

Making Queensland Safer Bill 2024

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Australian
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Commission

Inquiry into the Making Queensland Safer Bill 2024

Australian Human Rights Commission

Submission to the Justice, Integrity and Community Safety
Committee

3 December 2024

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1 Introduction

The Australian Human Rights Commission (Commission) makes this submission to the Justice, Integrity and Community Safety Committee (Committee) in relation to its inquiry into the *Making Queensland Safer Bill 2024* (the Bill).

It is concerning that only three working days have been provided from the introduction of the Bill on 28 November 2024 to the close of submissions on 3 December 2024, to comment on proposed legislative reforms that will have such significant and long-lasting human rights implications.

The Commission is opposed to key elements of the Bill, specifically provisions that, in the Government's own admission, directly breach human rights, in particular the *Human Rights Act 2019* (Qld) (Human Rights Act) and the *UN Convention on the Rights of the Child* (CRC).

We note the Queensland Attorney-General has provided the following justification:

These measures and the purposes to which they are directed are clearly supported by Queenslanders and are a direct response to growing community concern and outrage over crimes perpetrated by young offenders. For this reason, the amendments include an override declaration which provides that they have effect despite being incompatible with human rights.¹

Community safety is vital. The Commission notes that evidence shows that a more punitive justice system does not work to prevent crime by children.

The Commission's recent *Help Way Earlier!* report showed how a child rights and evidence-based approach to child justice reform should be taken to reduce child offending while also respecting children's rights.²

The report also acknowledged community concerns about personal safety are real, and the voices of victims need to be heard. Victims of crime advocates interviewed for the report expressed frustration that their calls for more effective prevention and early intervention were not being acted on by governments.³

The evidence shows that the younger you lock up children, the more likely it is that they will go on to commit more serious and violent crimes. As shown in *Help Way Earlier!*, making the justice system more punitive through longer sentences, harsher bail laws, and building more children's prisons is the wrong approach. That is because offending by children is a symptom of underlying causes and needs that we are failing to address. The proposed measures in the Bill are likely to result in more crime, not less. We urge the Queensland Government to apply

the evidence about what works to support children’s wellbeing, prevent crime and make communities safer.

Many children in contact with the criminal justice system are dealing with multiple and complex issues including neurological disabilities, cognitive and learning problems and mental health disorders. Poverty, intergenerational trauma, violence and abuse, racism, homelessness, and inadequate healthcare are contributing factors in their contact with the justice system. These social determinants limit how children are able to enjoy their rights on a non-discriminatory basis, including the right to education, health, and an adequate standard of living, as well as the right to live in safety and to fully enjoy their culture.

When children enter the justice system, their disabilities and mental health issues are exacerbated by detention and harmful conditions, including extended periods of time in isolation in their cells, as noted in numerous official reports. First Nations children and young people continue to be overrepresented in the criminal justice system, and particularly in detention.

Prevention of crime by children requires a public health approach to reform systems including health, education, housing and child protection, in order to address the underlying causes of crime, as set out in the *Help Way Earlier!* report.

2 Recommendations

Recommendation 1: The Commission recommends that the *Making Queensland Safer Bill 2024* should not be passed.

Recommendation 2: The Commission recommends that the Committee endorse the 24 recommendations in its *Help Way Earlier!* report which outline how Australia can transform child justice to improve safety and wellbeing.

3 Key human rights concerns with the Bill

3.1 Criminal justice responses for children must be age-appropriate, proportionate, and rehabilitative

The Bill proposes to amend the *Youth Justice Act 1992* (Qld) to remove the current restrictions on minimum or mandatory sentences for children for a number of violent offences and offences against property, so that they will become subject to the same minimum, mandatory and maximum sentences which currently apply to adults.

The Queensland Government has admitted in the Statement of Compatibility that these provisions are incompatible with human rights under the Human Rights Act and the CRC. The CRC is the most widely ratified human rights treaty in history, including by Australia in 1990. Australian governments and parliaments have obligations to take all appropriate measures to help all children in Australia realise their rights.

The CRC recognises that childhood is separate from adulthood, and lasts until 18; it is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity.

This is reflected in article 40 of the CRC that requires Australia to ensure its criminal justice responses for children are age-appropriate, proportionate, and rehabilitative.

The principle of proportionality means that mandatory sentences of any kind, and particularly of detention, contravene the CRC.⁴ They also have a disproportionate impact on First Nations peoples.⁵

The Bill's provisions will also result in more children being sentenced to longer periods of detention, which in turn may lead to further breaches of children's human rights. As noted in the Statement of Compatibility itself, the legislation 'may result in children being held in watchhouses for extended periods of time [and that] this impact results in limitations to the protection from cruel, inhuman or degrading treatment ... having regard to the fact that it is widely accepted that watchhouses are not appropriate or humane places in which to detain children (particularly for any lengthy period of time)⁶.

As discussed in *Help Way Earlier!*, children are already being detained inappropriately in adult watch houses in Queensland, some for extended periods of time.⁷

3.2 Detention as a last resort

The Bill proposes to amend the *Youth Justice Act 1992* (Qld) to remove the principle of detention as a last resort and the principle that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community.

The CRC states that detention should only be used as a last resort, and for the shortest appropriate period of time (article 37(b)). These are the main principles upon which Australian youth justice systems are based, and which are incorporated in some form in all state and territory legislation.

UN studies have highlighted the potentially harmful effects of detention on children, especially their health, mental health and development.⁸ Although there is a need for more research on the impacts of detention,⁹ it is clear that many children enter detention with existing health conditions, and that these may be exacerbated by being in detention, with some health conditions developing as a result of deprivation of liberty.¹⁰

Many children are entering detention with pre-existing vulnerabilities, such as neurodevelopmental disabilities and mental ill-health. Current models of detention are likely to compound trauma for these children. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability found that detention settings exacerbate the vulnerabilities of children with disability who often lack access to therapeutic support and trauma-informed care.¹¹

Recognising this potential for harm, the UN Committee on the Rights of the Child urges nations to immediately embark on a process to reduce reliance on detention to a minimum.¹² This requires the development of effective and responsive community-based alternatives to detention. These are discussed further in the *Help Way Earlier!* report¹³

3.3 First Nations children's rights

The Queensland Attorney-General has claimed, in relation to the Bill, that:

The amendments do not directly or indirectly discriminate based on race [because] the increased sentences will be applied equally to all children who are convicted of an offence.¹⁴

The Commission disputes this claim. Indirect discrimination occurs when a measure (in this case increased sentences for children) applies to everyone equally but adversely impacts particular groups because of an attribute (in this case race) which is protected under discrimination law.

If this Bill is passed, there are risks that, because the legislation will disproportionately impact certain racial groups including First Nations children, it will breach the *Racial Discrimination Act 1975*.

Despite First Nations people making up only 4.6 percent of the Queensland population, First Nations children comprise approximately 62 percent of the Queensland youth detention population. The Queensland Government has acknowledged in the Bill's Statement of Compatibility that the proposed legislation is likely to further disproportionately impact First Nations children.¹⁵

There is ample evidence that the answer to reducing criminal offending by First Nations Children is to address racism and the structural inequalities they and their communities face and to put in place measures to restore their human rights. Further eroding human rights is a retrograde measure that will only do more harm.

It is also of note that the proposed legislation directly contradicts many of the key recommendations set out in the Royal Commission into Aboriginal Deaths Report which the Commission, for over 30 years, has consistently recommended be implemented across all jurisdictions.

The Commission recommends that the Committee calls for the implementation of all 339 recommendations of the Royal Commission into Aboriginal Deaths Report, particularly those relating to Child Justice.

Since its introduction only days ago, there has been international condemnation of this Bill, with the Chair of the United Nations Committee on the Rights of the Child expressing 'dismay at the proposed changes to the law for child offenders that the Making Queensland Safer Bill will bring about'.¹⁶

3.4 Media access to youth justice proceedings

The Commission is concerned with the Bill's proposal to amend the Children's Court Act so that persons with media accreditation cannot be subject to an exclusion order.

The CRC 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 stages of the proceedings' (article 40(2)(b)(vii)).

Media reporting on matters relating to Aboriginal and Torres Strait Islander issues has a history of causing damage and harm through the perpetuation of negative and racist stereotypes.

Media and public exposure can undermine rehabilitation for children and young people as they transition into adulthood, seek employment and other support services such as housing.

In the *Help Way Earlier!* report, stakeholders called for more effective guidelines or regulation of the media¹⁷ which would need to be consistent across broadcasters, press outlets and social media platforms.¹⁸ This could be in the form of national guidelines or a statement of general principles, grounded in child rights, covering issues including privacy, reporting on people in distress,

and child vulnerability in the justice system. These could be informed by existing guidelines, such as those on family, domestic and sexual violence,¹⁹ which guard against victim blaming, industry codes of practice,²⁰ and the United Nations Children's Fund (UNICEF) guidelines and principles for journalists reporting on children's issues.²¹

3.5 A national, child rights-based approach to reform

The Commission's *Help Way Earlier!* report outlined an approach to child justice reform that protects child rights and is evidence-based.

While the central recommendations of the report are for nationally coordinated action, it includes many recommendations for evidence-based actions that could be independently pursued by states and territories. Similar key actions have been recommended in numerous previous reports, inquiries and reviews of child justice and child protection systems.

Reform requires placing children and their wellbeing at the centre of policymaking and service delivery; empowering First Nations children, families and communities; optimising community-based action; building a capable and child specialised workforce; basing systems on data and evidence; and embedding accountability for the rights of children. Recommendations in the *Help Way Earlier!* report for achieving this include:

Recommendation 5: Australian Governments provide integrated, place-based health, education and social services for both children and their families.

Recommendation 7: Australian Governments urgently prioritise access to safe and affordable housing for children and families, including those in the child protection and justice systems.

Recommendation 8: Australian Governments prioritise access to comprehensive and culturally safe healthcare, including for children with multiple and intersecting needs.

Recommendation 9: Australian Governments resource schools to be community hubs integrated with health services and providing flexible learning options.

Recommendation 10: Australian Governments prioritise investments in prevention and early intervention through Aboriginal Community-Controlled Organisations.

Recommendation 11: Australian Governments improve availability of free and accessible community sport, music, other social activities, and cultural programs, addressing barriers such as lack of public transport.

Recommendation 12: Australian Governments 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.

Recommendation 13: Australian Governments invest in restorative justice conferencing to be available across Australia, ensuring culturally appropriate approaches for First Nations children and communities.

Recommendation 14: Australian Governments resource the redesign of services to be place-based and informed by evidence and local community priorities, in line with Priority Reform 1 of the *National Agreement on Closing the Gap*.

Recommendation 15: Australian Governments develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection and police. Training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.

Recommendation 16: Australian Governments ensure that all child justice matters are heard in specialised Children's Courts or by child-specialist magistrates.

Recommendation 17: Australian Governments collect key data on children in the child justice system, disaggregated by age, sex, disability, geographic location, ethnic origin, and socioeconomic background, including data disaggregated at the local level to support service design and delivery. This data should be publicly available and accessible.

Recommendation 19: Australian Governments legislate to prohibit solitary confinement practices in child detention facilities and prohibit the use of isolation as punishment in any circumstance.

Recommendation 20: Australian Governments 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*.

Recommendation 21: Australian Governments agree to implement nationally consistent standards for monitoring detention facilities for children.

Recommendation 22: Australian Governments fully implement the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by designating National Preventive Mechanisms that have child rights expertise in all jurisdictions.

Recommendation 23: Australian Governments conduct Child Rights Impact Assessments on laws and policies that affect children.

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- ¹ Queensland Parliament, *Making Queensland Safer Bill 2024, Statement of Compatibility*, at: <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0205/5824t205.pdf> (accessed 2 December 2024).
- ² Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (2024) 89 <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.
- ³ Australian Human Rights Commission, *Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (2024) 109 <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.
- ⁴ United Nations Committee on the Rights of the Child, *General Comment 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) para 78.
- ⁵ NT Royal Commission into the Protection and Detention of Children in the Northern Territory (2017) Volume 4, 172 <<https://www.royalcommission.gov.au/child-detention/final-report>>.
- ⁶ Queensland Parliament, *Making Queensland Safer Bill 2024, Statement of Compatibility*, at: <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0205/5824t205.pdf> (accessed 2 December 2024).
- ⁷ Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (2024) 89 <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.
- ⁸ Manfred Nowak, Independent Expert leading the UN Global Study on Children Deprived of Liberty, *United Nations Global Study on Children Deprived of Liberty* (11 July 2019) 167, 178 ; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc A/HRC/38/36 (10 April 2018), [53]–[55], [60]– [69].
- ⁹ Tess Kelly et al, *Ensuring the Highest Attainable Standard of Health for Children Deprived of their Liberty* (Report, 2023) 6.
- ¹⁰ Tess Kelly et al, *Ensuring the Highest Attainable Standard of Health for Children Deprived of their Liberty* (Report, 2023) 1.
- ¹¹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 81.
- ¹² United Nations Committee on the Rights of the Child, *General Comment 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) para 83.
- ¹³ Australian Human Rights Commission, *'Help way earlier!': How Australia can transform child justice to improve safety and wellbeing* (2024) 71-75 <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>.

- ¹⁴ Queensland Parliament, *Making Queensland Safer Bill 2024, Statement of Compatibility*, at: <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0205/5824t205.pdf> (accessed 2 December 2024).
- ¹⁵ Queensland Parliament, *Making Queensland Safer Bill 2024, Statement of Compatibility*, at: <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0205/5824t205.pdf> (accessed 2 December 2024).
- ¹⁶ Office of the High Commissioner for Human Rights, Public Statement provided by Ann Skelton, Chairperson, Committee on the Rights of the Child relating to the *Making Queensland Safer Bill 2024*, 30 November 2024.
- ¹⁷ Academic roundtable (Anne Hollonds, Consultation for the Youth Justice and Child Wellbeing Reform Project, November 2023); Interview with non-government organisation or independent advocate (Anne Hollonds, Consultation for the Youth Justice and Child Wellbeing Reform Project, August 2023); Interview with non-government organisation or independent advocate (Anne Hollonds, Consultation for the Youth Justice and Child Wellbeing Reform Project, February 2024); Confidential, Submission No 80 to the Australian Human Rights Commission, Youth Justice and Child Wellbeing Reform Project (2023).
- ¹⁸ Interview with government representatives (Anne Hollonds, Consultation for the Youth Justice and Child Wellbeing Reform Project, February 2024).
- ¹⁹ Australian Press Council, Advisory Guideline on Family and Domestic Violence Reporting (Report, 9 July 2021); Our Watch, How to report on violence against women and their children (National Edition Report, 2019).
- ²⁰ See, for example, the Australian Communications and Media Authority Industry Codes of Practice for radio and television, commercial non-commercials, SBS and ABC: Australian Communications and Media Authority, 'Industry Codes of Practice' (Web page, 2 February 2024).
- ²¹ UNICEF, 'Guidelines for journalists reporting on children' (Webpage).