

Making Queensland Safer Bill 2024

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Making Queensland Safer Bill.

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Acknowledgement of Country

The Mental Health Lived Experience Peak Queensland (MHLEPQ) respectfully acknowledges the Traditional Custodians of the Lands and Waters throughout Queensland. We thank the Elders—past, present, and emerging—for their wisdom and enduring strength.

We recognise that the legacy of colonisation has profoundly impacted First Nations peoples, contributing to unique and significant experiences of societal exclusion and health inequity. Colonisation has enforced systems of racism, stigma, and discrimination, leading to intergenerational social disadvantage and marginalisation. Historical and ongoing injustices have compounded the challenges faced by First Nations (Aboriginal and / or Torres Strait Islander) peoples resulting in poorer outcomes, especially visible in the youth criminal justice system. This further impacts the social and emotional wellbeing of First Nations communities.

We acknowledge the enduring resilience and resistance of First Nations peoples in the face of these adversities. We respect their rights and autonomy to lead their own healing journeys, guided by their beliefs and traditional practices and connectedness to Country, family, and spirit.

Who are the MHLEPQ?

The Mental Health Lived Experience Peak Queensland (MHLEPQ) was established in July 2021 to provide advice and advocacy informed by people with lived experience of the Queensland mental health system. Our work is underpinned by equity, access, cultural safety, recovery, and human rights and we are funded by the Mental Health, Alcohol and Other Drugs Branch, Qld Department of Health. MHLEPQ is a member of the National Mental Health Consumer Alliance, where other state and territory consumer peak bodies meet to coordinate on shared issues, including issues relating to Commonwealth policy and government funded services.

Solidarity with Lived Experience

The MHLEPQ supports people with lived and living experience of mental ill health and suicidality, some of whom have been harmed by breaches of their human rights within culturally unsafe systems that they sought for support. We work in partnership with and are guided by the lived experiences and expertise of the MHLEPQ members, whose valuable recommendations have the power to create lasting change. MHLEPQ is committed to advocating for a human rights based approach across the mental health and social systems, ensuring reform toward more representative, inclusive and responsive systems that meet the needs of the communities they serve.

Human rights statement

The MHLEPQ recognise the inherent rights of children to be protected, nurtured and empowered to reach their highest potential¹², connected to their communities. Rights include access to support addressing the social determinants of social and emotional wellbeing such as adequate housing, a clean and sustainable environment, and health services that are affordable, effective, and culturally safe. Children's rights emphasise the importance of early intervention and a supportive environment for their growth and development. Governments and societies are obligated to create legislation, policies and programmes that guarantee access to healthcare for all children, especially those in vulnerable situations. Every child, irrespective of ethnicity, gender, sexual orientation or socioeconomic status has the inherent right to a healthy life.

Enshrined in the United Nations Convention on the Rights of the Child (UNCRC), ratified by Australia on December 17 1990.

² Legislated in the Queensland Human Rights Act (2019), including rights to education, freedom of expression, protection from violence, family support and freedom, equality and dignity.

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Overview

Our organisation recognises the harm that victims of youth criminal offending have experienced and in no way minimise the very real impacts that youth crime has on communities. Our organisation empathises with victims of child offending behaviour and understands that the human rights of victim-survivors must be at the centre of restoration, a public discourse that we hear and understand. We advocate for the recognition of the inherent rights of victims *as well as* for the rights of children and young people who offend.

With this in mind, the MHLEPQ raises two (2) main rationale against the progression of the *Making Queensland Safer Bill* (the Bill). Firstly, evidence shows that increasing penalties for violent crime committed by children will be ineffective in producing the desired outcomes of decreased offending and “making communities safer”. Secondly, the serious unintended negative consequences and human rights breaches against children and families do not justify the suggested outcomes of the Bill being enacted in legislation.

Our organisation opposes the Bill in its current form based on the perspectives outlined below. We advocate for withdrawal, or at the very least amendment of the Bill before its second reading on the basis that it is non-evidenced, reactionary and represents the likelihood for increased victimisation of both community members and child/young person offenders. Preventing violent crime must be at the centre of evidence-based legislation and policy design, in service of maximal protection of citizens and potential future victims.

We take a systemic approach to understanding the whole-of-community impacts of strengthening a punitive criminal justice approach to children as young as ten (10). We draw on the existing evidence to argue the case for a public health, restorative justice and human rights-based approach to responding to children and young people who offend.

Violating the human rights of young offenders does not equate to justice for victims of crime. It is a stain on Australia's human rights record, which also endangers the community because it leads to higher rates of recidivism³

We agree with other legal and sector experts that the Bill will fail to “make communities safer” and result in unacceptable negative consequences. The MHLEPQ supports many of the submissions made by other community and governmental organisations against the proposed Bill, including but not limited to Sisters Inside Inc and the National Network of Incarcerated and Formerly Incarcerated Women and Girls (#130); QMHC (#129); QHRC (#176); Youth Advocacy Centre Inc (#137); QFCC (#155); Queensland Advocacy for Inclusion (#37); and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (#150). We share their grave concerns about a shift in legislation toward punitive sentencing, also articulated by the Attorney General in the Bill’s Statement of Compatibility (p.5):

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 [...] 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.

We note the extraordinarily short time frame of two (2) working days to prepare a submission for consideration before tabling the first report. This timeframe was outside the capacity of our organisation to respond and is likely to have excluded the contribution of many. The MHLEPQ are grateful to the Committee for their commitment to considering late submissions but urges the Justice, Integrity and Community Safety Committee (the Committee) to slow the process of forming this key piece of legislation to allow for meaningful engagement with Queenslanders.

³ National Human Rights Commissioner Finlay 2022.

<https://humanrights.gov.au/about/news/governments-must-urgently-address-youth-justice-crisis>

Recommendation 1

The Committee withdraw the Bill before its second reading in Parliament. In the absence of withdrawal, the Bill should be amended to be fully evidence-based and compliant with international and Queensland human rights legislation for all children, with a focus on First Nations children and communities and their unique cultural rights.

Discussion

Safeguarding the human rights of all children

We note that in *Report No. 1, 58th Parliament – Making Queensland Safer Bill 2024*⁴ the Committee found that the Bill is not compatible with the Queensland *Human Rights Act 2019* (HRA). Based on all available evidence the MHLEPQ strongly disagrees with the Committee’s conclusion that the “incompatibility is justified in the circumstances”.

The MHLEPQ contend that broad-sweeping population-based law change such as that proposed in the Bill may be driven by legitimate public concern heightened by media sensationalism and political positioning rather than evidence⁵. We believe that overriding and breaching international and state-based human rights law, therefore, lacks justification and request that the government reconsider their obligations to human rights conventions including but not limited to the Convention on the Rights of the Child (CRC); Convention on the Rights of Persons with Disability (CRPD); Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), HRA and the Racial Discrimination Act 1975 (Cth).

⁴ <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824T0225/5824t225.pdf>

⁵ The MHLEPQ notes the Australian Bureau of Statistics data on steadily falling youth crime rates across Australia and Qld since 2009-10, save a small overall increase (6%) nationwide during 2022-2023. Australian Bureau of Statistics (2024). Recorded Crime: Offenders. Canberra: ABS

Overriding the HRA, removing the principle of detention as a last resort from the Youth Justice Act 1992, and introducing “Adult Crime, Adult Time” policies for children will increase whole-community harm, not decrease it.

Recommendation 2

Undertake further consultation with international and state-based human rights experts and (if passed) the Bill adopt recommendations from the Queensland Human Rights Commission submission⁶ that:

- a. The Bill be amended so that the increased maximum and mandatory penalties apply only to children aged 14 years 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.

Child maltreatment, mental health and the criminalising of adolescents are linked

The Australian Child Maltreatment Study⁷ found that children who experience maltreatment are at increased risk of mental health disorders in both childhood and adulthood, as well as behaviours that may lead to criminalisation. Child maltreatment in Australia is both endemic and preventable, requiring investment in public health approaches that support targeted prevention:

⁶ Queensland Human Rights Commission submission #176 to the *Inquiry into Making Queensland Safer Bill* <https://documents.parliament.qld.gov.au/com/JICSC-CD82/IMQSB2024-B002/submissions/00000176.pdf>

⁷ <https://www.acms.au/resources/the-prevalence-and-impact-of-child-maltreatment-in-australia-findings-from-the-australian-child-maltreatment-study-2023-brief-report/> Accessed 11.12.2024

It is a moral, social and economic imperative for Australian governments to develop a coordinated long-term plan for generational reform (Hasam et al.)

Detaining children is harmful, doesn't rehabilitate, and in many circumstances has negative long-term impacts. Evidence shows that first contact with the youth justice system at less than 14 years of age is associated with an increased non-communicable disease mortality rate (Calais-Ferreria, et al).

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 problems⁸

Primary and secondary prevention of 'upstream' determinants of youth offending behaviour, such as childhood maltreatment, housing insecurity and poverty must be prioritised above reactionary punitive measures in legislative and regulatory frameworks.

Recommendation 3

Amend the Bill to reflect the evidence from the Australian Child Maltreatment Study that recommends investment in a coordinated public health approach to primary and secondary prevention of childhood maltreatment⁹

Recommendation 4

Respond to childhood youth criminal offending with developmentally- and trauma-informed, culturally safe and person-centred approaches at the earliest possible intervention point. Consider dual diagnosis and cross-sector service provision according to contemporary best practice frameworks¹⁰. Ensure that

⁸ 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 See recommendations 1-8, The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study 2023. Brief Report, p.35. [Here](#)

¹⁰ See Mendoza & Wands 2024 (references): Time to Get it Right: Responsive & Effective Services for Marginalised Young People. A Report and Best Practice Framework

children within the criminal justice system are supported with mental healthcare tailored to their unique stage of neurodevelopment.

Children living with intersectional adversities will be most harmed

There are complex and multiple contributors to criminal offending by young people (Malvaso et al). Living with cognitive disabilities, poor mental health and/or suicidality, alcohol and substance disorders, traumatic impacts of adverse childhood events (ACEs) such as poverty, exclusion from education, housing insecurity, abuse and neglect, and unemployment, are some of the social determinants that require intensive support and early intervention to influence children's developmental trajectory. This is particularly so for young people who experience multiple and cumulative social disadvantage/exclusion, with evidence showing that children with a higher number of ACEs are more likely to engage in serious, violent and chronic offending behaviour.

Early-life physical and social adversity have been associated with adolescent criminalisation, making a case for early interventions before justice system contact takes place, and where possible, investment in alternatives to criminal sanctioning for vulnerable young people (Calais-Ferreira et al, p.607)

While not every child who is traumatised will offend, and not every offender is traumatised, significant evidence shows us that many children engaged in offending behaviour are themselves victims of adversity or violence and this needs to be researched more in Australian contexts, a finding from the Australian Child Maltreatment Study¹¹.

While in custody, children and young people don't get their developmental needs met, which creates further barriers to participation in educational, vocational and recreational programmes. In addition, custodial staff often lack trauma-informed training that supports them to interact positively with young people to role model self-regulation and prosocial behaviours.

<https://www.acms.au/>

The wellbeing of communities will not be served by harsher punishment of these children.

Recommendation 5

Focus on whole-of-community prevention and early intervention models as public health strategies to reduce young people's offending. Coordinate programmes in various contexts such as within families, schools and communities at key times and events such as school transitions, out-of-home care etc. Apply diversionary principles and other alternatives to youth justice supervision and detention that are therapeutic and culturally informed.

Complex public health solutions make communities safer

There are good reasons why children are (and should be) treated differently than adults in society. Children's relative neurodevelopmental immaturity results in less cognitive executive functioning and capacity to anticipate long-term consequences of their actions when compared with adults. There is no substantiation for the perspectives that increasing the severity and threat of detention and lowering the age of adult responsibility to ten (10) will act as a deterrent to young people who offend. In their recent report *Time to Get it Right: Responsive & Effective Services for Marginalised Young People*, Mendoza and Wands write (p.5):

To address community and media concerns on youth crime, state and territory governments have turned to Police 'flying squads, youth curfews, military style 'bootcamps', more beds in detention facilities, suspending children's rights to ail and increased sentencing. Yet the evidence that these investments and related actions will have the desired impact is thin, at best.

We understand why these actions are attractive to some politicians, public servants and community members, however, increasing punitive criminal justice law is a blunt tool that doesn't address the root causes of child offending behaviour. Harsher penalties for youth crime do not make communities safer. They result in unwanted consequences for the community such as increased violent crime and increased recidivism, and risk of victimisation and traumatisation to the child in contact with the

criminal justice system. For this reason, we caution against the inclusion of minor non-violent and historic offences from childhood life stages given the known challenges that immaturity brings to foresight, decision-making, and impulse control.

The Australian National Children's Commissioner was very clear in 2022 when calling for a national taskforce to **address the drivers** of youth crime that¹²:

It is clear the current approach of tougher sentencing and bail laws, punitive conditions, building more children's prisons for increasing numbers, and incarcerating children as young as 10 years old, is not working to keep the community safe

The rates of youth justice supervision of 10- to 17-year-olds in Queensland in 2021-22 were already the second highest in Australia, approaching close to double the national average, and almost four times the rate of Victoria¹³. There is no evidence to say that harsher sentencing and detention laws would support decreased offending, and for some groups, the change would disproportionately affect their children and communities, notably First Nations people.

Recommendation 6

Adopt the Queensland Mental Health Commission's recommendations to implement evidence-based initiatives that address the root causes of child offending behaviour and prioritise rehabilitation, education and social support. Legislation change must consider that children in the youth justice system are themselves overwhelmingly victims of trauma and should be treated in line with international and state human rights obligations.

Restorative justice and human rights approaches consider the complexity of whole communities and provide equitable frameworks based on

² Australian Human Rights Commission 2022.

<https://humanrights.gov.au/about/news/governments-must-urgently-address-youth-justice-crisis>

³ Australian Institute of Health and Welfare 2024. Youth justice

<https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

evidence. Diversionary practices, policies and laws that minimise early contact with the criminal justice system hold the most promise for remediation of child/young person offending behaviour. Sustained investment in approaches that support both victims and child/young person offenders to recover and rehabilitate are what raise the possibility of safer communities both now and in the future.

Recommendation 7

Reconsider all available evidence including the *Productivity Commission's 2024 Report on Youth Justice Services* and adopt a whole-of-community, cross-sector public health approach to increasing community safety that reflects restorative justice principles and protects the rights of victims of crime as well as children who offend.

First Nations' Equity and cultural self-determination

First Nations children and communities already experience marked inequity within the criminal justice system, particularly for people living in very remote areas, from the lowest socioeconomic areas and for children living with cognitive disabilities, trauma and mental health challenges. Young First Nations people aged 10–17 in 2022–23 were¹⁴:

- 22–23 times as likely as non-First Nations Australians to be under supervision or community-based supervision
- 28 times as likely to be in detention (80% of detained young people remain unsentenced)

In 2022, both the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Race Discrimination Commissioner called for urgent action to address the “youth justice crisis” through alternative approaches to criminal justice¹⁵:

⁴ Australian Institute of Health and Welfare 2024. Youth Justice <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

⁵ Commissioners June Oscar and Chin Tan <https://humanrights.gov.au/about/news/governments-must-urgently-address-youth-justice-crisis>

[Com. June Oscar] Prison does nothing to rehabilitate young people. It only perpetuates cycles of trauma and leads to further youth offending. Prison is no place for a child

[Com. Chin Tan] Structural racism and discrimination play a major role in causing trauma and behavioural complexities, which contribute to over-policing and high rates of detention

Recommendation 8

Adopt Recommendation 1 from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd's submission¹⁶: that *the Queensland Government significantly increase investment in Aboriginal and Torres Strait Islander community-driven solutions to reduce numbers of First Nations youth in contact with the justice system. Funding must be targeted across the continuum of care, from prevention and early intervention to reintegration, prioritising First Nations-led models proven to deliver better outcomes at significantly lower costs.*

Recommendation 9

Embed the evidence-based recommendations from the National Agreement on Closing the Gap¹⁷ (target 11) and the Australian Law Reform Commission report, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Report 133, 2018)*¹⁸; to reduce the disproportionate rate of incarceration of First Nations peoples and children in detention and improve community safety.

The unintended consequences are disproportionate and unacceptable

The MHLEPQ consider that, on balance, the proposed new legislation will unacceptably increase the negative consequences to victims of offending, communities and children/young people who offend. Evidence shows an

⁶ Inquiry into Making Queensland Safer Bill Submission #150

⁷ <https://www.closingthegap.gov.au/national-agreement/targets>

⁸ Australian Law Reform Commission, 2018. https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf

increased likelihood of negative consequences to a punitive criminal justice approach in the following, unacceptable ways:

- Detention within the youth justice system early in the life course is well documented as contributing to entrenchment within the adult criminal justice system and increased violent crime and recidivism.
- Increased victimisation, worsening violent crime and recidivism
- Immediate and long-term poorer mental health outcomes
- Increased social complexity due to reintegration, community division and increased stigma and discrimination
- Increased criminalisation of First Nations children and young people
- Increased criminalisation of marginalised youth living with neurodevelopmental disorders, maltreatment and other social disadvantage
- The phenomenon known as the “care to custody pipeline” documents the relationship between the child protection and criminal justice systems. Child protection should be flagged as an ‘upstream’ early intervention point for the support of children who are in that system, most notably out-of-home care.

Contact

MHLEPQ welcomes further discussion about this submission or any other matters relating to the relationship between mental health and childhood contact with the criminal justice system. Please contact:

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Future communication about this submission or associated matters can be made with:

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