Making Queensland Safer Bill 2024

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3rd December 2024

Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: JICSC@parliament.qld.gov.au

Dear Committee Secretary,

Re: Making Queensland Safer Bill 2024

Thank you for the opportunity to provide comments on the Making Queensland Safer Bill 2024 (**Bill**) which proposes to amend the Criminal Code, *Youth Justice Act 1992* (**YJ Act**) and *Children's Court Act 1992* (**CC Act**) with a view to implementing the Government's election promises contained within its *Making Queensland Safer Plan* including, notably, 'adult crime, adult time' for children who commit certain prescribed serious Criminal Code offences and removal of Youth Justice Principle 18 from the Charter of youth justice principles. On principle, we strongly oppose the passage of this Bill for a number of reasons including that: the proposed amendments go against the long-established evidence base which demonstrates that incarceration of children simply does not work in preventing, reducing or deterring offending; the effect of the Bill will disproportionately impact Aboriginal and Torres Strait Islander children who are significantly overrepresented in the numbers of children in contact with, or at risk of being in contact with, the criminal justice system; the proposed amendments are contrary to the government's human rights obligations to children such that the Bill includes express overrides of the *Human Rights Act 2019;* and the Bill is at odds with the National Agreement on Closing the Gap, in particular, relating to the targets to reduce overrepresentation of young people in the criminal justice system. Despite our strong opposition to the Bill, we are cognisant of the fact that the Bill is likely to be

passed due to the political context of these reforms. Therefore, in this submission, whilst we have expressed our opposition to the Bill, where appropriate, we have made recommendations on changes to the Bill that might mitigate the potential negative implications that could flow from the proposed framework if enacted.

Additionally, we feel compelled to comment that given the significance of the proposed amendments, we are disappointed by the very short timeframe which has been provided for consultation on the Bill.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil (including, child protection and domestic violence) and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

ATSILS is also a member of QATSIC (the Queensland and Torres Strait Islander Coalition) and a member of the Coalition of Peaks, both coalitions were formed to work in partnership with all three levels of government under the National Agreement for Closing the Gap. ATSILS and its fellow members of QATSIC: the Queensland Aboriginal and Islander Health Council (**QHAIC**); the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (**QATSICPP**); and the Queensland Indigenous Family Violence Legal Service (**QIFVLS**), work together to identify the interplay between the justice system, the child safety system, school suspension

practices, availability of health services and responses to family and domestic violence which contribute to the overrepresentation figures.

Introductory comments

Over many years we have seen the effects of short-sighted, knee-jerk tough-on-crime responses framed within one election cycle to the next including, but not limited to, unprecedented amendments to youth justice legislation to reverse the presumption of bail ('show cause' provisions), expansion of the offences to which the bail 'show cause' provisions apply and the introduction of an offence for breach of bail conditions. In our view, these measures have directly contributed to more and more children being incarcerated to the point where Queensland's youth detention centres are at or over capacity and children are being held in police adult watch houses as an overflow solution in breach of their human rights.

Unfortunately, the Bill will not, in our view, turn the tide nor will it make communities safer.

The proposed 'adult crime, adult time' framework in conjunction with the removal of Youth Justice Principle 18 and the special sentencing consideration in section 150(2)(b) which provides that non-custodial orders are better than detention in promoting a child's ability to reintegrate, will see more children incarcerated and for longer periods of time.

There is a large body of Australian and international evidence that shows:

- the brain of a child is not yet fully developed and consequently they should not be held to the same standard of moral culpability as an adult[1];
- that incarcerating children is ineffective in deterring future offending and often exacerbates existing issues, making children more likely to reoffend (which is entirely counter-productive to the goal to make communities safer)[2];
- incarcerating children can have negative developmental impacts on the child and that detention during the crucial developmental years of a child can cause

[1] Sarah B Johnson, Robert W Blum, Jay N Giedd, 'Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy' (2009) Sept 45(3), 216-21.

[2] Even with the toughest youth laws in Australia, in 2023, between 84 and 96 percent of children released from a youth detention in Queensland reoffended within 12 months following release. Source: Australian Institute of Health and Welfare (2023) Young people returning to sentenced youth justice supervision, 2021-22 supplementary data tables, Table s17, available at <https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/data>.

significant harm to a child's mental health, emotional development and educational outcomes[3];

- incarceration of a child does not have a deterrent effect for children, particularly from disadvantaged backgrounds or with neurodiversity (including foetal alcohol spectrum disorder), cognitive impairments or disability or those with histories of abuse[4].

We note that, Statement of Compatibility for the Bill expressly states at page 5 that:

> *"I also recognise that, according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aims of punishment and denunciation.* ***The amendments will lead to sentences for children that are more punitive than necessary to achieve community safety.*** *This is in direct conflict with international law standards, set out above, which provides that sentences for a child should always be proportionate to the circumstances of both the child and the offence – mandatory sentencing prevents the application of this principle."*

Additionally, we note that proposed changes have the clear potential to encourage fewer pleas of guilty from daunted children - and thus more matters proceeding to trial. This will result in longer delays, longer periods on remand and consequently more overcrowding in watch houses and youth detention centres. Along with the pressures this will place on the courts, police and youth detention centres, this will also come at a financial burden to the State. Furthermore, we ask the Committee to consider whether the inevitable reduction in the amount of pleas and consequent increase in matters proceeding to trial would lead to an increase in victims being subject to cross-examination and the traumatising/retraumatising effect that might have on victims and their families.

We have long been proponents of governments seeking to lead public opinion (rather than following it), via an adopted course of being seen to be 'smart on crime' – which will lead to greater community safety and electoral satisfaction. Addressing the upstream drivers of crime: health, housing, employment, education etc, is crucial – arm-in-arm with the greater utilisation of diversionary and rehabilitation options.

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[3] Inspector of Detention Services, Cleveland Youth Detention Centre inspection report: focus on separation due to staff shortages (August 2024), available at <https://www.ombudsman.qld.gov.au/ArticleDocuments/574/IDS%20CYDC%20Inspection%20report%202024%20-%20Focus%20on%20separation%20-%20PUBLIC.PDF.aspx>.

[4] Human Rights Watch (2018), *"I Needed Help, Instead I Was Punished"*, available at <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>.

Placing young, mostly highly disadvantaged offenders in detention, where they get to mix with and are influenced by the small percentage of hard-core serial offenders, is entirely counter-productive to community safety (and to the futures of those children).

For these reasons, we express our strong opposition to the Bill.

In the event that the Bill is passed, despite our strong objections and those of other key stakeholders, we have outlined some comments on the Bill's provisions itself with a view to moderating some of the negative implications that we have identified.

Comments on the provisions of the Bill

Mandatory sentencing

The Queensland Law Reform Commission (**QLRC**) is currently undertaking a Review of Particular Criminal Defences. In connection with this review, QLRC commissioned the Australian National University to conduct an independent study to help ALRC understand community attitudes to defences and sentences in cases of homicide and assault in Queensland. The findings of that study show that there was no clear evidence that the community supports mandatory life sentences for adults[5]. That this Bill intends to impose such for children is, in our view, incomprehensible. Therefore, it is critical that a sentencing judge's discretion is retained in the context of the proposed amendments – all the more so, where under the adult sentencing regime, 'life imprisonment' is mandated.

Expanding victims access to the Children's Court

The Bill proposes to make a number of amendments to expand the access of victims to Children's Court proceedings. Additionally, however, the Bill proposes to entirely remove the courts discretionary power to exclude certain prescribed persons from the courtroom (per section 20(2) to (4) of the CC Act). This is unacceptable and, in our view, an incursion on a court's ability to control its own proceedings. There are strong policy objectives that support the need for the court's discretionary power to be able to exclude relevant persons from the Children's Court proceedings which are founded in having due regard to the rights of victims with maximising the prospects of rehabilitation of the child and upholding the best interests of the child noting the

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[5] https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0011/814169/community-attitudes-survey-research-report-fact-sheet.pdf.

vulnerability of a child going through the court process. We strongly recommend that clause 4 of the Bill be amended such that sections 20(2) to (4) of the CC Act remain unaffected by the Bill.

Expanding the court's ability to allow publication of identifying information about a child)

The Bill proposes to make amendments to section 234 of the YJ Act which expand the court's ability to allow publication of identifying information about a child to include where a court sentences a child for an offence under the proposed new section 175A of the YJ Act, the offence involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence having regard to all the circumstances. In our view, this proposed amendment is highly inappropriate and entirely disregards the vulnerability of a child, the right to privacy, the impact that such would have on the child's prospects of rehabilitation and future employability of the child, noting that unemployed individuals are proportionally more likely to commit a crime and this is counter-productive to safer communities as a goal. We are also talking about 'naming and shaming' a cohort who are often incredibly disadvantaged, having been led into crime via homelessness, sexual abuse, FASD etc. Is such how we as a society wish to be judged?

New legal framework for transfer of 18-year-old detainees from youth detention centres to adult prisons

The Bill proposes to amend the existing process for age-related transfers of detainees in youth detention centres to adult prisons and, in so doing, remove a number of steps of due process that exist in the current framework including, notably, that the chief executive issues a notice to the detainee which contains an invitation to the detainee to make submissions to the chief executive about the transfer and an obligation on the chief executive to facilitate a consultation with the detainee and a lawyer as soon as reasonably practicable after a prison transfer notice is given to the detainee. The proposed amendments provide that all youth detention centre detainees are to be transferred to adult prison within 1 month of turning 18 years old. The Explanatory Notes state that the intent is for the transfer process to be 'automatic and efficient', however, in our view, this should not be at the expense of due process.

We strongly recommend that the existing framework remain unamended to enable a detainee sufficient time to be able make submissions on a proposed delay of transfer which might be for important reasons, such as, that the individual is part way through a rehabilitation program that is providing benefits, or that the individual is not of

sufficient capacity to be ready for such a change due to a cognitive impairment and/or disability. There should also remain an administrative review mechanism to enable review of a decision of the chief executive in this context, in addition to judicial review.

Victims Register

The Bill proposes to make registration on the Victims Register 'opt-out' rather than 'opt-in', meaning that a victim or family member of a deceased victim would no longer need to apply to opt-in to the Register to be kept updated on the offender's custodial movements including release date.

We oppose this amendment on the basis that some victims, who might forget to opt-out, could be traumatised or re-traumatised by receiving such uninvited communications. By all means ensure that more is done to ensure that victims are properly educated as to their rights in this regard – but the default position should remain as an 'opt-in'.

Requirement for review of the operation of the proposed amendments

Due to the significance of these changes and their incompatibility with human rights, we strongly recommend that the operation of the proposed amendments be subject to a statutory requirement of review after 12 months.

Additional comments

Current overcrowding in Queensland's correctional centres is avoidable and better options to rehabilitate prisoners already exist in the community or could be scaled up.

Prisoners eligible for parole are overstaying by weeks or months, unable to access programs or take any positive steps due to an overwhelmed, overcrowded system. These overstays do not achieve any positive outcomes and worse, contribute to more overcrowding and overwhelm.

Giving greater access to community organisations to deliver programs and services inside as well as outside the jail will overcome disjointed responses and ex-prisoners falling between the cracks and unable to access basic support to successfully transition to the outside.

Community safety is better served by immediate increases in the number of prisoners doing rehabilitative programs and increased access for prisoners to programs on the outside.

The lack of access to programs by prisoners was rightly recognised as the most pressing issue in Queensland's correctional centres in a review of the Queensland Parole System in 2016. The situation is much worse in 2024.

The video link system in the prisons is overloaded and not fit for purpose. There are multiple lost opportunities for solving multiple problems because the video link system is so grossly inadequate.

One of the biggest growths in prison numbers has been the increase in prisoners sentenced to short terms of imprisonment (6 months or less) imposed in the Magistrates Courts and these are the prisoners who get the least access to any interventions and often have the greatest need.

This group is the group most in need of interventions due to one or more factors of mental illness or disability, interrupted education and literacy issues, homelessness and drug and alcohol dependency, and lack of identity documents. This group frequently fail on the outside and return to prison via a revolving door that is costly and counterproductive.

Community safety is better served by better access to residential drug and alcohol rehabilitation services. More of these being built with a better capacity to accept clients with criminal histories would start to address root cause problems.

There is a hidden problem of warehousing the mentally unwell in the Corrections Centres. Community safety is better served by more mental health hospital beds generally as well as more hospital beds in secure units.

Community safety is better served by putting more options on the table for judicial decision makers, not taking them away.

The crafting of bail orders and bail conditions and sentencing orders by the courts to address the individual circumstances of the accused in light of the type of offending is the key problem-solving stage in the criminal justice system.

Given the high numbers of prisoners on short sentences, more appropriate options such as community corrections orders should be available to sentencing judges and magistrates.

See generally, QSAC, *Community based Sentencing Orders, Imprisonment and Parole Options* (2019).

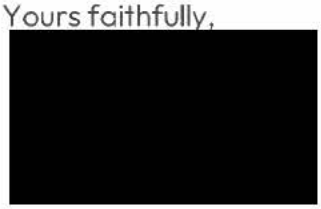
Many problems need to be tackled in partnership, as a multi-agency response is really needed to overcome siloed and fractured responses. We would urge greater use of the opportunities offered by the Closing the Gap process and multi-agency working groups as ways of filling in the gaps in an area such as the justice sector.

When only one or two agencies provide input on changes the resulting picture can be one dimensional. For example, while a co-responder model for police is an excellent idea and one that we have advocated for, however the current arrangements in place for the QPS to use YJ officers as co-responders with youth creates role conflicts and ethical difficulties for the YJ officers in the immediate term and long-term trust and efficacy issues with their clients. This could have been avoided by bringing all stakeholders with the necessary experience and expertise to the table to design an appropriate co-responder model.

As we have ourselves learned, the combined perspectives of the peaks have helped us identify the interplay between the justice system, the child safety system, school suspension practices, availability of health services and responses to family and domestic violence which all contribute to the overrepresentation figures. The insights which QATSIC can bring to the table can help overcome current blind-spots in these systems.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,



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