



Submission to the
**Inquiry into the *Youth Justice and Other Legislation
Amendment Bill 2021* (QLD)**

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, with more than ten million supporters in over 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief and does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience - people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language or sexual orientation, gender identity or intersex status. Amnesty International recognises the right to freedom of thought, conscience and religion as set out in Article 18 of the UDHR.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status. Amnesty International calls for states to take measures that prohibit discrimination as well as positive measures to address long-standing or systemic disadvantages, and to prevent discrimination by non-state actors. Our work on non-discrimination is grounded in human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We work both publicly with our supporters and privately with families and lawyers in determining the most strategic approach to bring about change at any given time and within the consent which we are given. We then mobilise our large supporter base to take actions, individually and in their community.

1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission to the Queensland Parliament Legal Affairs and Safety Committee's inquiry into the *Youth Justice and Other Legislation Amendment Bill 2021* (Qld) (the bill).
- 1.2 This submission will draw on our expertise in international human rights law and standards as well as our Australian research since 2013, on effective mechanisms to tackle the over-representation of Aboriginal and Torres Strait Islander children in the Australian justice system, with a focus on the situation in Queensland in the context of the bill.
- 1.3 In September 2016, Amnesty International released *Heads Held High: Keeping Queensland kids out of detention*¹ which raised serious concerns about the treatment of children in Queensland detention centres and prisons.
- 1.4 Although Amnesty International remains concerned about the structure and systems operating through the Queensland youth justice system, it should be noted there have been positive developments in recent years - including moving children out of adult prisons, and fewer children being held overnight and for prolonged stays in watch houses.
- 1.5 Amnesty International submits that any changes to the youth justice system in Queensland should be focussed on the best interests of the child and therefore on keeping children and young people out of prison. Evidence shows better resourcing of Indigenous and community-led diversion programs and other services to address the underlying causes of crime have far superior outcomes for children and for society.
- 1.6 The bill makes amendments to legislation regarding:
 - electronic monitoring devices as a condition of bail for offenders aged 16 and 17 years old in certain circumstances,²
 - parental or other support associated with youth bail,³
 - changes to the presumption of bail⁴ and breach of bail being considered as an aggravating factor during sentencing,⁵
 - clarifying the *Charter of Youth Justice Principles*,⁶
 - providing powers for police to stop a person and use a handheld scanner to scan for knives,⁷

¹ Amnesty International Australia, 2016, *Heads held high: Keeping Queensland kids out of detention, strong in culture and community*, viewed 14 September 2017, available at https://static.amnesty.org.au/wp-content/uploads/2016/12/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf?x85233 (Amnesty International Australia, *Heads held high*)

² *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), s 26

³ *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), s 21, s 26

⁴ *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), s 24

⁵ *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), s 29

⁶ *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), s 33

⁷ *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), ss 5 - 6

enhancing the existing owner onus deeming provisions for hooning offences.⁸

- 1.7 Amnesty International does not support any of the proposals outlined in the bill. This submission does not provide an analysis of all proposals. However, of particular concern are the provisions regarding bail. These provisions will funnel more children and young people into police watch houses and detention.
- 1.8 The proposed changes to the youth justice system will disproportionately affect Aboriginal and Torres Strait Islander young people, who are already over-represented in the youth justice system. In Queensland, Aboriginal and Torres Strait Islander children and young people are 28 times more likely to be in detention than their non-Indigenous peers.⁹
- 1.9 Amnesty International rejects the objectives of the bill as stated in the *Explanatory Notes*. Nowhere in the *Explanatory Notes* does it state that the amendments to the *Youth Justice Act 1999 (Qld)* (YJA) are designed to reduce youth offending, nor address the underlying causes of crime. The objectives are based on tough-on-crime rhetoric and do not place the best interests of children at the centre of the legislation.
- 1.10 Amnesty International also rejects the 'Achievement of policy objectives' section of the *Explanatory Notes*. This bill will not reduce youth offending. The bail provisions, in particular, will result in a dramatic increase of children and young people being detained in police watch houses for breaching bail conditions, and then transferred to detention. Amnesty International is particularly concerned that this will lead to another overcrowding crisis in police watch houses and detention centres, similar to the situation in 2019.
- 1.11 Amnesty International regrets that the government has chosen to respond to perceived community safety concerns that are mostly generated by media hysteria in a way that puts the lives of vulnerable children and young people, and in particular, Aboriginal and Torres Strait Islander children and young people, in the media spotlight by proposing the bill. This in itself is feeding the community's perception that there is a 'youth crime crisis' in Queensland, when in fact, youth crime has fallen.¹⁰
- 1.12 The Queensland youth justice system does need reform, but not the reform that the bill proposes. This submission will make recommendations for reform that will keep children and young people out of prison, and address the underlying causes of youth crime in Queensland.
- 1.13 Amnesty International recommends that the Legal Affairs and Safety Committee rejects the *Youth Justice and Other Legislation Amendment Bill 2021 (Qld)*.**

Recommendations

Amnesty International recommends that:

⁸ *Youth Justice and Other Legislation Amendment Bill 2021 (Qld)*, ss 7 - 17

⁹ Australian Institute of Health and Welfare, *Fact sheet: Youth justice in Queensland 2018-19*, <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19/contents/state-and-territory-fact-sheets/queensland>

¹⁰ Australian Bureau of Statistics, *Recorded Crime - Offenders, 2019-20 financial year*, <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>

- (1) The Legal Affairs and Safety Committee rejects the *Youth Justice and Other Legislation Amendment Bill 2021* (Qld).

If the Legal Affairs and Safety Committee supports the *Youth Justice and Other Legislation Amendment Bill 2021* (Qld), Amnesty International recommends that:

- (2) The Legal Affairs and Safety Committee rejects the bail reform provisions - clauses 24 and 29 - of the bill.

Amnesty International recommends that:

- (3) That the *Youth Justice Act 1992 (QLD)* - Schedule 1 be amended to include statements that reflect the principles of the Convention on the Rights of the Child, Riyadh Guidelines, Beijing Rules and Havana Rules, including that the detention of a child must occur a last resort, and all efforts must be taken to divert a child away from the justice system as a precursory step to other modes of punishment. It should also reflect the importance of such diversion being Indigenous and community-led, and be focussed on addressing the underlying causes of crime.
- (4) The Queensland government:
- (a) amend section 5 of the *Criminal Code Act 1899* (QLD) to raise the minimum age of criminal responsibility from ten to at least fourteen years old,
 - (b) legislate so that children cannot be held in police watch houses overnight.

2. International Legal Human Rights Frameworks

- 1.1 Through ratification of binding international human rights treaties and the adoption of United Nations (UN) declarations, the Australian Government has committed to ensuring that all people enjoy universally recognised rights and freedoms.
- 1.2 The over-representation of Indigenous young people in the criminal justice system has been recognised as a human rights issue by a number of UN treaty bodies and the Special Rapporteur on the Rights of Indigenous Peoples in her 2017 report.¹¹

¹¹ Committee on the Rights of the Child, 2012, *Concluding Observations – Australia*, CRC/C/AUS/CO/4, 28 August 2012, viewed 14 September 2017, available at http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_AUS_CO_4.pdf; Committee Against Torture, 2008, *Concluding Observations – Australia*, CAT/C/AUS/CO/3, 22 May 2008, viewed 14 September 2017, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2F3&Lang=en; Office of the High Commissioner for Human Rights, 2017, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, A/HRC/36/46/Add.2, 8 August 2017, viewed 14 September 2017, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/37/Add.2 (Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*).

Convention on the Rights of the Child

- 1.3 The Convention on the Rights of the Child (CRC) is the primary source of the rights relevant to this inquiry.
- 1.4 Unique among the major UN human rights treaties, it explicitly recognises the particular needs of Indigenous children.
- 1.5 Australia is a state party to the CRC, having signed and ratified the Convention in 1990. Relevant obligations under the CRC include responsibilities that:
 - the best interests of the child is a fundamental principle to be observed, including in the context of criminal justice;¹²
 - arrest and detention must be measures of last resort;¹³ and
 - a variety of appropriate alternatives to detention should be in place to ensure that children are dealt with in a manner appropriate to their well-being and proportionate to their circumstances.¹⁴
- 1.6 Article 1 of the CRC defines a child as “every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier.”¹⁵ Article 3.1 states that “in all actions concerning children, whether undertaken by ... courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”¹⁶
- 1.7 Article 37 of the CRC provides that States Parties shall ensure that “the arrest, detention or imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹⁷ Article 40(3) requires States Parties to “promote the establishment [of] measures for dealing with such children without resorting to judicial proceedings ... to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”¹⁸
- 1.8 In its General Comment 10, on children’s rights in juvenile justice, the Committee on the Rights of the Child says that “a comprehensive policy for juvenile justice must deal with ... the prevention of juvenile delinquency; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings.”¹⁹
- 1.9 In its General Comment 24, on the principle that deprivation should be imposed for the shortest appropriate period of time, the Committee on the Rights of the Child says that governments “should provide regular opportunities to permit early release from custody,

¹² Convention on the Rights of the Child, Art. 3

¹³ Convention on the Rights of the Child, Art. 37(b)

¹⁴ Convention on the Rights of the Child, Art. 40(b)

¹⁵ Convention on the Rights of the Child, Art. 1

¹⁶ Convention on the Rights of the Child, Art. 3.1

¹⁷ Convention on the Rights of the Child, Art. 37

¹⁸ Convention on the Rights of the Child, Art. 40(3)

¹⁹ UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, available at: <http://www.refworld.org/docid/4670fca12.html>

including police custody, into the care of parents or other appropriate adults”.²⁰

- 1.10 Article 2(1) of the CRC requires parties to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour ... ethnic or social origin ... or other status.”²¹
- 1.11 Article 37 of the CRC requires that “every child deprived of liberty shall be treated with humanity and respect ...and in a manner which takes into account the needs of persons of his or her age.”²² What this means in practice is set out in more detail in the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules).

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

- 1.12 The Havana Rules contain several provisions that are relevant to this inquiry.
- 1.13 Article 17 of the Havana Rules states that “Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures”.²³
- 1.14 In regards to reintegration into the community and to reduce recidivism, the Havana Rules require that, “all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release”.²⁴

United Nations Guidelines for the Prevention of Juvenile Delinquency

- 1.15 During its 68th plenary meeting, 14 December 1990, the UN General Assembly adopted *Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines).
- 1.16 The Riyadh Guidelines are important to this inquiry as they affirm the importance of reducing ‘juvenile delinquency’ which reduces crime, the necessity of implementing the guidelines according to a child-centred approach, and the community responsibility for children’s well-being from the earlier ages onward.
- 1.17 The Riyadh Guidelines opens with, “The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes”.²⁵
- 1.18 Importantly, Article 6 of the Riyadh Guidelines states, “community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort”.²⁶
- 1.19 Article 45 of the Riyadh Rules states, “government agencies should give high priority to plans

²⁰ UN Committee on the Rights of the Child (CRC), *General comment No. 24 (2019): Children's Rights in the child justice system*, CRC/C/GC/24, available at: <http://www.refworld.org/docid/34591.html>

²¹ Convention on the Rights of the Child, Art. 2(1)

²² Convention on the Rights of the Child, Art. 37

²³ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. 17

²⁴ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. 79

²⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 1

²⁶ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 6

and programmes for young persons and should provide sufficient funds and other resources for the effective delivery of services, facilities and staff for adequate medical and mental health care, nutrition, housing and other relevant services, including drug and alcohol abuse prevention and treatment, ensuring that such resources reach and actually benefit young persons”.²⁷ Such programmes “should be planned and developed on the basis of reliable, scientific research findings, and periodically monitored, evaluated and adjusted accordingly”.²⁸

- 1.20 Affirming the CRC and Havana Rules, the Riyadh Rules states, “The institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance”.²⁹

United Nations Standard Minimum Rules for the Administration of Juvenile Justice

- 1.21 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) was adopted by the UN General Assembly in 1985. For this inquiry, the Beijing Rules contain relevant provisions particularly regarding the importance of diverting children away from detention.
- 1.22 The Beijing Rules states that “consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority”.³⁰
- 1.23 Rule 11.4 of the Beijing Rules recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed.³¹
- 1.24 In regards to holding children on remand in detention, the Beijing Rules states, “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time”³² and “whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”.³³

3. Amendments to the *Youth Justice Act 1992* (QLD)

- 3.1 Amnesty International rejects all of the proposed amendments to the Queensland YJA. The bail provisions are particularly concerning and will result in more children being detained in watch houses and detention centres.

²⁷ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 45

²⁸ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 48

²⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 46

³⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Art. 11.1

³¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Art. 11.4

³² United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Art. 13.1

³³ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Art. 13.2

Electronic monitoring devices as a condition of bail for offenders aged 16 and 17 years old in certain circumstances

- 3.2 Amnesty International rejects clause 26 of the bill which would amend the YJA to allow for Electronic monitoring devices as a condition of bail for offenders aged 16 and 17 years old in certain circumstances.
- 3.3 Electronic monitoring devices would interfere with a child's right to privacy as set out in Article 16 of the CRC.
- 3.4 The fitting of electronic monitoring devices is an extremely serious decision to take. Electronic monitoring devices should only be used in limited circumstances and are more suited for adults who understand the seriousness of the situation at hand. Such devices are not age appropriate for 16 and 17 year olds, thus violating Article 40(3)(b) of the CRC.
- 3.5 Young people's misunderstanding of the seriousness of bail conditions and the electronic monitoring device will result in a high rate of bail breaches. This, combined with the new bail provisions in the bill, will see a sharp increase in children breaching bail and thus being detained in watch houses and detention centres.
- 3.6 More appropriate bail alternatives to electronic monitoring exist. Primarily, Indigenous and community-led diversion programs that focus on addressing the underlying causes of crime. The Queensland government has announced \$5.6 million over four years in trials of Indigenous-led 'On Country' programs in Cairns, Mt Isa and Townsville.³⁴ These programmes need to be evaluated and replicated across the state.
- 3.7 The Queensland government recently announced that it would cease the Supervised Community Accommodation (SCA) service, otherwise known as 'youth bail houses'. An Ernst and Young review into the service found that SCAs were "doing their job of providing appropriate services and reducing offences by residents, but are underutilised and alternative options are more cost effective".³⁵ Amnesty International contends that the underutilisation of the service could easily be corrected by ensuring that relevant authorities were regularly diverting suitable children and young people to the service. Furthermore, SCAs would have been more successful if they had more holistic, wrap-around therapeutic services that attempted to address the underlying causes of crime.
- 3.8 It is important to note that the *Statement of Compatibility* noted that the bill may violate sections 25(a), 26(1), 26(2) and 28(2)(c) of the *Human Rights Act 2019* (QLD) (HRA).³⁶

Bail Reform Provisions

- 3.9 There are two bail reform provisions in the bill that Amnesty International submits will harm children and young people. Clause 24 of the bill provides for a presumption against bail when an alleged offence occurs while the child is already on bail. Clause 29 will categorise 'breach of bail' as an aggravating factor when the court is determining the appropriate sentence.

³⁴ Farmer, Di, 2020, *On Country programs for Townsville*, <https://statements.qld.gov.au/statements/90127>

³⁵ Linard, Leanne, 2020, *Supervised Community Accommodation service to end*, <https://statements.qld.gov.au/statements/91168>

³⁶ Ryan, Mark, 2021, *Statement of Compatibility: Youth Justice and Other Legislation Amendment Bill 2021*, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2021/5721T196.pdf>

- 3.10 A presumption against bail for children and young people will funnel them into detention. This violates the principle of ensuring that detention is a last resort as outlined in the CRC³⁷, Havana Rules,³⁸ Riyadh Guidelines,³⁹ and the Beijing Rules.⁴⁰
- 3.11 A by-product of funneling more children and young people into police watch houses and detention centres is overcrowding. In 2019, Amnesty International Australia exposed more than 2000 individual human rights violations inside the Brisbane Clty Watch House against children and young people, as a result of overcrowding and the inappropriate nature of the facility.⁴¹
- 3.12 As per the *Statement of Compatibility*, the bill also violates the right to liberty and security of person,⁴² and the presumption of innocence.⁴³
- 3.13 Rather than automatically denying children bail, the government must look at ways that it can better divert children into Indigenous and community-led programs that address the underlying causes of crime.
- 3.14 If a child is diverted to a program after their first offence, and learns skills to better engage with the community, school, and family, to live a happy, healthy life, recidivism does not become a problem. The Queensland Family and Child Commission found that prison does not deter re-offending. Locking up children makes them less likely to finish school, tertiary education and training and secure a job.⁴⁴
- 3.15 Diversion of children away from detention is in line with the Riyadh Rules principle: 'community-based services and programmes should be developed for the prevention of juvenile delinquency'.⁴⁵
- 3.16 Such programs should follow the justice reinvestment model. Justice Reinvestment is an evidence-based approach to reducing incarceration rates by investing in, and supporting communities to address the underlying social issues leading to offending. The approach was developed in the United States "as a means of curbing spending on corrections and reinvesting savings from this reduced spending in strategies that can decrease crime and strengthen neighbourhoods."⁴⁶
- 3.17 In contrast to the United States, Justice Reinvestment in Australia has largely been a community-driven process. Maranguka and the Bourke Tribal Council have led the Maranguka Justice Reinvestment Project since 2013, in partnership with JustReinvest NSW.

³⁷ Convention on the Rights of the Child, Art. 37

³⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. 17

³⁹ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 46

⁴⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Art. 13.1

⁴¹ Amnesty International Australia, 2019, *Kids in watch houses: exposing the truth*, <https://www.amnesty.org.au/watch-houses/>

⁴² Human Rights Act 2020, s 29(6)

⁴³ Human Rights Act 2020, 32(1)

⁴⁴ Queensland Family and Child Commission, 2017, *The Age of Criminal Responsibility in Queensland*, p. 29.

⁴⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 6

⁴⁶ Senate Legal and Constitutional Affairs References Committee, 2013, *Value of a justice reinvestment approach to criminal justice in Australia*, available at:

https://www.aph.gov.au/parliamentary_business/committees/senate/legal_and_constitutional_affairs/completed_inquiries/2010-13/justicereinvestment/report/index

⁴⁷ Justice Reinvestment in Bourke has focused on coordination and partnership between community, service providers, government and police. This has led to the Bourke Warrant Clinic — a support network for young people including not-for-profit workers and government officials from family, education and health sectors. A magistrate may hold a warrant for arrest of a child or young person for two weeks, during which the support team will work with the young person to develop a plan to address their offending with the clinic. This plan can include attendance at education or community programs.⁴⁸

3.18 A KPMG report into the Maranguka Justice Reinvestment Project found a a 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of reoffending, and a 31% increase in year 12 student retention rates and a 38% reduction in charges across the top five juvenile offence categories, in Bourke.⁴⁹

3.19 Programs in Queensland are generally funded for three years. This may not be enough time for programs to set-up and run for a long enough time to make a significant impact. It is also not enough time for programs to collect evidence to show its effectiveness. The Productivity Commission recommended that “governments should transition to longer-term contracts (a minimum of seven years) that reflect the cost of service provision and take into account the capacity of providers to deliver outcomes, particularly for Aboriginal communities. This should be supported by a relational approach to contracting, where regional government staff visit providers and engage in regular collaborative discussions on service outcomes and continuous service improvements”.⁵⁰ This learning should be transferred to Queensland.

3.20 Codifying breach of bail as an aggravating factor when determining a sentence will lead children to be given stricter sentences, including custodial sentences. This goes against the CRC principle of ensuring that the child’s best interest⁵¹ are at the centre of legislation, and the principle of ensuring that detention is a last resort as outlined in the CRC⁵², Havana Rules,⁵³ Riyadh Guidelines,⁵⁴ and the Beijing Rules.⁵⁵

3.21 Amnesty International recommends that the Legal Affairs and Safety Committee rejects the bail reform provisions - clauses 24 and 29 - of the bill.

Amending the Charter of Youth Justice Principles

3.22 Clause 33 amends schedule 1 of the YJA, the charter of youth justice principles (the charter), to clarify that principle 1, which states that the community should be protected from offences, includes, in particular, recidivist high-risk offenders.

⁴⁷ JustReinvest NSW, *Justice Reinvestment in Bourke*, available at <http://www.justreinvest.org.au/justice-reinvestment-in-bourke/>.

⁴⁸ K Allman, ‘Breaking the Prison Cycle’, 2016, 25 *Law Society of NSW Journal*, p. 29.

⁴⁹ Just Reinvest NSW, 2017, *KPMG Report shows changes in Bourke had economic impact of \$3.1m in 2017 & estimates \$7m additional over 5 years*, <https://www.justreinvest.org.au/landmark-report-demonstrates-economic-impact-of-3-1-million-in-2017-and-e-estimates-additional-impact-of-7-million-over-five-years-through-justice-reinvestment-in-bourke/>

⁵⁰ Productivity Commission, *Expenditure on Children in the Northern Territory*, 2020, <https://www.pc.gov.au/inquiries/completed/nt-children/report/nt-children.pdf>

⁵¹ Convention on the Rights of the Child, Art. 3

⁵² Convention on the Rights of the Child, Art. 37

⁵³ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Art. 17

⁵⁴ United Nations Guidelines for the Prevention of Juvenile Delinquency, Art. 46

⁵⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Art. 13.1

- 3.23 Amnesty International rejects that a statement regarding recidivist high-risk offenders should be included in the charter. Principle 5 already refers to recidivism in an appropriate manner.
- 3.24 The charter should be aspirational and positive. It should signal the type of youth justice system, and the type of community, that the government wants to build.
- 3.25
- 3.26 Amnesty International submits that the YJA - Schedule 1 be amended to include statements that reflect the principles of the CRC, Riyadh Guidelines, Beijing Rules and Havana Rules, including that the detention of a child must occur a last resort, and all efforts must be taken to divert a child away from the justice system as a precursory step to other modes of punishment. It should also reflect the importance of such diversion being Indigenous and community-led, and be focussed on addressing the underlying causes of crime.**

4. Reform needed of the Queensland youth justice system

- 4.1 Though Amnesty International rejects the bill, it is of the strong opinion that reform is needed of the Queensland youth justice system.

4.2 Amnesty International recommends that the Queensland government:

amend section 5 of the *Criminal Code Act 1899* (QLD) to raise the minimum age of criminal responsibility from ten to at least fourteen years old,

legislate so that children cannot be held in police watch houses overnight,

The minimum age of criminal responsibility

- 4.3 The current minimum age of criminal responsibility - that is, the age children can be placed in detention - is ten years old. Citing human rights, legal and medical expertise, Amnesty International has called for the minimum age of criminal responsibility to be raised to fourteen years, in all jurisdictions.⁵⁶
- 4.4 In Queensland, if the minimum age of criminal responsibility was raised to fourteen years, there would have been 15.5% fewer children imprisoned in 2018-19.⁵⁷
- 4.5 The global median age of criminality of 14 years old.⁵⁸ Most European countries set their ages of criminal responsibility at between 14 and 16 years and China, Russia, Kazakhstan, Japan, Sierra Leone and Azerbaijan have 14 years as the age.⁵⁹

⁵⁶ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 3, available at:

<https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

⁵⁷ Australian Institute of Health and Welfare, 2018, Table s74B. Calculated by taking the percentage of 10-13 year olds imprisoned of the total number of children imprisoned.

⁵⁸ Australian Human Rights Commission, National Children's Commissioner, 2016, *Children's Rights Report 2016*, p.187.

⁵⁹ Child Rights International Network (CRIN), 2018 *Minimum ages of criminal responsibility around the world*, accessed 14 August, available at <https://www.crin.org/en/home/ages>

- 4.6 The United Nations Committee on the Rights of the Child has said that countries should be working towards a minimum age of criminal responsibility of 14 years or older.⁶⁰
- 4.7 Australia has been repeatedly been criticised by the United Nations, including long-standing criticism from the UNCRC,⁶¹ and by the Committee on the Elimination of Racial Discrimination, for failing to reform the current minimum age of criminal responsibility. When the Special Rapporteur on the Rights of Indigenous Peoples visited Australia in 2017 she said that the routine detention of 10 and 11 year-old children was the most distressing aspect of her visit.⁶² During its Universal Periodic Review, 31 countries called on Australia to raise the minimum age of criminal responsibility.⁶³
- 4.8 Rather than imprisoning children under the age of fourteen, the Queensland government should divert them to Indigenous and community-led diversion programs that address the underlying causes of crime.
- 4.9 Amnesty International recommends that the Queensland Government amend section 5 of the *Criminal Code Act 1899* (QLD) to immediately raise the age of criminal responsibility to *at least* 14 years old⁶⁴. There should be no limitations for children under this age and the Government should transition all children out of prison within a year.

Police watch houses

- 4.10 In 2019, Amnesty International Australia exposed more than 2000 individual human rights violations inside the Brisbane City Watch House against children and young people, as a result of overcrowding and the inappropriate nature of the facility.⁶⁵
- 4.11 The Queensland government responded by rapidly diverting children away from the justice system. Within two months of the issue being exposed, there were no children left in the watch house.⁶⁶

⁶⁰ Committee on the Rights of the Child, 2007, *General comment No. 10 (2007) Children's rights in juvenile justice*, CRC/C/GC/10, p.11, accessed 2 August 2018, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

⁶¹ United Nations Committee on the Rights of the Child, Sessions of the Committee, 1997: paragraphs 11 and 29, 2005: paragraph 73; 2012: paragraph 82(a).

⁶² United Nations Human Rights Council, 2017, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, accessed, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/234/24/PDF/G1723424.pdf?OpenElement>.

⁶³ The Guardian, 2021, *More than 30 countries condemn Australia at UN over high rates of child incarceration*, <https://www.theguardian.com/australia-news/2021/jan/21/china-attacks-australia-at-un-over-baseless-charge-s-as-canberra-criticised-for-keeping-children-in-detention>

⁶⁴ Amnesty International Australia, 2018, *The sky is the limit: Keeping young children out of prison by raising the age of criminal responsibility*, p 14

⁶⁵ Amnesty International Australia, 2019, *Kids in watch houses: exposing the truth*, <https://www.amnesty.org.au/watch-houses/>

⁶⁶ ABC News, 2019, *All children removed from Brisbane watch house following national condemnation*, <https://www.abc.net.au/news/2019-07-17/children-out-of-police-watch-house-brisbane-qld-government-says/11318202>

- 4.12 According to data published by the Children's Court of Queensland however, eleven children stayed in a police watch house for more than 15 days during the 2019-20.⁶⁷
- 4.13 Police watch houses aren't designed to hold children. There is no valid reason for a child to be held in a watch house. Stays in police watch houses - particularly long stays - harm children.
- 4.14 Rather than staying in watch houses, children should be diverted to Indigenous and community-led diversion programs that address the underlying causes of crime.
- 4.15 Amnesty International recommends that the Queensland government legislate so that children cannot be held in police watch houses overnight.

5. Conclusion

- 5.1 Amnesty International is strongly opposed to the *Youth Justice and Other Legislation Amendment Bill 2021 (QLD)*.
- 5.2 The bill will result in more children and young people being held in police watch houses and sentenced to prison. This is not in the best interest of children, or the community.
- 5.3 Rather than a 'stronger framework', the government should focus on how to keep children out of prison, and to divert them to Indigenous and community-led programs that address the underlying causes of crime.
- 5.4 **Amnesty International recommends that the Legal Affairs and Safety Committee rejects the *Youth Justice and Other Legislation Amendment Bill 2021 (Qld)*.**
- 5.5 **If the Legal Affairs and Safety Committee supports the *Youth Justice and Other Legislation Amendment Bill 2021 (Qld)*, Amnesty International recommends that The Legal Affairs and Safety Committee rejects the bail reform provisions - clauses 24 and 29 - of the bill.**

⁶⁷ Amnesty International Australia, 2020, *Scrapping of bail houses latest retrograde step in QLD youth justice reform*, <https://www.amnesty.org.au/scrapping-of-bailhouses-latest-retrograde-step-in-qld-youth-justice-reform/>