

## Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

**Submission No:** 16 - including supplementary submission

**Submitted by:** Scott McDougall, Commissioner, Queensland Human Rights Commission

**Publication:** Making the submission and your name public

**Attachments:** See attachment

**Submitter Comments:**

Our ref: BNE3413158

15 November 2023

Committee Secretary  
Youth Justice Reform Select Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**By email:** [youthjustice@parliament.qld.gov.au](mailto:youthjustice@parliament.qld.gov.au)

Dear Committee Secretary

### **Youth justice reform in Queensland**

Thank you for the opportunity to make written submissions prior to public hearings to commence on 22 November 2023.

As requested, this brief submission focuses on:

- Aspects of the terms of reference relevant to the work of the Queensland Human Rights Commission (the Commission); and
- Based on this work, the Commission's views on how the current youth justice system may be improved to better protect children and young people, and the community.

The Commission may, in addition, prepare a further submission on the terms of reference which is due on 10 January 2024.

### **The Commission's role**

The Commission is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* and *Human Rights Act 2019* ('Human Rights Act'), which include:

- dealing with complaints of discrimination, sexual harassment, vilification, reprisal (under the *Public Interest Disclosure Act 2009*), and breaches of the Human Rights Act;
- reviewing public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights;
- promoting an understanding, acceptance, and public discussion of human rights and the Human Rights Act in Queensland; and
- providing education about human rights and the Human Rights Act.

In carrying out these functions the Commission is concerned with the human rights of all people in Queensland — including those impacted by crime and those accused or convicted of crime. The Commission has given detailed consideration to human rights concerns relating to the youth justice system, and in relation to support provided to victims of crime, and has made regular submissions to Government, parliamentary committees, and justice agencies on these issues.

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## Focus on reducing incarceration and reoffending

The Commission appreciates the serious community concern that surrounds the issue of youth crime in Queensland. However, as the Commission has noted in previous submissions, ‘tough on crime’ programs and measures, that are reactive to crimes already committed, are not effective in rehabilitating children and reducing recidivism.

In this context, the best outcome for victims, young offenders and the broader community will be achieved by initiatives that reduce reoffending and incarceration — by tackling the causes and consequences of youth crime.

This is consistent with human rights obligations that emphasise that children should only ever be arrested, detained, or imprisoned as a measure of last resort, for the shortest period of time, and that all efforts should be made to apply alternative measures.<sup>1</sup> It is consistent with protecting and promoting the human rights of all members of the public (in relation to, for example, the right to life, the right to security of the person, and the right to property), by reducing offending and recidivism over time. In addition, it promotes the rights of young people who may otherwise end up cycling in and out of detention to equality, to culture, to education, and to health.<sup>2</sup>

The Commission has consistently referred back to the *Report on Youth Justice* (2018) by former police Commissioner Bob Atkinson on the Queensland Government’s progress on youth justice reforms and other measures to reduce recidivism (2018 Atkinson report).<sup>3</sup> The report identified common features of children and young people in the youth justice system,<sup>4</sup> and system deficits that contribute to initial and repeated contact with it.<sup>5</sup> In response, it recommended the Queensland Government adopt as its policy position for youth justice the objectives of: intervening early, keeping children out of court, keeping children out of custody, and reducing reoffending (referred to as the ‘four pillars’) bookended by the principles of public safety and community confidence.

The objective of keeping children out of custody is also consistent with findings and recommendations of the Australian Law Reform Commission’s *Pathways to Justice* report (2017), made to both Commonwealth and State governments in relation to adults in the justice system. This included recommendations to support and develop justice reinvestment programs, reform bail, and improve access to community-based sentencing, particularly in remote areas.<sup>6</sup>

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<sup>1</sup> *Convention on the Rights of the Child*, arts 37(b), 40(3)(b); *Human Rights Act 2019* (Qld), s 26(2).

<sup>2</sup> *Human Rights Act 2019* (Qld), ss 15, 16, 24, 27, 28, 29, 36, 37.

<sup>3</sup> Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018).

<sup>4</sup> These included poverty, a home environment characterised by neglect, domestic and family violence, and/or traumatic events; poor school attendance, and lack of access to vocational training and employment; undiagnosed and/or untreated health issues or unsupported disability issues, such as mental health concerns, childhood trauma, and cognitive and intellectual disability; and substance abuse.

<sup>5</sup> These included youth justice system that has evolved from an adult criminal justice approach; no coordinated multi-agency approach to support at-risk children and their families, and lack of information sharing across systems; a shortage of after-hours services, both government and NGOs; youth justice processes that result in young people and children being detained and disconnected from protective factors, such as family, community, and school; and the need for reform targeting the over-representation of Aboriginal and Torres Strait Islander children in the youth justice system.

<sup>6</sup> Australian Law Reform Commission (2017), *Pathways to Justice: Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133), recs 4-1, 4-2, 5-1, 5-2, 7-1, 7-2, 7-3.

The 2018 Atkinson report formed the basis of Queensland's Youth Justice Strategy and Action Plan.<sup>7</sup> However, since then a 'tough on crime' approach has diluted the effectiveness of the strategy recommended by Atkinson. The Government has:

- made legislative amendments in 2020 which limit a judge's discretion to grant bail to a child, which were passed without parliamentary committee scrutiny;
- made legislative amendments in 2021 which introduce a presumption against bail for certain offences;
- announced in December 2022 ten new measures to fight youth crime, including increasing penalties, extreme high visibility police patrols and a fast-track sentencing program 'so children spend less time on remand and more time serving their sentences';
- made legislative amendments in February 2023 which made breach of bail an offence, and amended laws in relation to serious repeat offenders. These amendments override the application of the Human Rights Act, and will expire in March 2028;
- made further legislative amendments in August 2023, without parliamentary committee scrutiny, which allow for the declaration of watchhouses as youth detention centres and to which obligations under the Human Rights Act do not apply. The amendments, which override the application of the Human Rights Act, expire on 31 December 2026.

At the same time, the only announced, coordinated Government action taken to meet the rights and needs of children and young people has been to build more capacity in youth detention centres, and to convert an existing watchhouse and build a new remand centre to detain young people until there is further capacity in youth detention centres. The shift to a renewed focus on detention contributes to serious psychological and other harms for children and young people, and does not contribute to the long-term safety of the community.<sup>8</sup>

### **Work undertaken by the Commission**

A timeline of events concerning Queensland youth justice issues is annexed to this submission.

The Commission's work has included:

1. Of significant and ongoing concern to the Commission is the increasing use of watch houses for the prolonged detention of children and young people while they await bail or placement at a youth detention centre, including children as young as 11. The Commission has highlighted these concerns through public submissions and media,<sup>9</sup> and by engaging with relevant agencies directly (including in relation to transparency of watchhouse data, provision of services to detained young people, and design of new facilities to ameliorate the most immediate human rights concerns with watchhouse detention).
2. Conducting visits to watchhouses and youth detention centres.

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<sup>7</sup> Queensland Government, *Working Together, Changing the Story* (Youth Justice Strategy 2019-2023) and Queensland Government, *Working Together: Changing the Story* (Youth Justice Strategy Action Plan 2019- 2021).

<sup>8</sup> As to the latter, see Bob Atkinson, *Youth Justice Reforms Review: Final Report* (March 2022), 25-28.

<sup>9</sup> See, eg, Queensland Human Rights Commission, Submission to Children's Commissioner, Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform across Australia* (30 June 2023), 6-7 (available at: <https://www.ghrc.qld.gov.au/resources/submissions>); Queensland Human Rights Commission, 'Statement from Queensland Human Rights Commissioner Scott McDougall regarding the use of adult prisons and police watch houses as youth detention centres' (24 August 2003).

3. Collaborating with other oversight agencies on issues affecting young people in the youth justice system, including the Queensland Family and Child Commission, the First Nations Justice Officer, the Office of the Public Guardian, the Queensland Ombudsman, the Inspector of Detention Services, the Queensland Audit Office, and the Australian Children's Commissioner.<sup>10</sup>
4. Participating in the Queensland Legal Affairs and Safety Committee's Inquiry into support provided to victims of crime, and meeting with the Interim Victims' Commissioner to discuss victims' rights and interests in the context of responses to youth offending.<sup>11</sup>
5. Advocating for an independent review of Queensland state school's high rates of disciplinary school absences in which children with disability, First Nations children and children in out of home care are over-represented, as well as ongoing engagement related work, such as the targeted review of the *Education (General Provisions) Act 2006*, the review of the non state schools accreditation framework, and consideration of the recommendations of the Disability Royal Commission in relation to inclusive education.<sup>12</sup>
6. Receiving complaints from young people in detention under the Human Rights Act and the Anti-Discrimination Act.
7. Intervening in court cases to provide independent expertise on the application of the Human Rights Act, such as in *Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* [2023] QSC 174.
8. Engaging with the Australian Productivity Commission in relation to the review of the National Agreement on Closing the Gap.<sup>13</sup>
9. Making submissions on the human rights implications of proposed legislative amendments, and supporting calls to raise the age of criminal responsibility.<sup>14</sup>

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<sup>10</sup> See eg, Queensland Human Rights Commission, Submission to Children's Commissioner, Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform across Australia* (30 June 2023).

<sup>11</sup> Queensland Human Rights Commission, Submission to the Legal Affairs and Safety Committee, *Inquiry into support provided to victims of crime* (12 April 2023).

<sup>12</sup> See eg, Queensland Human Rights Commission, Submission to the Department of Education, *Review of Education (General Provisions) Act 2006* (29 April 2022); Submission to the Independent Reviewer, *Queensland Non-State Schools Accreditation Framework Review* (23 May 2023).

<sup>13</sup> Queensland Human Rights Commission, Submission to the Australian Productivity Commission, *Review of the National Agreement on Closing the Gap* (6 October 2023).

<sup>14</sup> Queensland Human Rights Commission, Submission to the Legal Affairs and Community Safety Committee, *Youth Justice and Other Legislation Amendment Bill 2019* (10 July 2019); Submission to Council of Attorneys-General, *Age of Criminal Responsibility – Working Group review* (28 February 2020); Submission to the Legal Affairs and Safety Committee, *Youth Justice and Other Legislation Amendment Bill* (12 March 2021); Submission to the Community Support and Services Committee, *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (30 November 2021); Submission to the Economics and Governance Committee, *Strengthening Community Safety Bill 2023* (24 February 2023).

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## Key focus areas for reform

On the basis of its work, the Commission suggests the following as key areas of focus, relevant to the Committee's Terms of Reference, to ensure that the youth justice system better protects children and young people, and the community, while being consistent with human rights standards:

1. Renewed and demonstrated commitment to a whole of government, long-term human rights-based approach to youth justice that meaningfully addresses the causes of youth offending. This could be driven by the appointment of a Minister for Children with a stand-alone department that has sufficient authority to co-ordinate strategies across multiple portfolios, or alternatively the Department of the Premier and Cabinet should take on this co-ordinating function.
2. A coordinated Statewide media strategy to promote and support the four pillars policy position.<sup>15</sup>
3. Genuine consultation with children and their families, including any groups who are over-represented in the youth justice system, including First Nations communities and people with disability.
4. Genuine consultation with victims of youth crime, their enhanced participation in youth justice processes, and review of the extent to which their rights are adequately protected under the Human Rights Act as part of its first statutory review.
5. Reform and provision of resources required to keep children in school, including by reducing the use of suspensions and exclusions.<sup>16</sup>
6. Support for and expanding existing evidence-based diversion and reduction of reoffending programs.
7. Support for further justice reinvestment trials, including trials initiated in partnership with First Nations communities, in coordination with the Commonwealth National Justice Reinvestment Unit.<sup>17</sup>
8. Repeal of amendments to the *Bail Act 1980*, *Police Powers and Responsibilities Act 2000* and *Youth Justice Act 1992*, including the offence of breach of bail applicable to children, to reduce the number of children and young people detained on remand.<sup>18</sup>
9. Repeal of amendments to the *Youth Justice Act 1992* and *Police Powers and Responsibilities Act 2000* overriding the Human Rights Act to authorise prolonged detention of children in watch houses.<sup>19</sup>

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<sup>15</sup> See 2018 Atkinson report, rec 66.

<sup>16</sup> See further Queensland Human Rights Commission, Submission to Children's Commissioner, Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform across Australia* (30 June 2023), 8.

<sup>17</sup> See <https://www.ag.gov.au/legal-system/justice-reinvestment>.

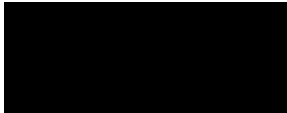
<sup>18</sup> See Queensland Human Rights Commission, Submission to Children's Commissioner, Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform across Australia* (30 June 2023), 5-6.

<sup>19</sup> Enacted through the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

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10. Providing greater transparency, including though publicly available real-time data on rates of detention of young people in watch houses.
  11. Raising the minimum age of criminal responsibility to 14 years.<sup>20</sup>
  12. Ensuring that no child or young person is held in a watch house for more than 24 hours, and that any facility used to detain children and young people on remand meets minimum international standards specific to the pre-trial detention of children and young people.
  13. Ensuring adequate staffing of existing youth detention facilities to enable children to receive necessary individualised therapeutic and educational services, and to eliminate the use of separation overall but particularly as a result of understaffing.
  14. Creating a mechanism to ensure greater government accountability for reaching Closing the Gap targets.<sup>21</sup>

Thank you for the opportunity to provide input to the Inquiry.

Yours sincerely



**Scott McDougall**  
**Commissioner**

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<sup>20</sup> Submission to the Community Support and Services Committee, *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (30 November 2021).

<sup>21</sup> Queensland Human Rights Commission, Submission to the Australian Productivity Commission, *Review of the National Agreement on Closing the Gap* (6 October 2023).

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## Youth justice and watchhouse detention – Timeline

- December 1990 – Australia ratified the United Nations *Convention on the Rights of the Child* (Article 37 details rights in relation to detention and imprisonment of children).
- 15 April 1991 – Final report of the Royal Commission into Aboriginal Deaths in Custody delivered.
- 1 September 1993 – *Juvenile Justice Act 1992* and *Children’s Court Act 1992* came into effect, substantially reframing the Queensland youth justice system.
- Late 1998: Large numbers of children held in police watch houses. In response, the Department of Families, Youth and Community Care (DFYCC), Queensland Police Service (QPS), and other entities took a range of measures to record and explore alternative options.<sup>22</sup>
- March 1999: Australasian Juvenile Justice Administrators (now the Australasian Youth Justice Administrators) endorsed the *Standards for Juvenile Custodial Facilities*, based on the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules), the *United Nations Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), and the UN *Convention on the Rights of the Child*. The standards continue to be applied in Queensland.<sup>23</sup>
- June 1999 – Report of the Commission of Inquiry into Abuse of Children Queensland Institutions (**the Forde Inquiry**) tabled in Parliament, including recommendations regarding a list of basic rights of children in youth detention centres.
- August 1999 – DFYCC produced *Detention of Children in Watch houses: a report on the outcome of the process to identify issues and recommend strategies to reduce the incidence and duration of time children spend in watch houses*. The report notes with support a recommendation from the workshop, ‘That alternative placement options be developed for young people on remand in order to reduce the number placed in juvenile detention centres’.<sup>24</sup>
- 2003 – Major amendments made to the *Juvenile Justice Act 1992* under the *Juvenile Justice Amendment Act 2002*, including encouraging increased use of diversionary options by the police and courts, removing requirements for a child to ‘show cause’ why they should be granted bail in certain circumstances, and incorporating a new ‘charter of juvenile justice principles’ into Schedule 1.
- October 2004 – A Memorandum of Understanding agreed between the Queensland Police Service and the Department of Communities regarding the detention of children in watch houses.

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<sup>22</sup> See Youth Advocacy Centre, *The Use of Queensland Watch Houses to Hold Children* (Orange Paper 1, March 2019).

<sup>23</sup> See Queensland Government, ‘Youth Detention Policies’, *Managing Youth Detention Centres* (Web Page, 7 August 2023) <<https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-detention/managing-youth-detention-centres/youth-detention-policies>>. Rules such as these are not binding on states, but they do provide universal minimum standards. As well as being recognised by Australasian Youth Justice Administrators, they have been cited by the Commonwealth Attorney-General’s Department as relevant to assessing humane treatment in detention. See Attorney-General’s Department, ‘Right to Humane Treatment in Detention: Public Sector Guidance Sheet’ (Web Page) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-humane-treatment-detention>>.

<sup>24</sup> Report not available – obtained from secondary source.



- 2009 – Australasian Juvenile Justice Administrators (now the AYJA) released the *Juvenile Justice Standards* setting out the agreed standard for practice to be delivered by juvenile justice administrators released.
- 2010 – Amendments made to the *Juvenile Justice Act*, including a name change to the *Youth Justice Act 1992*.
- 1 July 2013 – Final report of the Queensland Child Protection Commission of Inquiry (**the Carmody Inquiry**) released, which recommend legislative reforms for child protection and oversight of youth detention.<sup>25</sup>
- 2014 – The Queensland Government abolishes the Commission for Children and Young People and Child Guardian, and establishes the roles of the Public Guardian (with child advocates, community visitor program and powers of inspection and obtaining information) and the Family and Child Commission (to provide oversight for the whole child protection system).
- 28 March 2014 – Significant amendments made to the *Youth Justice Act 1992*, despite being viewed as ‘unduly punitive and inappropriate by the majority of stakeholders’,<sup>26</sup> including relevantly removal of the principle that a sentence of imprisonment should be as a last resort and for the shortest appropriate time.<sup>27</sup>
- October 2014 – Australasian Juvenile Justice Administrators (AJJA) *Principles of Youth Justice in Australia* were endorsed by all states and territories as the foundation document for youth justice in Australia, building on the AJJA *Youth Justice Standards* (2009). Updated in April 2019 (AJJA now known as Australasian Youth Justice Administrators).
- 1 July 2016 – In line with commitments made by the Queensland Government during the 2015 general election, the *Youth Justice Act 1992* was amended to repeal the 2014 reforms, reflecting international evidence that increasing the severity of punishment is ineffective in reducing recidivism in children and young people. This included reinstatement of the principle that detention be as a last resort and for the shortest appropriate period when sentencing.<sup>28</sup>
- 19 August 2016 – The Independent Review of Youth Detention was ordered by the Queensland Attorney-General as a Commission of Inquiry. The review was preceded by the airing of CCTV footage, first person accounts, and allegations from young people and staff about excessive force at the Cleveland Youth Detention Centre. Ms Kathryn McMillan QC and Professor Megan Davis were appointed as Commissioners. The confidential report dated December 2016, was published with the Government’s response on 26 April 2017.<sup>29</sup>
- January 2018 – The Queensland Premier appointed Major-General (Retd) Stuart Smith AO DSC as the independent Townsville Community Champion to consult with the community about youth crime. Major-General Smith’s report found consensus for a fair and sustainable approach to youth crime addressing five key themes:
  - Share more information on action being taken to address youth crime.

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<sup>25</sup> Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* (Final Report, 1 July 2013).

<sup>26</sup> Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2015 (Qld) 2.

<sup>27</sup> *Youth Justice and Other Legislation Amendment Act 2014* (Qld).

<sup>28</sup> *Youth Justice and Other Legislation Amendment Act 2016* (Qld). See also Explanatory Notes, Youth Justice and Other Legislation Amendment Bill 2015 (Qld) 1.

<sup>29</sup> Kathryn McMillan and Megan Davis, *Independent Review of Youth Detention* (Confidential Report, December 2016).

- Hold youths accountable for their actions.
  - Support youth and their families to participate in education.
  - Promote role models and mentors.
  - Improve the diversionary justice process and timeliness within the youth justice system.<sup>30</sup>
- 12 February 2018 – The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* commenced. This ended the practice of treating 17-year-olds as adults in Queensland’s criminal justice system, and the transfer of 17-year-olds from the adult justice system to the juvenile justice system. Due to the limitations of bed capacity in detention centres, this change resulted in children remanded in custody being temporarily held in police watchhouses for prolonged periods.
  - 8 June 2018 – Mr Bob Atkinson AO APM delivered his *Report on Youth Justice (Atkinson Report)*<sup>31</sup> to the Queensland Government recommending that the Queensland juvenile justice system be based on the following four pillars:
    - i. intervene early
    - ii. keep children out of court
    - iii. keep children out of custody, and
    - iv. reduce reoffending.

The report recommends:

- a focus on attendance at school and vocational training
  - increased options for police to divert child offenders from prosecution
  - increased options for courts to divert children from detention centres
  - increased options for children to remain in the community rather than be remanded in custody.
- 11 December 2018 – The Queensland Government released *Working Together, Changing the Story: Youth Justice Strategy 2019-2023 (Youth Justice Strategy)*, responding to the Atkinson Report and adopting the four pillars for youth justice policy.
  - May 2019 – Public concerns were heightened about the standards and human rights limitations associated with prolonged watch house detention of children, including as exposed in a Four Corners story and an Amnesty International report.<sup>32</sup> The new Department of Youth Justice formed on 20 May 2019.
  - 25 July 2019 – The *Youth Justice Strategy Action Plan 2019-21 (Action Plan)* set out practical steps to implement the Youth Justice Strategy, and a specific commitment to reduce the use of watch houses to accommodate children on remand. Strategies

<sup>30</sup> Major General (Retd) Stuart Smith, *Townsville’s Voice: Local Solutions to Address Youth Crime*, (Independent Report, 5 December 2018).

<sup>31</sup> Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018).

<sup>32</sup> See for example: ‘Inside the Watch House’, *Four Corners* (Australian Broadcasting Corporation, 13 May 2019) <<https://www.abc.net.au/4corners/inside-the-watch-house/11108448>>; Mark Willacy, ‘The Watch House Files: Queensland Children Kept in Isolation in Maximum Security Adult Watch Houses’, *ABC News* (online, 13 May 2019) <<https://www.abc.net.au/news/2019-05-13/queensland-children-in-watch-houses-detention/11100226>>; Office of the Public Guardian, ‘There are immediate solutions available to remove children from watch houses’ (Media Release, 14 May 2019); Amnesty International, ‘Human Rights Abuses Against Kids in the Brisbane City Police Watch House’, *Kids in Watch Houses: Exposing the Truth* (Web Page) <<https://www.amnesty.org.au/watch-houses/>>.

included: a new 32-bed youth detention centre at Wacol, an additional 16 beds at Brisbane Youth Detention Centre, and additional resources at watch houses to provide appropriate support for children.

- 5 September 2019 – The *Youth Justice and Other Legislation Amendment Act 2019* received assent, amending the *Youth Justice Act* to support implementation of the *Youth Justice Strategy* by removing legislative barriers that may contribute to children being refused bail, breaching bail conditions, or remaining in remand detention for an extended period of time.<sup>33</sup> **(2019 amendments)**
- September 2019 – The UN Committee on the Rights of the Child recommended the minimum age of criminal responsibility be 14.<sup>34</sup> This recommendation was made specifically to Australia by the United Nations.<sup>35</sup> The UN Committee similarly recommended that countries increase the minimum age of detention to 16 years of age.
- 1 January 2020 – The *Human Rights Act 2019* commenced, placing new obligations on public entities in Queensland.
- 29 January 2020 – A Public Health Emergency under the *Public Health Act* was announced by the Minister in response to the COVID-19 Pandemic.
- 10 March 2020 – The Queensland Government announced a five-point plan to crack down on youth crime following community anger over repeat offenders. The plan included tougher actions on bail, a police blitz on bail, and more resources to appeal court decisions where appropriate.<sup>36</sup>
- 13 March 2020 – The fatal stabbing of a teenager by two other teenagers<sup>37</sup> sparked renewed debate over youth crime and knife crime. The teenagers were ultimately sentenced for murder.
- 30 June 2020 – The Department of Youth Justice *2019-2020 Annual Report* recorded that no young people were held on remand in watch houses since late 2019 except for routine processing or awaiting transport in regional areas.<sup>38</sup>
- 15 July 2020 – Commencement of amendments to the *Youth Justice Act* requiring that a child must be refused bail if judged to be an unacceptable risk to the safety of the community. These amendments were contained in the *Community Services Industry (Portable Long Service Leave) Act 2020*, declared urgent, and passed without parliamentary committee scrutiny of their compatibility with human rights<sup>39</sup> **(2020 amendments)**.

<sup>33</sup> Amendments in the *Youth Justice and Other Legislation Amendment Act 2019* (Qld).

<sup>34</sup> United Nations Committee on the Rights of the Child, [General Comment No 24: Children's Rights in the Child Justice System](#), UN Doc CRC/C/GC/24 (18 September 2019).

<sup>35</sup> United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (30 September 2019) [48].

<sup>36</sup> Premier and Minister for Trade, Minister for Police and Minister for Corrective Services, and Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, 'Hard Line on Youth Crime' (Joint Statement, 10 March 2020) <<https://statements.qld.gov.au/statements/89510>>.

<sup>37</sup> 'Teenage boy fatally stabbed at Redcliffe, north of Brisbane' ABC News (online, 14 March 2020) <<https://www.abc.net.au/news/2020-03-14/15yo-angus-beaumont-stabbed-redcliffe-qld/12056324>>.

<sup>38</sup> Department of Youth Justice (Qld), *2019-2020 Annual Report* 5.

<sup>39</sup> Via the *Community Services Industry (Portable Long Service Leave) Act 2020*.

- Mid 2020 – Built capacity of Brisbane Youth Detention Centre increases by 16 beds, increasing Queensland’s safe capacity from 219 to 232 beds, and built capacity from 258 to 274 beds across two detention centres.
- 12 November 2020 – Department of Youth Justice renamed the Department of Children, Youth Justice and Multicultural Affairs as a result of machinery-of-government changes.
- December 2020 – New West Moreton Youth Detention Centre, stage 1, commenced operation with an additional 8 beds.
- 26 January 2021 – Tragic deaths of a couple hit and killed by a car allegedly driven by a 17-year-old male person.<sup>40</sup>
- March 2021 – West Moreton Youth Detention Centre completed, providing 32 beds in total. Overall capacity over 3 detention centres is now 259 safe capacity, and 306 built capacity.
- 30 April 2021 – Further amendments to the *Youth Justice Act* made by *Youth Justice and Other Legislation Amendment Act 2021* commenced, including the introduction of a presumption against bail for prescribed indictable offences in certain circumstances. **(2021 amendments)** The Premier announced that former Police Commissioner, Bob Atkinson, would look at the effectiveness of the reforms after 6 months.<sup>41</sup>
- 15 September 2021– Private member’s Bill, Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, was introduced into Parliament, proposing to raise the minimum age of criminal responsibility in Queensland from 10 to 14-years-old, and transferring any children under 14-years-old out of custody. The Community Support and Services Committee report released on 15 March 2022<sup>42</sup> recommended that the Bill not be passed but made recommendations regarding treatment of young people in the youth justice system and consideration of increasing the minimum age of criminal responsibility to 12 years.
- 28 October 2022 – Inspector of Detention Services Bill 2021 introduced, creating a new statutory office holder within the Queensland Ombudsman’s Office with a focus on promoting the humane treatment of detainees and inspecting places of detention in Queensland, including: youth detention centres, adult prisons and watch-houses. On 21 January 2022, Legal Affairs and Safety Committee recommends that Bill be passed. The Bill received assent on 7 September 2022 but functions of the Inspector did not commence until 1 July 2023.
- January 2022 – Plans to repurpose the Caloundra watch house to a temporary, short-term youth remand centre withdrawn following community consultation.

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<sup>40</sup> See for example, ‘Teen charged with murdering Kate Leadbetter and Matt Field is remanded in custody by the Children’s Court’, *ABC News* (online, 27 January 2021) <<https://www.abc.net.au/news/2021-01-27/alexandra-hills-couple-killed-stolen-car-brisbane-charge-murder/13093838>>.

<sup>41</sup> ‘Report on 2021 Youth Justice reforms from Bob Atkinson’, *Youth justice reviews and reports* (Web Page, 18 November 2022) <<https://desbt.qld.gov.au/youth-justice/reviews-reports/reforms-review>>.

<sup>42</sup> Community Support and Services Committee, Queensland Parliament, *Criminal Law (Raising the age of Responsibility) Amendment Bill 2021* (Report No 16, 15 March 2022).

- October 2022 – The Premier announced that the Qld government is considering expanding youth justice detention, with a new youth detention centre in Cairns.<sup>43</sup>
- 15 November 2022 – Bob Atkinson’s March 2022 review into 2021 amendments released.<sup>44</sup> The report reviewed the status of the eight legislated changes and nine policy initiatives six months after they were introduced.<sup>45</sup>
- 1 December 2022 – Introduction of the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022. The purpose of the Bill is to facilitate visits by the United Nations Subcommittee on Prevention of Torture to places of detention in Queensland, following denial of entry of the Subcommittee to Queensland mental health units during its October 2022 visit to Australia. Legal Affairs and Safety Committee recommended that the Bill be passed 24 February 2023.
- 16 December 2022 – Childrens Court 2021-22 Annual Report was tabled in Parliament noting significant increase in young people held in youth detention and police watchhouses, with an average of 43 nights in unsentenced detention.
- 26 December 2022 – Two teenagers charged following a stabbing that resulted in death.<sup>46</sup>
- 29 December 2022 – Qld Government announced 10 new measures to fight youth crime.<sup>47</sup>
- 16 January 2023 – Appointment of inaugural First Nations Justice Officer, funded as part of the Government’s response to the Women’s Safety and Justice Taskforce’s first *Hear Her Voice* report to reduce the representation of First Nations people in the criminal justice system.<sup>48</sup>
- 9 February 2023 – Townsville Magistrate, Viviana Keegan, granted bail to 13 alleged youth offenders triggering an appeal by police in relation to some of the children.<sup>49</sup> The appeals ultimately did not proceed.

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<sup>43</sup> ‘Premier floats new youth detention centre for Cairns, where police are warning against vigilantism’, *ABC News* (online, 5 October 2022) <<https://www.abc.net.au/news/2022-10-05/premier-floats-cairns-youth-detention-police-warn-vigilantes/101505070>>.

<sup>44</sup> Bob Atkinson, *Youth Justice Reforms Review* (Final Report, March 2022).

<sup>45</sup> Minister for Children and Youth Justice and Minister for Multicultural Affairs, ‘Interim review of youth justice reforms released’ (Media Statement, 15 November 2022).

<sup>46</sup> Jocelyn Garcia, ‘Two youths charged with murder over Qld mum’s Boxing Day death’, *Brisbane Times* (online, 27 December 2022) <<https://www.brisbanetimes.com.au/national/queensland/two-youths-set-to-be-charged-with-murder-over-qld-mum-s-boxing-day-death-20221227-p5c8w4.html>>.

<sup>47</sup> Warren Barnsley, ‘Annastacia Palaszczuk announces 10 new measures to fight youth crime in Queensland after alleged murder of Emma Lovell’, *7 News* (Web Page, 29 December 2022) <<https://7news.com.au/news/qld/annastacia-palaszczuk-announces-10-new-measures-to-fight-youth-crime-in-queensland-after-alleged-murder-of-emma-lovell-c-9299070>>.

<sup>48</sup> Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence, ‘Queensland’s Inaugural First Nations Justice Officer Appointed’ (Media Statement, 16 January 2023).

<sup>49</sup> Shayla Bulloch, Madura McCormack and James Hall, ‘“Cracked the s\*\*ts”: Outrage as magistrate releases 13 young offenders at same time’, *The Courier Mail* (online, 11 February 2023) <<https://www.couriermail.com.au/truecrimeaustralia/police-courts-qld/cracked-the-sts-outrage-as-magistrate-releases-13-juvi-crims-at-same-time/news-story/f2a84f578db4426a9b6aa00485b2f3d8>>.

- 13 February 2023 – Report on the death of a man, following attack by teenagers at shopping centre taxi rank.<sup>50</sup>
- 17 February 2023 – The QFCC initiated a systemic review of the drivers that cause children to enter and remain in Queensland watchhouses.<sup>51</sup>
- 21 February 2023 – The Strengthening Community Safety Bill 2023 was introduced into parliament, with submissions due to the Economics and Governance Committee by 12pm 24 February 2023. The Bill intended to improve community safety by reducing recidivism amongst young people and strengthening youth justice laws to respond to serious repeat offenders. Amendments include four human rights Override Declarations in relation to:
  - *Bail Act 1980* section 29 that makes it an offence for a child to break a condition of bail.
  - *Youth Justice Act 1992* sections 150A and 150B, the effect of which is that a court may declare a child a serious repeat offender when sentencing for an indictable offence, and the court must have regard to the need to protect members of the community, impact of the offence on public safety, and the offending and bail history of the child.
  - *Youth Justice Act 1992* section 246A that requires the court to revoke a conditional release order in relation to a prescribed indictable offence where the child has breached the conditional release order, unless there are special circumstances. The child will be ordered to serve the sentence of detention for which the conditional release order was made.

The Committee's report was tabled on 10 March 2023 and recommended the Bill be passed. It received assent and commenced on 22 March 2023. The overrides will expire on 22 March 2028 by virtue of s 45(2) of the *Human Rights Act 2019*.

- March 2023 – The Queensland Audit Office commenced an audit to examine how effectively public sector entities are delivering youth justice initiatives to help young people better connect with the community and reduce risks of offending.<sup>52</sup> The audit lists DCYJMA, QPS, and DJAG as bodies that may be audited. Tabling is anticipated between January and March 2024.
- 10 May 2023 – The National Children's Commissioner invited submissions on Youth Justice and Child Wellbeing Reform across Australia.<sup>53</sup> This project is still ongoing.
- 11 May 2023 – The Queensland Government announced that the first of two planned new youth detention centres will be built at the Woodford Correctional Precinct

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<sup>50</sup> Georgie Hewson and David Chen, 'Toowoomba man Robert Brown, 75, dies from injuries after alleged assault at taxi rank last week', *ABC News* (online, 13 February 2023) <<https://www.abc.net.au/news/2023-02-13/toowoomba-man-dies-days-after-alleged-taxi-rank-assault/101952070>>.

<sup>51</sup> Queensland Family and Child Commission, 'Queensland watch houses under review' (Media, 17 February 2023).

<sup>52</sup> Queensland Audit Office, 'Diverting Young Offenders from Crime' (Web Page) <<https://www.gao.qld.gov.au/audit-program/diverting-young-offenders-crime>>.

<sup>53</sup> Australian Human Rights Commission, 'Youth Justice and Child Wellbeing Reform across Australia' (Web Page, 3 July 2023) <<https://humanrights.gov.au/our-work/childrens-rights/projects/youth-justice-and-child-wellbeing-reform-across-australia>>.

northwest of Brisbane, and that the project is in the detailed design stage. Work is ongoing to select a site for new youth detention centre near Cairns.<sup>54</sup>

- 18 May 2023 – Machinery-of-Government changes resulted in the Department of Children, Youth Justice and Multicultural Affairs being renamed to Department of Child Safety, Seniors, and Disability Services, with youth justice functions transferred to the Department of Youth Justice, Employment, Small Business and Training effective 1 June 2023.
- 19 May 2023 – Queensland Parliament’s Legal Affairs and Safety Committee tabled a report on the Inquiry into support provided to victims of crime.<sup>55</sup> On 9 August 2023, the government indicated its support in principle for all 18 recommendations, including reforms to support access to information about criminal justice processes to victims.<sup>56</sup>
- 1 July 2023 – The Queensland Ombudsman’s functions under the *Inspector of Detention Services Act 2022* commenced. Inspection standards for Queensland youth detention centres were published in August 2023, with standards for watch houses to follow.<sup>57</sup>
- 26 July 2023 – The Australian Productivity Commission published its draft findings and recommendations on the ongoing implementation of the National Agreement on Closing the Gap.<sup>58</sup>
- 8 August 2023 – A Supreme Court of Qld decision on a *habeas corpus* application for children currently remanded in watchhouse custody was handed down.<sup>59</sup> The Supreme Court ordered the children be delivered by 10pm that day into the custody of the Chief Executive of the Department of Youth Justice, Employment, Small Business and Training, in accordance with s 56(1) of the *Youth Justice Act 1992: Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* [2023] QSC 174.
- 24 August 2023 – The Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Bill 2022 passed with amendments introduced on 23 August 2023 and without Parliamentary Committee scrutiny. The amendments included four human rights Override Declarations in respect of:
  - *Youth Justice Act 1992* section 56 – a child remanded to custody is in the custody of the Commissioner of Police until notified that the Chief Executive will accept the custody of the child (at a youth detention centre). The Chief Executive is required to consider various matters such as the child’s age and medical conditions, however a failure of the Chief Executive to provide procedural fairness to the child in deciding the date for delivery into custody does not affect the validity of the decision.

<sup>54</sup> Minister for Children and Youth Justice and Minister for Multicultural Affairs, ‘New youth detention centre to be built at Woodford’ (Media Statement, 11 May 2023).

<sup>55</sup> Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into Support provided to Victims of Crime* (Report No 48, 19 May 2023).

<sup>56</sup> Queensland Government, *Queensland Government Response to Legal Affairs and Safety Committee Report No. 48, 57<sup>th</sup> Parliament* (Response).

<sup>57</sup> See Queensland Ombudsman, ‘Legislation and standards’ (Web Page, 31 August 2023) <<https://www.ombudsman.qld.gov.au/detention-inspection/legislation-and-standards>>.

<sup>58</sup> Productivity Commission (Cth), ‘Review of the National Agreement on Closing the Gap: Draft Report’, *Closing the Gap Review* (Web Page, 26 July 2023) <<https://www.pc.gov.au/inquiries/current/closing-the-gap-review/draft>>.

<sup>59</sup> *Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* [2023] QSC 174.

- *Youth Justice Act 1992* section 210 – a child sentenced to detention is in the custody of the Commissioner of Police until the Chief Executive advises the Commissioner a date when the Chief Executive will take custody of the child (at a youth detention centre). The Chief Executive is required to consider various matters such as the child’s age and medical conditions, however a failure of the Chief Executive to provide procedural fairness to the child in deciding the date for delivery into custody does not affect the validity of the decision.
- *Youth Justice Act 1992* section 262 – for places of detention established from 23 August 2023, before recommending the Governor in Council makes a regulation establishing a place of detention, the Minister must have regard to whether the establishment of the detention centre would be compatible with human rights. This does not require the Minister to comply with section 58 of the *Human Rights Act 2019*, and a failure to have regard to compatibility with human rights does not affect the validity of a regulation establishing a detention centre.<sup>60</sup>
- *Police Powers and Responsibilities Act 2000* section 640 – failure to provide procedural fairness to a child transferred between watchhouses or to other places such as holding cells does not affect the validity of the decision to transfer the child.

In addition, new section 262A is inserted into the *Youth Justice Act 1992* which declares that section 58 of the *Human Rights Act 2019* does not apply to acts and decisions that:

- are reasonably necessary for the administration of this Act; and
- relate to a child, or the placing of a child, in a detention centre established from 23 August 2023.

The amendments received assent and commenced on 1 September 2023, except for amendments relating to section 262 and 262A of the *Youth Justice Act 1992* which commenced on 23 August 2023. The Overrides expire on 31 December 2026, unless postponed for up to 12 months.

- 24 August 2023 – The *Queensland Child Rights Report 2023*<sup>61</sup> is launched by the Queensland Family and Children Commission, an inaugural report that analyses how Queensland upholds children’s rights and identifies changes needed to embed a child rights approach across government policy, legislation and systems to deliver better, more equitable outcomes for Queensland children.
- 8 September 2023 – The Queensland Government confirmed that the Caboolture Watchhouse is to be used as hub to detain young people exclusively if capacity issues prevent transfer of young people from watchhouses to detention centres.<sup>62</sup> *The Guardian* newspaper report noted that advertising of jobs at Caboolture Watchhouse Education Support Hub had begun and an additional \$462,000 had been provided in the state budget for delivering education to young people in watchhouses over two years.

<sup>60</sup> The Explanatory Notes for the Amendments in Consideration state at page 12 that judicial review will still be available in respect of the decision of the Minister.

<sup>61</sup> Queensland Family and Children Commission, *Queensland Child Rights Report 2023* (Report, 2023).

<sup>62</sup> Eden Gillespie and Ben Smee, ‘Queensland to create watch house for children amid fears of looming ‘human rights disaster’, *The Guardian* (online, 8 September 2023) <

<https://www.theguardian.com/australia-news/2023/sep/08/queensland-police-watch-houses-caboolture-child-facility>>.



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- 5 October 2023 – The Queensland Government announced a new youth remand facility in Wacol<sup>63</sup> to accommodate approximately 50 young people with delivery of stage one in 2024. The facility will be operated by the Department of Youth Justice, Employment, Small Business and training and will house young people in detention exclusively until the new youth detention centres open in Woodford and Cairns.

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<sup>63</sup> Premier and Minister for the Olympic and Paralympic Games, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, and Minister for Employment and Small Business, Minister for Training and Skills Development and Minister for Youth Justice, 'New youth remand facility to be built at Wacol' (Joint Statement, 5 October 2023).

## Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland

**Submission No:** 16  
**Submitted by:** Queensland Human Rights Commission supplementary submission  
**Publication:** Making the submission and your name public  
**Attachments:** See attachment  
**Submitter Comments:**



Queensland  
**Human Rights**  
Commission

# Youth Justice Reform in Queensland

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Additional Submission to Youth Justice Reform  
Select Committee

28 February 2024

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## Introduction

1. On 12 October 2023 the Youth Justice Reform Select Committee (the **Select Committee**) was established to conduct an inquiry to examine ongoing reforms to the youth justice system and support for victims of crime.
2. The Queensland Human Rights Commission (the **Commission**) made a submission to the Select Committee on 15 November 2023, and the Human Rights Commissioner, Scott McDougall, gave evidence to the Select Committee on 24 November 2023.
3. This submission responds to the Select Committee's call for further submissions on identified priority areas. Rather than repeating evidence already provided to the Select Committee, in this submission the Commission provides:
  - a copy of another recent submission that the Commission has made to the Department of the Premier and Cabinet on a whole-of-government strategy for children, relevant to the first priority area
  - specific references to select documents issued by United Nations (**UN**) human rights expert bodies relevant to the priority areas, in particular a document issued by the Committee on the Rights of the Child (the **CRC**) concerning child justice systems.
4. As the body tasked with overseeing implementation of states' obligations under the Convention on the Rights of the Child, with experience across a wide range of countries and legal systems, the CRC is well placed to contribute to the Select Committee's understanding of how the human rights of all can best be protected and promoted in the priority areas identified.
5. Further background information about the Commission and the relevance of human rights to the Inquiry is provided further below at paragraphs [26]—[30].

## Human rights and guidance from UN Bodies

6. The *Human Rights Act 2019* (Qld) (the **Human Rights Act**) consolidates and establishes statutory protections for certain rights recognised under international law. In this Inquiry, the rights of victims of crime, children and young people, and those working in the youth justice system are particularly relevant (noting that some of these categories can overlap). The aim must be to maximise the rights of all involved in a way that is consistent with the Human Rights Act, read in light of Australia's international obligations.
7. Numerous rights protected under the Human Rights Act are important in this inquiry, including the right to life, security of the person, and to property of those potentially impacted by crime, and rights to equality, liberty, freedom from torture or ill-treatment, fair trial rights, cultural rights and access to education and health for children and young people. Given the Inquiry's focus on the Youth Justice system, two specific rights are particularly relevant:

- the rights that children have, without discrimination, to the protection that is needed by them as children, and that is in their best interests (s 26)
  - the specific rights of children in the criminal process (s 33).
8. To help States to fulfil their obligations to protect human rights, the core international human rights treaties establish committees made up of independent experts. These committees, known as Treaty Bodies, monitor implementation of a particular human rights treaty and give guidance to States, including through issuing official documents known as General Comments (or General Recommendations) which provide detailed consideration of how human rights apply and intersect in particular areas. The UN Human Rights Council also appoints independent human rights experts (including Special Rapporteurs) with mandates to report and advise on particular human rights.
  9. Official documents by UN Treaty Bodies and Special Rapporteurs can assist the Select Committee in its consideration of how rights protected under the Human Rights Act can best be implemented in the context of the Youth Justice system.

## General Comment on the child justice system (2019)

10. The CRC is a treaty body with particular expertise in the area the focus of this inquiry. It monitors implementation of the Convention on the Rights of the Child, which Australia signed in 1990. In 2019 the CRC issued *General Comment No. 24 on children's rights in the child justice system (General Comment No 24)*.<sup>1</sup> This touches on a number of issues relevant to the priority areas identified by the Select Committee.
11. General Comment No 24 explains the CRC's understanding of how children's rights can best be implemented while promoting public safety. Its insights are drawn from its review of practice across numerous states and experience in applying the Convention to individual complaints, and are informed by the views of States and non-governmental organisations during the drafting of the General Comment.<sup>2</sup> This General Comment replaces a previous document, from 2007, reflecting

the developments that have occurred since 2007 as a result of the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice.<sup>3</sup>

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<sup>1</sup> Committee on the Rights of the Child, 'General Comment No 24 on children's rights in the child justice system' (CRC/C/GC/24, 18 September 2019) (**General Comment No 24**).

<sup>2</sup> Including comments of the Australian Government: see Australian Government, 'Draft General Comment No. 24, replacing General Comment No. 10 on Children's rights in juvenile justice' (Submission, 2018), <<https://www.ohchr.org/Documents/HRBodies/CRC/GC10/Australia.docx>>.

<sup>3</sup> General Comment No 24, [1].

12. At the outset, General Comment No 24 notes that there are important reasons to approach child justice differently to the adult justice system:

Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.<sup>4</sup>

13. Like the Select Committee, the CRC recognises the importance of preserving public safety as a legitimate aim of the justice system.<sup>5</sup> It notes that an approach that respects the rights of children as enshrined in the Convention on the Rights of the Child (including always treating children in a manner consistent with the promotion of the child's sense of dignity and worth<sup>6</sup>) tends to be matched by a decrease in the prevalence of crime committed by children.<sup>7</sup>
14. A full copy of the CRC's *General Comment No 24 (2019) on children's rights in the child justice system* is attached as **Appendix A**. The remainder of the submission references specific sections relevant to identified priority areas.

## CRC statements relevant to identified priority areas

### 1. A whole of government strategy

***A 10-year strategy for youth justice in Queensland that engages all government agencies and community organisations which deliver services along the youth justice service continuum.***

15. General Comment No 24 places great emphasis on the need for early, coordinated, multidisciplinary responses to prevent and respond to children's involvement in the child justice system (see relevant extracts in next section, below).
16. The Commission is supportive of a long-term whole-of-government strategy that coordinates action between all relevant agencies relating to Youth Justice. However, such a strategy must be aligned with broader prevention and early intervention measures reaching children and young people as early as possible. In this respect any youth justice strategy must be fully aligned with, or part of, a broader government children's plan. We attach as **Appendix B** our recent submission to the Department of the Premier and Cabinet on its draft *Putting Queensland Kids First* strategy. In it, the Commission recommends, among other things, that any such strategy should
- establish mechanisms to ensure existing and future legislation, policies, and practices do not frustrate the objectives of the strategy

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<sup>4</sup> General Comment No 24, [2].

<sup>5</sup> General Comment No 24, [3].

<sup>6</sup> Convention on the Rights of the Child, art 40.

<sup>7</sup> General Comment No 24, [3].

- centre the role of human rights in underpinning responsibilities to children and families, and in providing minimum standards to be achieved
  - widen the scope of identified priorities to include maintaining engagement in schooling, addressing racism in schools, investing in schools to support strong cultural practices and a positive sense of cultural identity, and responding therapeutically to challenging behaviours
  - require the development of an implementation roadmap of immediate, medium-term, and long-term activities with clearly assigned responsibilities and timelines
  - establish outcomes and key indicators against which progress is measured
  - require publication of data on implementation in a coordinated and easily accessible format.
17. As previously raised in its submission to the Select Committee, the Commission also recommended in its submission on the draft *Putting Queensland Kids First* strategy that the Queensland Government appoint a Minister for Children and Families with a standalone department that has sufficient authority to coordinate strategies across multiple portfolios. This is necessary to ensure alignment and coordination between broader, universal prevention and intervention work, and targeted support arising out of direct involvement with the Youth Justice system.

## 2. Assessment, intervention and prevention strategies

### ***How to instigate earlier assessment, intervention and prevention strategies that support children and their families to access health, education, housing and other services.***

18. General Comment No 24 emphasises the importance of identifying root causes of children’s involvement in the criminal justice system, and gives guidance as to how early intervention and prevention strategies should be designed and delivered, including through diversion when children are above the age of criminal responsibility:

#### **A. Prevention of child offending, including early intervention directed at children below the minimum age of criminal responsibility**

9. States parties should consult the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and comparative national and international research on root causes of children’s involvement in the child justice system and undertake their own research to inform the development of a prevention strategy. **Research has demonstrated that intensive family- and community-based treatment programmes designed to make positive changes in aspects of the various social systems (home, school, community, peer relations) that contribute to the serious behavioural difficulties of children reduce the risk of children coming into child justice systems. Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of**



**parents are recommended. States parties should also develop community-based services and programmes that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.**

10. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the Convention requires States parties to provide the assistance to parents (or other caregivers) necessary to carry out their child-rearing responsibilities. **Investment in early childhood care and education correlates with lower rates of future violence and crime. This can commence when the child is very young, for example with home visitation programmes to enhance parenting capacity. Measures of assistance should draw on the wealth of information on community and family-based prevention programmes, such as programmes to improve parent-child interaction, partnerships with schools, positive peer association and cultural and leisure activities.**

11. Early intervention for children who are below the minimum age of criminal responsibility requires **child-friendly and multidisciplinary responses to the first signs of behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence.** Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience. **Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. As an absolute priority, children should be supported within their families and communities.** In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.

...

### **Interventions for children above the minimum age of criminal responsibility**

13. Under article 40 (3) (b) of the Convention, States parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, whenever appropriate. In practice, the measures generally fall into two categories:

- (a) Measures referring children away from the judicial system, any time prior to or during the relevant proceedings (diversion);
- (b) Measures in the context of judicial proceedings.

14. The Committee reminds States parties that, in applying measures under both categories of intervention, utmost care should be taken to

ensure that the child's human rights and legal safeguards are fully respected and protected.

***Interventions that avoid resorting to judicial proceedings***

15. Measures dealing with children that avoid resorting to judicial proceedings have been introduced into many systems around the world, and are generally referred to as diversion. **Diversion involves the referral of matters away from the formal criminal justice system, usually to programmes or activities. In addition to avoiding stigmatization and criminal records, this approach yields good results for children, is congruent with public safety and has proved to be cost-effective.**

16. Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. **Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system, and, in accordance with art. 40 (3) (b) of the Convention, children's human rights and legal safeguards are to be fully respected and protected in all diversion processes and programmes**

17. It is left to the discretion of States parties to decide on the exact nature and content of measures of diversion, and to take the necessary legislative and other measures for their implementation. The Committee takes note that a variety of community-based programmes have been developed, such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims.

...

***Interventions in the context of judicial proceedings (disposition)***

19. When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial are applicable (see section D below). **The child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centres, and the possibility of early release from detention.**

...

**Children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders or disabilities**

28. **Children with developmental delays or neurodevelopmental disorders or disabilities** (for example, autism spectrum disorders, fetal

alcohol spectrum disorders or acquired brain injuries) **should not be in the child justice system at all**, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.

### 3. Reimagining youth justice infrastructure

***Reimagining youth justice infrastructure, including best practice standard accommodation for children and young people who are detained, held on remand or transitioning from detention to the community.***

19. General Comment No 24 is clear that states should ‘immediately embark on a process to reduce reliance on detention to a minimum’ (at [83]), and draws states’ attention to the

2018 report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which the Special Rapporteur noted that the scale and magnitude of children’s suffering in detention and confinement called for a global commitment to the abolition of child prisons and large care institutions, alongside scaled-up investment in community-based services (A/HRC/38/36, para. 53).<sup>8</sup>

20. In that report, the Special Rapporteur on the right to health had stated:

63. Adolescence is a critical period of cognitive and emotional development, affecting the whole of adulthood. The Special Rapporteur remains deeply concerned about how punitive responses to youth violence affect adolescent health and development. Criminalization and incarceration have increased, despite the evidence that public-health approaches deliver better results. In reality, children held in penal institutions, including for acts of violence, are those whose early childhood needs and rights have not been fulfilled. International human rights law requires children to be treated in accordance with their age and best interests. Ensuring the full and harmonious development of children in society, from infancy to adolescence, is a core strategy for preventing youth crime.

64. Since the entry into force of the Convention on the Rights of the Child, neuroscience research has revealed that the brains of adolescents are still developing in many critical ways. This calls into serious question the rationale for punitive, closed environments and methods of control. Corporal punishment, humiliation, coercion and the denial of supportive environments that can ensure healthy, non-violent relationships and physical comfort can never elicit positive, long-term change in a child’s behaviour.

...

68. Coping mechanisms employed by stressed and desperate children, which include assaults against themselves and others, are perceived by society and judicial and welfare systems as acts that are self-harming, anti-

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<sup>8</sup> General Comment No 24, [82].

social and/or violent. The harm inflicted by institutions themselves too often goes unacknowledged.

69. There can be no hesitation in concluding that the act of detaining children is a form of violence. The Convention on the Rights of the Child prohibits the use of detention as a default strategy. Looking forward, a child rights-based strategy must strengthen even further the presumption against detention of children with a view to abolition.<sup>9</sup>

21. In relation to ‘the minority of cases where deprivation of liberty is deemed necessary’, General Comment No 24 sets out minimum standards applicable to the detention of children and young people as established in the *Convention on the Rights of the Child* and other UN documents (at [92]–[95]).
22. In terms of infrastructure design for these limited cases, the Council of Europe’s European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment<sup>10</sup> has also stated that

all detained juveniles who are suspected or convicted of a criminal offence should be held in detention centres specifically designed for persons of this age, offering a non-prison-like environment and regimes tailored to their needs and staffed by persons trained in dealing with the young. ... [T]he Committee has visited a number of juvenile establishments in several countries, which are indeed juvenile-centred and based on the concept of living units. These establishments are composed of small well-staffed units, each comprising a limited number of single rooms (usually no more than ten) as well as a communal area. Juveniles are provided with a range of purposeful activities throughout the day, and staff promote a sense of community within the unit. The CPT considers that this type of centre represents a model for holding detained juveniles in all European countries.<sup>11</sup>

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<sup>9</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (A/HRC/38/36, 10 April 2018) (internal citations omitted).

<sup>10</sup> The European Committee is not a UN body. It was established under the Council of Europe’s *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* in 1989, and conducts visits to places of detention, in order to assess how persons deprived of their liberty are treated.

<sup>11</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Juveniles Deprived of Their Liberty under Criminal Legislation*, CPT/Inf(2015)1-Part Rev1 (2015) [101]. See also Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez’ (A/HRC/28/68, 5 March 2015), [76]: ‘Children in conflict with the law should be held in detention centres specifically designed for persons under the age of 18 years, offering a non-prison-like environment and regimes tailored to their needs and run by specialized staff, trained in dealing with children’.

## 5. The current operation of the *Youth Justice Act 1992*

### ***The current operation of the Youth Justice Act 1992, including sentencing principles, the criteria for serious repeat offender declarations and traffic offences.***

23. In relation to sentencing of children, General Comment No 24 states:

73. ... The laws should contain a wide variety of non-custodial measures and should expressly prioritize the use of such measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time.

74. A wide range of experience with the use and implementation of non-custodial measures, including restorative justice measures, exists. States parties should benefit from this experience, and develop and implement such measures by adjusting them to their own culture and tradition. Measures amounting to forced labour or to torture or inhuman and degrading treatment are to be explicitly prohibited and penalized.

...

76. The Committee emphasizes that the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society.

77. Recognizing the harm caused to children and adolescents by deprivation of liberty, and its negative effects on their prospects for successful reintegration, the Committee recommends that States parties set a maximum penalty for children accused of crimes that reflects the principle of the "shortest appropriate period of time" (Convention on the Rights of the Child, art. 37 (b)).

78. Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede proper application of international standards.

24. Not specifically covered by the operation of the *Youth Justice Act 1992*, but relevant to how it operates in practice, the CRC also encourages States to increase their minimum age of criminal responsibility to at least 14, and

commends states that have higher minimum ages of criminal responsibility, such as 15 or 16:

22. Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.

## 6. Strengthening public confidence in the youth justice system

***How to strengthen public confidence in the youth justice system, including by: (a) examining the impact of social media and traditional news media on youth offending and community perceptions of safety (b) improving the way data on youth crime is communicated to the public***

25. In relation to this priority issue, General Comment No 24 states:

111. Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and “three strikes” approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.

## About the Queensland Human Rights Commission

26. The Commission is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* and the Human Rights Act, which include:
- dealing with complaints of discrimination, sexual harassment, vilification, reprisal (under the *Public Interest Disclosure Act 2010*), and contraventions of the Human Rights Act
  - reviewing public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights
  - promoting an understanding, acceptance, and public discussion of human rights and the Human Rights Act in Queensland
  - providing education about human rights and the Human Rights Act.
27. In carrying out these functions, the Commission gives detailed consideration to human rights issues arising in the Youth Justice system for offenders, victims, and the community.

## The relevance of human rights to this inquiry

28. Human rights are rights inherent to all human beings. By promoting respect for human rights, we recognise the dignity and worth of all people. Australia has signed a number of treaties under which it is legally obliged to respect, protect, and fulfil certain recognised human rights, and to provide remedies where those rights are violated. These treaties include the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social, and Cultural Rights*, the *Convention on the Rights of the Child*, and the *Convention on the Rights of Persons with Disabilities*. However, a treaty only becomes a direct source of individual rights and obligations in Australia once it is incorporated into domestic legislation.
29. The Human Rights Act consolidates and establishes statutory protections for certain rights recognised under international law, including those drawn from the treaties referred to above. The Human Rights Act places obligations on all three arms of government, the legislature, the judiciary and the executive. This means that:
- Parliament (the legislature) must consider human rights when proposing and scrutinising new laws.
  - Courts and tribunals (the judiciary) so far as is possible to do so, must interpret legislation in a way that is compatible with human rights.
  - Public entities (the executive) – such as state government departments, local councils, state schools, the police and non-government organisations and businesses performing a public function must act compatibly with human rights.

30. The Human Rights Act makes it clear that rights can be limited, but only where it is reasonable and justifiable.<sup>12</sup> It specifies that international law and the judgments of domestic, foreign and international courts and tribunals relevant to a human rights may be considered in interpreting the Act.<sup>13</sup> In this Inquiry, the rights of victims of crime, children and young people, and those working in the youth justice system are particularly relevant (noting that some of these categories can overlap). The aim must be to maximise the rights of all involved in a way that is consistent with Australia's international obligations. Relevant rights include:

- Right to recognition and equality before the law (section 15)
- Right to life (section 16)
- Right to protection from torture and cruel, inhuman or degrading treatment (section 17)
- Property rights (section 24)
- Right to privacy and reputation (section 25)
- Protection of families and children (section 26)
- Cultural rights – generally (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Right to liberty and security of person (section 29)
- Right to humane treatment when deprived of liberty (section 30)
- Right to a fair hearing (section 31)
- Rights in criminal proceedings (section 32)
- Rights of children in the criminal process (section 33)
- Right to education (section 36)
- Right to health services (section 37)

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<sup>12</sup> Although under Australia's treaty obligations there are some rights that it is never considered reasonable or justified to limit – such as the prohibition against torture and other ill-treatment.

<sup>13</sup> *Human Rights Act 2019* (Qld), s 48(3).



## Appendix A

Committee on the Rights of the Child, 'General Comment No. 24 on children's rights in the child justice system' (2019)



**Convention on the  
Rights of the Child**

Distr.: General  
18 September 2019

Original: English

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**Committee on the Rights of the Child**


**General comment No. 24 (2019) on children's rights in the  
child justice system**

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\* Reissued for technical reasons on 11 November 2019.

GE.19-15961(E)

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## I. Introduction

1. The present general comment replaces general comment No. 10 (2007) on children's rights in juvenile justice. It reflects the developments that have occurred since 2007 as a result of the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice. It also reflects concerns such as the trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty. The general comment covers specific issues, such as issues relating to children recruited and used by non-State armed groups, including those designated as terrorist groups, and children in customary, indigenous or other non-State justice systems.

2. Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.

3. The Committee acknowledges that preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the Rights of the Child. As the Convention clearly states in article 40, every child alleged as, accused of or recognized as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.

4. The Committee welcomes the many efforts made to establish child justice systems in compliance with the Convention. Those States having provisions that are more conducive to the rights of children than those contained in the Convention and the present general comment are commended, and reminded that, in accordance with article 41 of the Convention, they should not take any retrogressive steps. State party reports indicate that many States parties still require significant investment to achieve full compliance with the Convention, particularly regarding prevention, early intervention, the development and implementation of diversion measures, a multidisciplinary approach, the minimum age of criminal responsibility and the reduction of deprivation of liberty. The Committee draws States' attention to the report of the Independent Expert leading the United Nations global study on children deprived of their liberty (A/74/136), submitted pursuant to General Assembly resolution 69/157, which had been initiated by the Committee.

5. In the past decade, several declarations and guidelines that promote access to justice and child-friendly justice have been adopted by international and regional bodies. These frameworks cover children in all aspects of the justice systems, including child victims and witnesses of crime, children in welfare proceedings and children before administrative tribunals. These developments, valuable though they are, fall outside of the scope of the present general comment, which is focused on children alleged as, accused of or recognized as having infringed criminal law.

## II. Objectives and scope

6. The objectives and scope of the present general comment are:

(a) To provide a contemporary consideration of the relevant articles and principles in the Convention on the Rights of the Child, and to guide States towards a holistic implementation of child justice systems that promote and protect children's rights;

(b) To reiterate the importance of prevention and early intervention, and of protecting children's rights at all stages of the system;

(c) To promote key strategies for reducing the especially harmful effects of contact with the criminal justice system, in line with increased knowledge about children's development, in particular:

- (i) Setting an appropriate minimum age of criminal responsibility and ensuring the appropriate treatment of children on either side of that age;
  - (ii) Scaling up the diversion of children away from formal justice processes and to effective programmes;
  - (iii) Expanding the use of non-custodial measures to ensure that detention of children is a measure of last resort;
  - (iv) Ending the use of corporal punishment, capital punishment and life sentences;
  - (v) For the few situations where deprivation of liberty is justified as a last resort, ensuring that its application is for older children only, is strictly time limited and is subject to regular review;
- (d) To promote the strengthening of systems through improved organization, capacity-building, data collection, evaluation and research;
- (e) To provide guidance on new developments in the field, in particular the recruitment and use of children by non-State armed groups, including those designated as terrorist groups, and children coming into contact with customary, indigenous and non-State justice systems.

### III. Terminology

7. The Committee encourages the use of non-stigmatizing language relating to children alleged as, accused of or recognized as having infringed criminal law.
8. Important terms used in the present general comment are listed below:
- Appropriate adult: in situations where the parent or legal guardian is not available to assist the child, States parties should allow for an appropriate adult to assist the child. An appropriate adult may be a person who is nominated by the child and/or by the competent authority.
  - Child justice system:<sup>1</sup> the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders.
  - Deprivation of liberty: any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.<sup>2</sup>
  - Diversion: measures for referring children away from the judicial system, at any time prior to or during the relevant proceedings.
  - Minimum age of criminal responsibility: the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.
  - Pretrial detention: detention from the moment of the arrest to the stage of the disposition or sentence, including detention throughout the trial.
  - Restorative justice: any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing, conciliation and sentencing circles.<sup>3</sup>

<sup>1</sup> In the English version of the present general comment, the term “child justice system” is used in place of “juvenile justice”.

<sup>2</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), art. 11 (b).

<sup>3</sup> Basic principles on the use of restorative justice programmes in criminal matters, para. 2.

## **IV. Core elements of a comprehensive child justice policy**

### **A. Prevention of child offending, including early intervention directed at children below the minimum age of criminal responsibility**

9. States parties should consult the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and comparative national and international research on root causes of children's involvement in the child justice system and undertake their own research to inform the development of a prevention strategy. Research has demonstrated that intensive family- and community-based treatment programmes designed to make positive changes in aspects of the various social systems (home, school, community, peer relations) that contribute to the serious behavioural difficulties of children reduce the risk of children coming into child justice systems. Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of parents are recommended. States parties should also develop community-based services and programmes that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.

10. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the Convention requires States parties to provide the assistance to parents (or other caregivers) necessary to carry out their child-rearing responsibilities. Investment in early childhood care and education correlates with lower rates of future violence and crime. This can commence when the child is very young, for example with home visitation programmes to enhance parenting capacity. Measures of assistance should draw on the wealth of information on community and family-based prevention programmes, such as programmes to improve parent-child interaction, partnerships with schools, positive peer association and cultural and leisure activities.

11. Early intervention for children who are below the minimum age of criminal responsibility requires child-friendly and multidisciplinary responses to the first signs of behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence. Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience. Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. As an absolute priority, children should be supported within their families and communities. In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.

12. A systemic approach to prevention also includes closing pathways into the child justice system through the decriminalization of minor offences such as school absence, running away, begging or trespassing, which often are the result of poverty, homelessness or family violence. Child victims of sexual exploitation and adolescents who engage with one another in consensual sexual acts are also sometimes criminalized. These acts, also known as status offences, are not considered crimes if committed by adults. The Committee urges States parties to remove status offences from their statutes.

## **B. Interventions for children above the minimum age of criminal responsibility<sup>4</sup>**

13. Under article 40 (3) (b) of the Convention, States parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, whenever appropriate. In practice, the measures generally fall into two categories:

(a) Measures referring children away from the judicial system, any time prior to or during the relevant proceedings (diversion);

(b) Measures in the context of judicial proceedings.

14. The Committee reminds States parties that, in applying measures under both categories of intervention, utmost care should be taken to ensure that the child's human rights and legal safeguards are fully respected and protected.

### **Interventions that avoid resorting to judicial proceedings**

15. Measures dealing with children that avoid resorting to judicial proceedings have been introduced into many systems around the world, and are generally referred to as diversion. Diversion involves the referral of matters away from the formal criminal justice system, usually to programmes or activities. In addition to avoiding stigmatization and criminal records, this approach yields good results for children, is congruent with public safety and has proved to be cost-effective.

16. Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system, and, in accordance with art. 40 (3) (b) of the Convention, children's human rights and legal safeguards are to be fully respected and protected in all diversion processes and programmes.

17. It is left to the discretion of States parties to decide on the exact nature and content of measures of diversion, and to take the necessary legislative and other measures for their implementation. The Committee takes note that a variety of community-based programmes have been developed, such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims.

18. The Committee emphasizes the following:

(a) Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding;

(b) The child's free and voluntary consent to diversion should be based on adequate and specific information on the nature, content and duration of the measure, and on an understanding of the consequences of a failure to cooperate or complete the measure;

(c) The law should indicate the cases in which diversion is possible, and the relevant decisions of the police, prosecutors and/or other agencies should be regulated and reviewable. All State officials and actors participating in the diversion process should receive the necessary training and support;

(d) The child is to be given the opportunity to seek legal or other appropriate assistance relating to the diversion offered by the competent authorities, and the possibility of review of the measure;

(e) Diversion measures should not include the deprivation of liberty;

<sup>4</sup> See also section IV.E below.

(f) The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records.

### **Interventions in the context of judicial proceedings (disposition)**

19. When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial are applicable (see section D below). The child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centres, and the possibility of early release from detention.

## **C. Age and child justice systems**

### **Minimum age of criminal responsibility**

20. Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years can be formally charged and subjected to child justice procedures, in full compliance with the Convention. The Committee reminds States parties that the relevant age is the age at the time of the commission of the offence.

21. Under article 40 (3) of the Convention, States parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the Convention, and the most common minimum age of criminal responsibility internationally is 14. Nevertheless, reports submitted by States parties indicate that some States retain an unacceptably low minimum age of criminal responsibility.

22. Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.

23. The Committee recognizes that although the setting of a minimum age of criminal responsibility at a reasonably high level is important, an effective approach also depends on how each State deals with children above and below that age. The Committee will continue to scrutinize this in reviews of State party reports. Children below the minimum age of criminal responsibility are to be provided with assistance and services according to their needs, by the appropriate authorities, and should not be viewed as children who have committed criminal offences.

24. If there is no proof of age and it cannot be established that the child is below or above the minimum age of criminal responsibility, the child is to be given the benefit of the doubt and is not to be held criminally responsible.

### **Systems with exceptions to the minimum age**

25. The Committee is concerned about practices that permit the use of a lower minimum age of criminal responsibility in cases where, for example, the child is accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children's development. The Committee strongly recommends that States parties abolish such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception.

### **Systems with two minimum ages**

26. Several States parties apply two minimum ages of criminal responsibility (for example, 7 and 14 years), with a presumption that a child who is at or above the lower age but below the higher age lacks criminal responsibility unless sufficient maturity is demonstrated. Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualized assessment of criminal responsibility, the Committee has observed that this leaves much to the discretion of the court and results in discriminatory practices.

27. States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.

### **Children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders or disabilities**

28. Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.

### **Application of the child justice system**

29. The child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offence.

30. The Committee recommends that those States parties that limit the applicability of their child justice system to children under the age of 16 years (or lower), or that allow by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence (see also general comment No. 20, para. 88).

31. Child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.

32. The Committee commends States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties.

### **Birth certificates and age determination**

33. A child who does not have a birth certificate should be provided with one promptly and free of charge by the State, whenever it is required to prove age. If there is no proof of age by birth certificate, the authority should accept all documentation that can prove age, such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports. Documents should be considered genuine unless there is proof to the contrary. Authorities should allow for interviews with or testimony by parents regarding age, or for permitting affirmations to be filed by teachers or religious or community leaders who know the age of the child.



34. Only if these measures prove unsuccessful may there be an assessment of the child's physical and psychological development, conducted by specialist pediatricians or other professionals skilled in evaluating different aspects of development. Such assessments should be carried out in a prompt, child- and gender-sensitive and culturally appropriate manner, including interviews of children and parents or caregivers in a language the child understands. States should refrain from using only medical methods based on, inter alia, bone and dental analysis, which is often inaccurate, due to wide margins of error, and can also be traumatic. The least invasive method of assessment should be applied. In the case of inconclusive evidence, the child or young person is to have the benefit of the doubt.

#### **Continuation of child justice measures**

35. The Committee recommends that children who turn 18 before completing a diversion programme or non-custodial or custodial measure be permitted to complete the programme, measure or sentence, and not be sent to centres for adults.

#### **Offences committed before and after 18 years and offences committed with adults**

36. In cases where a young person commits several offences, some occurring before and some after the age of 18 years, States parties should consider providing for procedural rules that allow the child justice system to be applied in respect of all the offences when there are reasonable grounds to do so.

37. In cases where a child commits an offence together with one or more adults, the rules of the child justice system applies to the child, whether they are tried jointly or separately.

### **D. Guarantees for a fair trial**

38. Article 40 (2) of the Convention contains an important list of rights and guarantees aimed at ensuring that every child receives fair treatment and trial (see also article 14 of the International Covenant on Civil and Political Rights). It should be noted that these are minimum standards. States parties can and should try to establish and observe higher standards.

39. The Committee emphasizes that continuous and systematic training of professionals in the child justice system is crucial to uphold those guarantees. Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.

40. Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress. In particular, gender-sensitive attention should be paid to girls and to children who are discriminated against on the basis of sexual orientation or gender identity. Accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony.

41. States parties should enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and the taking of evidentiary samples. Records should be kept on the location and condition of the child in all phases and processes.

#### **No retroactive application of child justice (art. 40 (2) (a))**

42. No child shall be held guilty of any criminal offence that did not constitute a criminal offence, under national or international law, at the time it was committed. States parties that expand their criminal law provisions to prevent and combat terrorism should ensure that those changes do not result in the retroactive or unintended punishment of children. No child should

be punished with a heavier penalty than the one applicable at the time of the offence, but if a change of law after the offence provides for a lighter penalty, the child should benefit.

**Presumption of innocence (art. 40 (2) (b) (i))**

43. The presumption of innocence requires that the burden of proof of the charge is on the prosecution, regardless of the nature of the offence. The child has the benefit of the doubt and is guilty only if the charges have been proved beyond reasonable doubt. Suspicious behaviour on the part of the child should not lead to assumptions of guilt, as it may be due to a lack of understanding of the process, immaturity, fear or other reasons.

**Right to be heard (art. 12)**

44. In paragraphs 57 to 64 of general comment No. 12 (2009) on the right of the child to be heard, the Committee explained the fundamental right of the child to be heard in the context of child justice.

45. Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.

**Effective participation in the proceedings (art. 40 (2) (b) (iv))**

46. A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge. Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Developments in child-friendly justice provide an impetus towards child-friendly language at all stages, child-friendly layouts of interviewing spaces and courts, support by appropriate adults, removal of intimidating legal attire and adaptation of proceedings, including accommodation for children with disabilities.

**Prompt and direct information of the charge(s) (art. 40 (2) (b) (ii))**

47. Every child has the right to be informed promptly and directly (or where appropriate through his or her parent or guardian) of the charges brought against him or her. Promptly means as soon as possible after the first contact of the child with the justice system. Notification of parents should not be neglected on the grounds of convenience or resources. Children who are diverted at the charge stage need to understand their legal options, and legal safeguards should be fully respected.

48. Authorities should ensure that the child understands the charges, options and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons.

**Legal or other appropriate assistance (art. 40 (2) (b) (ii))**

49. States should ensure that the child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted. The Committee requests States parties to withdraw any reservation made in respect of article 40 (2) (b) (ii).

50. The Committee remains concerned that many children face criminal charges before judicial, administrative or other public authorities, and are deprived of liberty, without having the benefit of legal representation. The Committee notes that in article 14 (3) (d) of the International Covenant on Civil and Political Rights, the right to legal representation is a

minimum guarantee in the criminal justice system for all persons, and this should equally apply to children. While the article allows the person to defend himself or herself in person, in any case where the interests of justice so require the person is to be assigned legal assistance.

51. In the light of the above, the Committee is concerned that children are provided less protection than international law guarantees for adults. The Committee recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities. Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.

52. If children are diverted to programmes or are in a system that does not result in convictions, criminal records or deprivation of liberty, “other appropriate assistance” by well-trained officers may be an acceptable form of assistance, although States that can provide legal representation for children during all processes should do so, in accordance with article 41. Where other appropriate assistance is permissible, the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.

53. As required under article 14 (3) (b) of the International Covenant on Civil and Political Rights, there is to be adequate time and facilities for the preparation of the defence. Under the Convention on the Rights of the Child, the confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed (art. 40 (2) (b) (vii)), and the child’s right of protection against interference with his or her privacy and correspondence is to be respected (art. 16).

#### **Decisions without delay and with the involvement of parents or guardians (art. 40 (2) (b) (iii))**

54. The Committee reiterates that the time between the commission of the offence and the conclusion of proceedings should be as short as possible. The longer this period, the more likely it is that the response loses its desired outcome.

55. The Committee recommends that States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to institute charges, and the final decision by the court or other judicial body. These time limits should be much shorter than those set for adults, but should still allow legal safeguards to be fully respected. Similar speedy time limits should apply to diversion measures.

56. Parents or legal guardians should be present throughout the proceedings. However, the judge or competent authority may decide to limit, restrict or exclude their presence in the proceedings, at the request of the child or of his or her legal or other appropriate assistant or because it is not in the child’s best interests.

57. The Committee recommends that States parties explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes. The Committee also recognizes that many children are informally living with relatives who are neither parents nor legal guardians, and that laws should be adapted to allow genuine caregivers to assist children in proceedings, if parents are unavailable.

#### **Freedom from compulsory self-incrimination (art. 40 (2) (b) (iv))**

58. States parties must ensure that a child is not compelled to give testimony or to confess or acknowledge guilt. The commission of acts of torture or cruel, inhuman or degrading treatment in order to extract an admission or confession constitutes a grave violation of the child’s rights (Convention on the Rights of the Child, art. 37 (a)). Any such admission or confession is inadmissible as evidence (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15).

59. Coercion leading a child to a confession or self-incriminatory testimony is impermissible. The term “compelled” should be interpreted broadly and not be limited to

physical force. The risk of false confession is increased by the child's age and development, lack of understanding, and fear of unknown consequences, including a suggested possibility of imprisonment, as well as by the length and circumstances of the questioning.

60. The child must have access to legal or other appropriate assistance, and should be supported by a parent, legal guardian or other appropriate adult during questioning. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, should take all factors into account, including the child's age and maturity, the length of questioning or custody and the presence of legal or other independent assistance and of the parent(s), guardian or appropriate adult. Police officers and other investigating authorities should be well trained to avoid questioning techniques and practices that result in coerced or unreliable confessions or testimonies, and audiovisual techniques should be used where possible.

**Presence and examination of witnesses (art. 40 (2) (b) (iv))**

61. Children have the right to examine witnesses who testify against them and to involve witnesses to support their defence, and child justice processes should favour the child's participation, under conditions of equality, with legal assistance.

**Right of review or appeal (art. 40 (2) (b) (v))**

62. The child has the right to have any finding of guilt or the measures imposed reviewed by a higher competent, independent and impartial authority or judicial body. This right of review is not limited to the most serious offences. States parties should consider introducing automatic measures of review, particularly in cases that result in criminal records or deprivation of liberty. Furthermore, access to justice requires a broader interpretation, allowing reviews or appeals on any procedural or substantive misdirection, and ensuring that effective remedies are available.<sup>5</sup>

63. The Committee recommends that States parties withdraw any reservation made in respect of article 40 (2) (b) (v).

**Free assistance of an interpreter (art. 40 (2) (b) (vi))**

64. A child who cannot understand or speak the language used in the child justice system has the right to the free assistance of an interpreter at all stages of the process. Such interpreters should be trained to work with children.

65. States parties should provide adequate and effective assistance by well-trained professionals to children who experience communication barriers.

**Full respect of privacy (arts. 16 and 40 (2) (b) (vii))**

66. The right of a child to have his or her privacy fully respected during all stages of the proceedings, set out in article 40 (2) (b) (vii), should be read with articles 16 and 40 (1).

67. States parties should respect the rule that child justice hearings are to be conducted behind closed doors. Exceptions should be very limited and clearly stated in the law. If the verdict and/or sentence is pronounced in public at a court session, the identity of the child should not be revealed. Furthermore, the right to privacy also means that the court files and records of children should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case.

68. Case-law reports relating to children should be anonymous, and such reports placed online should adhere to this rule.

69. The Committee recommends that States refrain from listing the details of any child, or person who was a child at the time of the commission of the offence, in any public register of offenders. The inclusion of such details in other registers that are not public but impede access to opportunities for reintegration should be avoided.

<sup>5</sup> Human Rights Council resolution 25/6.

70. In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.

71. Furthermore, the Committee recommends that States parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review.

## **E. Measures<sup>6</sup>**

### **Diversion throughout the proceedings**

72. The decision to bring a child into the justice system does not mean the child must go through a formal court process. In line with the observations made above in section IV.B, the Committee emphasizes that the competent authorities – in most States the public prosecutor – should continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures. In other words, diversion options should be offered from the earliest point of contact, before a trial commences, and be available throughout the proceedings. In the process of offering diversion, the child's human rights and legal safeguards should be fully respected, bearing in mind that the nature and duration of diversion measures may be demanding, and that legal or other appropriate assistance is therefore necessary. Diversion should be presented to the child as a way to suspend the formal court process, which will be terminated if the diversion programme is carried out in a satisfactory manner.

### **Dispositions by the child justice court**

73. After proceedings in full compliance with article 40 of Convention are conducted (see section IV.D above), a decision on dispositions is made. The laws should contain a wide variety of non-custodial measures and should expressly prioritize the use of such measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time.

74. A wide range of experience with the use and implementation of non-custodial measures, including restorative justice measures, exists. States parties should benefit from this experience, and develop and implement such measures by adjusting them to their own culture and tradition. Measures amounting to forced labour or to torture or inhuman and degrading treatment are to be explicitly prohibited and penalized.

75. The Committee reiterates that corporal punishment as a sanction is a violation of article 37 (a) of the Convention, which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment).

76. The Committee emphasizes that the reaction to an offence should always be proportionate not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs, including, if appropriate, the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society.

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<sup>6</sup> See also section IV.B above.

77. Recognizing the harm caused to children and adolescents by deprivation of liberty, and its negative effects on their prospects for successful reintegration, the Committee recommends that States parties set a maximum penalty for children accused of crimes that reflects the principle of the “shortest appropriate period of time” (Convention on the Rights of the Child, art. 37 (b)).

78. Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede proper application of international standards.

#### **Prohibition of the death penalty**

79. Article 37 (a) of the Convention reflects the customary international law prohibition of the imposition of the death penalty for a crime committed by a person who is under 18 years of age. A few States parties assume that the rule prohibits only the execution of persons who are below the age of 18 years at the time of execution. Other States defer the execution until the age of 18. The Committee reiterates that the explicit and decisive criterion is the age at the time of the commission of the offence. If there is no reliable and conclusive proof that the person was below the age of 18 at the time the crime was committed, he or she should have the benefit of the doubt and the death penalty cannot be imposed.

80. The Committee calls upon the few States parties that have not yet abolished the imposition of the death penalty for all offences committed by persons below the age of 18 years to do so urgently and without exceptions. Any death penalty imposed on a person who was below the age of 18 at the time of the commission of the offence should be commuted to a sanction that is in full conformity with Convention.

#### **No life imprisonment without parole**

81. No child who was below the age of 18 at the time he or she committed an offence should be sentenced to life imprisonment without the possibility of release or parole. The period to be served before consideration of parole should be substantially shorter than that for adults and should be realistic, and the possibility of parole should be regularly reconsidered. The Committee reminds States parties that sentence children to life imprisonment with the possibility of release or parole that in applying this sanction they should strive for the realization of the aims of article 40 (1) of the Convention. This means, inter alia, that a child sentenced to life imprisonment should receive education, treatment and care aiming at his or her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child’s development and progress in order to decide on his or her possible release. Life imprisonment makes it very difficult, if not impossible, to achieve the aims of reintegration. The Committee notes the 2015 report in which the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment finds that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child (A/HRC/28/68, para. 74). The Committee strongly recommends that States parties abolish all forms of life imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence.

### **F. Deprivation of liberty, including pretrial detention and post-trial incarceration**

82. Article 37 of the Convention contains important principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty and provisions concerning the treatment of and conditions for children deprived of their liberty. The Committee draws the attention of States parties to the 2018 report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which the Special Rapporteur noted that the scale and magnitude of children’s suffering in

detention and confinement called for a global commitment to the abolition of child prisons and large care institutions, alongside scaled-up investment in community-based services (A/HRC/38/36, para. 53).

83. States parties should immediately embark on a process to reduce reliance on detention to a minimum.

84. Nothing in the present general comment should be construed as promoting or supporting the use of deprivation of liberty, but rather as providing correct procedures and conditions in the minority of cases where deprivation of liberty is deemed necessary.

### **Leading principles**

85. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time; and (b) no child is to be deprived of his or her liberty unlawfully or arbitrarily. Arrest is often the starting point of pretrial detention, and States should ensure that the law places clear obligations on law enforcement officers to apply article 37 in the context of arrest. States should further ensure that children are not held in transportation or in police cells, except as a measure of last resort and for the shortest period of time, and that they are not held with adults, except where that is in their best interests. Mechanisms for swift release to parents or appropriate adults should be prioritized.

86. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of the Convention. Pretrial detention should not be used except in the most serious cases, and even then only after community placement has been carefully considered. Diversion at the pretrial stage reduces the use of detention, but even where the child is to be tried in the child justice system, non-custodial measures should be carefully targeted to restrict the use of pretrial detention.

87. The law should clearly state the criteria for the use of pretrial detention, which should be primarily for ensuring appearance at the court proceedings and if the child poses an immediate danger to others. If the child is considered a danger (to himself or herself or others) child protection measures should be applied. Pretrial detention should be subject to regular review and its duration limited by law. All actors in the child justice system should prioritize cases of children in pretrial detention.

88. In application of the principle that deprivation of liberty should be imposed for the shortest appropriate period of time, States parties should provide regular opportunities to permit early release from custody, including police custody, into the care of parents or other appropriate adults. There should be discretion to release with or without conditions, such as reporting to an authorized person or place. The payment of monetary bail should not be a requirement, as most children cannot pay and because it discriminates against poor and marginalized families. Furthermore, where bail is set it means that there is a recognition in principle by the court that the child should be released, and other mechanisms can be used to secure attendance.

### **Procedural rights (art. 37 (d))**

89. Every child deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. The Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age.

90. Every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation. The Committee also recommends that States parties ensure that pretrial detention is reviewed regularly with a view to ending it. In cases where conditional release

of the child at or before the first appearance (within 24 hours) is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body for the case to be dealt with as soon as possible but not later than 30 days after pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings many times and/or for long periods, urges States parties to adopt maximum limits for the number and length of postponements and introduce legal or administrative provisions to ensure that the court or other competent body makes a final decision on the charges not later than six months from the initial date of detention, failing which the child should be released.

91. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal court decisions, but also the right of access to a court for review of an administrative decision (taken by, for example, the police, the prosecutor and other competent authorities). States parties should set short time limits for the finalization of appeals and reviews to ensure prompt decisions, as required by the Convention.

#### **Treatment and conditions (art. 37 (c))**

92. Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – “unless it is considered in the child’s best interests not to do so” – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.

93. The above rule does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility.

94. Every child deprived of liberty has the right to maintain contact with his or her family through correspondence and visits. To facilitate visits, the child should be placed in a facility as close as possible to his or her family’s place of residence. Exceptional circumstances that may limit this contact should be clearly described in law and not be left to the discretion of the authorities.

95. The Committee emphasizes that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

- (a) Incommunicado detention is not permitted for persons below the age of 18;
- (b) Children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement. Due regard should be given to their needs for privacy, for sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities;
- (c) Every child has the right to education suited to his or her needs and abilities, including with regard to undertaking exams, and designed to prepare him or her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him or her for future employment;
- (d) Every child has the right to be examined by a physician or a health practitioner upon admission to the detention or correctional facility and is to receive adequate physical and mental health care throughout his or her stay in the facility, which should be provided, where possible, by the health facilities and services of the community;
- (e) The staff of the facility should promote and facilitate frequent contact by the child with the wider community, including communications with his or her family, friends and other persons, including representatives of reputable outside organizations, and the opportunity to visit his or her home and family. There is to be no restriction on the child’s ability to communicate confidentially and at any time with his or her lawyer or other assistant;



(f) Restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted. Restraint should not be used to secure compliance and should never involve deliberate infliction of pain. It is never to be used as a means of punishment. The use of restraint or force, including physical, mechanical and medical or pharmacological restraints, should be under close, direct and continuous control of a medical and/or psychological professional. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately. States should record, monitor and evaluate all incidents of restraint or use of force and ensure that it is reduced to a minimum;

(g) Any disciplinary measure is to be consistent with upholding the inherent dignity of the child and the fundamental objectives of institutional care. Disciplinary measures in violation of article 37 of the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, solitary confinement or any other punishment that may compromise the physical or mental health or well-being of the child concerned, and disciplinary measures should not deprive children of their basic rights, such as visits by legal representative, family contact, food, water, clothing, bedding, education, exercise or meaningful daily contact with others;

(h) Solitary confinement should not be used for a child. Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others. Where it is deemed necessary to hold a child separately, this should be done in the presence or under the close supervision of a suitably trained staff member, and the reasons and duration should be recorded;

(i) Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or any other proper independent authority, and to be informed of the response without delay. Children need to know their rights and to know about and have easy access to request and complaints mechanisms;

(j) Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting;

(k) States parties should ensure that there are no incentives to deprive children of their liberty and no opportunities for corruption regarding placement, or regarding the provision of goods and services or contact with family.

## **G. Specific issues**

### **Military courts and State security courts**

96. There is an emerging view that trials of civilians by military tribunals and State security courts contravene the non-derogable right to a fair trial by a competent, independent and impartial court. This is an even more concerning breach of rights for children, who should always be dealt with in specialized child justice systems. The Committee has raised concerns about this in several concluding observations.

### **Children recruited and used by non-State armed groups, including those designated as terrorist groups, and children charged in counter-terrorism contexts**

97. The United Nations has verified numerous cases of recruitment and exploitation of children by non-State armed groups, including those designated as terrorist groups, not only in conflict areas but also in non-conflict areas, including children's countries of origin and countries of transit or return.

98. When under the control of such groups, children may become victims of multiple forms of violations, such as conscription; military training; being used in hostilities and/or terrorist acts, including suicide attacks; being forced to carry out executions; being used as

human shields; abduction; sale; trafficking; sexual exploitation; child marriage; being used for the transport or sale of drugs; or being exploited to carry out dangerous tasks, such as spying, conducting surveillance, guarding checkpoints, conducting patrols or transporting military equipment. It has been reported that non-State armed groups and those designated as terrorist groups also force children to commit acts of violence against their own families or within their own communities to demonstrate loyalty and to discourage future defection.

99. The authorities of States parties face a number of challenges when dealing with these children. Some States parties have adopted a punitive approach with no or limited consideration of children's rights, resulting in lasting consequences for the development of the child and having a negative impact on the opportunities for social reintegration, which in turn may have serious consequences for the broader society. Often, these children are arrested, detained, prosecuted and put on trial for their actions in conflict areas and, to a lesser extent, also in their countries of origin or return.

100. The Committee draws the attention of States parties to Security Council resolution 2427 (2018). In the resolution, the Council stressed the need to establish standard operating procedures for the rapid handover of children associated or allegedly associated with all non-State armed groups, including those who committed acts of terrorism, to relevant civilian child protection actors. The Council emphasized that children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law. The Council also urged Member States to consider non-judicial measures as alternatives to prosecution and detention that were focused on reintegration, and called on them to apply due process for all children detained for association with armed forces and armed groups.

101. States parties should ensure that all children charged with offences, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the Convention, and should refrain from charging and prosecuting them for expressions of opinion or for mere association with a non-State armed group, including those designated as terrorist groups. In line with paragraph 88 of its general comment No. 20, the Committee further recommends that States parties adopt preventive interventions to tackle social factors and root causes, as well as social reintegration measures, including when implementing Security Council resolutions related to counter-terrorism, such as resolutions 1373 (2001), 2178 (2014), 2396 (2017) and 2427 (2018), and General Assembly resolution 72/284, in particular the recommendations contained in paragraph 18.

### **Customary, indigenous and non-State forms of justice**

102. Many children come into contact with plural justice systems that operate parallel to or on the margins of the formal justice system. These may include customary, tribal, indigenous or other justice systems. They may be more accessible than the formal mechanisms and have the advantage of quickly and relatively inexpensively proposing responses tailored to cultural specificities. Such systems can serve as an alternative to official proceedings against children, and are likely to contribute favourably to the change of cultural attitudes concerning children and justice.

103. There is an emerging consensus that reforms of justice sector programmes should be attentive to such systems. Considering the potential tension between State and non-State justice, in addition to concerns about procedural rights and risks of discrimination or marginalization, reforms should proceed in stages, with a methodology that involves a full understanding of the comparative systems concerned and that is acceptable to all stakeholders. Customary justice processes and outcomes should be aligned with constitutional law and with legal and procedural guarantees. It is important that unfair discrimination does not occur, if children committing similar crimes are being dealt with differently in parallel systems or forums.

104. The principles of the Convention should be infused into all justice mechanisms dealing with children, and States parties should ensure that the Convention is known and implemented. Restorative justice responses are often achievable through customary, indigenous or other non-State justice systems, and may provide opportunities for learning for

the formal child justice system. Furthermore, recognition of such justice systems can contribute to increased respect for the traditions of indigenous societies, which could have benefits for indigenous children. Interventions, strategies and reforms should be designed for specific contexts and the process should be driven by national actors.

## **V. Organization of the child justice system**

105. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of child justice.

106. A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

107. The Committee recommends that States parties establish child justice courts either as separate units or as part of existing courts. Where that is not feasible for practical reasons, States parties should ensure the appointment of specialized judges for dealing with cases concerning child justice.

108. Specialized services such as probation, counselling or supervision should be established together with specialized facilities, for example day treatment centres and, where necessary, small-scale facilities for residential care and treatment of children referred by the child justice system. Effective inter-agency coordination of the activities of all these specialized units, services and facilities should be continuously promoted.

109. In addition, individual assessments of children and a multidisciplinary approach are encouraged. Particular attention should be paid to specialized community-based services for children who are below the age of criminal responsibility, but who are assessed to be in need of support.

110. Non-governmental organizations can and do play an important role in child justice. The Committee therefore recommends that States parties seek the active involvement of such organizations in the development and implementation of their comprehensive child justice policy and, where appropriate, provide them with the necessary resources for this involvement.

## **VI. Awareness-raising and training**

111. Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and "three strikes" approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.

112. It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the

available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the possible use of new technologies such as video “court appearances”, while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.

## **VII. Data collection, evaluation and research**

113. The Committee urges States parties to systematically collect disaggregated data, including on the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children, the nature of the sanctions imposed on them and the number of children deprived of their liberty.

114. The Committee recommends that States parties ensure regular evaluations of their child justice systems, in particular of the effectiveness of the measures taken, and in relation to matters such as discrimination, reintegration and patterns of offending, preferably carried out by independent academic institutions.

115. It is important that children are involved in this evaluation and research, in particular those who are or who have previously had contact with the system, and that the evaluation and research are undertaken in line with existing international guidelines on the involvement of children in research.

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## Appendix B

Queensland Human Rights Commission, 'Putting Queensland Kids First: Consultation Draft' (Submission to Department of the Premier and Cabinet, 21 February 2024)



Queensland  
**Human Rights**  
Commission

# Putting Queensland Kids First: Consultation Draft

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Submission to Department of the Premier and  
Cabinet

21 February 2024

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## Introduction

1. In January 2024 the Queensland Government published *Putting Queensland Kids First Consultation Draft (the Plan)*, which outlines  

a vision that focuses on strengthening protective factors around children, young people and families to prevent adverse experiences through early interventions and prevention — starting early in life and targeting key transition points.
2. This submission responds to a call for ideas and reflections on the Plan. The Commission strongly supports the development of a whole-of-government strategy to strengthen protective factors for children, young people, and families in Queensland, and thanks the Government for the opportunity to provide its input.

## About the Commission

3. The Queensland Human Rights Commission (**Commission**) is an independent statutory authority with functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019 (Human Rights Act)*, which include:
  - dealing with complaints of discrimination, sexual harassment, vilification, reprisal (under the *Public Interest Disclosure Act 2010*), and contraventions of the Human Rights Act
  - reviewing public entities' policies, programs, procedures, practices and services in relation to their compatibility with human rights
  - promoting an understanding, acceptance, and public discussion of human rights and the Human Rights Act in Queensland
  - providing education about human rights and the Human Rights Act.
4. In carrying out these functions, the Commission gives detailed consideration to human rights issues arising in the youth justice system for offenders, victims, and the community.<sup>1</sup>
5. The Commission has consistently put forward the view that the best outcomes for young people and the community will be achieved by identifying risk factors that

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<sup>1</sup> This includes the use of watch houses for prolonged detention of children and young people, conducting visits to watchhouses and youth detention centres, collaborating with oversight agencies on issues affecting young people in the youth justice system, participating in the Queensland Legal Affairs and Safety Committee's *Inquiry into Support provided to Victims of Crime*, advocating for an independent review of Queensland state schools' high rates of disciplinary school absences, receiving complaints under the *Human Rights Act 2019 (Qld)* concerning education and detention of young people, intervening in court proceedings, engaging with the Productivity Commission in relation to the review of the National Agreement on Closing the Gap, and making submissions on proposed legislation related to the age of criminal responsibility and bail and sentencing laws. See further Queensland Human Rights Commission, Submission No 16 to Youth Justice Reform Select Committee, *Inquiry into youth justice reform in Queensland* (15 November 2023).



lead to youth crime and addressing them through early intervention. Accordingly, the Commission has prioritised work that relates to:

- access to education, especially the high levels of school disciplinary absences in Queensland in which children with disability, First Nations children, and children in out-of-home care are over-represented
- structural discrimination in service provision including health services, education, and law enforcement
- family support and the child safety system
- raising the age of criminal responsibility
- truth and treaty and accountability for Closing the Gap targets.

## Summary of submission

6. In this submission, the Commission addresses each of the consultation questions and comments on aspects of the draft Plan.

In summary, the Commission recommends that the Plan should:

- develop a clear vision co-designed with children, young people and their families
- more clearly express the Plan's purpose, scope, and relationship to legislation, policies, and practices in related areas (including youth justice)
- establish mechanisms to ensure existing and future legislation, policies, and practices do not frustrate the objectives of the Plan
- centre the role of human rights in underpinning responsibilities to children and families, and in providing minimum standards to be achieved
- reword and expand the guiding principles to better reflect the Plan's vision and purpose
- widen the scope of identified priorities to include maintaining engagement in schooling, addressing racism in schools, investing in schools to support strong cultural practices and a positive sense of cultural identity, and responding therapeutically to challenging behaviours
- require the development of an implementation roadmap of immediate, medium-term, and long-term activities with clearly assigned responsibilities and timelines
- establish outcomes and key indicators against which progress is measured
- require publication of data on implementation in a coordinated and easily accessible format.

The Commission also recommends that the Queensland Government:

- appoint a Minister for Children and Families with a standalone department that has sufficient authority to coordinate strategies across multiple portfolios. The Minister should be responsible for ensuring alignment of policies and accountability for the Plan's outcomes.

7. Queensland would not be the first jurisdiction to implement a whole-of-government strategy for improving outcomes for children and young people. In this submission we draw on the experience of implementing strategies developed overseas and in other Australian states and territories.

## Vision, scope, and relationship with other policies

### Vision and purpose

8. The stated objective of the Plan is ‘to strengthen protective factors around children, young people and families through targeted investment in prevention and early interventions’.<sup>2</sup> The investment priorities go on to specify ‘our priorities ensure all children and young people have the best possible start in life, remain connected to education and achieve healthy outcomes with a focus on those at risk of entering the youth justice system’.<sup>3</sup>
9. In the Commission’s view, the Plan should better articulate its purpose and vision, which can then be underpinned by principles, priority areas, and measurable outcomes.
10. New Zealand’s *Child and Youth Wellbeing Strategy (New Zealand Child and Youth Strategy)* has as its vision ‘Making New Zealand the best place in the world for children and young people’,<sup>4</sup> while its purpose is to:
  - set out a framework to improve child and youth wellbeing that can be used by anyone
  - drive government policy in a unified and holistic way
  - outline the policies the Government intends to implement
  - harness public support and community action
  - increase political and public sector accountability for improving wellbeing
  - improve wellbeing outcomes for Māori children and young people.<sup>5</sup>
11. The United Nations strategy *Youth 2030: Working with and for Young People* sets out as its vision:

A world in which the human rights of every young person are realized; that ensures every young person is empowered to achieve their full potential; and that recognizes young people’s agency, resilience and their positive contributions as agents of change.<sup>6</sup>

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<sup>2</sup> Queensland Government, *Putting Queensland Kids First: Giving our kids the opportunity of a lifetime* (Consultation draft, 2024) 10.

<sup>3</sup> Ibid.

<sup>4</sup> Department of the Prime Minister and Cabinet (NZ), *Child and Youth Wellbeing Strategy* (29 August 2019) (**New Zealand Child and Youth Strategy**) 10.

<sup>5</sup> Ibid 20-21.

<sup>6</sup> United Nations, *Youth 2030: Working with and for Young People* (September 2018).

12. Other child and youth strategies in Australia include the following as their vision:

- *Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031*: 'Children and young people in Australia reach their full potential by growing up safe and supported, free from harm and neglect'.<sup>7</sup>
- Tasmanian *Child and Youth Wellbeing Strategy*: 'Children and Young People in Tasmania have what they need to grow and thrive'.<sup>8</sup>
- Northern Territory *Youth Strategy 2023–2033*: 'A Northern Territory where young people lead enjoyable lives, are empowered to achieve their full potential, are socially connected, and positive participants in their community'.<sup>9</sup>
- South Australian *Safe and Well: Supporting families, protecting children*: 'South Australia is a state where vulnerable families with children are supported, and where children are safe, valued and look forward to a bright future'.<sup>10</sup>

13. The Queensland Plan's vision and purpose needs to be stated up front. Drawing on concepts in the Plan, its vision could be: 'Giving all children and young people in Queensland the best opportunity to live fulfilling, connected, and happy lives'. However, the vision of the Plan must be subject to broad consultation and explicitly co-designed with children, young people, and families. The principles will then provide a framework to achieve the vision (including through prevention and early intervention) and the priorities will ensure significant investment is directed to children and young people facing heightened risk of engagement, or re-engagement, with the child protection and youth justice systems.

**Recommendation:** A clear vision for the Plan should be co-designed with children, young people, and families and given high visibility.

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<sup>7</sup> Commonwealth of Australia, *Safe and Supported: The National Framework for Protecting Australia's Children 2021 – 2031* (2021) 8 (**Australian National Framework**).

<sup>8</sup> Tasmanian Government, *It Takes A Tasmanian Village: Child and Youth Wellbeing Strategy* (August 2021), 8 (**Tasmanian Child and Youth Strategy**).

<sup>9</sup> Department of Territory Families, Housing and Communities (NT), *Northern Territory Youth Strategy 2023–2033* (2023).

<sup>10</sup> Government of South Australia (SA), *Safe and Well: Supporting families, protecting children* (December 2019).

## Scope of the Plan and relationship with other government activity

14. The issues raised in the Plan cross multiple areas of government activity, including existing early intervention and prevention initiatives in health, education, housing, youth justice, child safety, and policing.<sup>11</sup> The Plan sets out protective factors (at pages 12 to 13), covering health, social care, education, employment, support for families, support for cultural rights, youth justice policies, and housing. Risk factors identified span a similar number of policy areas.
15. The Plan is concerned with a wide range of portfolios and significant government investment across infancy, childhood, and adolescence, as well as support for families and connection to culture. The final Plan should address how implementation of the Plan by various portfolios will be coordinated. The Commission recommends that this be by an appointed Minister for Children and Families with a standalone department, or alternatively, by the Department of Premier and Cabinet. These options are discussed in more detail in **Consultation Question 5: Working together** below.
16. As the Plan notes, its goals should also align with and contribute to **Closing the Gap** targets and obligations. Adopting the Productivity Commission's recent recommendation to update Cabinet and Budget processes to ensure alignment with priority Closing the Gap reforms is crucial in this respect.<sup>12</sup>
17. The **relationship between the Plan and youth justice strategy** should also be made explicit and clarify whether 'prevention and early intervention' is intended to encompass some, or all, of the following:
  - identifying root causes of children's involvement in youth justice systems (intervening early)
  - interventions that reduce pathways into the youth justice system, such as police-diversion, decriminalising certain behaviours and raising the age of responsibility (keeping children out of court)
  - supports once a young person has been charged with an offence to minimise harm to the young person, and reduce risk of recidivism (keeping children out of custody and reducing reoffending).
18. This categorisation reflects the 'Four Pillars' recommended by former Police Commissioner Bob Atkinson to underpin Queensland's youth justice strategy,<sup>13</sup> and is implemented through the Queensland Government's *Youth Justice Strategy 2019-2023*. The 'pillars' overlap and should complement each other. If aspects of these pillars are not intended to be included in this Plan, there must be clear alignment between the Plan and other strategies to achieve these.

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<sup>11</sup> See Queensland Government, *Putting Queensland Kids First: Giving our kids the opportunity of a lifetime* (Consultation draft, 2024) 8–9 'Snapshot of existing early intervention and prevention initiatives'.

<sup>12</sup> Productivity Commission (Cth), *Review of the National Agreement on Closing the Gap* (Study report, 2024) volume 1, 17 (rec 3).

<sup>13</sup> Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), rec 1, 21-27.

19. Given its broad scope, it is also necessary to develop priority areas for **screening those with risk factors** and **identifying critical points where heightened risk arises or manifests** so that targeted, intensive resources can be directed to those areas and individuals under the Plan at the earliest possible stage. This is addressed further in our response to **Consultation Question 3: Other priorities**.

**Recommendation:** The Plan should

- (i) clearly identify the portfolio areas it relates to
- (ii) set out how implementation by different portfolios will be coordinated
- (iii) align with and contribute to Closing the Gap targets and obligations
- (iv) set out the relationship between the Plan and the Government's Youth Justice Strategy
- (v) require development of mechanisms to identify those most at risk across priority areas, and critical points for intervention and intensive support.

**Addressing law, policies, and practices that heighten risk**

20. In addition, it is critically important to ensure that legislation, policy and practice by Government agencies does not work against the objectives of the Plan and increase risks and harm to children. This would include, for example, institutional racism and unconscious bias within service delivery, use of suspensions and exclusions within schools, and child safety practices that prioritise removal over prevention and early intervention.
21. The Commission has also repeatedly raised concerns regarding youth justice laws that counteract the vision of the Plan, by holding children criminally responsible significantly earlier than justified,<sup>14</sup> and specifically overriding children's human rights to detain them for prolonged periods in police watchhouses. As a short-term facility, watch houses do not provide longer-term basic needs of young people, such as fresh air, natural light, a balanced diet, exercise, appropriate hygiene resources, privacy, family contact, and social interaction. Detention disconnects a young person from protective factors they may have in the community without any of the rehabilitative or other programs available in youth detention centres.
22. The prolonged detention of young people in watch houses must be stopped as a matter of urgency and priority. In light of current overcrowding in Youth Detention centres, in the short-term the Government should convene a summit of key government agencies and stakeholders to find solutions to otherwise

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<sup>14</sup> In early 2022, the Queensland Parliament's Community Support and Services Committee examined the *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*, which sought to raise the minimum age of criminal responsibility to 14 years. The Commission supported this reform, provided it was accompanied by appropriately developed and funded therapeutic alternatives, and in a manner that respected and protected the rights of victims: Queensland Human Rights Commission, Submission No 65 to the Community Support Services Committee, Queensland Parliament, *Inquiry into the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (30 November 2021).

accommodate or divert children and young people awaiting transfer to Youth Detention facilities. As an immediate stopgap measure, if watchhouses are still being used to house children longer than overnight, procedures must be put into place to facilitate day entry to Youth Detention centres where these are accessible. This would at least allow children and young people to access health services, education and recreational facilities, mitigating to some extent the significant harms to both children and community safety caused by prolonged detention in the watchhouse.

**Recommendation:** The Plan should require

- (i) mapping of how current laws, government policies, and public entity practices may contribute to risk factors identified in the Plan or frustrate its vision
- (ii) measures to address the identified issues
- (iii) that future cabinet and budget submissions on matters impacting children and young people in priority areas identified in the Plan explicitly address how the proposed policies align with the Plan's objectives.

**Recommendation:** Parliament should immediately

- (i) raise the age of criminal responsibility to 14 years
- (ii) repeal provisions overriding the Human Rights Act to authorise prolonged detention of children in watch houses.

## Consultation Question 1: Core principles

*What are the core principles you think should inform our early intervention and prevention approach to support children, young people and families?*

### Human rights as key

23. The Commission is broadly supportive of the core principles set out in the Plan. However, it is important that **the Plan is more explicitly grounded in children's and young people's human rights**. Placing the rights of children and their families at the centre of decision making provides both justification for the objectives and approach, and a framework for decision-making and accountability. It also provides grounding for the other core principles identified at page 11 of the Plan. Too often in Queensland children's basic human rights have been violated for political expediency: the Plan needs a solid grounding in human rights to ensure that it can achieve its long-term goals.
24. Human rights law recognises the importance of children remaining with their families and the rights of children to be safe, to access health services and support for disabilities, to enjoy a stable living environment, and to education. All of these have been identified as protective factors for positive life trajectories and against contact with the youth justice system.
25. The Plan's objectives align with public entities' existing obligations under the Human Rights Act — it is therefore aimed at meeting obligations that the Government already has under law. Under the Human Rights Act, public entities must act compatibly with, and give proper consideration to, human rights,

including recognition and equality before the law (s 15), right to life (s 16), freedom from torture, and cruel, inhuman, and degrading treatment (s 17), privacy and reputation (s 25), the protection of families and children (s 26), cultural rights (ss 27 and 28), rights of children in the criminal process (s 33), right to access education (s 36), and right to access health services (s 37).

26. The United Nations *Convention of the Rights of the Child*, which may be used to interpret the rights of children under the Queensland Human Rights Act<sup>15</sup>:
- requires that, in all actions concerning children, the best interests of the child are a primary consideration (Art 3)
  - requires States to ensure, to the maximum extent possible, the survival and development of the child (Art 6(2))
  - recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (Art 27(1))
  - confirms the responsibility of parents for the upbringing of children (Art 18 and 27)
  - requires States to provide assistance to parents or other caregivers necessary to carry out their responsibilities to their children (Art 27)
  - recognises the right of children with a mental or physical disability to special assistance to enable them to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Article 23)
  - recognises the right of every child to education, and requires states to take measures to encourage regular attendance at schools and the reduction of drop-out rates (Art 28)
  - provides States shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment (Art 39)
  - recognises the right of every child in the youth justice system to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and which takes into account the desirability of promoting the child's reintegration and assuming a constructive role in society (Art 40(1)).

### Articulation of principles

27. Flowing from this grounding in human rights, the Commission considers that certain core principles can be elaborated in a way that better resonates with the purpose of the Plan and human rights. Drawing heavily from the New Zealand Child and Youth Strategy,<sup>16</sup> the Plan's current principles could more clearly express that:

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<sup>15</sup> *Human Rights Act 2019* (Qld), s 48. In relation to the equivalent provision in the Victorian Human Rights Charter, see further *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796, [146]–[156].

<sup>16</sup> The New Zealand Child and Youth Strategy was subject to a three year review in 2022, which found that the Strategy's principles enjoyed support: Department of the Prime Minister and Cabinet, 'Briefing: Review of the Child and Youth Wellbeing Strategy — Findings and

- a. **Children and young people have inherent dignity and are at the centre of everything we do.**<sup>17</sup> Too often children and young people are dehumanised in public discourse, or their wellbeing is seen as having instrumental, rather than intrinsic value. This is connected to the existing draft principle that the approach should be **child and young person-centric** and informed by their voices and experiences, which the Commission fully supports.
- b. **The best outcomes come from providing support early in the life of the child or early in the life of the problem.**<sup>18</sup> This is connected to the existing draft principle **prevention and early intervention**. The Commission strongly supports this focus, but, as discussed above, considers that the Plan and draft principle could more clearly articulate what the Plan is trying to prevent, and to which ends it is considered appropriate to intervene.<sup>19</sup> A simpler focus in the principles on providing support at the earliest possible moment would be clearer, with the vision, purpose, and scope adequately explained up front.
- c. **Individuals, family, communities, and all of government all have responsibility for child wellbeing.**<sup>20</sup> Achieving the vision of the plan requires support at all of these levels, and factors hindering progress at any of these levels should be identified and addressed. It also recognises that solutions are likely to come from families and communities, and the important role of community-led design and delivery (see further below).<sup>21</sup>
- d. **Families hold primary responsibility for children’s health, wellbeing and development, and priority should be given to supporting children within their families and communities.**<sup>22</sup> This is clear both as a matter of

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Recommendations’, 18 August 2022, <<https://www.childyouthwellbeing.govt.nz/resources/review-child-and-youth-wellbeing-strategy>>, 2, 29.

<sup>17</sup> See New Zealand Child and Youth Strategy, 28: ‘Children and young people are taonga’, and Australian National Framework, 8 ‘Listening and responding to the voices and views of children and young people, and the views of those who care for them’.

<sup>18</sup> New Zealand Child and Youth Strategy, 29: ‘Early support is needed’. See further Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 21–2.

<sup>19</sup> For example, it is not clear in the text under the current draft principle whether prevention and intervention refer to steps to avoid or mitigate risk factors identified on pages 12 to 13, and/or whether the ultimate goal is preventing and intervening in relation to contact with child protection and the criminal justice system.

<sup>20</sup> New Zealand Child and Youth Strategy, 29: ‘Change requires action by all of us’. See further Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018). 21.

<sup>21</sup> Referred to further in the Plan under ‘Investment Priorities’ (Partnering for integrated, place-based and First Nations-led delivery) at pages 14 and 19.

<sup>22</sup> Tasmanian Child and Youth Strategy, 12: ‘Acknowledging that the family and extended family of the child has the primary responsibility for the care, upbringing and development of their child/children ...’.



international human rights law,<sup>23</sup> and has been shown to lead to the best outcomes for children and young people.<sup>24</sup>

- e. **The wellbeing of children and young people is interwoven with the wellbeing of their family and community.**<sup>25</sup> As stated in the New Zealand strategy: ‘Children should be viewed in the context of their families...and other family groups and communities. This principle recognises that parents, caregivers, families, and whānau need to have the right kind of support at the right time in order to provide a nurturing environment for their children’.<sup>26</sup>
- f. **Focus on the strengths and knowledge of community and empower parents, kin, and families.** The Commission strongly supports the **strengths-based** approach expressed in the existing principles. Again, this is entirely consistent with human rights, including the rights of children and families and cultural rights protected under the Human Rights Act.<sup>27</sup> Consistent with a strengths-based approach, Government should support community-led design and delivery in implementing the Plan. This is recognised in the investment priorities later in the document,<sup>28</sup> but would be helpfully referenced here in the guiding principles.
- g. **Reshaping the relationship between the state and Aboriginal and Torres Strait Islander peoples is crucial**, including through meeting obligations under the **National Agreement on Closing the Gap** and work towards **truth and treaty**.<sup>29</sup> This recognises the devastating and ongoing impact that the violence and inter-generational trauma of colonisation has on the wellbeing and life trajectories of Aboriginal and Torres Strait Islander peoples and the

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<sup>23</sup> *United Nations Convention on the Rights of the Child*, preamble; Committee on the Rights of the Child, *General Comment No. 24 on children’s rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [11].

<sup>24</sup> Royal Australian College of Physicians, *Early Childhood: The Importance of the Early Years* (Position Statement, May 2019) 19-21; Tim Moore, ‘Early Childhood and Long Term Development: The Importance of the Early Years’ (Research paper, Australian Research Alliance for Children and Youth, June 2006) 5-9.

<sup>25</sup> New Zealand Child and Youth Strategy, 29: ‘Children and young people’s wellbeing is interwoven with family and whānau wellbeing’.

<sup>26</sup> New Zealand Child and Youth Strategy, 29. See also Tasmanian Child and Youth Strategy, 12; See Australian National Framework, 8 ‘Access to quality universal and targeted services designed to improve outcomes for children, young people and families’.

<sup>27</sup> *Human Rights Act 2019* (Qld), ss 27–28.

<sup>28</sup> Investment Priorities: Partnering for integrated, place-based and First Nations-led delivery (at pages 14 and 19)

<sup>29</sup> See New Zealand Child and Youth Strategy, 28: ‘Māori are tangata whenua and the Māori-Crown Relationship is foundational’.

fundamental changes consistent with the Declaration on the Rights of Indigenous Peoples required to address it.<sup>30</sup>

- h. **All children and young people deserve to live a good life.**<sup>31</sup> The Commission strongly supports the principle that the Plan should promote **cultural safety, equity, and inclusion**. The Plan recognises that there should be a mix of universal, targeted and intensive supports because to achieve equity some children and young people may need more support than others. Under this principle it is also important to recognise the need to identify and address structural discrimination in the way needs are identified, services are delivered, and other contact with public agencies is experienced.
- i. **Service delivery must be proactive, accessible, and integrated.** This means that systems are in place to recognise that a person is in need, and provide proactive, culturally safe and coordinated services to address that need (related to the current draft principle **Integrated ways of working to connect Queenslanders**). The Commission strongly supports a principle that prioritises ease of access to services for children, young people, and families. This must include services or focus points developing relationships of trust with children and their families, and measuring and dealing with racial and other forms of discrimination that are present within a system.
- j. **Achieving the Plan's vision needs sustained, holistic and comprehensive approaches.** Effective measures to improve the wellbeing of children and young people require a long-term, multi-agency response to preventive measures, responses to individual risk factors, and broader structural factors including poverty and discrimination.
- k. **Actions must be evidence-informed, transparent, and agencies accountable.**<sup>32</sup> The Commission agrees that an **evidence-informed** approach is crucial if the Plan is to succeed in achieving its objectives. Tied to comments below about implementation (see **Consultation Question 5**), the Commission also considers that transparency and accountability should be included in this principle, or expressed as standalone principles. At a minimum relevant agencies should be accountable for achieving established objectives in set timeframes, adhering to agreed monitoring and evaluation, reporting against defined indicators, and ensuring that activities are informed by evidence as it evolves. Creation of a single, publicly accessible website

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<sup>30</sup> As to the cultural determinants of health and wellbeing see further Ngaire Brown, Peter S Azzopardi and Fiona J Stanley, 'Aragung buraay: culture, identity and positive futures for Australian children' (2023) 219(10) *Medical Journal of Australia* S35, S36.

<sup>31</sup> New Zealand Child and Youth Strategy, 28: 'All children and young people deserve to live a good life'; Australian National Framework, 8: 'Trauma-informed, culturally safe, and inclusive policies and actions'.

<sup>32</sup> New Zealand Child and Youth Strategy, 29: 'Actions must deliver better life outcomes'; Australian National Framework, 8: 'Excellence in practice and policy development, based on evidence, data and information sharing' and 'Clear responsibilities and strong monitoring, evaluation and achievements of outcomes'.

collating evidence, research and evaluation, accountability metrics relating to implementation of the Plan, and its impacts would assist in coordination, transparency and public scrutiny, and be consistent with the proactive disclosure approach required by the *Right to Information Act 2009* (Qld).

**Recommendation:** The Plan should

- (i) recognise as an overarching core principle that children, young people, and families have human rights that the government is required to respect, protect, and fulfil
- (ii) consider rewording and enlarging other principles to reflect the issues identified above.

## Consultation Question 2: Key protective factors

*What are the key protective factors in keeping children and young people on positive trajectories, and how can we further boost these?*

- 28. The consultation draft plan provides a non-exhaustive list of risk factors and protective factors organised by child developmental stage, drawn from reports that consider risk factors and contact with the criminal justice system, intervention points for child and youth wellbeing, and the wellbeing outcomes framework for Aboriginal children and Torres Strait Islander children in Queensland.
- 29. The **general and universal protective factors identified at pages 12 to 13 of the Plan are sound and backed by evidence**. While some of the factors will be specific depending on the child's stage of development, the Commission notes that despite the graphical representation, **many will extend beyond particular developmental stages, such as access to quality education, and universal health and social care**. The Commission strongly supports action to enhance all of these protective factors.

### High quality and culturally safe early childhood education

- 30. The Commission recommends that **high quality and culturally safe early childhood education** (as opposed to early primary education) should be given explicit emphasis in the protective factors – both because it is established as a significant protective factor in relation to later poor life outcomes including involvement with the criminal justice system,<sup>33</sup> and (relatedly) because it provides an early opportunity for identifying children who would benefit from more

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<sup>33</sup> See, eg, Megan O'Connell et al, *Quality Early Education for All* (Mitchell Report No 01/2016, April 2016) 6-7; Royal Australasian College of Physicians, *Early Childhood: The Importance of the Early Years* (Position Statement, May 2019) 37; Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 33-34.

intensive, targeted support and for delivering that support to children and families at an early stage.<sup>34</sup>

### **Access to and staying in education or training**

31. In addition, the 2018 Atkinson Report identified **access to and staying in education or training** more broadly as a crucial protective factor from engagement with the Youth Justice system.<sup>35</sup> This is already recognised in the Plan, and is discussed further below under **Consultation Question 3: Other priorities**.

### **Strong cultural practices and a positive sense of cultural identity**

32. The Commission strongly supports the reference to **cultural connection** as a key protective factor across a child and young person's life, and this reinforces the need to ensure that any intervention under the Plan prioritises supporting children and young people within their family and community (see above suggested principle). As part of this, **strong cultural practices** (such as 'extended family, access to traditional land, revitalisation of traditional languages, learning dance and story, and understanding traditional roles and practices') and **a positive sense of cultural identity** are important protective factors for children and young people.<sup>36</sup> Among other things, they assist children to maintain their resilience, self-esteem, and sense of self, and are themselves a way of combating racism.<sup>37</sup> Opportunities to promote this within educational environments are addressed under **Consultation Question 3: Other priorities**.

#### **Recommendation:** The Plan should

- (i) recognise high quality and culturally safe early childhood education as a key protective factor
- (ii) identify strong cultural practices and a positive sense of cultural identity as protective factors tied to cultural connection.

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<sup>34</sup> See, eg, Queensland Family and Child Commission ('QFCC'), *Lessons from the life-story timelines of 30 Queensland children who have died: A small sample review of commonalities in child and family trajectories considered at the Child Death Review Board* (Report, June 2023) ('*Lessons from the life-story timelines of 30 Queensland children who have died*'), 16-22; Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018) 33-4.

<sup>35</sup> Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 33-4. See also QFCC, *Lessons from the life-story timelines of 30 children who have died*, 8.

<sup>36</sup> Ngaire Brown, Peter S Azzopardi and Fiona J Stanley, 'Aragung buraay: culture, identity and positive futures for Australian children' (2023) 219(10) *Medical Journal of Australia* S35.

<sup>37</sup> Ibid. See also Telethon Kids Institute, *Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts: Report for the Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, July 2017) 33-6.

## Consultation Question 3: Other priorities

*Are there any other priorities you think that Putting Queensland Kids First should consider?*

33. The Commission considers that the Investment Priorities identified at pages 14 to 19 of the Plan are appropriate and necessary, and will be enhanced by the overlay of reworded and expanded principles outlined above (response to **Consultation Question 1: Core principles**). This section makes comments on two of the identified priorities, and suggests inclusion of another.

### **Supporting families and strengthening communities**

34. In relation to the second priority, **supporting families and strengthening communities**, the Commission considers it crucial that this also directly address child safety policies, and the need to prioritise support of families rather than removal wherever possible. Where removal from families is exceptionally required, support of kinship carers and cultural connection is crucial (in light of suggested draft principle (d) identified under **Consultation Question 1** above).

### **Maintaining engagement in education and training**

35. **Supporting confident transitions to education and training** is crucial, but so is providing targeted and intensive support to ensure that students continue attending school and are not excluded from education. While ‘improving responses to complex behaviours and wellbeing needs’ is mentioned in relation to this priority area (at page 18), it is important that priority is explicitly given to:

- minimising disciplinary absences, and enrolment cancellation and refusal
- ensuring students who have disengaged with education, or who are at risk of disengaging, are provided with sustained, coordinated support.

36. In its small sample review of 30 child deaths in Queensland, the Queensland Family and Child Commission (**QFCC**) found that

for school aged children, failing to re-engage children in education exposes them to prolonged and increased risk. Put more simply — absence from schooling is a clear identifier that there are risks in a child’s life.<sup>38</sup>

37. As the report explains:

School presents more than just an education opportunity but also a place where children may access specialised services to support their wellbeing, find structure and stability and engage with age-appropriate peers to maintain social capital and feel connected to their community. There remains a need for shared responsibility and coordination between agencies that respond to children disengaging from education including Education, Child Safety, Youth Justice, and Police. Keeping children

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<sup>38</sup> QFCC, *Lessons from the life-story timelines of 30 children who have died*, 3.

engaged in school provides a down-stream approach and can prevent escalation to tertiary services and increasing human and financial costs.<sup>39</sup>

38. In his report into Youth Justice responses, Bob Atkinson noted that

the Pathways to Prevention project, operating over 10 years from 2002 to 2011 in a disadvantaged area of Queensland [identified] an absence of a positive attachment to school at age seven as the greatest predictor of later offending....

As well as education being key to the positive development of children, school provides an ideal environment to identify those who are at risk of antisocial or offending behaviour. As early as age five, children manifest behavioural signs indicative of a need for targeted support....<sup>40</sup>

39. However, children as young as five or six displaying complex behaviours can be suspended or excluded from education. In 2022, for example, there were 4,869 suspensions of children in Prep to Year 2 from Queensland state schools, and 10 exclusions of children in Year 1 and Year 2 from school.<sup>41</sup> Research indicates children most at risk of school disciplinary absences are children with disability, Aboriginal and/or Torres Strait Islander children, and children in out of home care, or a combination of these attributes.<sup>42</sup> This mirrors the cohort of children disproportionately represented in the youth justice system.

40. The Government has recently begun implementation of a Youth Engagement Education Reform package which includes the establishment of an intensive education case management service, recruitment of additional Court Liaison Officers and Youth Transition Officers, First Nations engagement programs and additional funding for Queensland Pathways State Colleges, FlexiSpaces in high needs schools, and alternative learning programs.<sup>43</sup> This is welcome and should be squarely within a priority investment area for the Plan.

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<sup>39</sup> Ibid 14. See also Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 34.

<sup>40</sup> Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 22, 34.

<sup>41</sup> Department of Education (Qld), 'School disciplinary absences by student demographics' (2023), <<https://qed.qld.gov.au/our-publications/reports/statistics/Documents/sda-by-student-demographics.xlsx>>. In Queensland state schools in 2022 there were 762,452 short suspensions (1–10 days), 3,123 long suspensions (11–20 days), and 1,595 exclusions: Department of Education (Qld), 'School disciplinary absences: Table 1: School disciplinary absences by regions, 2018–2022' (2023), <<https://qed.qld.gov.au/our-publications/reports/statistics/Documents/sda-by-region.pdf>>.

<sup>42</sup> Linda Graham, Callula Killingly, Matilda Alexander and Sophie Wiggins, 'Suspensions in QLD state schools, 2016–2020: overrepresentation, intersectionality and disproportionate risk', *The Australian Educational Researcher* (available online, 24 August 2023) <<https://link.springer.com/article/10.1007/s13384-023-00652-6> />.

<sup>43</sup> Premier and Minister for the Olympic and Paralympic Games, Minister for Education, Minister for Industrial Relations and Minister for Racing, and Minister for Employment and Small Business, Minister for Training and Skills Development and Minister for Youth Justice, '\$288 million package to keep students engaged in education' (Joint Statement, 4 December 2023).

## Addressing racism in schools

41. In addition, a necessary area for investment in **supporting confident transitions into learning, education and training** and **maintaining engagement in education** that is not currently mentioned in the Plan is addressing racism in schools. A recent report commissioned by the Ethnic Communities Council of Queensland underscores both the prevalence of racism in Australian educational settings, and the significant barrier that racism provides to ‘accessing, engaging, and succeeding in education’.<sup>44</sup>

## The role of schools in supporting strong cultural practices and pride in culture

42. There are also significant opportunities for schools to play a positive role in strengthening the protective factors of connection to culture through **strong cultural practices** and **a positive sense of cultural identity**.<sup>45</sup> Schools should be supported, for example, to:
- boost the role of Aboriginal and Torres Strait Islander Elders within schools — for example through sharing of knowledge, history, stories and skills with teachers and in classrooms, through cultural mentoring groups, and individual mentoring<sup>46</sup>
  - integrate knowledge of, respect for, and pride in Aboriginal and Torres Strait Islander languages, knowledge, culture and belief systems in delivering curriculum and in extra-curricular activities<sup>47</sup>
  - facilitate the participation of Aboriginal and Torres Strait Islander students in cultural practices
  - provide an enhanced role for Aboriginal and Torres Strait Islander parents and carers
  - deliver culturally appropriate and inclusive prevention and health promotion programs.<sup>48</sup>

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<sup>44</sup> John Bosco Ngendakurio, *Report: Racism in Australian Schools* (Ethnic Communities Council of Queensland, February 2024), <<https://eccq.com.au/wp-content/uploads/2024/02/Report-Racism-Within-Australian-Schools.pdf>>, 2–4.

<sup>45</sup> See Kevin Lowe, Neil Harrison, Cathie Burgess and Greg Vass, ‘A systematic review of recent research on the importance of cultural programs in schools, school and community engagement and school leadership in Aboriginal and Torres Strait Islander education’ (Commissioned Report, Social Ventures Australia, 25 October 2019).

<sup>46</sup> See, for example, Angela Turner, Katie Wilson, Judith L Wilks, ‘Aboriginal Community Engagement in Primary Schooling: Promoting Learning through a Cross-Cultural Lens’ (2017) 42(11) *Australian Journal of Teacher Education* 96.

<sup>47</sup> Brown et al have suggested that a key indicator required for assessing cultural wellbeing is ‘the number of states/ territories that have Aboriginal and Torres Strait Islander education content for *all* children as part of the core education curriculum’: Ngaire Brown, Peter S Azzopardi and Fiona J Stanley, ‘Aragung buraay: culture, identity and positive futures for Australian children’ (2023) 219(10) *Medical Journal of Australia* S35, S36.

<sup>48</sup> See, for example, the Strong & Deadly Futures alcohol and drug prevention program: K Routledge et al, ‘Acceptability and feasibility of Strong & Deadly Futures, a culturally-inclusive alcohol and drug prevention program for Aboriginal and/or Torres Strait Islander secondary students’ (2022) 2 *SSM Mental Health* 100073.

## Responding therapeutically to challenging behaviours

43. Tied to this, a further priority area for the Plan, which is connected to the Youth Justice Strategy, is appropriate responses to behavioural concerns in children and young people. This is connected to **'Identifying and responding to needs for healthy development and positive life choices'** outlined at page 17 of the Plan, but should be made more explicit. In addition to providing universal screening and services, the Plan must prioritise the provision of intensive, non-stigmatising support to children and families when behavioural difficulties manifest.
44. In relation to children at risk of contact with the criminal justice system in particular, guidance in this area is provided by the United Nations Committee on the Rights of the Child. In its *General Comment No. 24 on children's rights in the child justice system* the Committee stated that:

States parties should consult the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and comparative national and international research on root causes of children's involvement in the child justice system and undertake their own research to inform the development of a prevention strategy. Research has demonstrated that intensive family- and community-based treatment programmes designed to make positive changes in aspects of the various social systems (home, school, community, peer relations) that contribute to the serious behavioural difficulties of children reduce the risk of children coming into child justice systems. Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of parents are recommended. States parties should also develop community-based services and programmes that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.<sup>49</sup>

45. The Committee emphasises in particular the need for **particularly intensive 'child-friendly and multidisciplinary responses to the first signs of behaviour by children that would, if the child were above the minimum age of criminal responsibility, be considered an offence' (which the Committee considers should be no lower than 14):**

Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience. Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. As an absolute priority, children should be supported within their families and communities. In the exceptional cases that require an out-

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<sup>49</sup> *General Comment No. 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [9].



of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.<sup>50</sup>

46. It is clear however that **criminalisation of challenging behaviour in children is counterproductive**. As Bob Atkinson noted in his report on Youth Justice

studies by child offending experts suggest that children below the age of 14 have rarely developed the social, emotional and intellectual maturity necessary to determine criminal responsibility. Studies in this area widely recognise the strong correlation between early involvement in the youth justice system and chronic offending in adulthood, the trajectory through the criminal justice system often being more rapid the earlier a young person is involved with the system. Whilst causation remains difficult to establish, it is suggested that a more child and family centred approach to offending at this age can help ameliorate the circumstances that led to the offending at a young age.<sup>51</sup>

47. The QFCC has reported on concerns in particular with excessive police call-outs and criminalisation of children living in residential care. It reported examples of children who had been charged for property damage for pushing a stool over, and stealing for leaving their residential service for a period of hours with a borrowed key to their room.<sup>52</sup> Such police intervention ‘presumes children living in residential care are potential criminals and increases their contact with the criminal justice system where they otherwise would have had none’.<sup>53</sup> As the QFCC has noted, ‘[t]hese children can rightfully expect to be cared for within a trauma-responsive system that does not unnecessarily criminalise behaviours that would not be treated as criminal in a family home’.<sup>54</sup>
48. Relatedly, police should not have a lead role in policy or action that is in response to challenging behaviours of children and young people.

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<sup>50</sup> Ibid [11].

<sup>51</sup> See, eg, Bob Atkinson, *Report on Youth Justice (Version 2, 8 June 2018)*, 104–5, which notes that studies ‘suggest that children below the age of 14 have rarely developed the social, emotional and intellectual maturity necessary to determine criminal responsibility’, and that there is ‘a strong correlation between early involvement in the youth justice system and chronic offending in adulthood, the trajectory through the criminal justice system often being more rapid the earlier a young person is involved with the system’.

<sup>52</sup> QFCC, *The criminalisation of children living in out-of-home-care in Queensland* (2018), 9, 12.

<sup>53</sup> Ibid 9.

<sup>54</sup> Ibid 19.

**Recommendation:** The Plan should expressly refer to prioritising:

- (i) support of families over removal wherever possible in relation to supporting families and strengthening communities
- (ii) legislative and policy reform to minimise school disciplinary absences in relation to supporting confident transitions to education and training

and include as priority areas for investment

- (iii) intensive and multidisciplinary support for continued engagement in school or training
- (iv) addressing racism in schools
- (v) supporting strong cultural connection, cultural practices, and pride in Aboriginal and Torres Strait Islander culture in schools, including through investing in promoting the role of Elders in schools
- (vi) responding therapeutically to challenging behaviours, including those displayed by children in residential care.

## Consultation Question 4: Connection to culture and community

*How can we best support connection to culture and community for children, young people and families?*

49. Supporting connection to culture for young people requires **acting consistently with the cultural rights of their community protected in the Human Rights Act**.<sup>55</sup> For First Nations people, these include the right to protect and develop identity and cultural heritage, to use language, to maintain kinship ties, to maintain and strengthen their relationship with the land, and to conserve and protect the environment.<sup>56</sup> In the previous section the Commission outlined, for example, the important role of schools in promoting respect for and empowering cultural knowledge, and facilitating cultural practices and pride in Aboriginal and Torres Strait Islander culture.
50. As discussed above, maintaining connection to culture also requires a strong focus on **keeping children with families** and **keeping children out of detention and out of the criminal justice system**. For these reasons it is important that these are a focus of the principles and priority investment areas.
51. To maintain connection to, and a sense of belonging within, the wider community it is also **important that children and young people are not demonised within**

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<sup>55</sup> *Human Rights Act 2019* (Qld) ss 27 and 28.

<sup>56</sup> Section 28.

**the public discourse**, and that politicians, NGOs and the media are actively engaged in promoting understanding and inclusion. As the UN Committee on the Rights of the Child has emphasised:

Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and “three strikes” approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.<sup>57</sup>

52. Bob Atkinson recommended that Government adopt a coordinated Statewide media strategy to promote and support the Four Pillars policy position underpinning the youth justice strategy, stating:

The framework or ‘bookends’ of the Four Pillars policy position are public safety and community confidence. Both traditional mainstream media (print, radio, television) and social media have a significant role in influencing the public awareness and perception of safety and crime and the effectiveness of associated Government policy.

...Opportunities to present evidence, whether from practice or research papers, about what works could also help build a narrative that supports best practice in keeping communities safe and reducing youth reoffending. This may include availability of respected individuals for interview.

Additionally, the production of de-identified stories for mainstream and social media of children successfully emerging from a youth justice program as well as stories of the experiences of Youth Justice staff would assist in an enhanced public awareness of the circumstances of many children in the youth justice ‘system’, the associated challenges, and, more broadly, that there is no quick fix.

...

Finally, if achievable, media support could drive a concerted community goal in terms of closing the gap in the representation of Aboriginal and Torres Strait Islander children in the criminal justice system.<sup>58</sup>

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<sup>57</sup> *General Comment No. 24 on children’s rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [111].

<sup>58</sup> Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 100.

**Recommendation:** Supporting connection to culture and community:

- (i) should promote the cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected under the Human Rights Act
- (ii) requires a strong focus on keeping children with their families and communities
- (iii) includes having a media strategy that promotes understanding and inclusion of children and young people.

## Consultation Question 5: Working together

*What would it look like for us to work together as partners, all committed to improving outcomes for children and young people?*

53. One of the key purposes of the Plan is to consolidate the whole-of-government commitment to the vision for children and young people sought by the Plan, which then enables a coordinated approach within government, and with non-government agencies, across multiple domains. The New Zealand strategy articulates the challenge as follows:

Despite significant government investment in public policies, services and local initiatives, inequities for many children and young people have proven difficult to shift. Like other countries, a key problem is one of 'fragmentation of effort'. At a public policy level there are too many policies that were developed and implemented in silos. Fragmentation and lack of coordination happens vertically (between national and local government), horizontally (between different agencies), by age (such as antenatal and postnatal, preschool, school age, tertiary), and by different groups or areas of focus (such as parenting support, family violence, job seeker).

This same fragmentation is replicated in government and non-governmental contracted services. Investment is often ad hoc, not sustained, and with little responsiveness to new evidence or cultural knowledge, including insights from service users (such as children, young people and their families). This, in turn, creates fragmentation of advocacy as different groups seek to solve different parts of the puzzle. Until now, there has been no unifying message or way of talking about child and youth wellbeing in New Zealand or way of aligning efforts to a common set of goals.

Aligning government action with community action has the potential to create the transformative change required for the Strategy to achieve its vision.<sup>59</sup>

54. The Commission strongly supports the Plan's emphasis on **partnering for integrated, place-based and First Nations led delivery** – driven by and

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<sup>59</sup> New Zealand Child and Youth Strategy, 13.

delivering through ‘those providers best placed to engage with vulnerable children and families across the State’.<sup>60</sup>

55. However, at the government level, achieving the Plan’s overall vision also requires:

- ensuring that legislation, policy, and practice of public bodies does not work at cross-purposes to the Plan (see above, [22]–[24])
- alignment across agencies through creation of **a detailed and cohesive implementation roadmap**
- establishment of **outcomes and key indicators** against which progress can be measured
- **measuring and transparently reporting on progress**, and learning from what works
- **designation of responsibility** for driving progress and accountability.

### Implementation roadmap

56. To ensure that agencies are working together effectively across the broad range of areas covered by the Plan, it is crucial that a detailed implementation roadmap is developed following adoption of the Plan. Within the identified priority areas, this should have immediate, medium-term, and long-term activities assigned to lead agencies to be achieved within set timeframes.

57. The implementation roadmap must have input from non-government agencies, communities, families and children, including First Nations organisations and community leaders, in accordance with the recommended principles stepped through **Consultation Question 1**.

### Outcomes and indicators

58. In relation to **outcomes**, the New Zealand Child and Youth Strategy provides examples of what could be included in the Plan. Informed by what children and young people said was important to them, the Strategy’s intended outcomes are:

- Children and young people are loved, safe and nurtured
- Children and young people have what they need
- Children and young people are happy and healthy
- Children and young people are learning and developing
- Children and young people are involved and empowered.<sup>61</sup>

59. A small set of **indicators** have been developed against each outcome, which must be reported to Parliament — broken down by household income or other socio-economic status, ethnicity, and other key demographic variables.<sup>62</sup>

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<sup>60</sup> Queensland Government, *Putting Queensland Kids First: Giving our kids the opportunity of a lifetime* (Consultation draft, 2024) 19.

<sup>61</sup> New Zealand Child and Youth Strategy, 30.

<sup>62</sup> Ibid 31.

60. The development of meaningful indicators, and regular reporting against these indicators, are imperative to ensure the focus is on improved outcomes for children and young people, and not the delivery of services or infrastructure.

### **Measuring and transparently reporting on progress**

61. To achieve the principle that actions must be evidence-informed, transparent, and agencies held accountable (see [27]), responsible agencies should be required to regularly and publicly report on progress, including accessible data that tracks these changes. This will assist public scrutiny, identification of gaps, and improved response and coordination.
62. An example of data that helps to track progress would be the publication of the numbers of children detained in watchhouses, including length of stays and demographics.

### **Designation of responsibility**

63. Coordinating action across a wide range of portfolios requires designation of an individual or body accountable to the Plan's commitments, with sufficient authority to help drive policy and investment decisions, to monitor and drive progress across multiple portfolios, and to ensure lessons learned are shared.
64. This coordination could be driven by the appointment of a Minister for Children and Families with a stand-alone department. Alternatively the Department of the Premier and Cabinet should take on this co-ordinating function.

#### **Recommendations:**

The Plan should require

- (i) development of a detailed and cohesive implementation roadmap with immediate, intermediate and long-term activities
- (ii) establishment of outcomes and key indicators against which progress can be measured
- (iii) measurement and transparent reporting of progress.

The Queensland Government should appoint a Minister for Children and Families with a standalone department who is responsible for ensuring alignment of policies and accountability for the Plan's outcomes.