

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

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# Inquiry into Youth Justice Reform in Queensland



Queensland Mental Health Commission submission

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## Introduction

The Queensland Mental Health Commission (the Commission) welcomes the opportunity to make a submission to the *Inquiry into Youth Justice Reform in Queensland* (the Inquiry).

The Commission is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act) to drive ongoing reform towards a more integrated, evidence-based, and recovery-orientated mental health, alcohol and other drugs (AOD) and suicide prevention system in Queensland.

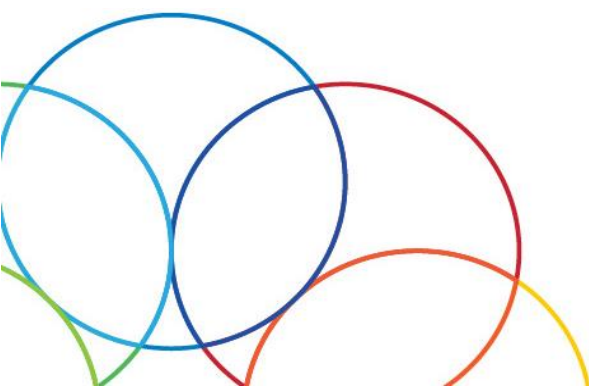
One of the Commission's primary functions is to develop a whole-of-government strategic plan to improve the mental health and wellbeing of Queenslanders, particularly people living with mental illness, problematic AOD use, and those affected by suicide. The current strategic plan is *Shifting minds: The Queensland Mental Health, Alcohol and Other Drugs, and Suicide Prevention Strategic Plan 2023-2028* (*Shifting minds*). *Shifting minds* is complemented by two sub-plans:

- *Achieving balance: The Queensland Alcohol and Other Drugs Plan 2022-2017* (*Achieving balance*)
- *Every life: The Queensland Suicide Prevention Plan 2019-2029* (*Every life*).

The terms of reference for the Inquiry have numerous points of connection to strategic priorities and actions under the *Shifting minds*, *Achieving balance*, and *Every life* plans.

*Every life* includes a focus on strengthening supports to people disproportionately impacted by suicide, including targeted responses and supports that consider key stressors, life stages, and transition points like entering or being released from justice settings. *Shifting minds* and *Achieving balance* recognise that people with lived and living experience of mental ill-health, and/or problematic AOD use are overrepresented in the adult and youth justice systems. Therefore, key whole-of-government priorities and actions under these plans include:

- expanding diversionary approaches and increasing the availability of health responses for people experiencing problematic AOD use to channel individuals away from a criminal justice pathway
- reducing stigma and discrimination, including across law enforcement and other systems to support strengths-based, culturally-safe, and person-centred responses to people with problematic AOD use
- supporting the mental health and wellbeing of children and young people, including by promoting the optimal start in life and strengthening services and supports for children aged 5–12 years old and their families
- developing and implementing a whole-of-system trauma strategy to reduce the incidence and impact of adversity and trauma across the life course
- strengthening the social and emotional wellbeing of First Nations Queenslanders, including by actively addressing the trauma experienced by First Nations peoples through whole-of-government implementation of *Leading healing our way: Queensland Aboriginal and Torres Strait Islander Healing Strategy 2020–2040*
- enhancing coordination and access to mental health and AOD treatment and support for people in contact with the criminal justice system, including expanding rehabilitation and reintegration responses and improving responses for First Nations peoples
- supporting and informing current discussion and decision-making around raising the age of criminal responsibility, particularly with regard to youth AOD related offences.



This submission is based on the Commission's work and is not intended to be a comprehensive response to the Inquiry's terms of reference. In addition, the Commission does not seek to duplicate the work or role of other agencies. This submission should, therefore, be considered alongside the below reports, which broadly align with the Commission's position on youth justice reform:

- Queensland Human Rights Commission (QHRC) submission to the Inquiry<sup>i</sup>
- QHRC submission to Youth Justice and Child Wellbeing Reform across Australia<sup>ii</sup>
- Queensland Family and Child Commission (QFCC) submission to the Strengthening Community Safety Bill 2023.<sup>iii</sup>

In addition, the Commission encourages the Inquiry to review the 2018 *Report on Youth Justice* by former police Commissioner Bob Atkinson (the Atkinson Report),<sup>iv</sup> which still holds significant relevance to youth justice issues in Queensland.

## Prioritise evidence-based prevention, early intervention, and diversion from the justice system

The challenge with the current justice response is that it is mostly a reactive response once a crime has been committed and an individual or community has already been negatively impacted. What is required is a paradigm shift to a more preventative and responsive system that looks at more effective, evidence based and holistic support for the young person and their family/kin network.

### *Prevention and early intervention*

In 2015, the Australian Research Alliance for Children and Youth conducted a review of the literature on early intervention and prevention. Notably, the review found:

*'Effective prevention and early intervention is possibly the most promising strategy for changing the trajectories of children. There is clear evidence that children's life chances are influenced by their families and communities and that they are able to be changed for the better. Improving the wellbeing of children, young people and families at population-level requires flexible and responsive systems that are equipped to deliver preventive interventions and respond effectively early to emerging issues and challenges.'*<sup>v</sup>

Prevention commences with ensuring children and young people receive the optimal start in life and that they are raised in loving, supportive environments where their physical, emotional, and social needs are met.<sup>vi</sup> A child's social and physical environment, including before conception, are key determinants of mental health and wellbeing throughout life.<sup>vii</sup> In particular, the first 2000 days of a child's life provide a critical window of opportunity to positively influence their developmental trajectory and build foundations for the future.<sup>viii</sup> To enable and empower children and young people to reach their full potential, they require access to quality health care and nutrition, protection from risk and harm, a sense of security and attachment, positive and nurturing family environments, responsive caregiving, and opportunities for early learning.<sup>ix</sup>

Research consistently shows that the earlier a child comes into contact with the justice system, the more prolonged their involvement is likely to be.<sup>x</sup> The most effective way to prevent this is to raise the age of criminal responsibility to 14, in line with internationally accepted standards. Early childhood and family support systems should also be in place to meet the diverse needs of various groups and communities, underpinned by a skilled and adequately resourced workforce to provide developmentally appropriate, trauma-informed, and culturally responsive support, care, and treatment for children and young people.

Most children and young people involved in the youth justice system have experienced homelessness, poverty, neglect, and/or domestic and family violence, with there being significant crossover between children and young people involved in Queensland's child protection and youth justice systems.<sup>xi</sup> This suggests current child protection interventions are not working effectively, and highlights the need for systems and services to intervene as soon as possible when risk factors associated with antisocial or offending behaviour are present. Holistic, integrated, and

coordinated responses to children, young people and their families are also required to reduce social and economic disadvantage and mitigate risk factors for offending. Early intervention responses for children and young people that maintain and support engagement in education, training, and employment can also positively impact on a young person's trajectory.

Children and young people involved in the justice system have significantly higher rates of mental ill-health and cognitive disability when compared to general youth populations and are also more likely to experience co-morbidity, as well as problematic AOD use.<sup>xii</sup> In particular, children and young people in youth detention present with complex needs and are more likely to have experienced childhood adversity and trauma.<sup>xiii</sup> Research suggests around 80 per cent of young people in Australian youth justice settings have experienced multiple traumas.<sup>xiv</sup>

### ***Diversion from the justice system***

In 2019, the (former) Queensland Productivity Commission *Inquiry into Imprisonment and Recidivism* found imprisonment rates in Queensland were increasing despite declining crime rates.<sup>xv</sup> The Queensland Government's response to the Productivity Commission report included a commitment to increase the range of options available for drug use offences, including expanding treatment services for people who would otherwise go through criminal justice processes and increasing access to health responses. A 'health response' is a term encompassing a range of health-focused interventions, including therapeutic and psychosocial supports, information and assessment, and triage and referral.

There are opportunities to enact a health response at all system touchpoints, particularly when children and young people offend or come into contact with police. Trajectories of criminal offending can be interrupted by offering diversion to health responses to ensure children and young people receive appropriate education, support, and treatment to address risk factors or the underlying causes of their antisocial and/or offending behaviour.

In 2021-22, there were 1465 children and young people aged 10-17 years in Queensland whose principle offence was an illicit drug offence.<sup>xvi</sup> The current approach of arresting, charging, detaining, and processing children and young people through the justice system for the use and/or possession of illicit substances and utensils provides an example of how the current system response fails to address the root causes of youth offending and demonstrates a missed opportunity for diversionary responses.

While the Commission is pleased to note the Queensland Government has recently committed to expanding its drug diversion program (a key priority under *Shifting minds*), more needs to be done to divert children and young people away from the justice system. For example, the QFCC's recent review into children and young people housed in adult watch houses found most young people released from detention return to custody within 12 months.<sup>xvii</sup> This demonstrates the current failure of custodial options to address youth offending and reoffending.

As outlined within the *Youth Justice Act 1992* and consistent with Australia's human rights obligations, the detention of children and young people should only be used as a measure of last resort where efforts of prevention, early intervention, and diversion have been unsuccessful.

### ***Prioritising investment in prevention, early intervention, and diversion***

Effective early intervention, prevention, and diversion requires a combination of cross-sectoral short, medium, and long-term approaches. Improving public safety and addressing the complex causes of youth offending also requires a consistent and concerted effort to change over a long period of time.<sup>xviii</sup>

The current system is largely crisis orientated and geared toward late intervention. Community-based services are often funded with short-term contracts and inadequate investment which impedes the delivery of tailored and quality services. There is a need to invest in and fund initiatives over a sufficient period to ensure they are appropriately designed, implemented, improved, and outcomes are effectively evaluated. This requires well planned and coordinated investment, long-term commitments over successive governments, and managing public expectations about the length of time required to see meaningful outcomes.

The return on investment for prevention and early intervention is likely to be significantly greater than current reactionary and crisis-based responses, which are both more challenging and expensive to resolve. Getting it right in the early years reduces downstream expenditure on mental ill-health, problematic AOD use, remedial education, welfare reciprocity,<sup>xix</sup> and the risks of children and young people becoming enmeshed in the criminal justice system.

Expenditure on late intervention and crisis responses are not sustainable and result in poorer outcomes for children, young people, their families, and the community.<sup>xx</sup>

## Adopting a human rights approach

Community safety is essential for the health and wellbeing of all Queenslanders, but equally important are rights and protections for our children and young people. The Commission is extremely concerned about the current 'tough on crime' approach to youth justice reforms in Queensland, which appear to focus on detention and punishment rather than rehabilitation and addressing the underlying causes of youth offending. There is overwhelming evidence to suggest this approach does not work and only serves to increase the chances of children and young people reoffending and becoming entrenched in the justice system.

The United Nations *Convention on the Rights of the Child* Article 37 (b) states:

*'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.'*

The Commission encourages the Queensland Government to reconsider recent decisions made to override the *Queensland Human Rights Act 2019* (the Human Rights Act) and the use of adult watch houses to detain children and young people awaiting bail or transfer to a youth detention centre. This not only removes human rights protections from some children and young people involved in the justice system but erodes public confidence in the protections afforded to all Queenslanders. It is also inconsistent with international standards and a contemporary and evidence-based approach to youth justice, and will likely have a counterproductive effect by exacerbating rather than reducing the rates of reoffending by children and young people.

The Human Rights Act provides a framework by which the impact of a decision or policy on a person's human rights can be comprehensively assessed. Placing the needs of children, young people and their families at the centre of decision-making is likely to reduce offending and maximise rehabilitation when offending does occur. Human rights law recognises the importance of children and young people remaining with their families and the rights of children to be safe and have access to health services, education, support for disability, and a stable living environment, all of which have been identified as protective factors against offending.

## Prohibiting the use of solitary confinement for children and young people

The Guardian's recent 'Written Off' series aims to detail the experiences of children and young people in Queensland's justice system, including within youth detention centres.<sup>xxi</sup> 'Written Off' details alarming conditions inside youth detention facilities that are inconsistent with human rights, the *Charter of youth justice principles*, and the *Inspection standards for Queensland youth detention centres*, including limited or no access to education, activities, and/or rehabilitation programs, and the widespread use of solitary confinement or 'separation' due to chronic staffing shortages. This results in children and young people being largely confined to their cells for days, weeks, and possibly months at a time.

Similar concerns were recently echoed by the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (the Disability Royal Commission). People with disability (including psycho-social disability), and particularly people with cognitive disability (e.g., autism spectrum disorders and severe or persistent mental illness) are significantly over-represented at all stages of the criminal justice system.<sup>xxii</sup> The Disability Royal Commission identified that the over-representation of First Nations peoples with cognitive disability in custody, particularly in youth detention, is a largely hidden national crisis.

In regard to the use of solitary confinement in youth detention centres, the Disability Royal Commission found:<sup>xxiii</sup>

- Isolation amounting to solitary confinement is often imposed on children and young people because of operational decisions to 'lockdown' a detention centre as a result of staffing issues and this is unacceptable.
- There is no evidence that solitary confinement is an appropriate response to people with disability displaying behaviours of concern.

- Children and young people are particularly vulnerable as they are still in crucial stages of development and experiences of isolation can interfere and damage developmental processes.
- For children and young people experiencing or at risk of experiencing mental ill-health, isolation practices can have particularly damaging psychological effects and isolation is likely to increase the risks of self-harm and suicide.
- Staff in youth detention centres (at all levels) require appropriate training to support the needs of children and young people with disability, including the use of trauma-informed, culturally appropriate, and gender-responsive approaches.

The Disability Royal Commission recommended state and territory legislation be amended to strictly prohibit the use of solitary confinement for children and young people and clearly define safeguards to applying isolation or separation practices for children and young people with disability. The Commission strongly supports this recommendation.

## First Nations children and young people involved in the justice system

Aboriginal and Torres Strait Islander peoples are disproportionately represented across adult and youth justice systems. Aboriginal and Torres Strait Islander children and young people are significantly overrepresented in Queensland's justice system because of ongoing systemic failures that disadvantage First Nations peoples. The QFCC's submission to the Strengthening Community Safety Bill 2023 identified this as one of nine action areas which must be addressed.

For example, the justice system has contact with Aboriginal and Torres Strait Islander children and young people an average of 5.5 years earlier than non-Indigenous children and young people,<sup>xxiv</sup> largely due to First Nations peoples being more likely to experience institutional and systemic disadvantage in the context of ongoing racism and disconnection from community, language, culture, land, sea, and country.

The Commission considers consultation and co-design with local First Nations communities and peoples as a vital component to the success and impact of future policy, initiatives, and planning with respect to youth justice reform. Culturally appropriate early intervention initiatives and programs should be developed to support families and young people who are at risk and to reduce the likelihood of First Nations children and young people entering the justice system. Such initiatives and programs should build on existing strengths in Aboriginal and Torres Strait Islander communities and be grounded in strong connection to community, family, culture, and country.

Future supports and services for First Nations peoples and communities should also include principles of self-determination and cultural safety and should be developed to respond to intergenerational trauma and the impacts of colonisation. Solutions to reduce the rates of First Nations children and young people within the youth justice system requires a broader systems response, which incorporates social and emotional wellbeing as a framework to achieve holistic wellness in families and communities. First Nations people including elders, people with a lived experience, and children and young people play a vital role in achieving this goal and should be included in all aspects of the discussion and design of any response to ensure its success.

For Aboriginal and Torres Strait Islander children and young people held in youth detention, there must be fair and equitable access to services, activities, and facilities, including services specifically related to their cultural identity, consistent with the *Inspection standards for Queensland youth detention centres*.<sup>xxv</sup>

## Contact

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