

Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

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Submitted by: Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
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See attached:



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10th March 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Delivered by email: lascc@parliament.qld.gov.au

Dear Secretary,

RE: Submission in relation to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

Thank you for the opportunity to provide comments on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023 (**Bill**) which, inter alia, proposes to: amend to the *Police Powers and Responsibilities Act 2000* (Qld) (**PPRA**) and the *Youth Justice Act 1992* (Qld) (**YJA**) to allow eligible persons with an opportunity to participate in a drug diversion assessment program; expand minor drug offences to include the possession of prescribed quantities of any type of dangerous drug and certain pharmaceuticals; and introduce a circumstance of aggravation for the offence of evading police under section 754 of the PPRA. Upon reviewing the Bill, we have some concerns regarding proportionality of punishment and, additionally, the ability for police to use their discretion when deciding whether a young person can be offered a drug diversion assessment program. We have sought to outline these concerns in this submission.

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 24 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 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 nearly 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.

Comments on the Bill

Drug diversion

The Bill proposes to make amendments to the PPRA and YJA to introduce drug diversion warnings, allow an eligible person to participate in a subsequent drug diversion assessment program and expand minor drug offences to include the possession of prescribed quantities of any type of dangerous drug and certain pharmaceuticals¹.

While we broadly support this measure, the effect of the proposed amendments is that:

- (a) an adult that is caught by a police officer to be carrying a small quantity of an illicit substance *must* be given a drug diversion warning (and offered the opportunity to participate in a drug diversion assessment program) for the first three occasions that they are caught, after which charges may be laid by police;
- (b) a young person that is caught by a police officer to be carrying a small quantity of an illicit substance *may* be given a drug diversion warning (and offered the opportunity to participate in a drug diversion assessment program) if the police

¹ Explanatory Notes, page 1, available at < <https://documents.parliament.qld.gov.au/tp/2023/5723T171-CAD1.pdf>>.

officer, in their discretion, decides to do so as an alternative to laying charges on the young person.

In other words, whereas an adult must be warned and offered a therapeutic diversionary pathway three times before charges may be laid, a child could be charged by police for a first-time offence.

We would however like to believe that the difference is predicated upon an understanding that a child is to be provided with some other form of a diversionary option – hence the added flexibility. If our optimism is misplaced however, then we would have obvious concerns and would call for legislative parity between adults and youths.

A safer drafting mechanism would be to couch the relevant section as ‘must’ “*unless an alternative diversionary option is utilised*”.

Introduction of a circumstance of aggravation for the offence of evading police under section 754 of the PPRA

The proposed amendments seek to increase the maximum penalty for the Evasion offence under section 754(2) of the PPRA from 200 penalty units or 3 years imprisonment to 300 penalty units or 5 years imprisonment if the offence is committed in one of the following circumstances of aggravation:

1. offence is committed at night;
2. driver of the motor vehicle (**MV**) uses or threatens violence;
3. driver of the MV is armed or pretends to be armed;
4. driver of the MV is in company;
5. driver of the MV damages or threatens to damage any property;
6. driver of the MV has previously been convicted of an offence under:
 - a) s754 of the PPRA (Evasion offence);
 - b) s408A of the Criminal Code (Unlawful use or possession of motor vehicles, aircraft or vessels);
 - c) s427 of the Criminal Code (Unlawful entry of vehicle for committing indictable offence); or
 - d) s328A of the Criminal Code (Dangerous operation of a vehicle).

We understand that these proposed amendments represent part of the Queensland government’s youth justice response, the impetus for which is the reduction of serious repeat youth offending.

While locking up young offenders for longer sentences may provide the community with short-term protection, evidence shows that:

- in the year comprising 2020-21, notwithstanding any tightening of youth justice laws in the years preceding, 90% of children released from youth detention in Queensland reoffended within 12 months of release²;
- longer stays in confinement do not reduce recidivism rates and often raise them³;
- children that end up in detention are likely to become ‘better’ criminals as they will be associating with and influenced by a cohort of more seasoned offending peers, some of whom might be serious repeat offenders;
- incarceration during youth reduces the likelihood of good educational outcomes, for example, graduation from high school and, therefore, compromises the quality and type of work that an individual may be able to obtain in the future⁴;
- incarceration during youth leads to poorer health in adulthood, mental and physical⁵; and
- children that are incarcerated have an elevated risk of being a victim of trauma/abuse in custody (e.g., physical and/or sexual abuse, inappropriate use of restraints, the use of solitary confinement, etc.) and this severely impacts their ability to function in society and thrive once released.

Whilst we would not support this proposed amendment – we would in particular reference our disagreement that ‘night-time’ or ‘being in company’ of themselves, should be a feature of aggravation.

A better approach to address youth offending

In our view, consistent with our advocacy over decades, the appropriate way of addressing youth offending is meaningful investment in upstream drivers of youth crime and adequate funding in prevention and early intervention initiatives which address the root causes for youth offending and which have been shown to work.

² Refer to Queensland Parliament Tabled Paper 1270-2022, Question on Notice asked by Mr T Nicholls of the Hon. Leanne Linard, Minister for Children and Youth Justice and Minister for Multicultural Affairs, found at <<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/1270-2022.pdf>>.

³ Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, (2022) page 14, available at < <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>>; Charles E. Loeffler and Daniel S. Nagin (2022) The Impact of Incarceration on Recidivism. *Annual Review of Criminology* 2022 5:1, 133-152.

⁴ Ibid, page 14.

⁵ Ibid, page 16.

In our view, the Queensland government needs to change its lens to youth offending from a policing lens to a therapeutic lens. A *safety* response is required as community safety encompasses safety of the community *and* the safety of young persons. These are not mutually exclusive.

Safer communities are something we all aspire to – but with youth offenders in general, and perhaps more specifically with the serious repeat offender cohort, we are largely dealing with children that have suffered severe trauma. Such includes physical and sexual abuse; mental health challenges; foetal alcohol spectrum disorder and so forth. Placing already traumatised children in a detention environment which will exacerbate their trauma, will, upon their release, lead to higher rates of re-offending – with less safe communities the outcome. The research is clear on this point.

Evidence-based approaches that work

We support the following approaches which involve both mainstream services and community-controlled services which work to make children accountable for their offending and also support them in a therapeutic way to help get their lives on track:

- Restorative justice, for example, bringing victims and perpetrators together to help perpetrators take responsibility for their behaviour and consider how they may make good the harm that they caused;
- Diversion of children away from the criminal justice system, in particular, children under the age of 14 – children need guidance and support, not incarceration which increases the likelihood of entrenching a child into a cycle of criminality;
- Providing essential supports to children with disability – given the prevalence of undiagnosed cognitive and/or behavioural disorders amongst Aboriginal and Torres Strait Islander children, it is critical that the Queensland government implements systemic screening practices at critical intersections of a child's life with government services, for example, upon enrolment at school and upon contact with the justice system. This will allow a window for providing contemporaneous supports for those children at the early intervention stage and avoid those children falling through the cracks;
- increasing the minimum age of criminal responsibility to 14 years of age in line with the benchmark set by the United Nations;

- embedding On-Country responses to youth offending as a diversionary pathway which gives cultural agency to First Nations communities to guide their youth within the cultural safety of their community;
- a critical review of rehabilitative programs within youth detention to ensure that they are effective and culturally safe, and to ensure that children on remand are able to take advantage of such programs;
- systems reforms to address social, economic and cultural iniquities that First Nations communities experience (consistent with Closing the Gap commitments); and
- policy initiatives that focus on:
 - increasing supports for vulnerable children in schools to increase school engagement and attendance, given many have experienced trauma and carry these burdens with them and some may have cognitive impairments which may be undiagnosed;
 - reducing the numbers of First Nations children that have been excluded from school by suspension or otherwise given that First Nations children have been found to be overrepresented in the cohort of children subject to school disciplinary absences; and
 - increasing supports for First Nations children who are receiving education in youth detention (e.g., overcoming the current severe shortage of staff in youth detention centres which is resulting in children not being taken to class and being required to undertake self-directed learning in their cells);
 - increasing supports for a child transitioning from youth detention schooling back into mainstream schooling.

Justice reinvestment initiatives internationally and within Australia have shown that early intervention and diversion really works and it does so at a fraction of the economic and human cost of youth detention. Some examples of excellent initiatives that have been proven to have positive results in addressing youth offending are as follows:

- The *Maranguka Justice Reinvestment Project* based in Bourke, New South Wales which is a grassroots community-based initiative that aims to redirect resources that would otherwise be spent on prisons into community to address underlying drivers of imprisonment and support vulnerable children and families with a focus on justice, employment, education, service delivery, youth engagement, drugs and

alcohol, mental health, early childhood, out of home care, housing and family violence.

- *The Lighthouse* which is an after-hours youth diversionary service operated by the Townsville Aboriginal and Islander Health Service where children that do not have adequate adult supervision, do not feel safe at home, are in trouble or need someone to talk to can have a safe place to be, have a meal, access shower facilities, have a bed for rest, be able to engage in sport and creative programs and importantly allow a safe place for children to form cultural connections.⁶
- *Youth Justice Family-Led Decision Making* which involves Aboriginal and Torres Strait Islander families, community stakeholders (including community-controlled organisations) and Youth Justice officers coming together to make positive decisions with the aim of improving a young person's behaviour, safety and ongoing cultural and practical support needs.
- Communities That Care (CTC) which is an evidence-based program based in community for reducing youth problem behaviours such as harmful substance use, low academic achievement, leaving school early, sexual risk taking and violence⁷.

CONCLUSION

While we are very supportive of diversionary pathways away from the criminal justice system in favour of therapeutic programs, we are concerned that the proposed drug diversion framework in this Bill will result in young people being disadvantaged (when compared with what is proposed for adults) as eligible young people will not automatically be offered the opportunity to participate in the drug diversion assessment program – rather, this will be a matter of police discretion. The proposed drug diversion framework should equally apply to both adults and children. Further, we do not support the proposed amendments in this Bill which seek to increase in penalties and maximum terms of imprisonment for the Evasion offence. Increasing jail times for offenders has been proven not to work in reducing recidivism and, in fact, may increase the likelihood of recidivism. We anticipate that, similar to other “tough on crime” approaches, the proposed amendments to the Evasion offence will disproportionately affect Aboriginal and/or Torres Strait Islander individuals and particularly young persons who are already amongst the most vulnerable in our

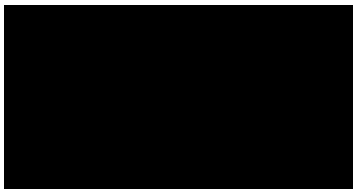
⁶ <https://www.taihs.net.au/taihs-services/youth-services/the-lighthouse-youth-after-hours-diversionary-service/>.

⁷ Toumborou, J., Rowland, B., Williams, J., Smith, R., ‘Community Intervention to Prevent Adolescent Health Behavior Problems: Evaluation of Communities That Care in Australia’, *Health Psychology*, 2019, Vol. 38, No. 6, 536 –544; J. Hawkins, D., Oesterle, S., Brown, E., Abbott, R., Catalano, R., Youth Problem Behaviors 8 Years After Implementing the Communities That Care Prevention System A Community-Randomized Trial, *JAMA Pediatrics*, 2014;168(2):122-129. doi:10.1001/jamapediatrics.2013.4009.

community. Consistent with our advocacy position over many years, we reiterate that evidence-based, community-led prevention and early intervention initiatives that address the root causes of youth offending is the correct way to address the current youth justice crisis along with impactful investment in housing, employment, education and health to address the upstream drivers of offending behaviour and the related social and economic iniquities that Aboriginal and Torres Strait Islander families face.

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

Yours faithfully,



Shane Duffy
Chief Executive Officer