation':

*We need to separate the need to identify, appropriately assess and respond constructively to children's responsibility for crimes from the quite distinct urge to criminalise them...Children are responsible for many actions defined by criminal law as crimes — in so far as they did it. And many are also responsible in the sense that they did know what they were doing was wrong, in one way or another, when they did it...But we must also recognise, as the Convention does, that their developmental status requires a special approach, for all our sakes...*

*Keeping [children] out of the criminal justice system does not mean that young people who commit offences avoid 'justice' or that nothing is done about their offending...Stopping criminalising children does not mean giving up on or giving in to children who are causing trouble and harm.<sup>34</sup>*

Anglicare's own work with young people at risk of involvement in the youth justice system is based on a restorative practice approach that focuses on helping young people to understand the impact of their actions, accept responsibility and make reparation. The framework is culturally appropriate and embedded across the whole spectrum of a child's experience, and at every touchpoint with the justice system. The statutory element of this practice framework — a restorative justice approach — sees offending as a violation of people and relationships, and thus 'creates obligations to make things right'.<sup>35</sup> It addresses the needs and harms experienced by victims, offenders and the community.

The restorative approach is consistent with the recommendations of the recent Australian Human Rights Commission report, *Help Way Earlier! How Australia Can Transform Child Justice to Improve Safety and Wellbeing*<sup>36</sup>, and specifically the following recommendation, that:

*Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.*

## 5.1 What can we do right now to reduce youth offending?

The core objective of the Bill, as noted earlier in this submission, is to reduce youth offending. The discussion thus far outlines a range of ways in which the Making Queenslanders Safer Bill is an inappropriate means of achieving this aim.

The suggestions we make below are consistent with the objective of reducing youth offending through appropriate government investment in holistic prevention and early intervention support programs for children and families that address the risk factors that can result in youth offending in the first place.

### 5.1.1 Take action to address the red flags

There is no single department or approach that can address the complex array of reasons why children and young people offend.

It is therefore critical that the Queensland Government engages across portfolios to identify and address some of the key 'red flags' that suggest children could be at risk of disengaging from school and the community, increasing their potential to offend. In particular, we highlight the role of education and health, and a cross-portfolio responsibility that includes justice, employment, housing and others to maintain a focus on social connection and inclusive communities.

#### 5.1.1.1 Education

##### School suspensions

Research published by the Australian Institute of Criminology has demonstrated positive associations between repeat school suspensions and the problem behaviour of teenagers (such as violent and nonviolent antisocial behaviour, violence and tobacco use), even taking into account other known risk factors for such behaviours.<sup>37</sup>

*School suspension is a key element of what is known as the 'school-to-prison pipeline', which sees marginalised and excluded young people at an increased risk of juvenile and, eventually, adult incarceration (Hemphill 2017).*

An Anglicare collaboration with Education Queensland that developed timelines of 'education red flags' for students indicated increased risk of problem behaviours at the transition point from primary to high school. The project suggested that the incidence of such behaviours could be reduced by providing targeted, intensive support at this milestone, with greater availability of professionals, such as psychologists and counsellors, and more alternative education pathways and other services particularly for 10-13 year olds who currently have few options outside the mainstream education system. As Baidawi et al note:

*Few services currently target the unique needs of children aged 10 to 13 years with early offending behaviour. Instead, most of the available services focus on older teenagers, young adults, or younger children.*<sup>38</sup>

There is also a significant body of evidence that suggests that the younger a student is when they are first suspended, the more likely it is they will end up involved in the juvenile justice system.<sup>39</sup> One large-scale longitudinal study in the United States<sup>40</sup> found that students were more likely to be suspended from ages 11–18 years if they had already been suspended in the early years of primary school. Students who have significant experience of exclusionary discipline tend to have lower educational outcomes, are more likely to be disengaged from education,<sup>41</sup> and are more likely to be involved in the justice system.<sup>42</sup>

In their article ‘School House to Big House’, researchers O’Brien and Trudgett note also that Aboriginal and Torres Strait Islander children (particularly boys) are suspended or excluded from schooling at much higher rates than non-First Nations children.<sup>43</sup>

While the explicit link between First Nations children who are suspended and/or excluded from education and their subsequent over-representation in the justice system is still an under-researched area, the link between school exclusion of children from minority and marginalised groups and over-involvement in the justice system has been convincingly established internationally.<sup>44</sup> It requires little stretch of the imagination to see similar patterns in Australia and, in reference to the current inquiry, here in Queensland.

University of Queensland researchers Avery-Overduin and Poed<sup>45</sup> provide a systematic review of alternatives to external suspension and exclusion for P-6 students in a peer-reviewed 2023 article.<sup>46</sup> They address not only a range of alternatives to suspension, but also discuss which of these approaches have demonstrated successful outcomes in reducing the time students spend excluded from classrooms in response to behavioural issues.

Addressing the suspension rates of Queensland children is a strategy that this Government could implement also immediately in two ways:

- Providing extra resourcing and support specifically at the primary–high school transition point.
- Focusing on children aged 6-9 years to reduce short and long suspensions.

Data obtained by the ABC earlier this year revealed that in 2023 Prep students received more than 700 suspensions, Year 1 students about 2,000, Year 2 students approximately 2,500, and Year 3 students about 3,500.<sup>47</sup>

Focusing on reducing the educational exclusion of children in early primary school could contribute, with other initiatives, to a reduced ‘pipeline’ of children in the 10-13-year-old cohort of alleged child offenders within the first term of this Government.

In the longer term, O'Brien and Trudgett made the following point about outcomes for First Nations children. It is, however, equally relevant to all children, and provides strong justification for focusing on educational engagement as one of a bundle of approaches addressing the reduction of youth offending:

*Education may play a significant role to prevent the incarceration of young people. It has been shown that education is a vehicle for social and economic change and can be instrumental in alleviating poverty... By improving educational outcomes... other social determinants, such as future employment and income are greatly improved, thereby reducing the risk of crime and incarceration.* <sup>48</sup>

#### 5.1.1.2 Health, development and disability

##### Universal health services in the early years

A further cohort of children over-represented in both educational exclusion<sup>49</sup> and the youth justice system is that of children with a disability. The statistics for children with disability in the juvenile justice system are variable, with figures varying from 33–47 per cent depending on the criteria used,<sup>50,51,52</sup> but regardless reflect gross over-representation<sup>53</sup> and significant potential for individual harm.

Recent Australian research noted that disabilities were frequently undiagnosed for children charged with early offending, resulting in school disengagement and lack of early intervention. As one staff member in the youth justice system noted:

*...in the [education support program] we find that we're working very hard to often support young people to get the appropriate assessments for undiagnosed [disability] – whether it's a neurological issue or anything down to dyslexia, dysgraphia, ADD, and even sort of those more neurotypical children who may have autism.* <sup>54</sup>

Disability-related behaviours, particularly where undiagnosed, can be misidentified by youth detention staff as non-compliant behaviour and met with responses aimed to 'maintain order' or as punishment.<sup>55</sup> The Disability Royal Commission also points out that many First Nations people, in particular, may have an undiagnosed or unidentified disability, yet no Australian corrective services or youth justice agency uses a culturally-validated screening tool to identify disability in First Nations people.<sup>56</sup>

Queensland Advocacy for Inclusion's submission to this consultation argues that assuming longer prison sentences will deter children from engaging in offending behaviour is erroneous, particularly for children whose decision-making capacity (already less than that of adults) is further impacted by disability. For example, impulsivity and hyperactivity, both symptoms of attention-deficit/hyperactivity disorder (ADHD), can impair judgment and decision-making. This can increase a child's risk of engaging in risk-taking behaviour, meaning they are less able to self-regulate their emotions. Threatening detention and punishing children in these circumstances will, therefore, be ineffective deterrents and will not address the underlying causes of their offending behaviour.

Given that disabilities often first present themselves in the early years,<sup>57</sup> there is a strong argument for expansion of a public health approach to early childhood screening for health, development and disability. As long as a decade ago, McLean et al noted:

*In countries where public primary health systems are established, these programs are embedded as universal systems, seeking to reach all children and support them in reaching their potential, for the benefit of the individual child, their family and society as a whole.*<sup>58</sup>

Further, they noted:

*Early intervention (therefore requiring early identification) for a variety of health and developmental problems is widely accepted to be a cost-effective strategy that optimises outcomes.*<sup>59</sup>

Researcher Tim Moore outlines the value of an integrated tri-level health system that addresses the need for universal, targeted and tertiary services.<sup>60</sup> Given the over-representation of children with a disability in the youth justice system, as mentioned above, Anglicare and the SRC advocate for strengthening of preventative services at each of these levels. We particularly emphasise the need to supplement (often bottle-necked) tertiary treatment services with a stronger public health approach and increased focus on universal health services during the early years, as well as greater investment to enable children and families to access supports to meet identified needs, regardless of their location in Queensland, or socioeconomic, cultural or other factors.

I've worked alongside 12-year-olds in the criminal justice setting in my role as a youth worker, providing court support. The children I met mostly just wanted to play games and hang out with their friends and older siblings. Sometimes this led to their being charged with an offence and brought before the court. The thinking was usually that they needed to be 'taught a lesson' so that they wouldn't come before the court again.

Often they arrived at the court wide-eyed and scared. Court was an experience of having things done to them, of being told they were 'bad' with little opportunity to participate. Developmentally this was difficult for many of them, and the process didn't facilitate their engagement. Sadly, sometimes the process engaged them in the identity of 'being an offender' and this was hard for them to let go of.

I learned by getting to know these children and their parents that court was the worst place for them at 12 years old, that they very rarely understood the process, but they experienced the ramifications of it, and sometimes this stayed with them far longer than it should have.

*Adam, Anglicare staff member*

## 6 Amendments to the Bill

It is clear from the above discussion that Anglicare and the Social Responsibilities Committee do not believe that the Making Queensland Safer Bill 2024 in its current form will achieve its objective and that, in fact, existing evidence suggests that the legislation is likely to generate harm to children, their families and communities.

If the Bill is set to be passed by Christmas 2024, however, as promised by this Government, we urge consideration of amendments addressing current issues in the youth justice system, including:

- With the likely increase in numbers of children in detention, we recommend changes to the staffing structure in detention centres that clearly separate the functions of ‘guard’ and ‘therapist’. It is psychologically unsafe for children when the staff member fulfilling a mentor role is also the person with authority to place children in solitary confinement or impose other punishment.
- Further, we recommend a progressive shift in staff ratios between these two types of role: as increased investment in therapeutic roles is embedded in the system, there will be a corresponding decrease in the need for guard roles.
- A stronger emphasis on mentorship will support the Government’s desire for a ‘laser-like focus on rehabilitation’.<sup>61</sup>
- We strongly recommend that solitary confinement practices, including ‘lockdowns’, and the use of isolation as punishment be prohibited.
- All non-violent offences (eg burglary and unlawful use of a vehicle) should be removed from the proposed legislation because these two offences are outside the scope of the Government’s election promise.

## 7 Conclusion

A plethora of national and international evidence demonstrates that jailing children — particularly those with the negative life experiences and structural disadvantage faced by most children in the youth justice system — fails every test of good policy. It is ineffective, expensive and creates incalculable, intergenerational-harm for individuals, families and the wider community.

The Making Queensland Safer Bill 2024, by the Queensland Government’s own admission, contravenes not only international human rights conventions, but Queensland’s own *Human Rights Act*. The Bill disregards internationally recognised medical and legal evidence, and is at odds with social norms and expectations about protecting children.

It is clear that there are alternate, less punitive ways of achieving the core objectives of this Bill. The best way of reducing youth offending is to keep children out of the system in the first place — working with children and families earlier and addressing the root causes of offending behaviour rather than the end result.



A recent editorial in the *Gold Coast Bulletin* reports that many Queenslanders no longer feel safe in their own homes.<sup>62</sup> This is tragic, and unnecessary. As a Government and as a community, we need to implement what works, communicate it well, and stop ‘othering’ our young people so they feel part of a community they no longer want to damage.

## Endnotes

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- <sup>6</sup> The Queensland Government Statistician's Office, in its most recent report, noted a 5.2% increase in unique child offenders, compared to a 4.1% increase in unique adult offenders — a mere 1.1% difference in overall figures. The largest volume increase was for offenders aged 40–44 years (+796) and the largest proportional increase (+14.3%) for those aged 50–54 years. (Queensland Government Statistician's Office, Queensland Treasury. 2024. *Crime Report, Queensland, 2022–23*. [www.qgso.qld.gov.au/issues/7856/crime-report-qld-2022-23.pdf](http://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2022-23.pdf))
- Both adult and child rates were lower in 2022–23 than a decade previously, in 2013–14 (-23.7% and -26.8% respectively), and the number of young offenders, relative to the population, actually fell 26.7 per cent over nine years. (Sato, K. 2024. Violent crime nearly three times worse since 2020, Queensland statisticians find, and it's not youth. *ABC Radio Brisbane* [online], 22 April. [www.abc.net.au/news/2024-04-22/queensland-violence-on-rise-report-shows-not-just-youth-crime/103751192](http://www.abc.net.au/news/2024-04-22/queensland-violence-on-rise-report-shows-not-just-youth-crime/103751192))
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