

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

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

By email: youthjustice@parliament.qld.gov.au

Dear Committee Secretary

Youth Justice Reform in Queensland

Thank you for the opportunity to provide feedback on the inquiry into youth justice reform in Queensland. The Queensland Law Society (**QLS**) appreciates being consulted on this important inquiry.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS has been a long standing advocate for reform in the youth justice, child protection and criminal justice systems. In our advocacy, QLS has always been mindful to balance the need to protect children in the youth justice process and to protect the community from harm. We acknowledge that Queenslanders have the right to be and feel safe in their communities. We strongly assert that this can only be made possible by the implementation of evidence based programs, policies and legislation that have the demonstrated ability to reduce recidivism and enhance community safety.

This response has been compiled by the QLS Children's Law, First Nations Legal Policy, Human Rights and Public Law Committee, whose members have substantial expertise in this area.

1. Terms of reference 1(a): ongoing reforms to the youth justice system

QLS has undertaken strong and sustained advocacy in relation to reform of the youth justice system. Our past submissions have proposed:

- a) Programs such as mental health, drug offending and traffic issues to address anti-social behaviour.
- b) Tight supervision and guidance to divert young people away from offending behaviour.
- c) A review of youth detention centres in Queensland.
- d) The engagement of experts to investigate community-led justice reinvestment programs, restorative justice practices and domestic and international jurisdictions that have been successful in long-term, sustainable solutions that reduce the rates of recidivist offenders and children entering the youth justice system, for example - Maranguka Community Hub (New South Wales), Groote Eylandt (Northern Territory), Hawaii, United Kingdom, Scotland.
- e) Increased funding for the legal assistance sector for youth justice and child protection matters.
- f) The use of intermediaries, such as speech and language therapists and speech pathologists, to be provided to children in the youth justice system. There are a number of benefits flowing from such an initiative including better outcomes during the legal process and longer term.
- g) Strong accommodation options so that when a child's released on bail they are secure and not living on the streets.
- h) The review of the effectiveness of the Joint Agency Protocol to reduce preventable police call-outs to residential care services with a view to reducing the criminalisation of children in care.
- i) Implement a transparent and accessible complaints mechanism in the child protection system.

QLS notes its opposition to amendments to the *Youth Justice Act 1992* (Qld) (**Youth Justice Act**) in relation to bail which, as predicted, have not resulted in a positive effect on recidivism rates.

QLS maintains all reforms in the Youth Justice system should be evidence based, receive appropriate consultation with stakeholders and the government should promote ongoing evidence-based research to inform its reform agenda.

2. Terms of Reference 2(a) - the prevention of entry and diversion of youth offenders from the justice system with specific consideration of risk and protective factors that reduce crime

Culturally Appropriate Support

QLS notes that term of reference 2(a) requires the Committee to consider effective ways to stop recidivism and protect the community with specific reference to the role of First Nations Peoples' to provide supports solutions and services. In this regard, we highlight the need for unique culturally appropriate support to be provided to First Nations youth which embeds cultural values and knowledge that should be recognised in the justice system. The Youth Justice Act

recognises the importance of diversity for youth and to consider the child's community¹. Thus, First Nations values of the child's community should be central to their rehabilitation and throughout their care. Otherwise, when issues such as cultural and language barriers, racism, and discrimination arise, the associated harms may be compounded and entrench their disadvantage further while in the justice system and beyond.

The need for cultural safety for First Nations' young people can not be overstated.

In September 2022 the QFCC released its report *"Yarning for Change"* which observed, amongst other things, 'the rights and aspirations of First Nations children and young people with a lived experience of the youth justice system are largely rendered invisible in the discourse, in the policy and practice of 'justice'. Notably, of the more than 100 children and young people aged between eight and 25 who participated in the study, the "vast majority" were First Nations.

There are many take-aways to be gleaned from the information-gathering approach used in this study and its results. In particular, it highlights the importance of embedding an effective evaluative mechanism into program design and practice in order to effectively harness the important empirical data to readily assess progress or the lack thereof. The evaluative approach taken in the *Yarning for Change* study also has the potential to operate as a further layer of accountability in respect of the overarching objectives of the Closing the Gap targets.

We urge the Queensland Government to listen to the experiences of these interactions both within the child protection and youth justice systems and to refrain from continuing to perpetuate previous legislative and policy failures. We highlight the importance of ensuring culturally appropriate support is provided to young people who are referred to diversionary programs. Currently the Youth Justice Act does not provide a diversion to any sort of cultural programs for First Nations young people.

Properly resourcing and incorporating opportunities for exploring and developing cultural identity for children should be required in diversions (eg. in Alternative Diversion Programs), supervised orders and in detention. Proper funding to enable this should also be provided to community organisations working with young people in the youth justice system.

Cognitive Assessments

In addition, we stress the importance of cognitive assessments forming a crucial component of the entry and diversion stage of the youth justice system. It is important that the vulnerabilities identified by the schooling system are also applied in the youth justice system particularly when a child's suitability for diversionary programs is being determined. There is also a need for increased training of child safety officers to assist and support young people who have been diverted from the youth justice system, ensuring they have adequate training to identify and address any underlying issues.

Young people and children who come into repeated contact with the criminal justice system are extremely vulnerable, demonstrating high rates of trauma, abuse and neglect, poorer health and are more likely to have a history of alcohol and drug use and dependence.²

¹ *Youth Justice Act 1992* (Qld), Schedule 1, 14.

² Law Council of Australia, *The Justice Project, Children and Young People* (Final Report, August 2018).

We make particular reference to the Senate Community Affairs References Committee's report into the assessment and support services for people with ADHD. It highlights that individuals with untreated or poorly managed ADHD are at an increased risk of involvement in the criminal justice system, particularly when people have not been able to access a formal ADHD diagnosis, or be given appropriate healthcare and support post-diagnosis.³ There is evidence to suggest that young people with ADHD are unfairly treated within the justice system, noting they *'are more than twice as likely to be convicted of a crime and three times more likely to be incarcerated, with substantially higher rates of recurrent offending with earlier re-entry to justice systems than young people without ADHD'*.⁴ Routine screening and comprehensive assessments for ADHD should be implemented for young people entering the justice system. This must be coupled with psychoeducation and awareness training for prison staff about the impact of ADHD on offenders and their behaviour. Offenders with ADHD should also be provided with education and skill development to help them develop coping strategies and make positive behavioural choices.

School-based preventative programs

QLS recommends additional funding be provided to establish school-based preventative programs which aim to assess disability in kindergarten and early primary school. These programs should be administered in consultation with families and should take place prior to any child coming into contact with youth justice. We also highlight the value in providing school breakfast programs, more school-based health assistance and ensuring the availability of school buses, particularly in rural and regional centres.

Correlation between residential care and the youth justice system

There remains a disturbing number of children who become involved with the youth justice system who have also been involved with residential care. The residential placement system doesn't offer children the emotional consistency they require, there is a need for more case management plans and more stability including one on one care for at risk children. The challenges are exemplified in the sentencing remarks of the Mt Isa Childrens Court of *Commissioner of Police v Jane Dean (a pseudonym)* [2022] QChCM 3 at page 5:

'As far as I can determine Jane's offending and failure to engage with probation is directly linked to the fact that she does not have somewhere suitable to live and has limited access to helpful adults who can help her develop the life skills she needs. It seems to me that when the Department of Child Safety says that Jane is 'self-placing' that is not the same as saying she is unreasonably refusing suitable accommodation. It is of note that the two placements Jane requested during the course of these proceedings were, essentially, unavailable to her: one due to legitimate Departmental processes and the other because of overcrowding at a suitable and desirable Child Safety placement.

[18] When Jane does not have suitable accommodation, she goes hungry and steals food. When Jane does not have suitable accommodation, she must spend time in company of adults who behave in anti-social ways that expose her to profound risks.

³ Senate Community Affairs References Committee, Parliament of Australia, *Assessment and support services for people with ADHD* (Report, November 2023) 54.

⁴ Ibid 56.

When Jane does not have suitable accommodation, she spends time on the street associating with other bored children and, together, they formulate and carry out plans to enter businesses and homes and to steal cars’.

Children in child protection settings should not be criminalised to divert social responsibility for welfare and other support responses. We strongly support measures to decriminalise children in residential care facilities, particularly when subjected to minor offences which would not be criminalised in a home setting. For example, children being charged with wilful damage or property offences for breaking crockery in residential care facilities.

The Queensland Family and Child Commission has recommended that multi-agency collaborative panels should be established earlier to prevent children and young people’s interaction with the youth justice system.⁵

Disability Royal Commission and the youth justice system

As demonstrated by the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (**the report**) there is significant overrepresentation of people with disability in the criminal justice system.⁶ The report calls on the Queensland government to uphold the rights of people with disability who are in custody.⁷ It also calls for increased screening and assessment for disability in youth detention and increased disability training for staff in youth detention.⁸

Effect of school suspensions and exclusions

There is a strong correlation between the number of children in the youth justice system and the number of children who are suspended and excluded from school. This is particularly evident for children with disabilities. There is a lack of support from the Department of Education to facilitate the re-enrolment of children who disengage from the education system in their senior years of schooling. Education can be used as a key tool to prevent entry into the youth justice system, this can be assisted by ensuring there are recognised programs for children to attend whilst they are suspended from their regular school. There is also a need to ensure that there is an ongoing ability to review a child’s capacity whilst suspended or excluded from school.

Closing the Gap Report

The Queensland Government is a party to the National Agreement on Closing the Gap (**National Agreement**).⁹ Target 11 requires that Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system. The Queensland Government has a responsibility to ensure an appropriate implementation plan is in place to uphold its responsibilities as a party to the National Agreement.

⁵ Queensland Family and Child Commission, *Spotlight: Youth Justice in Queensland* (Report, 2023) 20. Available at: https://www.qfcc.qld.gov.au/sites/default/files/2023-08/QFCC_Child_Rights_Report_1_YouthJustice_1.pdf

⁶ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, September 2023) Executive Summary, Our vision for an inclusive Australia and Recommendations.

⁷ Ibid.

⁸ Ibid.

⁹ Australian Government, ‘National Agreement on Closing the Gap’ *Closing the Gap* (Web Page, July 2020) < <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>>

Impact of parental incarceration

There is clear evidence demonstrating that young people with incarcerated family members are known to be at a greater risk of engaging with the youth justice system. To mitigate this risk, QLS endorses recommendation 33 of the Queensland Productivity Commission's Inquiry into Imprisonment and Recidivism. In this report, it is chiefly recommended that the Queensland government amend prisoner admission processes to better identify children with incarcerated parents and ensure that appropriate supports are available to them to ensure they do not engage with the criminal justice system themselves.

3. Terms of Reference 2(b) – effective ways to stop recidivism and protect the community from offending and the opportunity for community-controlled organisations with specific reference to the role of First Nations people to provide support solutions and services

To provide appropriate support solutions and services to stop recidivism and protect the community, it is imperative that Aboriginal and Torres Strait Islander people are involved in a supportive capacity in the youth justice system. There is a need for a First Nations court liaison officer in every court. The requirement of an acknowledgement of country and the presence of indigenous artworks and artefacts in all courts will make them a more culturally safe place for young people.

An alternative strategy involves giving more responsibility and recognition of community wisdom by trusting communities to be able to intervene with their own children. Currently there is a lack of an appropriate focus on cultural connection and cultural awareness for First Nations young people.

In addition to supporting young people directly, it is important to run programs which are focused at reforming more mature-aged First Nations peoples to ensure that they are capable of being the leaders their communities require them to be.

4. Terms of Reference 2(c)(i) – justice programs including on-country programs, education, health and housing services

A fault of the current justice programs is that many of these programs deal with young people's issues in isolation of the consequences of non-engagement with these services. This results in rigid frameworks being applied to allow young people to access services which do not recognise the particular vulnerabilities of young people. For example, some housing programs do not allow young people to have visitors which does not consider the negative mental health impact that this might have on a young person.

Our members have reported that there are several programs which have had relative success in supporting young people to take up development and healthcare opportunities. These include the Deadly Choices Programs¹⁰ and the Stars Foundation¹¹. QLS notes that programs must not only be available, but consideration must also be given as to how to facilitate the participation/access of young people in those programs.

5. Terms of Reference 2(c)(ii) – reducing people carrying weapons

¹⁰ 'Programs' *Deadly Choices* (Web Page) <<https://deadlychoices.com.au/programs/>>.

¹¹ 'Education support for First Nations girls: Stars Foundation' *Australians investing in Women* (Web Page) <<https://www.aiiw.org.au/registered-projects/education-support-for-first-nations-girls/>>.

QLS notes the importance of warnings at the point of sale of weapons. However, we note that current warnings have not been effective in highlighting the danger of knives. QLS welcomes the Government's announcement of new laws to restrict the sale of knives to young people.¹² We note under United Kingdom legislation, it is illegal to sell most knives or any weapons to anyone under the age of 18.¹³

6. Terms of Reference 2(c)(iii) – evidence-based early intervention and prevention programs

The youth justice system requires focus on prevention and early intervention measures, rather than punitive measures such as incarceration. To change or overcome a broken system, it is paramount to understand that the majority of young people in the justice system have experienced trauma, poverty, and disadvantage throughout their lives. It is well understood that young people raised in broken homes and socio-economic deprivation are more predisposed than other young people to engage in lawbreaking behaviours.

Evidence-based early intervention programs would address the underlying issues that contribute to youth offending and prevent or reduce the likelihood of them entering the youth justice system. It has been shown to be effective to reduce offending through an increase in education and skills to support them in making a positive choice for the future.¹⁴ In addition, providing appropriate funding for community led and run programs, which are culturally appropriate to reconnect with identity, community, culture or country and language. The essence being to provide a sense of belonging, self-esteem and maintain a standing in the community.

Addressing offending by this vulnerable cohort requires significant and sustained early intervention services to address the pervasive social and economic causes of offending and divert high-risk young people from the criminal justice system. The Queensland Government's *Working Together, Changing the Sentence* report recognises that prevention, early intervention, increased support services and restorative justice reduce youth offending and reoffending, while detention increases the risk of children and young people reoffending, which inevitably leads to lifelong periods of incarceration.¹⁵

Consistent with the existing principles of the Youth Justice Act, detention should be the last resort for children and if imposed, should provide the maximum safeguards and protections to minimise the adverse impacts of institutionalisation. Moreover, increased penalties are not an appropriate deterrent of offending or any criminal activity. It enhances recidivism. Unfortunately, in Queensland this has not come to pass, and youth detention is leaving young people scarred, angry, and more likely to reoffend.¹⁶

¹² Minister for Police and Corrective Services and Minister for Fire and Emergency Services (Qld), 'New laws to restrict the sale of knives and replica gel blasters to juveniles to enhance community safety' (Media Release, 5 November 2023).

¹³ Government of the United Kingdom 'Selling, buying and carrying knives and weapons' GOV.UK (Web Page, < <https://www.gov.uk/buying-carrying-knives>>).

¹⁴ Australian Government, Law & Justice: prevention and early intervention programs for Indigenous youth (2014) < <https://www.aihw.gov.au/reports/indigenous-australians/law-and-justice-prevention-and-early-intervention/summary>>.

¹⁵ Queensland Government, Working Together, Changing the Story, Youth Justice Strategy 2019-2023 (Report) < <https://www.dcssds.qld.gov.au/resources/dcsyw/youth-justice/reform/strategy.pdf>>.

¹⁶ Ben Smee, 'Like Guantanamo: the children locked in solitary for weeks at a time in Queensland youth prison', *The Guardian* (online, 6 June 2023) < <https://www.theguardian.com/australia-news/2023/jun/06/like-guantanamo-the-children-locked-in-solitary-for-weeks-at-a-time-in-queensland-youth-prison>>.

Diversory programs should be central throughout each phase for vulnerable children who are at risk of entering, or are in, the justice system. The programs should be community based and led to prevent or reduce youth offending, and to divert young offenders away from reoffending. This approach far outweighs the punitive measure of detention that does not address the underlying causes of youth offending.

7. Terms of reference 2(c)(iv) – reducing the numbers in custody on remand

QLS commends the Government's fast-tracking program which is currently being trialled in the lower courts in Brisbane, Townsville, Southport and Cairns to ensure that children spend less time on remand. However, we note that this program needs more resources from police and also from a defence perspective.

Representing a young person in the youth justice system is incredibly complex, practitioners may have a greater capacity to engage with a young person earlier in the process if there was greater funding availability. Young people who must wait for the administrative time of obtaining Legal Aid funding are at a disadvantage in accessing the fast track sentencing program and will therefore spend more time on remand.

Having said this, QLS submits that the money currently required to keep children on remand could be redirected to more effectively divert young people away from the youth justice system.

8. Terms of reference 2(c)(v) – alternatives to detention

In respect of alternatives to detention, QLS maintains its longstanding position in advocating that children should only be detained in custody as a last resort.¹⁷ Under principles 18 and 19 of the Queensland charter of youth justice principles, children should only be detained in custody as a last resort and this should be in a suitable facility and for the shortest period of time as justified in the circumstances.¹⁸

It is well-recognised that the more time a young person spends in youth detention the more likely they are to return and to be placed in the adult prison system.

QLS therefore recommends an examination of all possible alternatives to detention.

Regarding one possible alternative, QLS notes the pilot social benefit bonds program administered by the Queensland Treasury in 2017. This program established three social bonds, the Newpin Queensland social benefit bond focusing on reunification of children with their families, the YouthChoices social benefit bond focusing on reducing offending behaviour of young people and the Youth Connect social benefit bond focusing on developing the resilience of young homeless people.¹⁹ Funding is provided by private investors to service providers to achieve agreed outcomes. If the outcome is achieved, the government repays the investor and includes any relevant returns. If the project is unsuccessful, there is no repayment

¹⁷ Queensland Sentencing Advisory Council, *Kids in court: The sentencing of children in Queensland* (Report, November 2021) 20.

¹⁸ *Youth Justice Act* schedule 1.

¹⁹ 'Social Benefit Bonds Pilot Program' *Queensland Treasury* (Web Page, September 2022) <<https://www.treasury.qld.gov.au/programs-and-policies/social-benefit-bonds-pilot-program/>>.

from the government. The Government should evaluate the effectiveness of this pilot program to determine whether it should form part of a more permanent youth justice strategy.

9. Terms of reference 2(c)(vi) – detention and other consequences of offending

In this way QLS also advocates for raising the minimum age of criminal responsibility from 10 to 14. A low minimum age of criminal responsibility can contribute to early criminal pathways for young people, with early contact with the criminal justice system being one of the key predictors of youth and adult offending. Further, QLS notes that children and young people who commit serious or violent offences are unlikely to have the necessary capacity to understand the criminal nature of their offending. It is also unlikely that serious or violent offences committed by children and young people will satisfy the principle of *doli incapax*, provided it is administered appropriately.

It is the experience of our members that children do not have sufficient access to suitable health and rehabilitation services and educational services once placed in youth detention. By placing children in the youth justice system, particularly in detention, government is not meeting its responsibility to address the underlying factors that contribute to criminal offending by children. This ultimately leaves the socio-economic drivers of crime unaddressed, which will lead to the behaviours continuing.

QLS remains concerned about the access of young people to assessments, education and other program whilst in detention and the adequacy of post release planning. QLS remains concerned that this lockdown is due to inadequate staff resourcing.

Earlier this year in *R v TA* [2023] QChC 2 Fantin DCJ observed when sentencing a 13 year child with Foetal syndrome and Attention Deficit disorder (at page 5):

“For 78 of those 87 days (that is, for the overwhelming majority of the time you have been at Cleveland Youth Detention Centre on the last occasion), you have been confined in your cell for 20 hours or more each day. For 10 of those 87 days, you have been confined in your cell for 24 hours per day.”

His Honour continued:

“That is, you have effectively been held in solitary confinement. It is unsurprising that if you lock up a child for such lengthy periods of time with no stimulation other than behaviour over time is likely to deteriorate, including by causing damage to property, and that there is an increased risk of assault on staff or others. As other judicial officers in other jurisdictions in this country have observed, if you treat a child like an animal, it is unsurprising that they may behave like an animal.”

Former President of the Childrens Court, the Honourable Walter Sofronoff KC highlights the unique sentencing considerations for children included in the Youth Justice Act. This “requires a judge to give crucial weight to the prospects of a child’s future in the ways provided for by the Act and in a way unknown to the process of sentencing adults”. Further, “the Act requires that a child’s prospect of maturing into a decent adults be the central factor in sentencing rather than either retribution or general deterrence, which remain relevant”.²⁰ This highlights the importance of the detention of young people remaining as a last resort.

²⁰ *R v SCU* [2017] QCA 198, 27 [130] (Sofronoff P).

10. Terms of reference 2(c)(vii) – the most suitable infrastructure used for custody, detention or residential components necessary to reduce crime

QLS reiterates that a watch house is never an appropriate place to hold a child. The current infrastructure used in Queensland for custody and detention is not suitable for young people.

A key problem associated with current infrastructure is that it presents a significant barrier for young people to remain connected to their communities and to have their families visit whilst they are in detention.

QLS does not promote the building of more detention centres, a more appropriate solution is to build infrastructure to maintain young people in their own communities.

Bimberri Youth Justice Centre in the ACT is an example of a youth detention centre with more youth-appropriate facilities.²¹

11. Terms of reference 2(d) - systems and processes to provide immediate and ongoing support for victims of crime

Importantly, QLS highlights that the line between victim and offender in the youth justice context is often very blurry. Often most youth justice offenders have previously been victims of crime and this must be taken into account when considering any type of reform.

The Queensland youth justice system has developed a strong framework for encouraging restorative justice, with a number of options available under the Youth Justice Act for young people to be referred to restorative justice programs as both a sentencing and pre-sentencing option. Encouraging and facilitating victim engagement remains challenging as does delay both in engagement and resolution for the young person involved.

It is important the victims are advised of their capacity to provide victim impact statements, be advised of court outcomes and attend court proceeding involving children as permitted by section 20 of the *Childrens Court Act 1992* (Qld). There is a need to attach more resources to these programs to address both the needs of the young people and ensure that victims see that the case is being dealt with expeditiously. We note that there is considerable capacity within the youth justice system to facilitate this the challenge is ensuring that it is implemented in the most beneficial way. Therefore it is important to ensure that the current systems are working efficiently before looking at implementing alternative avenues for victims to participate in proceedings.

QLS also highlights the importance of victims having access to victim compensation schemes.

12. Terms of Reference 3(a) – power to call for persons, documents and other things

The Committee, pursuant to its terms of reference, has the power to call for persons, documents and other things. Accordingly, QLS recommends that the committee call for the following documents to assist in their inquiry:

- Register of youth detention centre lockdowns including a breakdown of lockdowns due to staffing shortages and lockdowns due to seclusion.
- School attendance records.

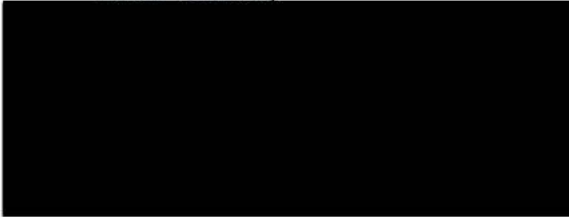
²¹ ACT Government, 'Bimberri Youth Justice Centre' *Community Services* (Web Page, May 2023) < <https://www.communityservices.act.gov.au/children-and-families/youth-justice/bimberri-youth-justice-centre>>.

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- Records of the number of children held in rooms without beds overnight.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED].

Yours faithfully



Chloé Kopilović
President