

## Submission to the Legal Affairs and Safety Committee on the Youth Justice and Other Legislation Amendment Bill 2021



Queensland  
Mental Health  
Commission

The Queensland Mental Health Commission (the Commission) welcomes the opportunity to make a submission for the Committee's consideration of the *Youth Justice and Other Legislation Amendment Bill 2021*.

The Commission is an independent statutory agency, established to drive ongoing reform towards a more integrated, evidence-based and recovery oriented mental health and substance misuse system.

The Commission works collaboratively across government, non-government, and community sectors, to set the strategic direction for a whole-of-government approach for reducing suicide, improving mental health, and preventing and reducing the impact of problematic alcohol and other drug use.

The Commission is currently engaging with relevant Queensland Government agencies to jointly consider strategies to disrupt the pathways to offending earlier in life and earlier in vulnerability, and to improve outcomes for the young people and their families at risk of youth justice involvement.

Further information can be provided by:

Ivan Frkovic, Queensland Mental Health Commissioner



### **Key points for consideration**

The Commission acknowledges the seriousness and impacts of youth offending on individuals, families, communities, including trauma and harm. Effective approaches for preventing and reducing youth offending have the potential to improve individual outcomes, reduce significant community distress, and yield substantial savings across a range of systems including justice, health, education, and welfare.

While offending behaviour should not go unaddressed, the preventative, and rehabilitative impacts of youth justice policy and legislative responses should be the principal objective. Punitive approaches that criminalise behaviour and funnel children and young people into the justice system, result in long-lasting negative outcomes for the child or young person, community, and broader system, and runs counter to human rights.

The Commission supports continued evidence-based reform which include prevention and reduction of offending behaviour. Adherence to the directions recommended by the Atkinson report and adopted under the Queensland Government *Working Together, Changing the Story: Youth Justice Strategy 2019-2023*<sup>i ii</sup> are also supported including to the principles and four pillars of *intervening early, keeping children out of court, keeping children out of custody, and reducing re-offending*.

It is noted that a substantial proportion of offences are committed by a small proportion of young people<sup>iii</sup>. The personal circumstances of many of these young people are characterised by significant challenges and adversities, and high need for intensive and specialised support and intervention. The proposed amendments may exacerbate the underlying vulnerabilities, potentially increasing the reoffending behaviours and reducing potential of better lifetime outcomes and safer communities.

The Commission shares the human rights concerns highlighted by the Queensland Human Rights Commission in its submission to the Committee<sup>iv</sup>. The Human Rights Commission's assessment that 'the likely consequence of the Bill is an increase of children in custody, in circumstances where the limited capacity of Queensland's youth detention centres may result in children detained for prolonged periods in police watchhouses', warrants significant consideration noting the affects this would have on the mental health and wellbeing of children in watchhouses.

As identified by numerous reviews and inquiries into youth justice systems in Australia, and supported by expert opinion, use of detention should be a last resort, due to the potentially criminogenic nature of youth justice detention that further entrench young people in disadvantage<sup>vi</sup>. This is particularly the case for young people on remand whereby they are exposed to the detrimental effect of detention but are not likely to receive substantial therapeutic or rehabilitative benefits<sup>vii</sup>.

To reduce the need for detention, the expert consensus and evidence points to the need for:

- Raising of the minimum age of criminal responsibility
- Diversion and 'off-ramps' away from incarceration and remand at all points of vulnerability for offending and contact with the youth justice system
- Employing alternatives to being remanded in custody<sup>viii</sup>.

Where remand and detention must be applied, developmentally and culturally appropriate therapeutic programs must be provided to ameliorate negative effects and maximise the development of skills and strategies for positive life outcomes. While under remand young people will experience disruptions to schooling, training, employment, and social and familial connections. The continuation of social, educational, and vocational engagement and participation are important protective and rehabilitative factors which should not be undervalued.

Targeted, specialist and multi-agency interventions are required that respond to individual needs if the significant individual, social and system impacts are to be reduced. Interventions must be available to respond to trauma and mental health challenges, problematic alcohol and other drug use, neuro-developmental challenges, learning and other educational difficulties, family problems, and economic hardships.

The disproportionate impact of the proposed amendments on Aboriginal and Torres Strait Islander young people must be considered and mitigated, due to the over-representation of Indigenous young people in the Queensland youth justice system. The protective function of connection to family, community, country, and culture may be impeded through overly restrictive responses that separate, segregate and confine individuals.

Greater negative impact can also be anticipated for other groups with pre-existing vulnerability including children and young people under statutory care and /or with disabilities.

- Children in the child protection system are disadvantaged by traumatic environmental factors related to adverse childhood experiences. Research shows that children who come to the attention of statutory child protection services are at least nine times more likely than other children to offend and come under the supervision of youth justice services. The research has also found that generally more than half of the children detained in youth justice centres are known to child protection services.
- High prevalence of foetal alcohol spectrum disorder (FASD) can be found in young people in the youth justice system. A study in Western Australia found that 36% of 99 young people aged 13-17 in the youth justice system met criteria for FASD. The research found this is the highest reported prevalence of FASD in a youth justice setting in the world<sup>ix</sup>.
- It is estimated that 17% of children and young people in youth justice in Queensland have a diagnosed or suspected disability<sup>x</sup>.

The factors known to increase the risk of involvement in offending behaviour among these groups, as well as the additional challenges in their understanding and complying to orders and sanctions must be better understood and responded to. Significant reductions in offending as well as of breaches of bail conditions can be achieved through appropriate interventions and supports tailored to their needs.

Strong links and interactions exist between risk and protective factors for mental health, problematic substance use, and offending behaviour. Effective approaches for preventing and reducing youth offending acknowledge these mental health and wellbeing contributors and impacts across the trajectory of offending behaviour. The intended and unintended consequences of the proposed amendments require consideration, including the mental health and wellbeing impacts. It is possible that without such consideration, the trajectories of some individuals will worsen and their involvement in costly youth justice responses be further entrenched.

- Available evidence demonstrates that therapeutic interventions are more effective at reducing offending, including chronic reoffending, than approaches based on punishment or control<sup>xi</sup>.
- The use of restrictive and custodial approaches limit and disrupt a person's protective connections with, and participation in, education, training, family, community, culture. Enhancing these points of connection are demonstrated to support positive identity, efficacy, sense of purpose and meaning, and thereby reduce likelihood of offending behaviour.
- Provision of targeted evidence-based interventions are required for young people at any stage of involvement with the justice system. Understanding and addressing the causes of, and contributors of offending behaviour in individuals and cohorts, will maximise the prospect of behaviour change and improve life outcomes. This includes considering and addressing neuro developmental, cognitive, personality, cultural, age and maturity factors.
- Understanding the pervasive role of trauma in contributing to offending behaviour, as well as ability to comply with sanctions and orders is critical. Trauma, abuse, and neglect impair development in crucial areas of impulse control and self-regulation, and result in increased hypervigilance, impulsivity, and difficulty trusting others, reduced resilience and other factors known to increase the risk of offending. Trauma informed approaches are required at all points of youth justice system contact and all relevant workforces require trauma informed competencies.
- The social and economic circumstances of vulnerable young people should be identified and addressed early, including family functioning, educational needs and school engagement, alcohol and drug issues, trauma, homelessness, and economic disadvantage. Family based intervention reduce risk of offending behaviour and its continuation. Family and community approaches are particularly critical for Aboriginal and Torres Strait Islander young people.
- Culturally appropriate and safe supports are required to support the mental and social and emotional wellbeing of the young offender and their family with a focus on rehabilitation and healing. Ensuring availability of culturally appropriate and safe housing is necessary where this is not available for the young people through family or kin.
- Aligned with *Working Together, Changing the Story*, continuing and strengthened efforts are required to prevent and intervene early before offending occurs. A strong association exists between Adverse Childhood Experiences (ACEs) and offending behaviour, including experiences of abuse or neglect, educational exclusion and disengagement, poverty, economic and social disadvantage, domestic violence, homelessness, alcohol and drug issues, disabilities and health and mental health concerns including mental health problems.
- Research shows that compared with people with no ACE exposure, those with 4 or more ACEs were 15 times more likely to be a perpetrator of violence in the previous 12 months, and 20 times more likely to have been incarcerated in their lives<sup>xii</sup>.
- Prolonged exposure to adverse family and environmental conditions from conception and during childhood may result in experiences of toxic stress, disrupting healthy brain development, prosocial skills, self-regulation, positive sense of self, and empathy. This can then be a pre-cursor to engaging in anti-social or criminal behaviour and early exposure to the youth justice system.

- This evidence points to opportunities to intervene earlier and more effectively to shift the trajectories for children and young people at risk of or engaging in behaviour that places them in the path of the youth justice system. Preventing or reducing the effects of ACES provides a significant opportunity to reduce offending behaviour and a range of other adverse outcomes. Research has estimated that preventing ACES could halve violence perpetration and incarceration<sup>xiii</sup>.
- Multiagency, multi-level approach is required that focuses on prevention, early intervention and, where relevant, rehabilitation as opposed to retribution and punishment addressing underlying factors, particularly before more serious behaviours manifest or offending occurs.

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<sup>i</sup> Atkinson, B, 2018, report on Youth Justice. Brisbane: Department of Child Safety, Youth and Women

<sup>ii</sup> *Working Together, Changing the Story: Youth Justice Strategy 2019-2023*,  
<https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>

<sup>iii</sup> Youth Justice Pocket Stat 2018-19

<sup>iv</sup> Queensland Human Rights Commission, 2021, Submission to the Legal Affairs and Safety Committee,  
<https://www.qhrc.qld.gov.au/resources/submissions>

<sup>v</sup> Ibid

<sup>vi</sup> Australian Institute of Criminology, 2020, Trends and Issues in crime and criminal justice, No. 605 October 2020

<sup>vii</sup> Ibid

<sup>viii</sup> Ibid

<sup>ix</sup> British Medical Journal <https://bmjopen.bmj.com/content/bmjopen/8/2/e019605.full.pdf>

<sup>x</sup> *Working Together, Changing the Story: Youth Justice Strategy 2019-2023*,  
<https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>

<sup>xi</sup> ANSOG

<sup>xii</sup> Scottish Government, 2018. Understanding Childhood Adversity, Resilience and Crime,  
<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2018/05/understanding-childhood-adversity-resilience-crime/documents/00535550-pdf/00535550-pdf/govscot%3Adocument/00535550.pdf?forceDownload=true>

<sup>xiii</sup> Bellis et al, 2019, Life course health consequences and associated annual costs of adverse childhood experiences across Europe and North America: a systematic review and meta-analysis, *Lancet*, Vol 4, October