

Making Queensland Safer Bill 2024

Submission No: 176
Submitted by: Queensland Human Rights Commission
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:



Queensland
Human Rights
Commission

Making Queensland Safer Bill

Submission to Justice, Integrity and Community
Safety Committee

4 December 2024

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Introduction

1. Queenslanders have the right to feel safe in their homes and communities, and the government has an obligation to protect them.
2. At the same time, parliament also has a responsibility to ensure that the policies it enacts to do this are evidence-based, do not limit fundamental rights more than necessary, and do not undermine community safety in the long run.
3. The government concedes the Making Queensland Safer Bill 2024 (the **Bill**) is 'more punitive than necessary' and is incompatible with a free and democratic society based on human dignity, equality and freedom.
4. The measures implemented by the Bill:
 - a. are counter to the evidence that deterrence through harsher sentences does not work to reduce youth crime and, based on the experience of other jurisdictions, will lead to more crime, not less;
 - b. will combine to frustrate the government's efforts to implement policies on early intervention, diversion, rehabilitation, and reintegration that do work;
 - c. severely limit the fundamental rights of some of the most vulnerable children in Queensland in ways that are discriminatory and disproportionate;
 - d. are likely to put significant further pressure on the courts – leading to more delays for victims of crime and greater potential for matters to be contested through trial and on appeal;
 - e. are likely to expose more children, as well as staff in youth detention centres and watch houses, to serious harm in an overloaded system which is already at breaking point.
5. The Explanatory Notes refer to the policy objectives of the Bill as implementing the government's election commitment to the *Making Queensland Safer Plan*, including implementing 'adult crime, adult' time', demonstrating to the community that youth offending is treated seriously, and increasing community confidence in the justice system.¹
6. However, contrary to its aim of 'making Queensland safer,' the available evidence suggests that this Bill will do little to deter youth crime, is likely to increase the number of victims, and will ultimately inflict greater harm on children, families, and communities.

¹ Explanatory Notes, Making Queensland Safer Bill 2024 (Qld) 1-2.

Recommendations

7. The Commission submits that the Committee should recommend that the Bill not be passed. In the alternative, the Commission submits that Committee recommend that:
 - a. the Bill be amended so that the increased maximum and mandatory penalties apply only to children aged 14 years and above.
 - b. the provisions applying adult maximum and mandatory penalties include an exception for offences that are committed without violence.
 - c. principles of detention as a last resort and preference for non-custodial orders be retained in relation to non-violent offences.
8. The Commission also submits that the Committee should recommend that:
 - a. the cumulative effect of all legislative changes since 2020 should be considered in an independent review in one year's time.
 - b. a central coordinating agency be established in the Department of Premier and Cabinet to oversee and monitor the effective implementation of a coherent whole of government plan to address children's rights, health and wellbeing, in order to address the causes of youth offending.

About the Commission

9. The Commission is an independent statutory body with functions under the *Anti-Discrimination Act 1991 (Qld)* (**Anti-Discrimination Act**) and the *Human Rights Act 2019 (Qld)* (**Human Rights Act**). This includes dealing with complaints about contraventions of these Acts, and promoting an understanding, acceptance, and public discussion of human rights in Queensland.
10. In the last 6 years, the Commission has given detailed consideration to human rights concerns relating to the victims' rights and the youth justice system, and has consistently made submissions to governments, parliamentary committees, and justice agencies on these issues. In particular, the Commission has:
 - a. focused government and public attention on the increasing use of Queensland watch houses for the prolonged detention of children and young people while they await bail or placement at a youth detention centre, including children as young as 10.
 - b. collaborated with other oversight agencies on issues affecting young people in the youth justice system, including the Queensland Family and Child Commission, the First Nations Justice Officer, the Office of the Public Guardian, the Queensland Ombudsman, the Inspector of Detention Services,

the Queensland Audit Office, the Interim Victims' Commissioner, and the Australian Children's Commissioner.

11. made submissions on the human rights implications of proposed legislative amendments, and supported calls to raise the age of criminal responsibility.²

The Bill is not compatible with human rights

12. The Bill severely limits the fundamental rights of some of Queensland's most vulnerable children in a way that is disproportionate to the goal of achieving better community safety.
13. Despite the title of the Bill, the Explanatory Notes do not explain how Queenslanders will be made any safer by the Bill. The Statement of Compatibility concedes that the Bill does not reflect a proportionate response to youth crime. The Statement of Compatibility acknowledges that the amendments:
 - are in conflict with international standards regarding the best interests of the child³
 - are expected to have a greater impact on Aboriginal and Torres Strait Islander children⁴
 - will lead to sentences for children that are more punitive than necessary to achieve community safety.⁵
14. The Statement finally confirms that:

... the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation.⁶
15. The Commission agrees with the assessment in the Statement of Compatibility that the Bill is not compatible with human rights, but does not agree that it was necessary or justifiable in the circumstances to override the Act.

The Bill will not make Queensland safer

16. The Bill introduces amendments that will increase the likelihood and length of detention of children, both sentenced and on remand, by:

² Where possible, the Commission publishes its submissions on its website. See Queensland Human Rights Commission, *Submissions* (Web Page, 6 June 2024) <<https://www.qhrc.qld.gov.au/resources/submissions>>.

³ Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 4.

⁴ Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 4.

⁵ Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 5.

⁶ Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 4. See also 6.

- a. applying adult maximum penalties, mandatory sentencing and non-parole periods, to children for certain crimes (clauses 7, 18 – 23).
 - b. removing the sentencing principle in section 150(2)(b) of the *Youth Justice Act 1992 (Qld)* (**Youth Justice Act**) that a non-custodial order is better than detention in promoting a child’s ability to reintegrate into the community, and providing as a first sentencing principle that in sentencing a child, a court must not have regard to any principle that a detention order should only be imposed as a last resort, or any principle that a sentence that allows the child to stay in the community is preferable (clause 15). This is subject to an override declaration.
 - c. removing section 208 of the Youth Justice Act which provides that a detention order can only be made after considering all the available sentences and taking into account the desirability of not holding a child in detention, and being satisfied that no other sentence is appropriate in the circumstances of the case (clause 24).
 - d. removing *Charter of youth justice* principle 18 that a child should be detained in custody where other non-custodial measures of prevention would not be sufficient, and for no longer than necessary to meet the purpose of detention (clause 37).
17. The Bill introduces additional amendments that raise concerns for the Commission. While the short timeframe for making this submission has limited the opportunity for a thorough examination of these issues, we consider these issues include:
- a. allowing youth cautions (which do not involve a finding of guilt), restorative justice agreements and other information, to be recorded on youth criminal histories. Further, these histories can be taken into account in adult sentencing, and findings of guilt without a conviction are to be taken as previous convictions, contrary to principles of rehabilitation and reintegration, and that children should not be punished beyond their sentence (clauses 7, 39, 48, 41, 44, 53).
 - b. expanding access to Childrens Court criminal proceedings to all victims’ relatives, and removing the discretion of the court to exclude persons, including media, for the proper administration of justice or the safety of a person. This may improve transparency and the rights of victims, but undermines children’s rights to privacy, life and security. The Statement of Compatibility overlooks the impact on fair hearing, as a crowded courtroom can affect a young person’s giving of evidence and their understanding of the process, and the potential for harm to victims due to media presence (clause 4).
 - c. removing safeguards and requirements of procedural fairness from decisions to transfer youth detainees to adult prisons within a month of turning 18. Transfer to adult prisons increases a young detainee’s risk of reoffending by

removing them from rehabilitative programs and therapeutic supports, undermining reintegration efforts and wasting significant government resources (clauses 12–14, 25–27, 33).

18. The Commission submits that the cumulative effect of these amendments will be harmful for children and the staff who work with them, discriminatory on the basis of age, race and disability, costly as compared to alternative measures to detention, and counterproductive to the objective of making the community safer.

Harsher sentences will be harmful to children, victims and staff

19. Under the Convention on the Rights of the Child, to which Australia is a party, children should only be detained as a measure of last resort and for the shortest period of time.⁷ This is because all detention is harmful to children, and counterproductive to community safety.⁸ As the Special Rapporteur on Torture has emphasised:

Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.⁹

20. This Bill does not only increase the risk of detention for children after conviction following consideration by a judge of all the circumstances. As set out in more detail below, nearly 90% of children in Queensland's detention centres are on remand. The imposition of higher maximum penalties and removal of the principle of detention as a last resort is also likely to mean that an even greater number of children will be detained pending trial.
21. Conditions in overcrowded Queensland youth detention centres are currently unacceptable, with children experiencing:

⁷ *Convention on the Rights of the Child*, UN Doc A/RES/44/25 (20 November 1989, entered into force generally on 2 September 1990) art 37(b).

⁸ Committee on the Rights of the Child, *General Comment No. 24 (2019) on Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) [2], [22]-[23]. UN Human Rights Council, *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) [63]-[69]. Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) 7 [33].

⁹ Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) 7 [33].

22. increasing amounts of time spent in lockdown (separated from other children in a locked room), generally as a result of staff shortages. In 2022-23, children in Cleveland Youth Detention Centre spent 81% of their time in lockdown.¹⁰
23. limited access to rehabilitation programs. For example, in Cleveland Youth Detention Centre, only 31 children completed rehabilitation programs in 2022 compared to 215 in 2018. Statistics for other detention centres were not accurately recorded.¹¹
24. very little provision of education. At Cleveland Youth Detention Centre, children had access to an average of 3 to 5 hours of face to face education a week, against an aim to deliver 17 hours of education per week.¹²
25. Crowded youth detention centres also mean longer stays in watch house detention. It is widely accepted internationally and in Queensland¹³ that watch houses are not appropriate or humane places in which to detain children for any length of time, including because of the inescapable exposure to adult detainees, the inability of the built and operational environment to meet the child's needs, and the lack of specialised staff.¹⁴ Watch house staff 'are not given any specialist training geared towards working with children, let alone those with complex needs', and have few behavioural management tools and strategies available other than use of force.¹⁵ The Attorney-General acknowledges that detention in watchhouses limits protection from cruel, inhuman or degrading treatment, and the right to humane treatment when deprived of liberty.¹⁶
26. The proposed laws will further strain capacity in youth detention centres and watch houses, increasing children's exposure to harm, frustrating rehabilitation and reintegration efforts, and leading to further offending behaviour.

¹⁰ Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 31. See also Inspector of Detention Services, Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024) 16-21.

¹¹ Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 32.

¹² Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 31-32.

¹³ *United Nations Committee on the Rights of the Child, General Comment No 24: Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) [85]; Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [85(k)]; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Juveniles Deprived of Their Liberty Under Criminal Legislation*, extract from the 24th General Report of the CPT (published in 2015) [99]-[100]; Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 4.

¹⁴ Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024).

¹⁵ *Ibid* 59.

¹⁶ Statement of Compatibility, Making Queensland Safer Bill 2024 (Qld) 4.

27. Further unintended consequences are likely to include that:
- Victims will be affected because children are more likely to plead not guilty and go to trial, and appeal harsher sentences.
 - Staff in detention and support services may face increased exposure to violence resulting from detaining children in inhumane conditions, which can also exacerbate their experiences of vicarious trauma.
28. For further information on the treatment of children in watch houses and youth detention centres in Queensland, refer to pages 12 to 29 of the **attached** recent submission by the Commission to the Australian Senate Legal and Constitutional Affairs Committee in relation to Australia's youth justice and incarceration system.

Treating children like adults is discriminatory

29. The right to equality under the Human Rights Act, like protections under the Anti-Discrimination Act, requires both formal and substantive equality before the law. Effective protection against discrimination may necessitate differential treatment.
30. This submission addresses the potential for discrimination based on age, race, and disability; however, it should not be interpreted to imply that the legislation does not also discriminate based on other characteristics, such as experiences of domestic or family violence, or homelessness.

Age

31. Children differ from adults physically, psychologically, cognitively and emotionally. This affects their ability to make rational decisions, understand the impact of criminal proceedings, and withstand the effects of detention and is the basis for having a separate youth justice system with a differentiated, individualised approach.¹⁷ Children are also in a position of dependence and disempowerment in relation to adults, which is why Article 3 of the *Convention on the Rights of the Child* requires all actions concerning children to have the best interests of the child as the primary consideration.
32. The existing youth justice framework, which is disrupted by the Bill, works to accommodate the difference between children and adults who offend including:
33. The presumption that a child between the age of 10 and 14 years is *incapable* of committing a crime because they have not developed sufficient understanding of the difference between right and wrong (*doli incapax*);¹⁸

¹⁷ *United Nations Committee on the Rights of the Child, General Comment No 24: Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) [2].

¹⁸ Under common law, although a child between the age of 10 and 14 years can be charged with a criminal offence, the prosecution must rebut a presumption that they are not criminally responsible by proving that they have the necessary understanding. See *Criminal Code Act 1899* (Qld) sch 1, s 29 ('*The Criminal Code*').

- a. Different maximum penalties for offences committed by children.
 - b. Detention and sentencing principles for children that acknowledge that children should only be detained as a last resort and for the shortest period of time.
34. The Bill overrides these standards, amounting to substantive discrimination of children on the basis of their age. In the case of amendments to sentencing principles, the Bill directly discriminates against children by treating them less favourably than adults who, for non-violent offences, have the benefit of the sentencing principles that:
- a. a sentence of imprisonment should only be imposed as a last resort; and
35. a sentence that allows the offender to stay in the community is preferable.¹⁹

Race

36. Aboriginal and Torres Strait Islander children make up approximately 8.2% of children and young people aged 10-17 in Queensland.²⁰ Overrepresentation of First Nations children in the criminal system is reflected in the following statistics:
37. In 2022-23, First Nations children accounted for 53% of all distinct young people convicted, and are represented at a higher rate in the 10 to 14 year age group.²¹
38. First Nations children accounted for between 65 and 71% of children in youth detention on an average day over the last 4 years,²² and in 2021–22 represented 87% of all children aged 10 to 13 years old in detention centres on an average day.²³
39. The average number of First Nations children in detention in Queensland is 45.1 per 10,000 young people in the population (an increase from 41.6 per 10,000 persons in 2021–22), where the national daily average in 2021–22 was 28.3 per 10,000 persons.²⁴
40. The reasons for First Nations people’s contact with the justice system are inextricably linked with dispossession, colonisation, discrimination and

¹⁹ *Penalties and Sentences Act 1992* (Qld) s 9(2)(a); 9(2A).

²⁰ Queensland Family & Child Commission, *Who’s responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 40.

²¹ Childrens Court of Queensland, *Annual report 2022–23* [18].

²² Childrens Court of Queensland, *Annual report 2022–23* [18].

²³ Youth Justice Reform Select Committee, *Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Interim Report, April 2024) 9.

²⁴ Children’s Court of Queensland, *Annual report 2022–23* [18].

experiences of institutional racism.²⁵ In addition, there is clear evidence of institutional racism within Australian criminal justice systems, with over-representation of Aboriginal and Torres Strait Islander people increasing at every stage of the criminal justice process.²⁶

41. In relation to children, the Australian Law Reform Commission found that First Nations children are more likely to be arrested than non-Indigenous children, 'even after factors such as the offence, offending history and background factors are taken into account'.²⁷ This is consistent with data reported by the Queensland Family and Child Commission in 2023, showing that First Nations children in Queensland 'are less likely to receive a diversion decision, and less likely to be granted bail', as well as being disproportionately exposed to the watch house system.²⁸
42. While the Bill applies equally to all children, it will nevertheless have a disproportionate impact on First Nations children, particularly in the 10-to-14-year age group, because of systemic racial discrimination in government systems and historical inequity.

Disability

43. Children with cognitive or intellectual disabilities are also overrepresented in youth detention in Queensland. The Queensland Youth Justice Census recorded that, of the children in Queensland youth detention centres or police watch houses in 2022:
 - 26% had diagnosed or suspected cognitive or intellectual disability
 - 19% had a diagnosed or suspected developmental/language disorder
 - 12% had diagnosed or suspected foetal alcohol spectrum disorder
 - 6% had diagnosed or suspected autism spectrum disorder.²⁹
44. It is likely that the numbers of children in detention in Queensland are even higher than these statistics indicate. The Disability Royal Commission found that, although collection of data across Australia is inadequate, 'the available data indicates that a significant majority of children in youth detention have at least

²⁵ Youth Justice Reform Select Committee, *Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Interim Report, April 2024) 8; National Children's Commissioner, Australian Human Rights Commission, '*Help Way Earlier!*' *How Australia can transform child justice to improve safety and wellbeing* (21 June 2024) 98–101.

²⁶ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 28 March 2018) 434.

²⁷ *Ibid*, 453.

²⁸ Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 5.

²⁹ Department of Children, Youth Justice and Multicultural Affairs, 'Young people in youth justice custody (2018 to 2022)', *Youth Justice Census Summary* (Web Page) <<https://www.youthjustice.qld.gov.au/our-department/data>>.

one or more disability'.³⁰ The Disability Royal Commission described the detention of First Nations people with a cognitive disability in Australia, particularly in youth detention, as 'a largely hidden national crisis'.³¹

45. According to the *Committee on the Rights of the Child*, children with developmental delays or neurodevelopmental disorders or disabilities should not be in the child justice system at all or, if not automatically excluded, should be individually assessed.³² Concerns arising from children with disability in the youth justice system include:
46. Children incapable of having criminal responsibility or being fit for trial because of disability may still be detained;³³
47. Children with disability may be arrested for offences arising from behaviours associated with their disability – for example, they become agitated or frightened when approached by police and react physically or run away – or take responsibility for offences they did not commit;³⁴
48. That 'the experience of custody can be significantly more severe for people with disability than for those without disability',³⁵ and while in youth detention 'they are exposed to substantial risks of violence, abuse and neglect'.³⁶
49. While the Bill does not propose to apply differently to children with disabilities, it indirectly discriminates by perpetuating and worsening a system that already unfairly disadvantages them.

Detention is expensive

50. In Queensland, the average cost per day for keeping a young person in detention is \$1,833.72. This is significantly less than any other jurisdiction, and 65% of the

³⁰ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 81. The Royal Commission notes that '[n]o corrective services or youth justice agency uses a culturally-validated screening tool to identify disability in First Nations people in custody', despite their necessity to ensure First Nations people with disability receive the supports they require while in custody and to plan for the supports required upon release from custody. (DRC Final Report vol 8, 34, 192.)

³¹ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 33.

³² *United Nations Committee on the Rights of the Child, General Comment No 24: Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) 7 [28].

³³ Youth Justice Reform Select Committee, *Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Interim Report, April 2024) 9, 70–1.

³⁴ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 39–42.

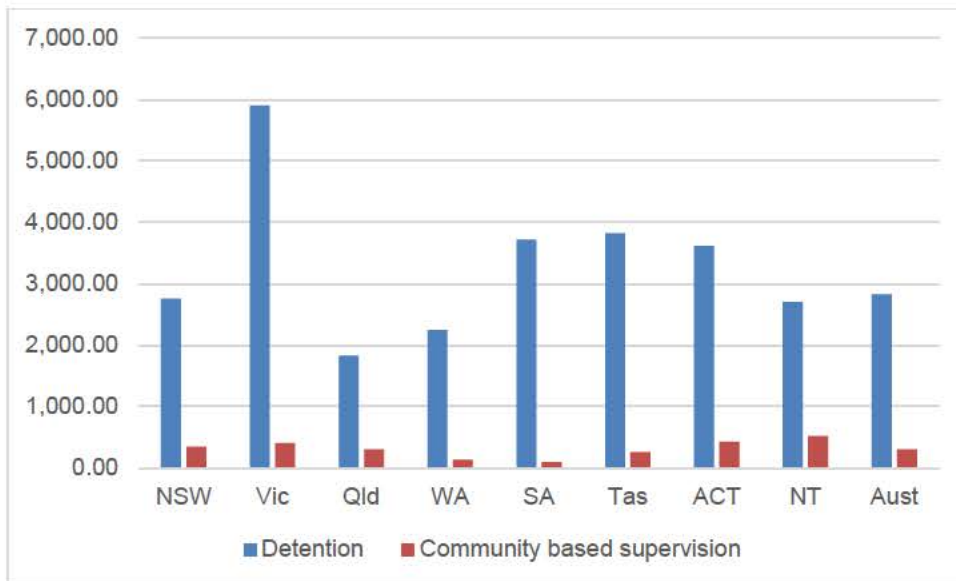
³⁵ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 5.

³⁶ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8, 81.

national average, suggesting that Queensland's spend is inadequate to meet the rehabilitation and reintegration needs of children and stop reoffending.

51. In contrast, the average cost per day per child for community-based supervision for 2022-23 was \$304.30. (Table A)

Table A: Average cost per day per young person in detention-based supervision and in community-based supervision for 2022-23³⁷



52. The financial impact of these amendments goes well beyond the costs of detention. The Explanatory Notes to the Bill acknowledges that:

The Bill is likely to increase demand for courts, police, the legal profession, corrective services, and youth justice. The Bill may increase the amount of time that young offenders spend in detention centres and corrective services facilities, increasing demand for these facilities. Government will monitor demand and the impacts of the legislative amendments. Any cost impacts will be dealt with as part of normal budget processes.³⁸

53. The Bill will likely increase pleas of not guilty, creating additional expense and time spent in trial and appeals, including funding for both the prosecution and defence.
54. Further, more time in detention means more trauma and harm experienced by the child, translating to additional money spent on health, mental health, services and support once they leave detention, both immediately and in the long term.

³⁷ Drawn from Productivity Commission (Cth), *Report on Government Services 2024* (Web Page, January 2024) 'Table 17A.20: Cost per young person under community-based supervision, 2022-23 dollars' and 'Table 17A.21: Cost per young person under detention-based supervision, 2022-23 dollars' <rogs-2024-partf-section17-youth-justice-data-tables.xlsx>.

³⁸ Explanatory Notes, Making Queensland Safer Bill 2024 8.

There are also costs connected with the harm experienced by staff and workers supporting children detained in overcrowded and inappropriate conditions.

55. These costs divert resources from strategies that are proven to enhance public safety, like early intervention, diversion from the courts.

Detention is counter-productive to public safety

Research shows detention does not reduce reoffending

56. The United Nations Committee on the Rights of the Child³⁹ says the evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with the Convention on the Rights of the Child, including the use of detention as a last resort and for the shortest period of time, and weight given to the child's best interests and the desirability of promoting the child's reintegration in society.⁴⁰
57. In 2018, former Police Commissioner Bob Atkinson reported on the Queensland Government's progress on youth justice reforms and other measures to reduce recidivism (**Atkinson report**).⁴¹ To improve public safety, the report recommended the Queensland Government adopt as its youth justice policy position the objectives of: intervening early, keeping children out of court, keeping children out of custody, and reducing reoffending (referred to as the 'four pillars').
58. While acknowledging there would always be a small number of children requiring detention to keep the community safe, the report relies on overwhelming evidence that punitive responses and (lengthy) detention sentences are harmful for children on multiple levels, increase the likelihood of reoffending, and do not reduce offending.⁴²
59. The Atkinson report formed the basis of Queensland's *Youth Justice Strategy 2019-2023* and *Action Plan*⁴³, and led to 2019 amendments to legislation to

³⁹ The Committee is the body of 18 independent experts that monitors implementation of the *Convention on the Rights of the Child* by its States parties.

⁴⁰ *United Nations Committee on the Rights of the Child, General Comment No 24: Children's Rights in the Child Justice System*, UN Doc CRC/C/GC/24 (18 September 2019) [2].

⁴¹ Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018).

⁴² Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018) 62, 74. See also: Yannick van den Brink and Nessa Lynch, 'Beyond the Life Sentence - A Children's Rights Lens on Sentencing for Murder' (2021) 29 *The International Journal of Children's Rights* 972, 989-990.

⁴³ Queensland Government, *Working Together, Changing the Story* (Youth Justice Strategy 2019-2023) and Queensland Government, *Working Together: Changing the Story* (Youth Justice Strategy Action Plan 2019- 2021).

improve access to bail and bail processes.⁴⁴ Between late 2019 and 30 June 2020, there were no young people held in prolonged watch house detention.⁴⁵

60. However, before the strategy and action plan could have any real effect, on 10 March 2020, the government announced a five-point plan to ‘crack down’ on youth crime, including tougher action on bail, a ‘police blitz’ on bail, and more resources for the State to appeal court decisions.⁴⁶ This was followed in quick succession by further ‘tough on crime’ approaches:

- 15 July 2020: legislative amendments limiting a judge’s discretion to grant bail to a child⁴⁷
- 30 April 2021: legislative amendments introducing a presumption against bail for youth offenders for certain offences.⁴⁸
- 29 December 2022: 10 new measures announced to fight youth crime, including increasing penalties, extreme high visibility police patrols and a fast-track sentencing program.⁴⁹
- 22 March 2023: legislative amendments to make breach of bail an offence and establish a new serious repeat offender regime, overriding the Human Rights Act.⁵⁰
- 20 May 2023: the launch of *Taskforce Guardian*, a joint initiative of the Department of Youth Justice and Queensland Police Service, in which ‘rapid response teams’ are deployed to ‘youth crime hot spots’.⁵¹
- 23 August - 1 September 2023: legislative amendments to enable the prolonged detention of children in watch houses, overriding the Human Rights Act.⁵² Additionally, human rights obligations are suspended in relation to acts and decisions that relate to a child in a youth detention

⁴⁴ Amendments to the *Youth Justice Act 1992* (Qld) by the *Youth Justice and Other Legislation Amendment Act 2019* (Qld).

⁴⁵ Department of Youth Justice (Qld), *2019-2020 Annual Report* 5.

⁴⁶ Anastasia Palaszczuk, Mark Ryan and Di Farmer, ‘Hard Line on Youth Crime’ (Joint Statement, Queensland Government, 10 March 2020).

⁴⁷ Amendments to the *Youth Justice Act 1992* (Qld) by the *Community Services Industry (Portable Long Service Leave) Act 2020* (Qld).

⁴⁸ Amendments to the *Youth Justice Act 1992* (Qld) by the *Youth Justice and Other Legislation Amendment Act 2021* (Qld).

⁴⁹ Warren Barnsley, ‘Annastacia Palaszczuk announces 10 new measures to fight youth crime in Queensland after alleged murder of Emma Lovell’, *7 News* (online, 29 December 2022) <<https://7news.com.au/news/qld/annastacia-palaszczuk-announces-10-new-measures-to-fight-youth-crime-in-queensland-after-alleged-murder-of-emma-lovell-c-9299070>>.

⁵⁰ Amendments to s 29 of the *Bail Act 1980* (Qld) and ss 150A, 150B of the *Youth Justice Act 1992* (Qld) by the *Strengthening Community Safety Act 2023* (Qld).

⁵¹ Department of Youth Justice, *Taskforce Guardian* (Web Page, 12 September 2024) <<https://desbt.qld.gov.au/youth-justice/parents-guardians/programs-initiatives/initiatives/taskforce-guardian>>; Di Farmer, ‘First of five new 24/7 Co-responder teams rolled out’ (Media Statement, 20 May 2023) <<https://statements.qld.gov.au/statements/97762>>.

⁵² Amendments to s 640 of the *Police Powers and Responsibilities Act 2000* (Qld) and ss 56, 210, 246A, 262 of the *Youth Justice Act 1992* (Qld) by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

centre established (including watch houses declared as youth detention centres) from 23 August 2023.⁵³

- 30 August 2024: legislative amendments that reword the principle of detention as a last resort, expand the ability of police to search with metal detecting 'wandering operations', increase the number of young people subject to electronic monitoring, and broaden the scope and increase penalties for a number of offences.⁵⁴

61. The cumulative effect of these rapid changes has yet to be thoroughly examined. However, the number of children in youth detention in Queensland has steadily increased from a daily average of 190 children in 2019–20, to a daily average of 285 in 2022–23.⁵⁵

Statistics show detention does not reduce reoffending

62. Rather than reducing recidivism and enhancing community safety, the government's 'tough on crime' approach of the last few years has resulted in:

- increased rates of youth detention
- utilisation rates of youth detention centres at unsafe levels
- increasing proportions of children on remand held in youth detention centres
- increasing watchhouse admissions and stays for prolonged periods.
- increasing numbers of serious repeat offenders.

63. By the government's own reckoning, rates of violent offending and numbers of victims have also increased from 2019 to 2023-24 (although there is an overall reduction in rates of offending, which has been the trend since 2009).⁵⁶

64. Detention is shown to be ineffective because there are high rates of recidivism among children released from Queensland detention. Between 2019 and 2022,

⁵³ *Youth Justice Act 1992* (Qld) s 262A. Section 58 of the *Human Rights Act 2019* (Qld) places obligations on public entities to act and decide compatibly with human rights, and to give proper consideration to human rights when making decisions.

⁵⁴ *Queensland Community Safety Act 2024* (Qld). See also Queensland Human Rights Commission, Submission No 212 to Community Safety and Legal Affairs Committee, Queensland Parliament, *Queensland Community Safety Bill 2024* (17 May 2024).

⁵⁵ Productivity Commission, *Report on Government Services 2024*, 'Table 17A.3: Young people aged 10-17 years in detention, by sex' (Report, 22 January 2024) <<https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>>. The lower number was apparent before the Covid-19 pandemic: in 2019, the daily average was 200 children: Childrens Court of Queensland, *Annual report 2022–23* 48 [30].

⁵⁶ Statement about Exceptional Circumstances, Making Queensland Safer Bill 2024 (Qld); Kenji Sato, 'Criminologists debunk claims of "youth crime crisis" as data shows dramatic declines', *ABC News* (online, 13 October 2024) <<https://www.abc.net.au/news/2024-10-13/criminologists-debunk-youth-crime-crisis-claims/104445432>>.

roughly 90% of young people released from detention re-offended within 12 months.⁵⁷

65. As Queensland's Family and Child Commissioner has emphasised:

The high rate of offending by a small cohort of young people who already have a history of detention is evidence that our current approach is not the solution to reducing and preventing crime.⁵⁸

66. Statistics also demonstrate that Queensland is an outlier in many of these areas.

67. The rate of children in detention in Queensland has been increasing since 2019-20, whereas detention rates in New South Wales, Victoria, Western Australia and South Australia have all been decreasing (**Table B**). In 2022-23, Queensland had the highest daily average number of children in detention in the country (285 per day – the next highest was NSW at 160 per day) and the second highest detention rate (5 per 10,000 children) behind the Northern Territory.⁵⁹ In comparison, the detention rate for the same year across Australia was 2.7, in England and Wales was 0.8, in Canada was 2.4, and in the USA was 6.3.⁶⁰

68. Detention centre utilisation rates in Queensland are significantly higher than the rest of the country. In 2022-23, the average Queensland detention centre utilisation rate was 98.3% while the next highest, ACT, was 69.1%.⁶¹ (**Table C**) Under Department policy, safe capacity is 85% bed utilisation. Operating above safe capacity increases risk of safety incidents, including assaults on detention staff.⁶²

69. The average daily number of young people in youth detention who are on remand has increased from 170 (85%) in 2019–20 to 249 (88%) in 2022–23. In 2022–23, the average time held in youth detention on remand was 51 nights (increasing from 43 nights the previous year).⁶³ Queensland appears to hold

⁵⁷ Youth Justice Reform Select Committee, *Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Interim Report, April 2024) 43; See also Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 62.

⁵⁸ Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 5.

⁵⁹ Productivity Commission (Cth), *Report on Government Services 2024*, 'Table 17A.3: Young people aged 10-17 years in detention, by sex' (Report, 22 January 2024).

⁶⁰ Australian Institute of Health and Welfare, 'Youth justice in context: Youth and adult justice systems in Australia: Contact with police', *Youth justice in Australia 2022-23* (Web Page, 28 March 2024) < <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/youth-justice-in-context>>.

⁶¹ Productivity Commission, *Report on Government Services 2024*, 'Table 17A.2: Utilisation of detention centres' (Report, 22 January 2024).

⁶² Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 33.

⁶³ Childrens Court of Queensland, *Annual report 2022–23* 48.

significantly more young people on remand in youth detention centres than any other state or territory.⁶⁴

70. Between 2018 and 2023, youth watch house admissions have increased by 452% and children being held in a watch house for more than 1 day has increased by 163%.⁶⁵ Daily watch house statistics, which have been published by the Queensland Police Service since 8 August 2024, indicate that as at 2 December 2024, there were 30 children in watch house custody, including 13 children who have spent 3 to 7 days in custody.⁶⁶ Watch house detention of young people does not appear to have the same systemic prevalence in other jurisdictions.⁶⁷
71. Since 2021–22, the Department of Youth Justice has used an index (the serious repeat offender index) to identify young offenders who commit disproportionately large numbers of serious offences.⁶⁸ From 2021–22 to 2022–23, there has been an increase in serious repeat offenders, from 17% of young people accounting for 48% of charges, to 20% of young people accounting for 54.5% of charges.⁶⁹

⁶⁴ Youth Justice Reform Select Committee, *Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Interim Report, April 2024) 49.

⁶⁵ Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 4.

⁶⁶ Queensland Police Service, 'Persons in Queensland Police Watch house Custody', *Watch house data* (web page, 10 October 2024 06:00) <<https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/watch-house-data>>.

⁶⁷ Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 24.

⁶⁸ The Serious Repeat Offender Index (SROI) is a 'point in time' measurement that represents the volume/seriousness of a young person's recent offending behaviour. SROI scores take into account the young person's age at that measurement date, as well as the young person's offending (including seriousness, frequency, clustering, and recency) and custody nights in the last 24 months. Higher index scores indicate more serious/frequent offending behaviour and young people with a score of 6 or above are considered a 'serious repeat offender': Childrens Court of Queensland, *Annual report 2022–23* 19-20.

⁶⁹ Childrens Court of Queensland, *Annual report 2022–23* [3]-[4]. This definition of serious repeat offender is separate to a person who is declared a serious repeat offender by the Magistrates Court under s 150A of the *Youth Justice Act 1992* (Qld).

Table B: Children in detention (rate per 10,000 children)⁷⁰

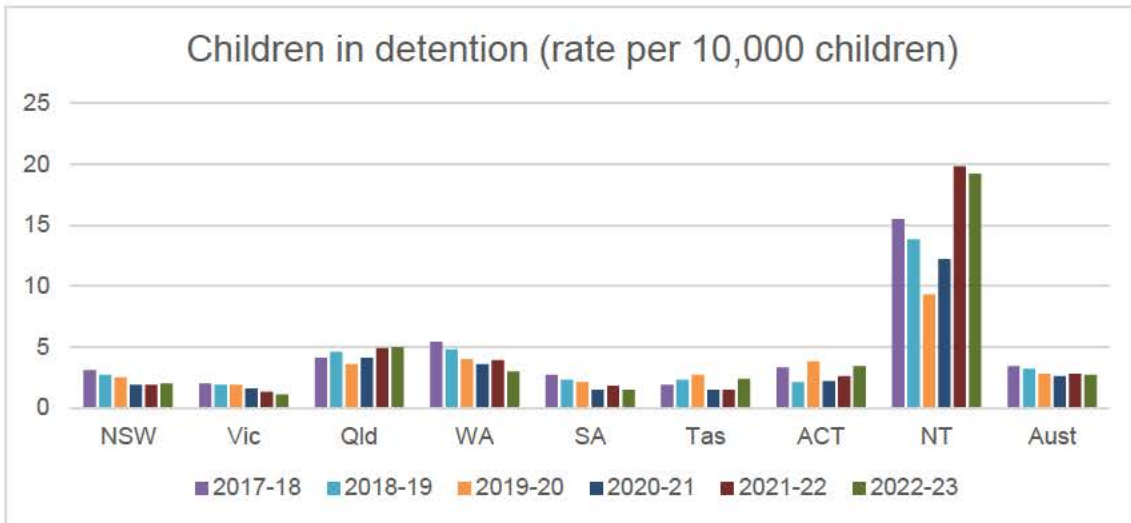
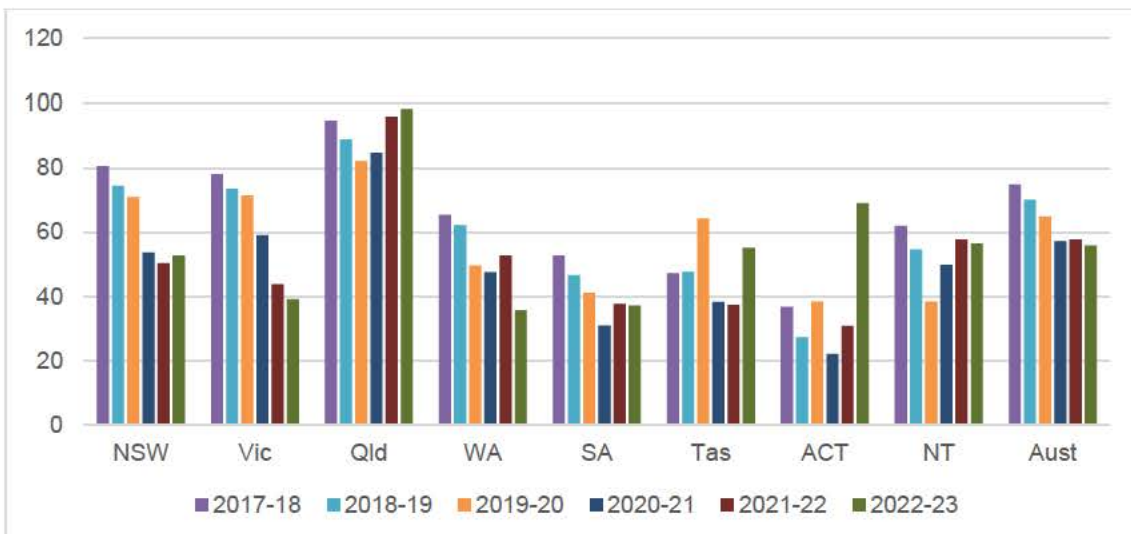


Table C: Utilisation rate of detention centres (%)⁷¹



⁷⁰ Drawn from Productivity Commission (Cth), *Report on Government Services 2024* (Web Page, January 2024) 'Table 17A.3: Young people aged 10-17 years in detention, by sex' <rogs-2024-partf-section17-youth-justice-data-tables.xlsx>.

⁷¹ Drawn from Productivity Commission (Cth), *Report on Government Services 2024* (Web Page, January 2024) 'Table 17A.3: Young people aged 10-17 years in detention, by sex' <rogs-2024-partf-section17-youth-justice-data-tables.xlsx>.

Evidence-based solutions promote safety and victims' rights

72. If the goal is to genuinely make communities safer and address the needs of victims of crime, the Bill does not provide the right approach to achieve these outcomes.
73. While the government has heard from members of the public that they want 'stronger' approaches to youth justice, many community members lack detailed knowledge about the criminal justice system. While criminal laws should generally align with community expectations, it is incumbent on the government to educate the public on what works to address youth crime.
74. Research has shown that the strongest predictor of punitive attitudes to crime is a lack of knowledge about the criminal justice system.⁷² The more information a person has about a case, the more likely it is that they will agree the sentence imposed is appropriate.⁷³ Queensland research found that after being given the opportunity to consider different sentencing scenarios, people noticeably shifted their perspectives away from punishment towards a more nuanced approach.⁷⁴
75. Furthermore, research on public attitudes in Australia has shown that for non-violent offences, such as property crime or non-violent drug offences, the public typically agrees with the courts, or leans toward non-custodial sentences.⁷⁵
76. The Bill is entirely contrary to evidence-based approaches that effectively enhance community safety. While the Commission acknowledges the government's intention to concurrently implement non-legislative measures, including significant investments in early intervention and rehabilitation programs, the harm that will be caused by this Bill will outweigh these efforts and undermine their intended outcomes.

⁷² Lynne D Roberts and David Indermaur, 'Predicting punitive attitudes in Australia' (2007) 14(1) *Psychiatry, Psychology and Law* 56, 61. See further Samuel Jeffs et al, 'Understanding of sentencing: Community knowledge of sentencing terms and outcomes' (Research Brief No 3, Queensland Sentencing Advisory Council, April 2023) 3.

⁷³ Kate Warner et al, 'Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study' (*Trends and Issues in Crime and Criminal Justice* No 407, Australian Institute of Criminology, 2011) 1, 5. See further Samuel Jeffs et al, 'Understanding of sentencing: Community knowledge of sentencing terms and outcomes' (Research Brief No 3, Queensland Sentencing Advisory Council, April 2023) 3.

⁷⁴ Samuel Jeffs et al, 'Understanding of Sentencing: Community Knowledge of Sentencing Terms and Outcomes' (Research brief No. 3, Queensland Sentencing Advisory Council, April 2023) 22.

⁷⁵ Geraldine Mackenzie et al, 'Sentencing and public confidence: Results from a national Australian survey on public opinions towards sentencing' (2012) 45(1) *Australian & New Zealand Journal of Criminology* 5–6, 45, 55.

No justification for overriding the Human Rights Act

77. Overriding the Human Rights Act must only occur in exceptional circumstances, and the current situation does not meet the high threshold anticipated by parliament when the Human Rights Act was introduced. Overrides are meant to address extraordinary situations, such as threats to public safety or national security,⁷⁶ and not for ordinary policymaking or to sidestep the Act's framework for balancing rights and legitimate public purposes.⁷⁷
78. There is no evidence to suggest that Queensland is currently facing an extraordinary crisis. In fact, youth crime has fallen across Australia, and according to 2008-09 to 2022-23 figures, the youth crime rate in Queensland fell from 3575.8 per 100,000 children to 1924.5 per 100,000 children. Both in 2008 and in 2023, Queensland had the fourth most youth offences per 100,000 population in Australia.⁷⁸
79. The Human Rights Act provides a vital framework to promote robust decision-making in complex and sensitive policy areas. Human rights and community interests are not in conflict –they align as hallmarks of good governance and a just society.
80. Rather than a barrier to the will of the people, the Human Rights Act upholds our democratic system by ensuring that laws are drafted in such a way as to balance legitimate aims with proportional limitations on rights.⁷⁹
81. Human rights compatible approaches to youth crime will create more effective, sustainable solutions that prioritise prevention, rehabilitation, and community safety without infringing disproportionately on children's rights.

Implementation, monitoring and evaluation

82. Knowing that risk factors for offending arise from a range of diverse and complex issues experienced by the young person, their families and communities, means

⁷⁶ *Human Rights Act 2019* (Qld) s 43(4).

⁷⁷ *Human Rights Act 2019* (Qld) s 13.

⁷⁸ Kenji Sato, 'Criminologists debunk claims of "youth crime crisis" as data shows dramatic declines', *ABC News* (online, 13 October 2024) <<https://www.abc.net.au/news/2024-10-13/criminologists-debunk-youth-crime-crisis-claims/104445432>>. Since 12 February 2018, 17 year olds in Queensland stopped being treated as adult offenders, and started being treated as juvenile offenders in the youth justice system.

⁷⁹ *Human Rights Act 2019* (Qld).

that an effective response must have shared responsibility across government, community and other relevant sectors who are held accountable.

83. The Commission recommends the creation of a central coordinating agency, located in the Department of Premier and Cabinet, that is responsible for implementing, evaluating and monitoring a joined-up, whole of government strategic approach to children's rights, health and wellbeing.
84. The agency should fulfil Queensland's obligations to provide, or work in close partnership with, the Closing the Gap independent mechanism that Australian governments agreed to implement by 2023⁸⁰, but is observed by the Productivity Commission's 2024 review to have not been mentioned in Queensland's first implementation plan, second implementation plan or annual report.⁸¹ This level of accountability is necessary to influence the type of change envisaged by the agreement, including Target 11 of Closing the Gap to reduce the rate of Aboriginal and Torres Strait Islander children in detention by at least 30 per cent.
85. The Commission considers that the central coordinating agency should:
 - include mechanisms to ensure existing and future legislation, policies, and practices do not frustrate the objectives of the strategy
 - centre the role of human rights in underpinning responsibilities to children and families, and in providing minimum standards to be achieved
 - widen the scope of identified priorities to include maintaining engagement in schooling, addressing racism in schools, investing in schools to support strong cultural practices and a positive sense of cultural identity, and responding therapeutically to challenging behaviours
 - require the development of an implementation roadmap of immediate, medium-term, and long-term activities with clearly assigned responsibilities and timelines, including any new early intervention and rehabilitative initiatives invested in by the current government
 - assess the cultural safety of First Nations youth in the design and delivery of programs
 - establish outcomes and key indicators against which progress is measured
 - require publication of data on implementation in a coordinated and easily accessible format.

Conclusion

86. All evidence points to the fact that increasing the rates and the length of children in detention is harmful, discriminatory, costly, and counterproductive. By the government's own admission, these laws are also not proportionate, and there

⁸⁰ *National Agreement on Closing the Gap: an Agreement Between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and All Australian Governments* (July 2020) cl 67.

⁸¹ Australian Government, Productivity Commission, *Review of the National Agreement on Closing the Gap* (Study report: Supporting paper, January 2024) vol 2, 128

are insufficient grounds to substantiate the extraordinary circumstances to justify overriding the Human Rights Act.

87. Queensland already detains more children than any other state, yet violent youth crime persists. Instead of perpetuating a cycle of harm, the government must prioritise sustainable, community-led solutions, such as early intervention initiatives, that align with human rights and deliver better outcomes for individuals and the broader community.
88. This Bill does not make Queensland safer. Queenslanders deserve a justice system that protects them today and invests in a safer future.

Attachment: Submission to Senate
Legal and Constitutional Affairs
Committee on Australia's youth justice
and incarceration system, 28 October
2024



Queensland
Human Rights
Commission

Australia's youth justice and incarceration system

Submission to Senate Legal and Constitutional
Affairs Committee

28 October 2024

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Introduction

1. This is the Queensland Human Rights Commission's (**Commission**) submission to the Legal and Constitutional Affairs Committee on its inquiry into Australia's youth justice and incarceration system, with particular reference to:
 - a. the outcomes and impacts of youth incarceration in jurisdictions across Australia;
 - b. the over-incarceration of First Nations children;
 - c. the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention;
 - d. the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights;
 - e. the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations; and
 - f. any related matters.

Summary of submission

2. In this submission, the Commission highlights recent developments in Queensland, where efforts to implement evidence-based reforms in youth justice policy have been derailed by short-term politicised responses to youth crime that have driven up rates of detention and stretched the system to breaking point.
3. The submission outlines how increasing incarceration has not benefited the wider Queensland community by making it safer, nor rehabilitated the children in the system. Instead, rates of reoffending within 12 months of release from detention stand at 90%.
4. There is clear evidence that detention is counterproductive to community safety and particularly harmful to children and their future life prospects. However, the frequency and conditions of child detention in Queensland raise significant additional human rights concerns. This submission highlights, in particular, human rights implications of:
 - the prolonged detention of children in watch houses
 - discrimination in relation to age, race and disability
 - prolonged separation and solitary confinement.
5. Queensland's approach to youth justice and detention has resulted in significant incarceration, over-crowded detention facilities, discrimination, and conditions of detention and treatment that are not only inhumane but are likely in some cases

to amount to cruel, inhuman or degrading treatment. The situation in Queensland means that the Commonwealth government is not meeting its international obligations under core international human rights treaties.¹

6. Like domestic and family violence and Closing the Gap initiatives, the Commission considers that national leadership is needed on youth justice and detention. This should reflect a child rights-based approach, including through the enactment of enforceable national minimum standards on:
 - the age of criminal responsibility
 - detention strictly as a last resort
 - documentation of exercise of discretion to charge and arrest a child
 - limits on detention in police facilities
 - limits on detention on remand
 - health and disability screening and assessment
 - conditions and staffing of youth detention
 - training of all staff interacting with children in the justice system
 - restrictions on use of force, restraints and isolation
 - reporting requirements
 - full implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
7. These measures are required by Australia's international legal obligations and the Commonwealth government has the power to legislate them.²
8. At the same time, significant attention and resources must be devoted to addressing drivers of contact with the youth justice system, some of which fall within the Commonwealth's direct remit including social security, primary health care, the National Disability Insurance Scheme and addressing Australia's relationship with First Nations peoples.
9. To really serve the community – including some of its most vulnerable children, who are *part of* that community – a national child rights-based approach must go beyond minimum standards for detention and transform the way youth justice is conceptualised and put into practice in Australia. A truly transformative approach would 'reinvest resources from the criminal justice system to community-led, place-based initiatives that address drivers of crime and incarceration'.³ It would address root causes, minimise contact children have with the justice system, redirect resources to focus on diversion, screening and support at the earliest

¹ Including the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

² Australian Constitution, s 51(xxix).

³ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, 28 March 2018) (***Pathways to Justice***) rec 4–1.

possible opportunity, and in the small minority of cases where detention was justified, ensure that it only occurs in small-scale, child-friendly, truly therapeutic facilities that are not prisons, with intensive support for continued connection with and re-integration into the community.

About the Commission

10. The Commission is an independent statutory body with functions under the *Anti-Discrimination Act 1991* (Qld) and the *Human Rights Act 2019* (Qld) (**Human Rights Act**). This includes dealing with complaints about contraventions of these Acts, and promoting an understanding, acceptance, and public discussion of human rights in Queensland.
11. The Commission has given detailed consideration to human rights concerns relating to the youth justice system and victims' rights, and has consistently made submissions to governments, parliamentary committees, and justice agencies on these issues. In particular, the Commission has:
 - focused government and public attention on the increasing use of Queensland watch houses for the prolonged detention of children and young people while they await bail or placement at a youth detention centre, including children as young as 10
 - collaborated with other oversight agencies on issues affecting young people in the youth justice system, including the Queensland Family and Child Commission, the First Nations Justice Officer, the Office of the Public Guardian, the Queensland Ombudsman, the Inspector of Detention Services, the Queensland Audit Office, the Interim Victims' Commissioner, and the Australian Children's Commissioner
 - made submissions on the human rights implications of proposed legislative amendments, and supported calls to raise the age of criminal responsibility.⁴

Youth justice policy in Queensland

Human rights standards

12. Many of Australia's international human rights obligations are directly incorporated into Queensland law through the Human Rights Act. This requires public entities in Queensland to act and make decisions compatibly with human rights and to give proper consideration to human rights when making decisions.⁵ It also requires courts and tribunals to apply human rights relevant to the

⁴ Where possible, the Commission publishes its submissions, which can be found here: <https://www.qhrc.qld.gov.au/resources/submissions>.

⁵ *Human Rights Act 2019* (Qld) s 58(1).

functions they are exercising,⁶ and requires that statutory provisions are interpreted compatibly with human rights to the extent possible consistent with their purpose.⁷

13. Relevant rights protected in the Human Rights Act include

- the right to equality (section 15)
- the right to life (section 16)
- protection from torture and cruel, inhuman or degrading treatment or punishment (section 17)
- protection of families and children (section 26)
- cultural rights – generally (section 27) and cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- right to liberty and security of the person (section 29)
- humane treatment when deprived of liberty (section 30)
- children in the criminal process (section 33)
- right to education (section 36)
- right to access health services without discrimination (section 37).

14. More specifically, section 26(2) of the Human Rights Act provides that

Every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.

Reviews of youth justice policy

15. In 2018, former police Commissioner Bob Atkinson reported on the Queensland Government's progress on youth justice reforms and other measures to reduce recidivism (**Atkinson report**).⁸ The report identified common features of children and young people in the youth justice system,⁹ and system deficits that contribute to initial and repeated contact with it.¹⁰ In response, it recommended the Queensland Government adopt as its youth justice policy position the objectives of: intervening early, keeping children out of court, keeping children out of

⁶ *Human Rights Act 2019* (Qld) s 5(2)(a).

⁷ *Human Rights Act 2019* (Qld) s 48.

⁸ Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018).

⁹ These included poverty, a home environment characterised by neglect, domestic and family violence, and/or traumatic events; poor school attendance, and lack of access to vocational training and employment; undiagnosed and/or untreated health issues or unsupported disability issues, such as mental health concerns, childhood trauma, and cognitive and intellectual disability; and substance abuse.

¹⁰ These included youth justice system that has evolved from an adult criminal justice approach; no coordinated multi-agency approach to support at-risk children and their families, and lack of information sharing across systems; a shortage of after-hours services, both government and NGOs; youth justice processes that result in young people and children being detained and disconnected from protective factors, such as family, community, and school; and the need for reform targeting the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system.

custody, and reducing reoffending (referred to as the ‘four pillars’) bookended by the principles of public safety and community confidence.

16. The Atkinson report formed the basis of Queensland’s *Youth Justice Strategy 2019-2023* and Action Plan¹¹, and led to 2019 amendments to legislation to improve access to bail and bail processes.¹²
17. In 2021, a private member’s Bill was introduced to raise the age of criminal responsibility from 10 years to 14 years, and to transfer any children under 14 out of custody. The parliamentary committee did not recommend the Bill be passed but made recommendations regarding treatment of young people in the youth justice system and consideration of increasing the minimum age of criminal responsibility to 12 years. The Bill was not passed.¹³
18. A timeline of youth justice legislative reforms and policy initiatives from 2016 to February 2022 is usefully set out in Bob Atkinson’s 2022 review of youth justice reforms.¹⁴ That report identifies opportunities to strengthen the government’s approach to youth offending aligned with principles of early intervention and non-incarceration, such as partnerships with Aboriginal and Torres Strait Islander people, identifying and managing cognitive impairments, developing place-based responses to preventing youth crime and engaging with the Queensland community about youth offending.¹⁵
19. On 16 January 2023, the inaugural First Nations Justice Officer was appointed, funded as part of the Government’s response to the Women’s Safety and Justice Taskforce’s first *Hear Her Voice* report to reduce the representation of First Nations people in the criminal justice system.¹⁶ The First Nations Justice Office is co-leading the development of a justice reinvestment framework for Queensland.¹⁷
20. As a result of legislative reform, on 1 July 2023, the Queensland Ombudsman’s functions under the *Inspector of Detention Services Act 2022* (Qld) commenced.

¹¹ Queensland Government, *Working Together, Changing the Story* (Youth Justice Strategy 2019-2023) and Queensland Government, *Working Together: Changing the Story* (Youth Justice Strategy Action Plan 2019- 2021).

¹² Amendments to the *Youth Justice Act 1992* (Qld) by the *Youth Justice and Other Legislation Amendment Act 2019* (Qld).

¹³ See Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (Qld) and Community Support and Services Committee, Queensland Parliament, *Criminal Law (Raising the age of Responsibility) Amendment Bill 2021* (Report No 16, 15 March 2022).

¹⁴ Bob Atkinson, *Youth Justice Reforms Review: Final Report* (March 2022) 17.

¹⁵ *Ibid* 154–158.

¹⁶ Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, ‘Queensland’s Inaugural First Nations Justice Officer Appointed’ (Media Statement, 16 January 2023).

¹⁷ ‘Justice reinvestment’, *Department of Justice and Attorney-General* (Web Page, 17 July 2024) <<https://www.justice.qld.gov.au/about-us/services/first-nations-justice-office/priorities/justice-reinvestment>>

Inspection standards for Queensland youth detention centres were published in August 2023,¹⁸ with standards for watch houses to follow. Two detention inspection reports have been published to date – one on Cleveland Youth Detention Centre, and another on Cairns and Murgon watch houses with a focus on detention of children.¹⁹

21. In October 2023, the Queensland Legislative Assembly established the Youth Justice Reform Select Committee to examine ongoing reforms to the youth justice system and support for victims of crime. After receiving 220 submissions, holding 17 public hearings and briefings with experts and government agencies, and conducting site visits, the committee dissolved on 17 April 2024 having failed to agree on an interim report. The draft interim report, containing 60 recommendations, was tabled in Parliament on 18 April 2024.²⁰
22. The Chair’s draft foreword to the interim report noted that, despite youth crime being a ‘polarising and complex issue’, the committee had identified several vital areas of consensus in its work:

Most notably, there is agreement that all Queenslanders, have a right to feel safe, and that the state’s youth justice system is falling short on this front. In addition, that our interventions are not early enough and that our systems are siloed without the necessary processes to ensure that Queensland children and youth do not fall through health and educational ‘gaps’.

Importantly, that detention does not deter reoffending, with timeframes for rehabilitation inadequate to effect long-term change as has been seen by the unacceptable high rates of reoffending.²¹ (emphasis added)

23. The Queensland Government provided a response to the draft interim report, accepting 23 recommendations in full, and accepting the remaining 37 recommendations in principle, which it committed to delivering primarily through the new *Community Safety Plan for Queensland*.²²

¹⁸ Inspector of Detention Services, Queensland Ombudsman, *Inspection standards for Queensland youth detention centres* (August 2023).

¹⁹ Inspector of Detention Services, Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024); Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024).

²⁰ Youth Justice Reform Select Committee, Queensland Parliament, *Draft Confidential – Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Report No 1, 57th Parliament, April 2024) (**Select Committee draft report**).

²¹ Sandy Bolton MP, ‘Chair’s Foreword’ (tabled 2 May 2024) to accompany Youth Justice Reform Select Committee, Queensland Parliament, *Draft Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime* (Report No.1, 57th Parliament, April 2024) <<https://documents.parliament.qld.gov.au/tp/2024/5724T736-BBBD.pdf>>.

²² Queensland Government, *Response to the Interim Report: Inquiry into ongoing reform to the youth justice system and support for victims of crime* (tabled 1 May 2024 by Mark Ryan MP) <<https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled->

Legislative and policy changes promoting detention

24. Attempts to implement the Atkinson report and reduce detention of young people have been undermined through legislative amendment (sometimes made without Parliamentary committee scrutiny) and policing policies, often hastily introduced in reaction to tragic high-profile events involving the loss of life. These include:

- 10 March 2020: five-point plan announced to crack down on youth crime, including tougher action on bail, a ‘police blitz’ on bail, and more resources to appeal court decisions.²³
- 15 July 2020: legislative amendments limited a judge’s discretion to grant bail to a child, which were passed without parliamentary committee scrutiny.²⁴
- 30 April 2021: legislative amendments introduced a presumption against bail for youth offenders for certain offences.²⁵
- 29 December 2022: 10 new measures announced to fight youth crime, including increasing penalties, extreme high visibility police patrols and a fast-track sentencing program.²⁶
- 22 March 2023: legislative amendments to make breach of bail an offence and establish a new serious repeat offender regime, which override the application of the Human Rights Act until 22 March 2028.²⁷
- 20 May 2023: a joint Department of Youth Justice and Queensland Police Service initiative, *Taskforce Guardian* was launched, in which ‘rapid response teams’ are deployed to ‘youth crime hot spots’.²⁸
- 23 August - 1 September 2023: legislative amendments, without parliamentary committee scrutiny, enabled prolonged detention of children in watch houses and the potential for watch houses to be

[Papers/docs/5724T725/5724t725-b9b9.pdf](#)>; Queensland Government, ‘Community Safety Plan for Queensland’ (Web Page, 30 April 2024) <<https://www.qld.gov.au/about/community-safety>>.

²³ Anastasia Palaszczuk, Mark Ryan and Di Farmer, ‘Hard Line on Youth Crime’ (Joint Statement, Queensland Government, 10 March 2020).

²⁴ Amendments to the *Youth Justice Act 1992* (Qld) by the *Community Services Industry (Portable Long Service Leave) Act 2020* (Qld).

²⁵ Amendments to the *Youth Justice Act 1992* (Qld) by the *Youth Justice and Other Legislation Amendment Act 2021* (Qld).

²⁶ Warren Barnsley, ‘Annastacia Palaszczuk announces 10 new measures to fight youth crime in Queensland after alleged murder of Emma Lovell’, *7 News* (online, 29 December 2022) <<https://7news.com.au/news/qld/annastacia-palaszczuk-announces-10-new-measures-to-fight-youth-crime-in-queensland-after-alleged-murder-of-emma-lovell-c-9299070>>.

²⁷ Amendments to s 29 of the *Bail Act 1980* (Qld) and ss 150A, 150B of the *Youth Justice Act 1992* (Qld) by the *Strengthening Community Safety Act 2023* (Qld).

²⁸ Department of Youth Justice, *Taskforce Guardian* (Web Page, 12 September 2024) <<https://desbt.qld.gov.au/youth-justice/parents-guardians/programs-initiatives/initiatives/taskforce-guardian>>; Di Farmer, ‘First of five new 24/7 Co-responder teams rolled out’ (Media Statement, 20 May 2023) <<https://statements.qld.gov.au/statements/97762>>.

declared as youth detention centres. These provisions and others override the application of the Human Rights Act until 31 December 2026.²⁹ Additionally, human rights obligations are suspended in relation to acts and decisions (reasonably necessary for the administration of the *Youth Justice Act 1992*) that relate to a child in a youth detention centre established from 23 August 2023.³⁰

- 30 August 2024: legislative amendments that reword the principle of detention as a last resort, expand the ability of police to search with metal detecting ‘wandering operations’, increase the number of young people subject to electronic monitoring, and broaden the scope and increase penalties for a number of offences.³¹
- 15 October 2024: Queensland Police Service announces 100th deployment of *Taskforce Guardian*, and reports that, over the course of 103 deployments across Queensland, 2093 children have been charged with 6167 offences and 980 children have been diverted from the youth justice system.³²

Youth Justice landscape following reforms

25. The number of young people charged with an offence in Queensland has steadily decreased since 2011 to 2022. However, in 2022–23, **the number of young offenders charged increased** by 6%, which was greater than the rate of population growth.³³
26. **The number of children in youth detention in Queensland has steadily increased** from a daily average of 190 children in 2019–20, to a daily average of 285 in 2022–23.³⁴

²⁹ Amendments to s 640 of the *Police Powers and Responsibilities Act 2000* (Qld) and ss 56, 210, 246A, 262 of the *Youth Justice Act 1992* (Qld) by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

³⁰ *Youth Justice Act 1992* (Qld) s 262A. Section 58 of the *Human Rights Act 2019* (Qld) places obligations on public entities to act and decide compatibly with human rights, and to give proper consideration to human rights when making decisions.

³¹ *Queensland Community Safety Act 2024* (Qld). See also Queensland Human Rights Commission, Submission No 212 to Community Safety and Legal Affairs Committee, Queensland Parliament, *Queensland Community Safety Bill 2024* (17 May 2024).

³² Queensland Police Force, ‘Taskforce Guardian marks 100th deployment’ (Press Release, 15 October 2024) <<https://mypolice.qld.gov.au/news/2024/10/15/taskforce-guardian-marks-100th-deployment/>>.

³³ Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 7.

³⁴ Productivity Commission, *Report on Government Services 2024*, ‘Table 17A.3: Young people aged 10-17 years in detention, by sex’ (Report, 22 January 2024) <<https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>>. The lower number was apparent before the Covid-19 pandemic: in 2019, the daily average was 200 children: Childrens Court of Queensland, *Annual report 2022–23* 48 [30].

27. Queensland appears to **hold significantly more young people on remand in youth detention centres than any other state or territory**.³⁵ The average daily number of young people in youth detention who are on remand has increased from 170 (85%) in 2019–20 to 249 (88%) in 2022–23. In 2022–23, the average time held in youth detention on remand held on remand was 51 nights (increasing from 43 nights the previous year).³⁶
28. Between 2018 and 2023, youth watch house admissions have increased by 452% and children being held in a watch house for more than 1 day has increased by 163%.³⁷ Of the 8,119 children detained in watch houses in 2022–23, 1911 (24%) were held in the watch house for 2 or more days, **close to 1000 children spent five or more days in the watch house**, and 146 children spent 15 or more days in the watch house.³⁸ Daily watch house statistics, which have been published by the Queensland Police Service since 8 August 2024, indicate that as at 10 October 2024, there were 25 children in watch house custody, 13 who had spent 3 to 7 days in custody, and 5 who had spent more than 7 days in watch house custody.³⁹ Watch house detention of young people does not appear to have the same systemic prevalence in other jurisdictions.⁴⁰
29. Since 2021–22, the Department of Youth Justice has used an index (the serious repeat offender index) to identify young offenders who commit disproportionately large numbers of serious offences.⁴¹ From 2021–22 to 2022–23, there has been an **increase in serious repeat offenders**, from 17% of young people accounting for 48% of charges, to 20% of young people accounting for 54.5% of charges.⁴²

³⁵ *Select Committee draft report* 49.

³⁶ Childrens Court of Queensland, *Annual report 2022–23* 48.

³⁷ Queensland Family & Child Commission, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 4 (**Who's responsible**).

³⁸ Childrens Court of Queensland, *Annual report 2022–23* 49.

³⁹ Queensland Police Service, 'Persons in Queensland Police Watch house Custody', *Watch house data* (web page, 10 October 2024 06:00) <<https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/watch-house-data>>.

⁴⁰ *Who's responsible* 24.

⁴¹ The Serious Repeat Offender Index (SROI) is a 'point in time' measurement that represents the volume/seriousness of a young person's recent offending behaviour. SROI scores take into account the young person's age at that measurement date, as well as the young person's offending (including seriousness, frequency, clustering and recency) and custody nights in the last 24 months. Higher index scores indicate more serious/frequent offending behaviour and young people with a score of 6 or above are considered a 'serious repeat offender': Childrens Court of Queensland, *Annual report 2022–23* 19-20.

⁴² Childrens Court of Queensland, *Annual report 2022–23* [3]-[4]. This definition of serious repeat offender is a separate to a person who is declared a serious repeat offender by the Magistrates Court under s 150A of the *Youth Justice Act 1992* (Qld).

30. There are high rates of recidivism among children released from detention. Between 2019 and 2022, roughly **90% of young people released from detention re-offended** within 12 months.⁴³

31. As Queensland's Family and Child Commissioner has emphasised:

The high rate of offending by a small cohort of young people who already have a history of detention is evidence that our current approach is not the solution to reducing and preventing crime.⁴⁴

A human rights crisis

32. Australia's obligations under the Convention on the Rights of the Child are clear: arrest, detention or imprisonment of children should be used only as a measure of last resort and for the shortest appropriate period of time.⁴⁵ This is because detention, regardless of the conditions in which children are held, is both counterproductive to community safety and particularly harmful to children and their future life prospects.⁴⁶

33. As the Special Rapporteur on Torture has emphasised:

Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems.⁴⁷

34. However, in Queensland, legislative and policy developments have been trending in the opposite direction: towards more frequent arrest and detention of children for longer periods of time. Increased criminalisation of children has in turn led to further egregious human rights violations as the youth incarceration system has been stretched to breaking point.

⁴³ *Select Committee draft report 43*; See also *Who's responsible* 62.

⁴⁴ *Who's responsible* 5.

⁴⁵ *Convention on the Rights of the Child*, art 37 (b).

⁴⁶ Committee on the Rights of the Child, *General comment No. 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [22]-[23]. (**CRC General Comment No 24**) [2]. UN Human Rights Council, *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) [63]-[69]. Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [33].

⁴⁷ Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015).

Detention of children in watch houses

35. Increasing numbers of children in detention for longer periods has stretched the capacity of youth detention centres, to the point that there have not been enough beds to accommodate them. This has resulted in thousands of incidents of children, including those as young as 10, being detained in police watch houses for periods of more than 24 hours, in some cases for over a month.⁴⁸
36. Holding a child in a police watch house for more than 24 hours is contrary to Australia's international obligations⁴⁹ and international minimum standards,⁵⁰ and is incompatible with Queensland's obligations under the Human Rights Act. The Queensland Parliament has clearly acknowledged this because provisions of the *Youth Justice Act 1992* that allow for the prolonged detention of young people in watch houses explicitly state the provisions have effect 'despite being incompatible with human rights'.⁵¹
37. Watch houses are designed for the temporary accommodation of adults and are unable to meet the basic rights and needs of children for detention, including the requirement that:
- children be completely separated from adults, except where that is in their best interests⁵²
 - centres be staffed by appropriately trained personnel and operated according to child-friendly policies and practices⁵³

⁴⁸ *Who's responsible 4*. See also Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024) 14–16.

⁴⁹ In particular, Australia's obligations under the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. Guidance on how children's rights can best be implemented while promoting public safety is given by the Committee on the Rights of the Child in their *General Comment No 24*. The Committee is a treaty body that monitors implementation of the Convention on the Rights of the Child, and its insights are drawn from its review of practice across numerous states and experience in applying the Convention to individual complaints. The Committee was informed by the views of States and non-governmental organisations during the drafting of the General Comment, including comments from the Australian Government. See Australian Government, Submission to United Nations Committee on the Rights of the Child, *Draft General Comment No. 24, replacing General Comment No. 10 on Children's rights in juvenile justice* (2018) <<https://www.ohchr.org/Documents/HRBodies/CRC/GC10/Australia.docx>>.

⁵⁰ *CRC General Comment No 24* [85]; *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* UN Doc A/RES/70/175 (17 December 2015); United Nations, *Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, GA Res 40/33, UN Doc A/RES/40/33 (29 November 1985) r 13; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)* UN Doc A/RES/45/113 (14 December 1990).

⁵¹ See, eg, *Youth Justice Act 1992* (Qld) ss 56, 210, 246A, 262.

⁵² *CRC General Comment No 24* [92]; *Human Rights Act 2019* (Qld) s 33(1).

⁵³ *CRC General Comment No 24* [92], *Havana Rules* r 31, 85. See also European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT),

- children be provided with daily access to fresh air, exercise, and natural light⁵⁴
 - centres are designed in keeping with rehabilitative aims of detention, with due regard to the need of the child for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities⁵⁵
 - children are provided with adequate health and mental health screening and services⁵⁶
 - children frequently make contact with their family and community⁵⁷
 - children be placed in single cell accommodation overnight, with areas for mixing outside cells.⁵⁸ The minimum size for a double room without ensuite should be 11 m².⁵⁹
38. The Queensland Family & Child Commission found that watch houses were not suitable places to detain young people for extended periods due to their design, lack of trained staff, and lack of youth-focused policies, services and programs designed to uphold the rights of children while detained, contrary to the Queensland Charter of youth justice principle 19 that a child in custody should only be held in a facility suitable for children.⁶⁰
39. Staff working in watch houses have publicly raised concerns about the impact of these conditions on children. In January 2024 *The Guardian* reported that a senior psychologist treating children in Cairns watch house had warned of ‘horrendous’ and ‘inhumane’ conditions, including claims that young people were not being provided adequate food, medical attention or legal support.⁶¹ The psychologist warned of a ‘massive deterioration’ in children’s physical and mental

Juveniles deprived of their liberty under criminal legislation, extract from the 24th General Report of the CPT (published in 2015) (***CPT Juveniles deprived of their liberty***) [101].

⁵⁴ *Nelson Mandela Rules* rr 14(a), 23(1), 42; *Havana Rules* r 47.

⁵⁵ *CRC General Comment No 24* [95(b)]; *Havana Rules* r 32.

⁵⁶ *CRC General Comment No 24* [95(d)]; *Havana Rules* rr 49–51.

⁵⁷ *CRC General Comment No 24* [94], [95(e)].

⁵⁸ *Havana Rules* r 33, *Nelson Mandela Rules* rr 12, 113.

⁵⁹ Australian Juvenile Justice Administrators’ Forum, *Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand* (Department of Human Services Victoria, May 1996) 59 [6.105].

⁶⁰ *Who’s responsible* 43-46. See also *Youth Justice Act 1992* (Qld) Schedule 1 (Charter of youth justice principles).

⁶¹ Ben Smee, ‘Psychologist treating children in Cairns watch house warns of ‘horrendous’ and ‘inhumane’ conditions’, *The Guardian* (online, 16 January 2024) <<https://www.theguardian.com/australia-news/2024/jan/16/cairns-police-watch-house-queensland-youth-detention>>; Ben Smee, ‘Cairns watch house worker sounds alarm over ‘massive deterioration’ in children’s physical and mental health’, *The Guardian* (online, 24 January 2024) <<https://www.theguardian.com/society/2024/jan/23/queensland-youth-detention-cairns-watch-house-children-physical-mental-health>>.

health and claimed that the treatment of children in Cairns watch house amounted to child abuse.⁶²

40. *The Guardian* also reported that a Senior Officer at the Cairns watch house has raised concerns in an email to various agencies that police cannot meet expectations for care of children held in the watch house, proposing that staff from external agencies be brought in to engage with and provide necessities to them including snacks, toilet paper and activities. It was reported that in the previous week 14 children were held in extended police custody in Cairns, including one who had been kept in the watch house cells for 18 days.⁶³
41. In June 2024, the Deputy State Coroner made findings in relation to two adult deaths in watch house custody, whose deaths may have been avoided if there had been adequate cell checks by watch house staff and adequate medical services on site. The Deputy State Coroner's recommendations included amending section 6 of the *Corrective Services Act 2006* (Qld) to ensure adult prisoners do not spend more than 72 hours in a watch house, rather than the 21 days currently specified, and additional resourcing to Queensland Police Service to support increased training of watch house officers and specialised police officers working within Queensland watch houses.⁶⁴ No legislative maximum exists at all for detention of children in watch houses.

Case example: alleged sexual assault of a child in a watch house

In February 2024, *The Guardian* reported a 13 year old boy had been sexually assaulted in watch house custody while sharing a cell with 3 other boys, including the 16 year old alleged perpetrator, who had himself been in the watch house for about 20 days when the incident occurred. Concerns for the victim's safety due to his small size and vulnerability had been raised in the preceding days by a psychologist and youth workers to the Department of Youth Justice and others. When the victim was again arrested, he was initially placed in a watch house isolation cell for 5 days for his own safety, and then transferred from Cairns to the Pine Rivers watch house, more than 1,500km away from carers, kin and other supports.⁶⁵

⁶² Peter McCutcheon, 'Kids Locked Up', 7.30, *ABC* (online, 24 January 2024) <https://www.abc.net.au/news/2024-01-24/queensland-children-in-adult-watch-houses-amounts-to-child-abuse/103386204>.

⁶³ Ben Smee, 'Police 'cannot meet' expectations for children in custody amid Cairns watch house overcrowding' *The Guardian* (online, 15 January 2024), <https://www.theguardian.com/australia-news/2024/jan/15/police-cannot-meet-expectations-for-children-in-custody-amid-cairns-watch-house-overcrowding>,

⁶⁴ *Inquest into the deaths of Shiralee Deanne Tilberoo and Vlasta Wylucki* (Coroners Court of Queensland, Deputy State Coroner Gallagher, 27 June 2024).

⁶⁵ Ben Smee, 'Boy, 13, allegedly sexually assaulted while being held in crowded Cairns watch house cell', *The Guardian* (online, 15 February 2024) <<https://www.theguardian.com/australia-news/2024/feb/15/boy-13-cairns-watch-house-cell-alleged-sexual-assault>>; Ben Smee, 'Concerns for 13-year-old in Queensland watch house ignored days before alleged sexual assault', *The Guardian* (online, 9 July 2024) <<https://www.theguardian.com/australia->

Case example: use of batons on a child in a watch house

In July 2024 the Australian Broadcasting Corporation published a video from August 2023 showing police officers striking a 17-year-old child with a baton 3 times at Richlands watch house, allegedly after he had sworn at officers but while he appeared to be complying with their directions. The video also shows police officers force him to the ground and handcuff him behind his back. United Nations minimum human rights standards concerning children emphasise that force can only be used in relation to children ‘in exceptional cases, where all other control methods have been exhausted and failed’ and that the use of weapons (such as batons) by personnel ‘should be prohibited in any facility where juveniles are detained’.

42. In September 2024, the Inspector of Detention Services published his inspection report on Cairns and Murgon watch houses, which were chosen because both have been used to detain children for long periods.⁶⁸ The report observed a lack of access to natural light, fresh air and exercise for detainees, and that prolonged detention in this type of environment could significantly affect their wellbeing. Insufficient medical screening, monitoring, staff training, activities for children, and coordination of welfare services also contributed to significant risks of harm children face by being detained in watch houses for any period. The report also noted instances of sick children and children at risk of self-harm being held for prolonged periods without access to health care.⁶⁹
43. At the very least, prolonged detention of children in watch houses breaches Australia’s obligation under article 10 of the International Covenant on Civil and Political Rights (ICCPR) to treat persons deprived of their liberty with humanity and respect for the inherent dignity of the person.⁷⁰ The Commission is of the view that the combination of conditions means that detention of children in watch houses for long periods of time, and certain instances of use of force against children, also raises the serious risk of amounting to cruel, inhuman or degrading

[news/article/2024/jul/09/concerns-over-13-year-old-in-queensland-watch-house-ignored-days-before-alleged-sexual-assault](https://www.abc.net.au/news/article/2024/jul/09/concerns-over-13-year-old-in-queensland-watch-house-ignored-days-before-alleged-sexual-assault)>.

⁶⁶ Alexander Blucher “Jason’ was beaten repeatedly with a baton in a watch house. An investigation found the use of force was ‘reasonable’ ABC News (online, 10 July 2024), <https://www.abc.net.au/news/2024-07-10/indigenous-teenager-beaten-brisbane-police-watch-house-cctv/104070840>.

⁶⁷ *Havana Rules* rr 64 and 65. See also *Nelson Mandela Rules* r 82(3).

⁶⁸ Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024) 11.

⁶⁹ *Ibid* 37–38, 46.

⁷⁰ See also *Human Rights Act 2019* (Qld) s 30.

treatment contrary to the ICCPR and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.⁷¹

44. As the Special Rapporteur on Torture has emphasised:

Owing to their unique physiological and psychological needs, which render them particularly sensitive to deprivation and treatment that otherwise may not constitute torture, children are more vulnerable to ill-treatment and torture than adults. ...

In determining the seriousness of acts that may constitute ill-treatment or torture, due consideration must be given to physical and mental effects and the age of the victim. In the case of children, higher standards must be applied to classify treatment and punishment as cruel, inhuman or degrading. In addition, the particular vulnerability of children imposes a heightened obligation of due diligence on States to take additional measures to ensure their human rights to life, health, dignity and physical and mental integrity.⁷²

45. The Committee on the Rights of the Child has indicated that States should ensure that children are not held in police cells, except as a measure of last resort and for the shortest period of time.⁷³ In light of the risk of detention in police custody giving rise to torture and ill-treatment, the Special Rapporteur on Torture has recommended that children should not be detained in law enforcement establishments for more than 24 hours, and only in child-friendly environments.⁷⁴

46. On 6 August 2024, the Queensland Police Service announced a wide-ranging review into watch houses across the State to address 'end-to-end systemic issues' in response to increasing complaints.⁷⁵ Further details, including the timeframe and Terms of Reference for the review, are yet to be released.

⁷¹ For consideration of how a combination of inadequate conditions of detention can amount to inhuman or degrading treatment in the context of the European Convention on Human Rights see *Ananyev v Russia* (European Court of Human Rights, First Section, Application Nos 42525/07 and 60800/08, 10 January 2012). In relation to children in particular see Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [71]–[72], [76], [78]. See also *Human Rights Act 2019* (Qld) s 17(b).

⁷² Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [33], [59]–[60].

⁷³ *CRC General Comment No 24* [85].

⁷⁴ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [85(k)].

⁷⁵ Jemima Burt and Julia Andre, 'Review into Queensland police watch houses to probe 'end-to-end systemic issues'', *ABC News* (online, 6 August 2024) <<https://www.abc.net.au/news/2024-08-06/review-queensland-police-watch-houses-systemic-issues/104188082>>.

Discrimination

47. Aspects of the detention of children in Queensland identified above operate in a way that is discriminatory on the basis of protected characteristics, including age, disability, and race. Discriminatory treatment is contrary to Queensland and Commonwealth law,⁷⁶ and to Australia's international obligations.⁷⁷
48. The drivers of this discrimination are complex and intersectional (i.e., because of the combined effect of more than one attribute), as are the strategies needed to address it. However, there are clear ways in which youth justice legislation and policy can cause or exacerbate discrimination, including by:
- mandating or permitting arrest and detention in circumstances where it is not justified (such where a child is unlikely to have capacity for criminal responsibility or by 'zero-tolerance' approaches to breach of bail by children⁷⁸)
 - through insufficient scrutiny of the exercise of discretion as to cautioning and diversion,⁷⁹ or a lack of appropriately adapted diversion options⁸⁰
 - by failures to adequately equip relevant staff with training, knowledge or resources to interact appropriately with children, including children with intellectual and cognitive disabilities⁸¹
 - by deployment of high-visibility or 'proactive' policing concentrated in particular locations or focussed on particular individuals or cohorts.⁸²

Age

49. The longstanding position under Australian law, including in Queensland, is a presumption that a child between the age of 10 and 14 years is *incapable* of

⁷⁶ Including under the *Anti-Discrimination Act 1991* (Qld), *Age Discrimination Act 2004* (Cth), *Racial Discrimination Act 1975* (Cth), and *Disability Discrimination Act 1992* (Cth).

⁷⁷ Including under the under the ICCPR, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disability (CRPD), and the Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

⁷⁸ See, for example, references to a 'zero-tolerance' approach being taken to children accused of breaching bail in May 2024: Ben Smee, 'How Queensland's youth crime crackdown is forcing vulnerable kids into 'brutal' detention system', *The Guardian* (online, 15 July 2024). See further *Pathways to Justice* 452–6.

⁷⁹ *Pathways to Justice* 452–8; Don Weatherburn & Brendan Thomas 'The influence of Indigenous status on the issue of police cautions' (2023) 56(2-3) *Journal of Criminology* 253.

⁸⁰ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) vol 8 310–11 (***DRC Final Report vol 8***).

⁸¹ See, eg, Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024) 5, 59–60; *DRC Final Report vol 8* 110–12.

⁸² Law Enforcement Conduct Commission (NSW), *An Investigation into the use of the NSW Police Force Suspect Targeting Management Plan on children and young people* (Final Report, October 2023); *DRC Final Report vol 8* 39–42; *Pathways to Justice* 455–6.

committing a crime because they have not developed sufficient understanding of the difference between right and wrong (*doli incapax*).⁸³

50. The United Nations Committee on the Rights of the Child has emphasised that children under the age of 14 are ‘unlikely to understand the impact of their actions or to comprehend criminal proceedings’ and that those entering adolescence are in a unique stage of development impacting ‘risk-taking, certain kinds of decision-making and the ability to control impulses’.⁸⁴ The Committee recommends the minimum of age of criminal responsibility should be at least 14 years, and suggests the minimum age that a child may be deprived of liberty be 16 years (unless there are genuine public safety or public health concerns).⁸⁵
51. Despite this, children in Queensland between the ages of 10 and 14 are regularly charged, arrested and held in detention in police watch houses, in circumstances where both the common law and international human rights law recognises that they are unlikely to have the capacity to be criminally responsible for their actions, and at a stage of their development where contact with the justice system is particularly harmful.⁸⁶
52. Australian Bureau of Statistics Data shows that, in 2022–23, at least:
 - 316 children between the ages of 10 and 11
 - 2063 children between the ages 12 and 13

were proceeded against (cautioned, charged or summonsed to court) by police in Queensland.⁸⁷ This cohort made up 22% of all children proceeded against by police in Queensland during the period.⁸⁸

53. The Inspector of Detention Services Report on Cairns and Murgon Watch houses showed that between 1 January 2023 and 31 January 2024 in Cairns Watch house:
 - 10 year olds were held for more than 1 day on 4 occasions;

⁸³ Under common law, although a child between the age of 10 and 14 years can be charged with a criminal offence, the prosecution must rebut a presumption that they are not criminally responsible by proving that they have the necessary understanding.

⁸⁴ *CRC General Comment No 24* [22].

⁸⁵ *CRC General Comment No 24* [22], [89].

⁸⁶ *DRC Final Report vol 8* 311.

⁸⁷ Australian Bureau of Statistics, *Recorded Crime – Offenders, 2022–23*, ‘Table 25 Youth offenders, Number of times proceeded against by police by age, Selected states and territories, 2022–23’ (released 8 February 2024) <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#data-downloads>>. Note, the data excludes proceedings for breach of bail: Australian Bureau of Statistics, *Recorded Crime – Offenders Methodology, Reference period 2022–23 Financial Year* (online, 8 February 2024) <<https://www.abs.gov.au/methodologies/recorded-crime-offenders-methodology/2022–23#data-collection>>.

⁸⁸ *Ibid.*

- 11 year olds were held for more than 1 day on 7 occasions (with 3 held between 3-6 days);
 - 12 year olds were held for more than 1 day on 6 occasions (with 1 held for between 3-6 days and 1 held for between 7-14 days); and
 - 13 year olds were held for more than 1 day on 42 occasions (with 15 held for between 3-6 days and 2 held for between 7-14 days).⁸⁹
54. Throughout Queensland, between 1 September 2021 to 30 September 2022 the following number of unique children **aged from 10 to 13** were held in police watch houses:
- less than 6 hours: 346 children (at least 84% First Nations children)
 - overnight: 242 children (at least 91% First Nations children)
 - between 2 to 6 days: 72 children (97% First Nations children)
 - more than a week: 8 children (100% First Nations children).⁹⁰
55. In addition, as highlighted elsewhere in this submission, children have lesser protections than adults in some aspects of detention. For example, legislation provides a 21 day maximum for detention of adults in a police watch house, but there is no legislative maximum for children. Children under separation in Queensland Youth Detention centres also have fewer legislative safeguards when separated than adults detained in Queensland prisons.⁹¹

Race

56. Aboriginal and Torres Strait Islander children make up approximately 8.2% of children and young people aged 10-17 in Queensland.⁹² However, in the first half of 2023, Aboriginal and Torres Strait Islander children made up:
- 66% of children detained in watch houses for 3 to 7 days
 - 62% of children detained in watch houses for 8 to 14 days
 - 63% of children detained in watch houses for more than 15 days.⁹³
57. The Inspector of Detention Services report of Cairns and Murgon Watch house reported that, for admissions to the Cairns watch house during the period of its review (1 January 2023 to 31 January 2024):

⁸⁹ Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024) 15.

⁹⁰ Queensland Parliament, *Question on Notice*, No. 1016 'Young people detained in police watch houses in Queensland' asked 12 October 2022 (M Berkman) tabled 11 November 2022 (Hon M Ryan).

⁹¹ Inspector of Detention Services, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (Report, August 2024) 53.

⁹² *Who's responsible* 40.

⁹³ *Who's responsible* 42.

- 87 of the 90 admissions of girls were Aboriginal and/or Torres Strait Islander children (97%)
 - 272 of the 292 admissions of boys were Aboriginal and/or Torres Strait Islander children (93%).⁹⁴
58. For Murgon watch house, all but one of the 32 admissions of children for more than 24 hours during the period of its review (1 January to 31 January 2023) were Aboriginal or Torres Strait Islander children.⁹⁵
59. The statistics referred to at paragraph [54] also demonstrate the gross over-representation of First Nations children among children aged 10 to 13 in police watch houses in Queensland, starting at 84% for stays less than six hours and increasing over time.⁹⁶
60. More broadly, for 2022–23:
- a. First Nations children accounted for 53% of all distinct young people convicted, and are represented at a higher rate in the 10 to 14 year age group.⁹⁷
 - b. First Nations children account for between 65 and 71% of children in youth detention on an average day over the last 4 years,⁹⁸ and in 2021–22 represented 87% of all children aged 10 to 13 years old in detention centres on an average day.⁹⁹
 - c. The average number of First Nations children in detention in Queensland is 45.1 per 10,000 young people in the population (an increase from 41.6 per 10,000 persons in 2021–22), where the national daily average in 2021–22 was 28.3 per 10,000 persons.¹⁰⁰
61. Root causes of First Nations people’s contact with the justice system are inextricably linked with dispossession, colonisation, discrimination and experiences of institutional racism.¹⁰¹ In addition, there is clear evidence of institutional racism within Australian criminal justice systems, with over-representation of Aboriginal and Torres Strait Islander people increasing at every

⁹⁴ Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024) 15.

⁹⁵ *Ibid* 16.

⁹⁶ This data covers the period 1 September 2021 to 30 September 2022.

⁹⁷ Childrens Court of Queensland, *Annual report 2022–23* [18].

⁹⁸ Childrens Court of Queensland, *Annual report 2022–23* [18].

⁹⁹ *Select Committee draft report* 9.

¹⁰⁰ Children’s Court of Queensland, *Annual report 2022–23* [18].

¹⁰¹ *Select Committee draft report* 9; National Children’s Commissioner, Australian Human Rights Commission, ‘*Help Way Earlier!*’ *How Australia can transform child justice to improve safety and wellbeing* (21 June 2024) 98–101.

stage of the criminal justice process.¹⁰² In relation to children, the Australian Law Reform Commission found that First Nations children are more likely to be arrested than non-Indigenous children, ‘even after factors such as the offence, offending history and background factors are taken into account’.¹⁰³ This is consistent with data reported by the Queensland Family and Child Commission in 2023, showing that First Nations children in Queensland ‘are less likely to receive a diversion decision, and less likely to be granted bail’, as well as being disproportionately exposed to the watch house system.¹⁰⁴

Disability

62. Children with cognitive or intellectual disabilities are also overrepresented in youth detention in Queensland. The Queensland Youth Justice Census recorded that, of the children in Queensland youth detention centres or police watch houses in 2022:

- 12% had diagnosed or suspected FASD
- 6% had diagnosed or suspected autism spectrum disorder
- 19% had a diagnosed or suspected developmental/language disorder
- 26% had diagnosed or suspected cognitive or intellectual disability.¹⁰⁵

63. It is likely that the numbers of children in detention in Queensland are even higher than these statistics indicate. The Disability Royal Commission found that, although collection of data across Australia is inadequate, ‘the available data indicates that a significant majority of children in youth detention have at least one or more disability’.¹⁰⁶ The Commission described the detention of First Nations people with a cognitive disability in Australia, particularly in youth detention, as ‘a largely hidden national crisis’.¹⁰⁷

64. If governments acted consistently with Australia’s international legal obligations, these children would not be charged or detained at all. As the Committee on the Rights of the Child has emphasised:

Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility.

¹⁰² *Pathways to Justice* 26, ch 3.

¹⁰³ *Ibid*, 453.

¹⁰⁴ *Who’s responsible* 5.

¹⁰⁵ Department of Children, Youth Justice and Multicultural Affairs, ‘Young people in youth justice custody (2018 to 2022)’, *Youth Justice Census Summary* <<https://desbt.qld.gov.au/youth-justice/data>>.

¹⁰⁶ *DRC Final Report vol 8* 81. The Royal Commission notes that ‘[n]o corrective services or youth justice agency uses a culturally-validated screening tool to identify disability in First Nations people in custody’, despite their necessity to ensure First Nations people with disability receive the supports they require while in custody and to plan for the supports required upon release from custody: *DRC Final Report vol 8* 34, 192.

¹⁰⁷ *DRC Final Report vol 8* 33.

If not automatically excluded, such children should be individually assessed.¹⁰⁸

65. Reports and reviews have identified a number of interconnected concerns with the criminalisation and detention of children with cognitive and intellectual disabilities in Queensland.
66. First, children who do not have capacity for criminal responsibility because of cognitive or intellectual disabilities may be detained, including in watch houses – even in circumstances where they have been previously found unfit for trial.¹⁰⁹
67. Second, a young person may be arrested and charged with offences solely arising from behaviours associated with their disability – for example because they become agitated and frightened when approached by police and either react physically or try to run away, or because they take responsibility for offences they did not commit.¹¹⁰
68. Third, as the Disability Royal Commission emphasised, ‘the experience of custody can be significantly more severe for people with disability than for those without disability’,¹¹¹ and while in youth detention ‘they are exposed to substantial risks of violence, abuse and neglect’.¹¹²

Case example: Detention, isolation, and use of force on girl with mental capacity of 5 year old

In July 2024, media reported on the case of ‘Sam’, a 13 year old First Nations girl with severe intellectual disabilities, highlighting how each of these issues can intersect to lead to serious human rights concerns.

According to reports, Sam’s police file indicates that she has the intellectual capacity of a 5 year old, and she has twice previously been assessed as unfit to stand trial. Despite this, she is designated a ‘Serious Repeat Offender’.¹¹³

Reports indicated that Sam has been arrested and held in the police watch house at least 10 times since she was 11.¹¹⁴ CCTV footage published from one period of detention in a watch house in August 2023 shows officers

¹⁰⁸ CRC General Comment 24.

¹⁰⁹ Select Committee draft report 9, 70–1.

¹¹⁰ DRC Final Report vol 8 39–42.

¹¹¹ DRC Final Report vol 8 81.

¹¹² DRC Final Report vol 8 81

¹¹³ In Queensland, a serious repeat offender is identified by the Department of Youth Justice using the ‘serious repeat offender index’ (SROI) which measures the volume/seriousness of a young person’s recent offending behaviour. More information on SROI is detailed at footnote 41 above.

¹¹⁴ Ben Smee, ‘At 14, Sam has the mental capacity of a five-year-old. So what’s she doing in a Queensland police cell?’ *The Guardian* (Online, 18 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/18/at-14-sam-has-the-mental-capacity-of-a-five-year-old-so-what-is-she-doing-in-a-queensland-police-cell-ntwnfb>>

attempting to force her into a padded isolation cell after she repeatedly covered the CCTV in her cell with toilet paper, with one officer saying ‘You were disobeying the rules missy’.¹¹⁵ The video shows her distraught and trying to leave the cell, and ultimately being injured when police officers try to slam the door shut. She was transported to hospital in handcuffs and leg chains.¹¹⁶

It is reported that, in October 2023, Sam was arrested again by two officers from Taskforce Guardian – a Queensland Police operation that deploys additional officers to what are described as ‘youth crime hotspots’ with aims including engaging with ‘serious repeat offenders’.¹¹⁷ According to media reports she was arrested after being approached in a car park by police when she ‘panicked and was arrested for resisting police’.¹¹⁸ Police records indicate that she became ‘hyper-agitated’ and ‘dysregulated’ when taken to the watch house, the reports say. CCTV shows that she was moved to the isolation cell after banging her head against the wall, where she urinated on herself, stripped naked, refused a change of clothes and continued to bang her head on the wall and punch herself in the face.¹¹⁹ After some time, she was taken to the hospital for assessment, where she was ‘diagnosed with ‘behavioural agitation’, discharged, and declared fit to return to the watch house’.¹²⁰

69. In its draft interim report, the Youth Justice Reform Select Committee noted that it had heard ‘concerning anecdotal evidence of children and young [people] with complex disabilities being detained in circumstances that put them, and the staff

¹¹⁵ Madeleine Wedesweiler & Jennifer Lau ‘Exclusive footage shows children being placed in isolation cells in Queensland’ *SBS News* (Online, 17 July 2024) <<https://www.sbs.com.au/news/article/exclusive-footage-shows-children-being-placed-in-isolation-cells-in-queensland/s23wwwygw>>; Ben Smee, ‘Screaming, freezing, struggling to breathe: confronting Queensland watch house footage exposes anguish of children locked in isolation cells’, *The Guardian* (Online, 17 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/17/queensland-youth-crime-watch-house-footage-police-treatment-ntwnfb>>

¹¹⁶ *Ibid.*

¹¹⁷ Department of Youth Justice, *Taskforce Guardian* (Web Page, 12 September 2024) <<https://desbt.qld.gov.au/youth-justice/parents-guardians/programs-initiatives/initiatives/taskforce-guardian>>.

¹¹⁸ Ben Smee, ‘At 14, Sam has the mental capacity of a five-year-old. So what’s she doing in a Queensland police cell?’ *The Guardian* (Online, 18 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/18/at-14-sam-has-the-mental-capacity-of-a-five-year-old-so-what-is-she-doing-in-a-queensland-police-cell-ntwnfb>>. The report states that the ‘charge sheet alleges she was violent, dropped her weight and kicked the door of a police car’.

¹¹⁹ Madeleine Wedesweiler & Jennifer Lau ‘Exclusive footage shows children being placed in isolation cells in Queensland’ *SBS News* (Online, 17 July 2024) <<https://www.sbs.com.au/news/article/exclusive-footage-shows-children-being-placed-in-isolation-cells-in-queensland/s23wwwygw>>.

¹²⁰ Ben Smee, ‘Screaming, freezing, struggling to breathe: confronting Queensland watch house footage exposes anguish of children locked in isolation cells’, *The Guardian* (Online, 17 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/17/queensland-youth-crime-watch-house-footage-police-treatment-ntwnfb>>.

involved, in traumatic situations and create[d] a number of safety risks to those involved'.¹²¹ It emphasised that:

Watch houses and detention centres are not equipped to support children and young people who are living with a significant mental health condition and/or a disability. This is an issue that is [inextricably] linked to the need for children and young people to receive comprehensive health screening at the earliest opportunity, ideally before they have any formal contact with police or the courts.¹²²

Lockdown, separation and solitary confinement

70. The pressures on the youth justice system in Queensland caused by the high incarceration rate have also led to serious human rights concerns around separation of children alone in a locked room for long periods in youth detention. This is inherently harmful for children and has significant consequences for their access to education and health services.
71. In youth detention centres, 'separation' or 'lockdown' refers to the practice of separating a child in a locked room. Generally, there is a centre-wide lockdown for 12 hours each night while children sleep in their own rooms. However, lockdowns can also occur during the day, and for consecutive days. During such periods children 'must be permitted a minimum of 2 hours outside of their room each day unless it is unsafe to do so'.¹²³
72. The Queensland Audit Office analysed the percentage of time Queensland's 3 youth detention centres spent in lockdown between 7am and 7pm, demonstrating a steady increase over time.¹²⁴ In 2022–23, 81% of lockdowns were related to staff shortages.¹²⁵

¹²¹ *Select Committee draft report 71.*

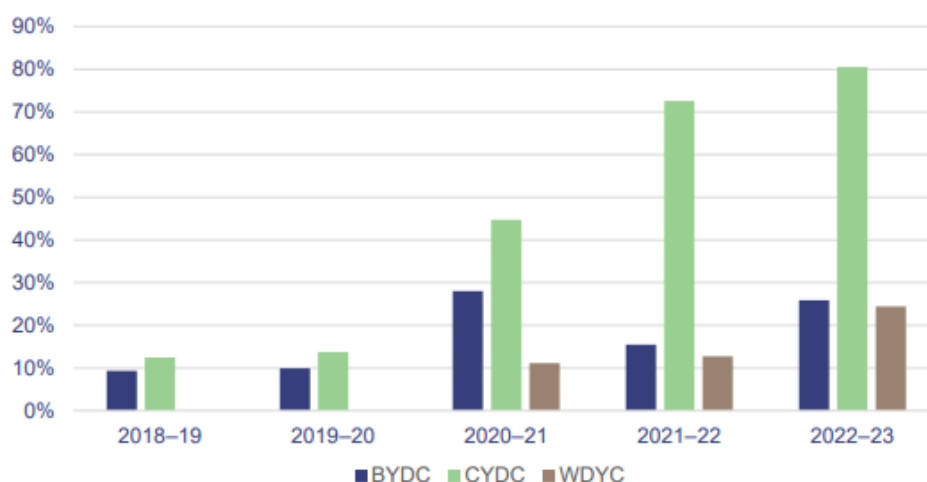
¹²² *Ibid.*

¹²³ Queensland Audit Office, *Reducing serious youth crime* (Performance Audit Report 15: 2023–24, 28 June 2024) 31.

¹²⁴ *Ibid* 31-32.

¹²⁵ *Ibid* 32.

Percentage of time detention centres were in lockdown, 2018–19 to 2022–23



Notes: BYDC – Brisbane Youth Detention Centre; CYDC – Cleveland Youth Detention Centre; WDYC – West Moreton Youth Detention Centre. West Moreton opened in December of 2020 meaning its 2020–21 data does not include the full year.

Source: Queensland Audit Office, based on audit evidence.

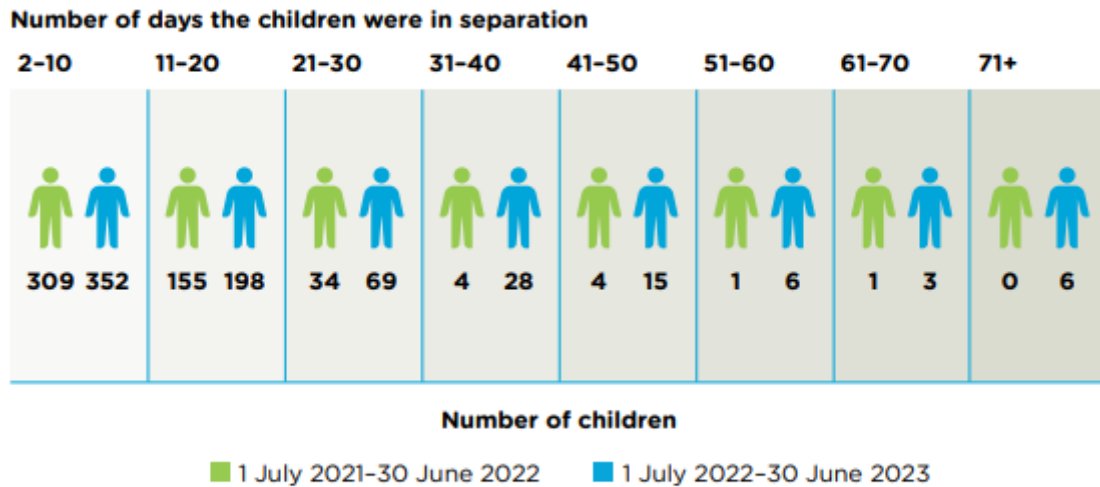
Figure 1: Percentage of time detention centres were in lockdown, 2018-2019 to 2022–23 (Table reproduced from Queensland Audit Office, *Reducing serious youth crime (Performance Audit Report 15: 2023–24, 28 June 2024)* 31 (Figure 6D))

73. As shown in the graph above, the Queensland Audit Office found that from 2018–19 to 2022–23, the amount of time spent in lockdown in Cleveland Youth Detention Centre, near Townsville, increased from 12% to 81%. This was ‘equivalent to 294 days in lockdown in 2022–23’.¹²⁶ At Cleveland Youth Detention Centre, only 31 children completed rehabilitation programs in 2022, compared to 215 in 2018. Most children only received an average 3 to 5 hours of face-to-face education each week from 2021 to 2023. While Brisbane and West Moreton were locked down less frequently (approximately 18% of the time), these centres did not accurately and consistently record the number of children who completed rehabilitation programs.¹²⁷
74. The Inspector of Detention Services examined more closely the use of separations caused by staff shortages at Cleveland Youth Detention Centre. Two forms of separation were noted – ‘night mode’, where children are locked in their room, and ‘continuous cell occupancy’, where children take turns to be released from their rooms in small groups into a common area. Throughout 2023, the overall number of separations declined, however, the use of night mode separations increased to try to avoid separations occurring on consecutive days (because fewer staff are required to supervise an accommodation unit while it is in night mode). Over an 8 day period in October 2023, most units were locked

¹²⁶ Ibid.

¹²⁷ Ibid.

down for 3 to 5 days.¹²⁸ Despite decreases, however, during 2022–23 many children were separated for more than 20 hours on consecutive days, including 6 children who were separated for more than 70 days in a row.¹²⁹



Source: Compiled by the Inspector of Detention Services using information from the Department of Youth Justice.

Figure 2: Children at Cleveland Youth Detention Centre in separation for 20 or more hours on consecutive days in the 2021–22 and 2022–23 financial years (reproduced from Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024) 21).

Children in watch houses may also be isolated for extended periods, usually where there is only one boy or one girl at the watch house, or the child is a risk to, or at risk of harm from, other children in custody.¹³⁰

Case examples: separation and solitary confinement in youth detention

A February 2023 judgment of the Children’s Court of Queensland recorded that a 14 year old child with Fetal Alcohol Spectrum Disorder and a history of neglect and abuse had been confined to his cell for 20 hours or more on 78 of the 87 days for which records were available during his period of remand. For 10 of those days he had been confined to his cell for 24 hours. He had been 13 when he committed the offence and for part of his time on remand. The judgment records how, ‘particularly on days when you have been locked in your cell for the entire day, or only let out for a few minutes ... you developed behavioural problems’.¹³¹ The court stated that the circumstances of his detention were ‘cruel, inappropriate and have served no rehabilitative effect’.¹³² The judge was satisfied that the detention was likely to have caused

¹²⁸ Inspector of Detention Services, Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024) 19.

¹²⁹ *Ibid* 16-21.

¹³⁰ Inspector of Detention Services, Queensland Ombudsman, *Cairns and Murgon watch houses inspection report: Focus on detention on children* (11 September 2024) 50-55.

¹³¹ *R v TA* [2023] QChC 2, 5.

¹³² *Ibid*.

the child ‘significant harm’¹³³ and that the detention ‘may well have increased the risk of further offending’ by the child.¹³⁴

In April 2023 a Children’s Court of Queensland judgment recorded how a 13 year old boy on remand was confined in his cell for 23 hours and 59 minutes on 11 days (of a 32 day period of detention). The judge noted that the boy had tried to plead guilty to the charges two days after being detained, and was unlikely to face a sentence of detention for the charges.¹³⁵ He considered that continuing to detain the child in these circumstances was ‘cruel and unusual punishment’.¹³⁶

The 2022–23 Annual Report of the Child Death Review Board reported two cases of children who had died – one by suicide and one by drug overdose. Both had experienced long periods of separation in Youth Detention. One of the boys ‘was confined to his cell for more than 22 hours of the day ...on 55 of the days he was in detention. On 22 days, he was in his cell for more than 23 hours. The Youth Justice report identified three occurrences of [the boy] spending 24 consecutive hours in his cell without a break and a further consecutive period of 31 hours and nine minutes’.¹³⁷ The other boy spent more than 50% of his 205 days in detention in separation.¹³⁸

75. According to the Child Death Review Board, the impacts of separation in youth detention include re-traumatising victims of abuse and neglect, exacerbating pre-existing mental health problems, and causing ‘extreme anxiety’. The psychological effects of separation can be amplified for First Nations children and young people due to their specific cultural needs. Separation was also observed to be counterproductive: it does not improve behaviour, creates problems with reintegration and fails to address the underlying causes of behaviour. In relation to one of the deaths being examined, extended separation had significantly impacted the boy’s access to education, therapeutic and cultural programs, social and leisure activities, exercise, fresh air and sunlight, and directly limited his ability to engage in criminogenic programs while on remand.¹³⁹
76. The Disability Royal Commission has also emphasised the ‘serious harm caused to children, who are already extremely vulnerable, by confining them for prolonged periods’.¹⁴⁰

¹³³ Ibid 4.

¹³⁴ Ibid 6.

¹³⁵ *R v Nathan (a pseudonym)* [2023] QChC 4.

¹³⁶ Ibid [18].

¹³⁷ Child Death Review Board, Queensland Family & Child Commission, *Annual Report 2022–23* 38.

¹³⁸ Ibid.

¹³⁹ Ibid 38-40.

¹⁴⁰ *DRC Final Report vol 8* 99

77. Where separation is for more than 22 hours without meaningful human contact it will be considered under international minimum standards to amount to ‘solitary confinement’.¹⁴¹ Meaningful human contact requires more than ‘those interactions determined by prison routines, the course of (criminal) investigations or medical necessity’.¹⁴² At international law, indefinite solitary confinement and prolonged solitary confinement (greater than 14 consecutive days) are prohibited for *any* prisoner and are considered to amount to torture or other ill-treatment.¹⁴³ International standards also prohibit the imposition of any period of solitary confinement on prisoners with mental or physical disabilities when it would exacerbate their conditions, or the imposition of solitary confinement on children as a disciplinary measure.¹⁴⁴

78. The Australian Human Rights Commission’s submission to the Committee Against Torture said:

Multiple studies confirm that the use of solitary confinement in institutional settings is often harmful. There is ‘unequivocal evidence’ that solitary confinement has a profound impact on health and wellbeing, and that children and young people are particularly susceptible. A vast body of research confirms that young people, until around 25 years, are still developing physically, mentally, neurologically and socially, and as a result, solitary confinement poses a serious risk of long-term harm.¹⁴⁵

79. The *Istanbul Statement on the Use and Effects of Solitary Confinement* provides ‘Negative health effects can occur after only a few days in solitary confinement, and the health risks rise with each additional day spent in such conditions’.¹⁴⁶ Similarly, Cleveland Youth Detention Centre psychologists told the Inspector of Detention Services:

... the timeframes in which they would see a decline in the mental health of children who were separated depended on each child. It can occur after a day for some but can

¹⁴¹ *Nelson Mandela Rules* r 44.

¹⁴² Penal Reform International Head Office and Human Rights Centre University of Essex, *Essex Paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, 2017, 88-89.

¹⁴³ *Nelson Mandela Rules* r 43; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/43/49 (20 March 2020) [57].

¹⁴⁴ *Nelson Mandela Rules*, r 44; *Havana Rules* r 67.

¹⁴⁵ Australian Human Rights Commission, *Submission to the UN Committee Against Torture, Follow Up Procedures to Australia’s Sixth Periodic Review* (15 September 2023) [77] (internal citations omitted). See also National Children’s Commissioner, Australian Human Rights Commission, *Submission No 11 to Youth Justice Reform Select Committee, Queensland Parliament, Inquiry into Youth Justice Reform in Queensland* (15 November 2023) 4–5.

¹⁴⁶ Adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul, and annexed to Manfred Nowak, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/63/175 (28 July 2008) 2.

take longer for others. However, they also advised that the effect is usually noticeable by the second day of separation.¹⁴⁷

80. Depending on the circumstances, the involuntary separation of a child from others in youth detention centres and watch houses may amount to inhumane conditions of detention or to torture or cruel, inhuman or degrading treatment.¹⁴⁸ Involuntary separation is also likely to significantly impact other children's other rights, including rights to health and education. Consistent with this, domestic and international bodies have called for legislative and policy measures in Australia to:

- prohibit and eliminate the use of solitary confinement for children¹⁴⁹
- ensure that isolation of children is only used when necessary to prevent imminent and serious threat of injury, as a last resort, and for the shortest amount of time¹⁵⁰
- agree nationally consistent definitions and minimum standards for isolation practices in youth justice detention, in accordance with international human rights standards¹⁵¹
- ensure accurate and disaggregated reporting on the use of isolation on children and young people, as is already required for adult corrections¹⁵².
- require that psychologists are consulted about the individual needs of children placed in separation in youth detention centres and their advice is considered and recorded when a period of separation beyond one day is requested, and for children in watch house isolation to be referred to mental health and/or medical staff and cultural support services.¹⁵³

¹⁴⁷ Inspector of Detention Services, Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024) 29.

¹⁴⁸ See further Juan E Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015) [44].

¹⁴⁹ Committee Against Torture, *Concluding observations on the sixth periodic reports of Australia*, UN Doc CAT/C/AUS/CO/6 (5 December 2022) [38(d)]; National Children's Commissioner, Australian Human Rights Commission, *'Help Way Earlier!' How Australia can transform child justice to improve safety and wellbeing* (21 June 2024) 91; *DRC Final Report vol 8, 18* (Recommendation 8.3).

¹⁵⁰ Commissioner for Children and Young People, Western Australia, ANZCCGA Joint Statement on isolation in Youth Detention (Web Page, 22 February 2024) <<https://www.cyp.wa.gov.au/news/anzccga-joint-statement-on-isolation-in-youth-detention>> (**ANZCCGA Joint Statement**); *DRC Final Report vol 8 18* (Recommendation 8.3).

¹⁵¹ Commissioner for Children and Young People, Western Australia, ANZCCGA Joint Statement on isolation in Youth Detention (Web Page, 22 February 2024) <<https://www.cyp.wa.gov.au/news/anzccga-joint-statement-on-isolation-in-youth-detention>>

¹⁵² Child Death Review Board, Queensland Family & Child Commission, *Annual Report 2022–23* 40; ANZCCGA Joint Statement; Inspector of Detention Services, Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024) 8–9 (Recommendations 12 and 15).

¹⁵³ Inspector of Detention Services, Queensland Ombudsman, *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages* (27 August 2024) 7 (Recommendation 4); Inspector of Detention Services, Queensland Ombudsman, *Cairns and*

The need to legislate national minimum standards

81. In her recent report on child justice, the National Children’s Commissioner referred to the issues considered by this Inquiry as ‘one of the most urgent human rights issues facing Australia today’.¹⁵⁴ She emphasised that
- Australia continually fails to implement evidence-based reforms to our child justice systems which would reduce offending behaviour and make our communities safer.¹⁵⁵
82. She has rightly called for a national approach for reform, with ‘the principles in the [Convention on the Rights of the Child] as a compass to guide our policy decisions, for the wellbeing of Australia’s children and the whole community’.¹⁵⁶
83. The Queensland experience shows why a national approach to youth justice – including enforceable national minimum standards – is essential. Multiple reports in Queensland have identified how fragmentation of responsibility for youth justice between different agencies has meant that no agency is accountable for success or failure or empowered to direct appropriate use of resources.¹⁵⁷ Despite clear evidence of what works and what does not, short-term political imperatives can drive decision-making contrary to the evidence. Short-term, reactive policy responses have not just led to a failing system, but to serious violations of the rights of some of the most vulnerable members of the community.
84. From a practical perspective, the benefits of national leadership in this area were recognised in the Atkinson report:

A national framework for Youth Justice would see a consistent, evidence-based approach advocated and delivered across Australia through the identification of core service elements, objectives and measurable outcomes. In accord with the [Australian Law Reform Commission Report *Pathways to Justice*] and the NT Royal Commission, addressing Aboriginal and Torres Strait Islander over-representation would need to be a priority.

...

Murgon watch houses inspection report: Focus on detention on children (11 September 2024) 8 (Recommendation 9).

¹⁵⁴ *Help Way Earlier* 8.

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.* 5.

¹⁵⁷ Queensland Audit Office, *Reducing serious youth crime Report 15:2023–24* (Performance Audit Report, 28 June 2024) 1; Queensland Family & Child Commission, *Who’s responsible: Understanding why young people are being held longer in Queensland watch houses* (30 November 2023) 62.

Elevating youth justice to a national level would facilitate national benchmarking, consistency of legislative frameworks, identification and sharing of best practice and contributing to endeavours to reduce the disproportionate rate of Aboriginal and Torres Strait Islander representation. A national agenda would also ensure the goodwill of governments across Australia is harnessed and the work of departments towards change is directed and supported in a cohesive manner. This would include, for instance, sharing learnings across jurisdictions relevant to other States and Territories.¹⁵⁸

85. From a legal perspective, the treatment of many children in the youth justice system is, as outlined in in this submission, contrary to Australia’s fundamental obligations under core international human rights treaties. These obligations are binding across the whole of Australia’s territory, including its states, and Australia cannot rely on internal law as a justification for a failure to perform its obligations.¹⁵⁹ The Commonwealth government has the power to legislate for an enforceable minimum baseline in this area,¹⁶⁰ and the obligation to do so.¹⁶¹
86. To uphold Australia’s international human rights obligations, including as reflected in Queensland’s Human Rights Act, the Commission urges the Commonwealth government to enact national enforceable minimum standards that cover the following:
- a. raising the minimum age of criminal responsibility to 14 years
 - b. prohibition of solitary confinement of children, and any use of isolation of children as a punishment
 - c. age-based and time limits on detention in police facilities
 - d. detention as a measure strictly of last resort
 - e. documentation of the exercise of police discretion to charge and arrest children
 - f. diversion of children with cognitive or intellectual disability from the justice system
 - g. time limits for pre-trial detention
 - h. health and disability screening and assessment on admission to any detention facility

¹⁵⁸ Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018) 112–13.

¹⁵⁹ Vienna Convention on the Law of Treaties, arts 27 and 29. See further UN Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) [4].

¹⁶⁰ *Australian Constitution* ss 51(xxix) and 109.

¹⁶¹ Vienna Convention on the Law of Treaties, art 26.

- i. the use of, and reporting on, force, restraints, and isolation or separation
 - j. requirements for minimum conditions of detention for children
 - k. staffing and training of staff in any facility in which children are detained
 - l. nationally consistent reporting on key datapoints including rates of charging, arrest, diversion, remand, incarceration, time in cell, and reoffending disaggregated by key demographics
 - m. nationally-consistent standards for monitoring facilities where children are detained
 - n. full implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
87. Many of the above proposed minimum standards – grounded in international human rights obligations – are already the subject of recommendations to government arising out of the detailed work of royal commissions and inquiries over decades.¹⁶² Others have models in existing state-based standards, such as the Queensland Inspector of Detention Service’s *Inspection Standards for Queensland youth detention centres*.¹⁶³ As the Atkinson report notes, history has shown that a national agenda is important to deliver change and desired outcomes, while the lack of a holistic and systemic approach leads to fragmentation and failures of implementation.¹⁶⁴ In this case, those failures of implementation are leading to serious violations of the most basic rights of Australian children – violations that the Commonwealth government can, and must, put an end to.

¹⁶² For example, Royal Commission into Aboriginal Deaths in Custody (1991), recs 47, 87, 88, 92, 96, 115, 127, 150, 151, 152, 154, 163, 215, 235, 239, 240, 242; *DRC Final Report vol 8* recs 8.1, 8.2, 8.3, 8.4, 8.5, 8.14, 8.15, 8.16, 8.20, 8.21, 8.22; *Pathways to Justice*, rec 14–1; *Help Way Earlier*, recs 15, 17, 19, 20, 21, 22.

¹⁶³ Inspector of Detention Services, Queensland Ombudsman, *Inspection standards for Queensland youth detention centres* (August 2023).

¹⁶⁴ Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018) 112.