

Submission to the Queensland Government Legal Affairs and Safety Committee regarding the Youth Justice and Other Legislation Amendment Bill 2021 (the Bill) from the School of Public Health and Social Work, Queensland University of Technology (QUT)

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Introduction

The staff of the School of Public Health and Social Work provide this submission at a critical moment in the public debate about youth justice in Queensland and whether there is a need for amended youth justice legislation and policy to address the complex causes and issues after a series of tragic events. We are particularly concerned about the rise in punitive language and narratives impacting marginalised young people and that these discourses are driving public debate and legislative and policy responses. The School provides critical human services and social work education to domestic and international students, many of whom graduate and work in front line government and non-government agencies focused on supporting young people and where ever possible their families and kin.

This submission argues against punitive legislative responses that are likely to see greater numbers of young people interacting with the youth justice system and ultimately placed in custody and involved with the courts. In particular, we strongly encourage you to reconsider proposed amendments to the *Youth Justice Act* including:

- Electronic monitoring as a condition of bail for some young people aged 16 and 17 years old who have committed a prescribed indictable offence and have been previously found guilty of one or more indictable offences.
- The creation of a limited presumption against bail for certain young people and the use of (police) assessments about parental and family capacity and support that then impacts decisions about granting of bail.

We believe these measures are likely to be counter-productive in preventing and reducing the numbers of young people encountering the youth justice system. We put forward the following submission focused on strengthening the early intervention and prevention approach adopted in the *Working Together Changing the Story Youth Justice Strategy 2019-2023*.

The societal context of youth justice

Contrary to sensationalised media reports and ‘common sense’ ideas about young people most do not commit serious offences and very few become serious and persistent offenders¹. Those who do go on to become repeat and serious offenders require a stronger commitment to re-engagement with community and opportunities for healing. However, in the wake of two undeniably tragic events involving young people, and persistent media reporting about juvenile crime waves in Townsville the Government has shifted away from a strategy of reengagement and healing to containment and retribution.

A neoliberal political environment and the subsequent shift toward individualising risks has resulted in an undermining of protective factors and an increase in risk factors for young people². The high correlation between early school leaving, family breakdown, homelessness and offending behaviour is well recognised but not well responded to. The focus on the supposed risk young people present to society has become linked to ‘tough on crime’ measures leading to increasingly punitive measures³. Young people themselves

¹ Cuneen, White & Richards 2015

² White, Wyn & Robards 2017

³ Ibid

become problematised, and this is amplified through media reporting. There has been a shift away from a welfare focus to a retributive focus, with young offenders being held accountable for their actions. The *Heads Held High Report*⁴ identified that Aboriginal and Torres Strait Islander young people are ‘more likely to be disadvantaged, removed from their families, absent from school, experiencing violence, racism and trauma, abusing substances and to have a disability or mental illness’.

There is a strong correlation between experiencing child abuse and neglect, involvement in the child protection and youth justice systems. More than half of the young people under youth justice supervision in the five years between 2014 - 2019 also received child protection services. For Indigenous young people this increases to 3 in 5 (61%) receiving both child protection services and youth justice supervision⁵. In their research regarding ‘crossover children’, Baidawi and Sheehan⁶ report that more than half of the young people in youth detention are known to child protection. Clearly, being taken into care is a risk factor for youth offending, CREATE Foundation⁷ suggest that factors within the out of home care environment may increase the risk of offending, including a correlation between placement instability and later offending behaviour. Of note for this submission is the finding that crossover children are charged with a higher proportion of offences compared with other young offenders⁸. That these young people who have already experienced significant life challenges, abuse, neglect, witnessing domestic and family violence, family breakdown, are over-represented in youth justice statistics, and in particular in the disproportionately higher number of offences, suggest a failure of the institutions which are aimed to protect them.

Disproportionate effects on First Nations peoples and communities

The effects of the range of proposed legislative measures will have a disproportionate impact for First Nations children, young people, their families and communities. In Queensland, as in other jurisdictions, First Nations peoples are over-represented in the youth justice system. The Department of Youth Justice reported that in 2018/19, of 4,716 young people who had at least one proven offence, 2,122 (45%) were First Nations young people and that this rate increased to 70% of all young people in custody on remand were First Nations young people⁹. Noting the addition of the new 32 bed West Moreton Youth Detention Centre that commenced operations in late 2020, and the increased capacity at Cleveland Youth Detention Centre in Townsville, we observe that these figures are likely to have increased in 2020/21. It is understood that the Queensland Government is particularly concerned about approximately 390 young people across Queensland who are deemed to be high risk recidivist offenders and we note that First Nations young people are highly likely to also be over-represented in this group of marginalised young people.

P.10 “an acute problem is presented by a small cohort of serious recidivist youth offenders who engage in persistent and serious offending (10 percent of all youth offenders (in the order of 390 individuals) account for 48 per of all youth crime, up four per cent from the previous 12-month period)”¹⁰.

⁴ Amnesty International Australia 2016 p2

⁵ AIHW 2020

⁶ Baidawi and Sheehan 2020

⁷ Tillack, K., Raineri, T., Cahil, A. & McDowell, J.(2018

⁸ Baidawi and Sheehan 2020

⁹ Department of Youth Justice Pocket Stats 2018-19 [Youth Justice Pocket Stats 2018-2019](#)

¹⁰ Youth Justice and Other Legislation Amendment Bill 2021

It is not at all clear that services and support is actually available to those who most need it. More needs to be done to reduce the numbers of young people, especially First Nations young people, interacting with the criminal justice systems.

Electronic monitoring, assessments about the availability of parental support and capacity by police officers, the limited presumption against bail are all measures likely to increase the numbers of First Nations young peoples interacting with the Police and the Courts. These strategies are designed to provide greater surveillance of young people, rather than provide meaningful support that takes into account issues such as loss of culture, poverty, homelessness and violence within the family home. As already been argued in this submission, the surveillance is even greater for those young people and families subject to child protection orders. The problems associated with these punitive measures are that they fail to recognise that in many parts of Queensland there is simply a lack of appropriate support services for young people and their families. Youth Justice Services Queensland have implemented some positive initiatives with young people that reflect cultural safety such as Restorative Justice Conferencing and Transition to Success. Coupled with appropriate diversionary practices from the Queensland Police Service and partnerships with the youth sector, there have been some positive trends in preventing young people from re-offending. There is much more to be done to increase the range of positive initiatives available to young people and their families that reflect the principle of cultural safety.

We would also like to encourage you to consider that across many of the traditional housing, homelessness, youth, health and education responses, many of the government agencies and non-government organisations have considerable work to do to ensure their responses are culturally safe in working with First Nations peoples and communities. The Queensland Government needs to partner with appropriate community-controlled organisations to ensure the most contemporary and culturally safe services are funded and delivered to young people and their families across all areas of service delivery.

Policy settings and options

The proposed legislative changes will have major policy implications. The existing four pillars policy framework that forms the structure of the Queensland Government *Working Together Changing the Story Youth Justice Strategy 2019-2023* – intervening early; keeping children out of court; keeping children out of custody and reduce re-offending – are in themselves and collectively vital strategies to achieve the goals of preventing and reducing youth crime in Queensland. The proposed legislative changes are likely to work against the policy intent of all four pillars.

We note that there appears to be little actual evidence of progress of many of the actions listed under each of these pillars, particularly actions listed under Pillar 4 – Reduce re-offending. It would also be helpful if the Queensland Government would be able to promote online information about ways in which the broader community can engage in positive ways to support young people. It is especially important the interagency context of youth work that is embedded in many of the actions, is properly resourced and supported. Further there is scope to not only review existing actions but consider including more actions including

funding new service delivery models that have achieved positive outcomes for young people and their families.

We would strongly recommend against knee jerk, vigilante and panic driven responses to youth. In addition to the many worthwhile actions listed in the Youth Justice Strategy, examples of service models worth considering across the lifespan of families and young people include the following initiatives:

- Improved resourcing and support for all service delivery agencies to engage in culturally safe policy development and practice;
- Supportive housing for families with children at risk of entering statutory services;
- The Geelong Project early intervention initiative to ensure young people at risk of homelessness remain engaged in school;
- Integrative housing, bail support, legal advocacy and family support services that include human services, social work and legal professionals and guided by wisdom of people with lived experience of youth justice, homelessness and other statutory agencies.
- The Brisbane Youth Service (BYS) Sustaining tenancies for young people initiative designed to support young people aged 16 and over to build their confidence and skills in managing expectations associated with housing tenancy.

Conclusion

The Queensland Government needs to ensure the full range of actions listed under the four pillars of the Youth Justice Strategy are implemented and that these are reviewed and modified as needed. Reducing and preventing marginalised young people from coming into contact with the youth justice system is going to take leadership and perseverance from all stakeholders. The discourse and rhetoric needs to be reshaped from a punitive response to a whole of community responsibility. The Youth Justice Strategy Action Plan 2019-2021 provides multiple pathways that respond to the intersecting issues affecting young people who are engaging in offending behaviour. It has long been recognised that it costs less to support a young person in the community than it does to keep them in a detention facility.¹¹ This requires a well-resourced youth work sector, adequate educational support, access to safe secure affordable housing, and family reconciliation programs where safe and appropriate. None of these are directly law and order focussed yet all of these will have a positive impact on young offenders. Youth Justice Minister Leanne Linard in a recent Media Statement¹² acknowledged that there have been successes in reducing the recidivism rate. Stay the course, for young people with significant and ongoing experiences of trauma and systemic rejection these strategies will take more time.

¹¹ White Wyn & Robards 2017.

¹² 9 Feb 2021 *Tough new action to target repeat offenders* Queensland Cabinet and Ministerial Directory <https://statements.qld.gov.au/statements/91439>

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