

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

Submission No: 97
Submitted by: The Whanau Ora Community Clinic
Publication: Making the submission and your name public
Attachments: See attachment
Submitter Comments:

Youth Justice Reform Select Committee

Introduction

1. We first acknowledge the First Nations people of Queensland and pay homage to their ancestors, the land they walk upon, care for, and which determines their identities, families, communities, as well as their rights and responsibilities as First Nations peoples. We submit this document humbly, recognizing that the issues faced by Indigenous peoples daily are similar worldwide. We also acknowledge the United Nations Declaration of Indigenous Peoples' Rights, which Australia, similar to New Zealand, has supported in principle for a decade or more. However, implementation in both countries remains challenging for different governments¹. Additionally, we note the recent Australian Indigenous Voice Referendum (2023), where Australians voted not to formally hear the voice of First Nations people, with two-thirds of the Queensland population voting this way. We understand the sensitivities of various perspectives towards First Nations people.

Whanau Ora Community Clinic

2. This submission is provided by Mr. George Ngatai and Ms. Raewyn Bhana, registered in Queensland to offer medical, health, and social services. We respond to the Youth Justice Reform Select Committee and the terms of reference of the inquiry that examines ongoing reforms for the youth justice system. The aim is to assist in the development of First Nations Peoples in Queensland, particularly supporting young people to access a wide range of services addressing their unique health and development needs. This includes gaining skills,

¹ Law Council of Australia (2022) Australia must formally adopt UN Declaration on Rights of Indigenous People [Australia must formally adopt UN Declaration on Rights of Indigenous People - Law Council of Australia](#)

expertise, knowledge, cultural and gender identity to navigate the various challenges they experience or are imposed upon them at this stage of their lives.

3. The Whanau Ora Community Clinic has a reputation in Aotearoa for providing a broad range of primary medical, health, and social care services. These services support individuals and whanau, including troubled youth requiring assistance with their self-esteem and cultural identity. The clinic supports their development with full participation and backing from their whanau, promoting intergenerational development and new opportunities.
4. As a kaupapa Māori organization, we have now established an office in Queensland. Our organization is experienced in working with diverse youth and Indigenous youth who often live with complex medical, health, and social issues. These may include mental health and addiction issues, family harm, living in social and economic environments where violence, guns, bullying, and gang life behavior are common. Criminal offending may be part of their journey into adulthood and lifestyle.
5. Due to low-level offending and issues within their families and communities, children and youth may also be encouraged by others in their family and social networks to become low-level offenders. This can lead to a journey and pathway toward criminal offending, bringing young people to the attention of the Police, Youth Courts, juvenile detention centers, and the need for access to education, medical and health services. They also require help with developing life skills, support for employment, engagement in meaningful activities, protection, support for housing, opportunities to learn life skills such as obtaining a driver's license, and assistance in establishing uplifting, respectful relationships with their peers and wider community members that support social integration.
6. Our organization also recognizes the importance of supporting children and young people to value their ancestral inheritance, ethnic, family, and wider cultural identity. Overall, our organization has experience working with troubled youth and their families in various

situations and environments that bring them to the attention of the police, court, justice, or correction services.

Whanau Ora Community Clinic Submission

7. We, as an organization, would like to make a submission to the Youth Justice Reform Select Committee established on October 12, 2023, to inquire and examine ongoing reforms for the youth justice system.
8. We also recognize new legislation that was introduced on August 24, 2023, amendments which commenced on assent of the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023. (Appendix One)
9. Amendments made were acknowledged to reflect and validate what has been the understood and established practice for the last 30 years to address those who have been abused in this system due to a lack of care and protection of their rights.
10. Validating the past without hearing the voices of those who have been abused in that system can affect all aspects of an individual's health and well-being and that of their families. Compensation should be available, and at least an apology to those whose rights have been trampled over or who have been abused by different public-funded agencies, as appropriate systems, infrastructure, checks, and balances were not in place.
11. The importance of recognition of harm that has occurred is an important part of healing for individuals, families, and communities to recover from abuse. Utilizing their own healing, health, and well-being treatment modalities and opportunities for storytelling so lessons become part of the knowledge and wisdom of families and communities, which we recognize as matauranga Māori. This information is now sought after by researchers, health and well-being practitioners, and different government and non-government organizations.

12. Following recent legal changes made in August 2023, this review covers the following matters:

a. Ongoing reforms to the youth justice system; and b. Support for victims of crime.

In undertaking the inquiry, the Committee considers:

c. The prevention of entry and diversion of youth offenders from the justice system, with specific consideration of risk and protective factors that reduce crime;

d. Effective ways to stop recidivism and protect the community from offending, and the opportunity for community-controlled organizations with specific reference to the role of First Nations peoples to provide support solutions and services;

e. The efficacy of:

i. Justice programs, including on-country programs, education, health, and housing services;

ii. Reducing people carrying weapons;

iii. Evidence-based early intervention and prevention programs;

iv. Reducing the numbers in custody on remand;

v. Alternatives to detention;

vi. Detention and other consequences of offending;

vii. The most suitable infrastructure used for custody, detention, or residential components necessary to reduce crime; and

f. Systems and processes to provide immediate and ongoing support for victims of crime.

Terms of Reference

13. The above terms of reference are not new to our organization and are common issues in New Zealand. These matters are discussed by various Crown, non-government, Māori, and Iwi-led organizations to acknowledge and consider different ways to address and redress youth offending, reflecting the youthfulness of the Māori and Pacific populations compared to the aging European (Pakeha) population in New Zealand. Further, consideration of youth offending is related to Māori intergenerational experiences of colonization and structural discrimination in New Zealand, which has created social, economic, health, and political inequalities across generations.
14. This reality and truth, supported by evidence such as legal research, government statistics, and the lived experiences of Māori, have been acknowledged as systematic discrimination against Māori. This includes legislation and the fast-tracking of legislation to address unintended consequences or legal redress through available channels in New Zealand, such as the Courts, use of the Waitangi Tribunal, engagement and participation in different Government-led and funded inquiries, and involvement in legislative reform.

Past Shapes the Future

15. For Māori, we recognize that the situation of our children and youth often reflects the decisions made in the past, which affect their social and economic environments today. It also reflects the choices and lifestyles of their parents, whanau, and the wider community, as well as their expectations for the future. For Māori, the past is always in front of us, and if we do not learn, we continue to achieve the same solutions and likely outcomes.
16. Recent legislation passed in relation to youth offending, set in August 2023, likely sets the scene for future youth offending, especially for First Nation Peoples, as the reforms do not support the growth and development of indigenous peoples and other communities

vulnerable to offending. More legislation that controls behavior where trauma and repeated trauma occur generally creates the same behavior.

17. We encourage greater independence and support to be given to families and communities to co-design services and interventions to meet their needs and aspirations for their children and great-grandchildren. This approach ensures they have an investment in their own future, role, responsibility, and accountability in accordance with their values, beliefs, and connection to the natural and spiritual environments they share with others.
18. In New Zealand, there is growing respect and recognition by different government agencies of the knowledge and wisdom that indigenous peoples hold through their worldview, ancestral knowledge, and knowledge of our world. This knowledge can be applied to help solve many complex social, economic, environmental, political, and human issues.

First Nations Peoples and Community-Controlled Organizations

19. We are pleased to see in the terms of reference (October 12, 2023) recognition of the importance of First Nations Peoples and community-controlled organizations invited to provide advice on interventions to reduce youth offending and recidivism. These are complex matters, relating to both societal and human physical, mental, family, and spiritual development. They also involve the relationships individuals, families, and communities have with their natural, social, and economic environments. There is a growing recognition that our behavior is shaped by others and the different environments where we live, socialize, work, and connect with others. Youth offending and prevention require recognition of the different environments they live in and changes occurring daily, along with access and exposure to various social hazards that can affect decision-making and behavior, such as access to alcohol, legal and illegal drugs, gambling, and different lifestyles that increase the risk of poor physical, mental, family, and spiritual health. These issues are constantly addressed within whanau and communities, with Māori health providers, such as our

organization, acting as brokers for clients and whanau to seek help, access, and utilize different services provided or funded by various government agencies. Community-controlled organizations, alone or with other partners, can create their own community hubs where services are minimal or no cost, safe, and stigma-free. Services provided and utilized can also be regularly reviewed by users and supported to continuously evolve to meet different client and whanau needs, remaining relevant and fit for purpose.

Involvement of Young People to Prevent and Support Early Intervention into Youth Offending

20. The involvement of young people in the development and evolution of youth offending decisions and systems in place is crucial, for they are the users and can provide valuable real-time information and advice on whether their legal, human, and international human rights are being met at all times.
21. Provision should be included in the terms of reference for the review of youth justice regarding how the voice of youth will be heard and who will protect the rights and responsibilities of young people. This ensures that government and non-government funded agencies and organizations involved in their care and protection are responsible, act legally, are open and transparent in their operations, provide real-time evidence of what is happening in their areas of responsibility, and are involved in youth prevention and early intervention. This enables them to respond quickly with young people to address and prevent further criminal offending before a young person accumulates a long list of recorded offenses, affecting their access to bail, sentencing, electronic monitoring, and surveillance for those aged 15 years or more. Without early intervention, the likelihood of young people being on a pathway to imprisonment increases. This creates a system of revolving doors, in and out of the community, increasing the risk of youth and adult violence, escalating physical, mental, family health, and spiritual issues, limiting opportunities for the growth and

development of young people, and establishing a pattern that may repeat itself and become a family and intergenerational cycle.

Community-Led Restorative Justice Services

22. As an organization, we have pioneered, in collaboration with local iwi, to upskill and develop our own restorative justice services with trained and certified Māori restorative justice facilitators. Our staff has also worked in local courts, networking with lawyers and the judicial profession to support restorative justice for offenders. This involves meeting their victims and agreeing on a restorative plan that recognizes the harm incurred for victims and develops a plan to move forward, promoting the development and healing of both victims and offenders.

Family Conferences

23. We also recognize the importance of family or whanau hui, where a restorative justice facilitator can convene such meetings and work with family members and their elders to develop solutions addressing issues within a family system. This is often related to child or youth offending, where the child or young person has no support, limited options, or requires protection from an unsafe environment.
24. Our organization is experienced in providing support to young people, often caring for them until a suitable place is available. This may include having a person with them 24 hours a day to prevent entry into a detention center or being housed in a prison cell.
25. Whanau or family conferences are often useful as family members have the opportunity to unite and work together on how complex issues may be resolved, creating their own solutions. This can be helpful for families negotiating and navigating their way through different agencies, where different personnel are involved from various agencies, and the

child or family may be on one or more agencies' caseload, but no person or agency is totally responsible.

Oranga Tamariki

26. Oranga Tamariki is a government agency responsible for supporting any child in New Zealand whose well-being is at a significant risk of harm now or in the future. This agency has been subject to a number of reviews assessing its ability or inability to meet its statutory responsibilities. There is now a growing recognition that whanau, hapu, and iwi should have a greater role, responsibility, authority, and resources to care for and protect their own children.
27. New legislation has been introduced to increase the advocacy of children and young people with the establishment of the Children and Young People's Commission Act 2022, enacted in 2023, to give Māori a greater voice in the advocacy of young people and to ensure that they get the support they require, which is also independently monitored outside of Oranga Tamariki.
28. This new board has specific responsibilities to promote and advance the rights, interests, and participation of young people to improve their well-being within the context of their families, whanau, hapu, and communities.
29. Membership of the board is defined in legislation, and those appointed must have knowledge and understanding of Te Tiriti o Waitangi, tikanga Māori, experience in Māori leadership, and half the board must identify as being Māori, supporting co-governance, shared leadership, and shared investment in the current and future development of young people.

30. The terms of reference for the inquiry need to be balanced, especially with the legislative changes made in August 2023. Focusing only on youth offending may create more offending, as doing the same thing is likely to create the same scenario.
31. Indigenous communities and community-controlled organizations can make significant changes with support. They can increase their advocacy for the positive development of children and young people within the context of their families and communities, recognizing their ethnicity, cultural, and spiritual values.

Community-Led and Directed Diversion Initiatives

32. As an example, our organization is one of the few community-based, Māori-led, and owned organizations working in partnership with the Police in South Auckland to operate Te Pae Oranga. In this community-based initiative, we have community Māori leaders who are recognized in the community and sit alongside representatives of the Police to meet with first-time and low-level offenders to discuss their behavior.
33. Prior to meeting the panel, the client, alone or with family support, is required with a support person, Kai Awhina, to develop a plan to make changes in their life, relationships, and behavior.
34. All clients are required to acknowledge and respect their whakapapa and cultural history and be able to present themselves to the panel, articulating who they are so they understand and respect their ancestral and whakapapa inheritance.
35. Through discussion and korero, their plan is approved by the panel, including the Police, and a defined time frame is required for actions and outcomes to be completed. Once completed as agreed, the person is not required to go to court, and diversion as an option is created.
36. For young people who drive without a formal license, we also assist in that area, for we know that young people will continue to drive and possibly steal cars until they are supported to

gain the necessary skills and expertise. Support is provided to hold them accountable for their actions and develop leadership and mentoring skills that they can apply in other areas of their lives and relationships.

Creation of Community-Developed Partnerships and Collaborations

37. The Whanau Ora Community Clinic does not work alone but also partners with different community groups. As recent legislation in Queensland has enabled different government-funded organizations to collaborate and work together to create a multi-agency approach, a similar system and funded infrastructure need to be in place to support First Nations peoples and community-owned organizations. This enables them to work together and develop community-designed prevention and early intervention solutions. This should include the development of new education and employment opportunities for working with their families and communities to achieve outcomes that families and communities agree on as important, such as the elimination of violence and weapons in defined places or situations.

Te Tiriti o Waitangi Principles

38. Our organization is a kaupapa Māori organization and supports and recognizes Te Tiriti o Waitangi in all areas of work. This is part of the responsibilities of being contracted to provide Crown-funded primary medical, health, and wider social services, which we call wrap-around support. In addition, we also take clients and whanau through whatever door they enter our services, whether directed by child and protection services, family harm, Police, community organizations, Ministry of Social Welfare, social housing groups, and so forth.

39. Working in health, we currently operate under the Pae Ora Healthy Futures Act 2022, in which we are required to recognize Te Tiriti o Waitangi in our work and embrace and work with these principles. They are to support clients and whanau to direct their own lives and

support their own defined view of self-determination or tino rangatiratanga, develop and implement solutions which clients and whanau support, achieve equitable solutions and outcomes for different clients, whanau, and populations, active protection for vulnerable populations, communities, and environments, the creation of new options and choices for clients, and the importance of working in partnership or collaboration with clients, families, and different organizations.

40. We see in the terms of reference for this justice review and recent changes to youth justice legislation that some of the principles that we are required to consider in New Zealand have application also in Queensland. This can address and redress youth offending, engage and support First Nations Peoples to be supported and resourced to develop new solutions, and allow community-owned controlled organizations to play a key role in supporting the implementation of current youth justice legislation.

41. Further, providing a framework for different relationships to be created, new organizations, new collaborations, improved outcomes, options, and choices can be created. Equitable outcomes and solutions can be measured, researched, and evaluated to improve the ongoing development of families, communities, and organizations.

42. In conclusion, we, as an organization, welcome the opportunity to contribute to youth law reform. We believe that our experience in New Zealand may be useful to support the engagement and participation of First Nations People, community-controlled organizations, and public-funded organizations. It is important not to see young people as a threat but as an opportunity to work together and create new futures.

43. Offending, and youth offending in particular, is related to trauma, intergenerational trauma, and living in environments where we do not feel safe and connected with our natural and spiritual environments.

Appendix 1

Youth Justice Reform in Queensland²

On 12 October 2023 the Youth Justice Reform Select Committee was established to conduct an inquiry to examine ongoing reforms to the youth justice system and support for victims of crime.

The terms of reference for the inquiry are:

1. A select committee, known as the Youth Justice Reform Select Committee be established to examine:
 1. ongoing reforms to the youth justice system; and
 2. support for victims of crime.
2. In undertaking the inquiry, the Committee consider:
 1. the prevention of entry and diversion of youth offenders from the justice system with specific consideration of risk and protective factors that reduce crime;
 2. 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 peoples to provide support solutions and services;
 3. the efficacy of:
 - i. justice programs including on-country programs, education, health and housing services;
 - ii. reducing people carrying weapons;

² [Committee Details | Queensland Parliament](#)

- iii. evidence-based early intervention and prevention programs;
 - iv. reducing the numbers in custody on remand;
 - v. alternatives to detention;
 - vi. detention and other consequences of offending;
 - vii. the most suitable infrastructure used for custody, detention or residential components necessary to reduce crime; and
 4. systems and processes to provide immediate and ongoing support for victims of crime.
3. The Committee:
 1. has the power to call for persons, documents and other things;
 2. may present reports to the Legislative Assembly as it determines;
 3. ceases at the dissolution of this parliament.
4. Standing Order 203 does not apply and a question before the Committee is decided by a majority of the votes of the members present and voting, plus one member.
5. The Committee consists of seven members.

Your submission **must** include the following or it may not be considered by the committee:

- the author's name
- if the submission is made on behalf of an organisation, the level of approval (e.g. a local branch, executive committee or national organisation), and

- **at least two of the following:**
 - email address
 - mailing address, and
 - daytime telephone number

Email:

youthjustice@parliament.qld.gov.au

Please note: Your name and submission may be published on the committee's inquiry webpage, which will mean it can be viewed on the internet. You can request for your name to be withheld from your published submission, or for both your name and your submission to be kept confidential (i.e. not published). Decisions about whether and how submissions are published are at the discretion of the committee.

On 24 August 2023, urgent amendments to the *Youth Justice Act 1992* were passed by the Queensland Parliament.

These amendments, which commence on assent of the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*, reflect and validate what has been the understood and established practice for the last 30 years.

The amendments have the following effect:

- make lawful the longstanding practice of holding children in watchhouses until beds become available in youth detention centres
- make that practice more transparent by setting out criteria to be taken into account when deciding the prioritisation and timing of transfers

- provide a human rights declaration override declaration that applies to this decision making process until 31 December 2026
- make a retrospective amendment to address past incidences of children being held in police custody in watchhouses when s.56(4) orders have not been made
- provide a human rights override declaration for the establishment of youth detention centres until December 2026, in extraordinary circumstances
- address drafting errors in relation to the transfer of detainees aged 18 or over to adult custody.

Read the [amendments to the legislation \(PDF, 266KB\)](#).

On 22 March 2023, the *Strengthening Community Safety Act 2023* came into effect, amending the *Youth Justice Act 1992* and other legislation.

The amendments to the *Youth Justice Act 1992*:

- extend and expand the trial of electronic monitoring devices as a condition of bail for a further 2 years to include eligible 15-year-olds
- expand the list of offences with a presumption against bail to include people who are passengers in stolen vehicles and enter premises with intent to commit an indictable offence
- confirm in legislation that a court is to take into account the young person's bail history when sentencing
- empower a sentencing court to declare a child a 'serious repeat offender' (SRO) to enable considerations such as community safety to be paramount when sentencing
- extend the maximum duration of a conditional release order (CRO) from 3 months to 6 months

- ensure child offenders given a CRO for more serious offending are more likely to serve their suspended term of detention if they breach their CRO
- in certain circumstances allow the transfer of 18-year-olds to correctional centres rather than detention centres
- ensure the continuation of multi-agency collaborative panels (MACPs) which facilitate coordinated case management for young people identified as high risk or requiring a collaborative response.

The Criminal Code has also been amended to:

- increase the maximum sentence for unlawful use of motor vehicle offences and introduce new circumstances of aggravation, including where an offender has published boastful material of their offending behaviour on social media
- and
- require unlawful use of motor vehicle offences with a circumstance of aggravation involving violence or being armed to be heard by a judge, attracting higher penalties.

The *Police Powers and Responsibilities Act 2000* has also been amended to provide that police are not required to consider alternatives to arrest if a child on bail for a prescribed indictable offence or certain domestic violence offences has contravened or is contravening a bail condition.

The *Bail Act 1980* has been amended to make it an offence for a child to breach a condition of their bail.

Extension and expansion of electronic monitoring

Following the [evaluation of the initial trial of electronic monitoring](#) as a condition of bail (see 2021 amendments below), the provisions have been extended until 30 April 2025 (as noted above) and the Youth Justice Regulation 2016 has been amended to prescribe 3 additional locations:

- Toowoomba
- Mount Isa
- Cairns

A further review will be conducted towards the end of the extended period.