

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

Submission No:	117 - including supplementary submission
Submitted by:	YFS Legal
Publication:	Making the submission and your name public
Attachments:	See attachment
Submitter Comments:	

10 January 2024

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

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

Dear Committee,

Re: Youth Justice Reform Inquiry

Thank you for the opportunity to provide feedback in relation to the Youth Justice Reform Inquiry ("the Inquiry").

YFS Legal is a community legal centre based in Logan, providing advice and representation to children and young people in the criminal justice system in Logan and surrounding areas. YFS Legal also assists in delivering the Children's Court duty lawyer service at the Beenleigh Childrens Court.

We support the Inquiry's goals to examine ongoing reforms to the youth justice system and support for victims of crime.

We acknowledge that Queenslanders have the right to be and feel safe in their communities. We submit that this can only be possible through the implementation of programs, policies, and legislation focused on prevention, reducing recidivism, and enhancing community safety.

Recent youth justice reforms have been tainted by lack of meaningful stakeholder engagement, transparency, and dismissal of human rights protections.

The current approach to youth justice in Queensland is not working. Punitive, retributive, tough on crime strategies are ineffective.

Detention does not address the underlying causes of youth offending. Increased penalties are not an appropriate deterrent of offending. They ultimately make the community less safe by increasing offending and recidivism.

Detention as a last resort and mandatory minimum sentences

We strongly advocate that “a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstance”¹ remain as it is. This approach is consistent with the *Human Rights Act 2019* (Qld) s 26(2) and the *Convention of the Rights of the Child*.² It is our position that mandatory sentencing conflicts with the principle of detention as a last resort and breaches these protections.

There is a significant amount of evidence which demonstrates that detention does not significantly reduce recidivism.³ Further, there are psychosocial effects of detention, such as exposure to negative influences, continuing disengagement with education and employment, and prevention of positive engagement with family and community.⁴ We agree with the submission made by the Youth Advocacy Centre in that detention can only assist in reducing reoffending if it has a strong rehabilitative and therapeutic response.⁵

We note the comments by Mr Anthony Reilly, Ombudsman and Inspector of Detention Services to the Inquiry through the Public Hearing on 6 December 2023 regarding solitary confinement.⁶ It is our experience that there is a continuing issue of staff shortages and chronic overcrowding resulting in separation practices in youth detention centres. This practice of lock downs and ‘night mode’ reduces access to school and therapeutic programs and has a direct harmful psychological impact on young people.

We understand that the number of young people considered to be chronic or serious repeat offenders has increased from 2021 to 2022.⁷ It stands to reason then, that the idea of detention as a punishment or deterrent does not work. We agree that an individualised multi-systemic therapeutic program is a more effective approach, and that community is better served.⁸

Respond to root causes

To reduce offending and reoffending, rehabilitative, holistic, and intensive therapeutic supports must address the root causes of the offending. An approach which focuses on improving outcomes for children and their families, will also improve community safety.

Currently, the needs of children and the root causes of problematic behaviour are not adequately addressed. Children in the justice system have often experienced trauma, including being victim/survivors of domestic and family violence. There are high rates of disability and neurological

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

² *Human Rights Act 2019* (Qld), s 26(2); *Convention of the Rights of the Child*, arts 37(b), 40(3)(b).

³ [Queensland Police Service Briefing Paper](#) to the Committee (12 November 2023, see page 9) and oral evidence of Bob Atkinson AO APM on 23 November 2023 at page 32 of the transcript.

⁴ [Professor Tamara Walsh submission](#) to the Committee (13 November 2023), 61 and 65.

⁵ [Youth Advocacy Centre submission](#) to the Committee (20 November 2023), 6.

⁶ Mr Anthony Reilly, Public Hearing Transcript of Proceedings (6 December 2023).

⁷ [Dr Troy Allard and Dr Molly McCarthy submission](#) to the Committee (16 November 2023).

⁸ *Ibid.*

conditions, and many children in the justice system are from communities characterised by poverty and considerable disadvantage.⁹

Early intervention

The youth justice system requires focus on prevention and early intervention measures, rather than reactionary and punitive measures such as detention.

Incarcerating children is not keeping our communities safe. Queensland detains more children each day than any other state and has the worst recidivist rate in Australia.¹⁰ Ninety-five per cent of young people that go to Cleveland Detention Centre allegedly reoffend within the year of their release.¹¹

The earlier a child is exposed to the justice system the more likely they are to reoffend.¹² To keep the community safe, the Queensland Government should remove children younger than 14 from the justice system and invest in services and supports.

Early intervention programs in Queensland support children and make communities safer for everyone.¹³ Early intervention programs prevent or reduce youth offending and divert young offenders away from reoffending. Engagement of young people and families with programs at the earliest opportunity, increases the chance of diverting young people from the youth justice system. Unfortunately, the Queensland Government is underfunding community-led programs focused on prevention and diversion.¹⁴

In addition to early intervention programs, bail programs and programs focusing on transition from detention also have success in diversion, rehabilitation, and reducing offending and reoffending of young people.

Programs should be community-based, therapeutic, and trauma informed. They should address the root causes of the offending, be culturally appropriate and safe, and protect the human rights of young people.

⁹ Queensland Government, 'Youth Justice Summary Census 2022' (2023), <https://desbt.qld.gov.au/data/assets/pdf_file/0019/17083/census-summary-custody.pdf>; McArthur, M., Suomi, A., & Kendall, B. 2021). 'Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in Australian Capital Territory.' Australian National University (2021), 7.

<https://www.justice.act.gov.au/data/assets/pdf_file/0006/2072364/Raising-the-Age-Final-Report.PDF>.

¹⁰ Productivity Commission, 'Report on Government Services 2023,' (2023), Part F, section 17: released 25 January 2023, Table 17A.26, <<https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice/rogs-2023-partf-section17-youth-evidencejustice-data-tables.xlsx>>.

¹¹ Queensland Government, 'Response to Question on Notice No. 859' (2022), <<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/859-2022.pdf>>.

¹² Sentencing Advisory Council, 'Reoffending by children and young people in Victoria' (2016), xiii, <[https://www.sentencingcouncil.vic.gov.au/sites/default/files/201908/Reoffending by Children and Young People in Victoria.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/201908/Reoffending%20by%20Children%20and%20Young%20People%20in%20Victoria.pdf)>.

¹³ Justice Reform Initiative, 'Alternatives to Incarceration in Queensland' (2023), 18-27, <https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1685393777/JRI_Alternatives_QLD_FULL_REPORT.pdf?1685393777>.

¹⁴ Queensland Council of Social Service, 'QCOSS: Queensland budget analysis 2023-2024, Investing in Queensland's Youth Services' (2023), <<https://www.qcoss.org.au/publication/state-budget-2023-2024-our-analysis/>>.

It is our experience that cognitive assessments are an important step diverting children from the youth justice system, and also that programs should be appropriately tailored for the young person.

YFS Legal is a part of a broader not-for-profit community organisation in Logan which delivers multiple programs to support vulnerable people experiencing adversity in the community. In particular, YFS has a number of youth support programs aimed at supporting young people who are at risk of, or are, experiencing homelessness, disengagement from school or employment, disconnection from family or community, addiction or struggling with substance use, mental health concerns including self-harm, family or relationship conflict, domestic and family violence and other risk factors which may result from ongoing trauma.

These programs include:

Resolve – Early intervention program to divert young people aged 10 to 16 at risk of entering the youth justice system.

Youthlink – Youth support program to build resilience and strengthen connection to family, support networks and community for vulnerable youth aged 12 to 21.

Next Step Plus – Support program to help young people aged 15 to 25 in the care of child safety or who have had a care experience to plan for independent life and case management for those who have left care.

SHIFT – An outreach program for young people aged 12 to 25 and their families to address harmful and problematic substance use

Community Youth Response and Diversion in Logan – A service partnering with the Aboriginal and Torres Strait Islander Community Health Service (ATSICHS) for young people aged 10 to 15 which provides culturally appropriate alternative interventions to police charging and/or remanding young people in custody with an emphasis on after hours diversion.

Most children who come before the youth justice system are affected by external risk factors which have led to offences committed. YFS Legal has seen firsthand the positive outcomes for young people who have had the opportunity to engage with these support programs after coming into contact with the youth justice system. YFS provides a holistic approach to supporting young people experiencing adversity and diverting them from the youth justice system.

There are similar programs in the surrounding areas, however we note that the capacity of these services is reduced by funding constraints. Increased funding is essential to provide adequate early intervention services. Currently the annual cost of detention-based supervision within the Queensland youth justice system is approximately \$218 million.¹⁵ It is our position that investing in early intervention will significantly assist in reducing these substantial costs of detaining children in custody.

Police response is also an integral part of early intervention. Police should be encouraged to divert young people from the youth justice system through referrals to a restorative justice process or

¹⁵ Productivity Commission, *above n 10*.

caution. We believe that decisions to deny bail and hold children in custody as opposed to issuing a notice to appear, should be reviewed by senior officers.

Keep children out of watchhouses

Watchhouses are not appropriate for any young person, particularly children with complex trauma or significant cognitive and neurological impairments.

The Queensland Government must urgently get children out of watchhouses, reduce the number of young people in detention and fund an alternative to the justice system for all children younger than 14. The alternative must be evidence based, trauma informed, culturally safe, therapeutic, and non-punitive.

Queensland has the highest rate of detaining children in custody, and consequently the highest rate of recidivism, of any state or territory in Australia.¹⁶ This demonstrates that detention is an ineffective tool in reducing recidivism, yet punitive approaches continue to be relied on as the primary method to address crime. Remarks of Australian Courts have indicated that the use of incarceration can in circumstances be “unproductive, or counter-productive, for the offender and hence the community.”¹⁷

Despite the Queensland Government asserting that prevention programs are the most effective approach to addressing youth offending and are also the most cost effective,¹⁸ amendments to the youth justice system imposed earlier this year by the *Strengthening Community Safety Act 2023* (Qld) have further entrenched children in an increasingly punitive system.

Examples of how these amendments are focused on punishment rather than prevention and rehabilitation are: legislating breach of bail as an offence for children and reducing the requirement for police to consider alternatives to arrest. Despite these amendments, there is no research-based or statistical evidence that indicates this Act has achieved its purpose.

Furthermore, amendments passed on 24 August 2023 (also in breach of the *Human Rights Act 2019*) allowing children to be held indefinitely in watchhouses¹⁹ consistently fail to comply with the Charter of Youth Justice Principles,²⁰ in particular:

- *Principle 19: A child detained in custody should only be held in a facility suitable for children.*
- *Principle 20: While a child is in detention, contacts should be fostered between the child and the community.*

Watchhouse conditions are much worse than the conditions in a detention centre and we often see children detained in these facilities for extended periods, sometimes for more than a month. These conditions include no access to natural light or exercise, exposure to violent adult offenders, lack of privacy, lack of access to showers and clean clothes, no ability to continue education and training, no

¹⁶ *Ibid.*

¹⁷ *Boulton v The Queen* [2014] VSCA 342, [112]

¹⁸ Queensland Government, ‘Working Together Changing the Story: Youth Justice Strategy 2019-2023’ (2019), 8.

¹⁹ Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023

²⁰ *Youth Justice Act 1992* (Qld), Schedule 1.

access to health services including inability to receive required medication and NDIS supports, isolation and no contact with family.

Since the amendments have passed, YFS Legal has seen no change in the way watchhouses are operated when detaining children.

Despite the complete lack of evidence that being detained (and in particular, detained in a watchhouse) works as an effective deterrent tool, it is often the most vulnerable children in the community who are remanded in watchhouses for extended periods. We see firsthand the detrimental impact such exposure has on a child's health and rehabilitation.

Although the principle of *doli in papax* provides a rebuttable presumption that children between the age of 10 and 13 do not have the requisite capacity to be found criminally responsible,²¹ it is rarely a barrier to prosecution.²² The presumption does not stop children under 14 years from being remanded in custody prior to finalisation of matters, including where charges are discontinued. This means we see children who do not have the required capacity to be found guilty of an offence, remanded in watchhouses and detention centres for extended periods whilst cognitive assessments are completed and/or evidence is adduced. These children caught in this effective limbo, are often children with neurological impairments and mental health conditions that require significant support – something that is not adequately provided in detention.

On average, 17 children aged 10-13 years were held in watchhouses in Queensland each day between 2019-20,²³ and children aged 10-13 make up 9% of the detention centre population.²⁴

An important aspect to keep children under the age of 14 out of watchhouses, is to raise the age of criminal responsibility to 14 years to align with extensive research and medical evidence²⁵. The United Nations Committee on the Rights of the Child, to which Australia is a signatory, has recommended that the age of criminal responsibility be raised to 14 years, but we are yet to see this evidence-based approach implemented in Queensland.

Other countries which have a minimum age of criminal responsibility of 14 years have implemented supports and programs for youth who commit offences which have successfully reduced recidivism.²⁶ A key factor of success in such programs is specialist training for people who provide these services to our most vulnerable children in the community.

²¹ *RP v The Queen* [2016] HCA 53.

²² Bob Atkinson, 'Report on Youth Justice' (2018).

²³ Explanatory Notes: Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021 (Qld), 4.

²⁴ Youth Justice Annual Summary Statistics: 2015-16 to 2019-2020, Detention Centre Data.

²⁵ Queensland Family and Child Commission, 'Designing a better response to youth – Raising the age of criminal responsibility Issues paper' (2022); Commonwealth of Australia, 'Royal Commission into Violence, Abuse, Neglect and Exploitation of people with a disability. Final Report – Volume 8, Criminal justice and people with disability' (2023), 28.

²⁶ Australian Institute of Health and Welfare, 'Comparisons between Australian and International Youth Justice Systems: 2014-14' (2015), Youth Justice Fact Sheet no. 74.

First Nations led solutions

It is well known that Aboriginal and Torres Strait Islander children and young people are over-represented in the justice system. To ensure that Queensland meets its Closing the Gap justice targets, the Inquiry must explore First Nations-designed and led initiatives.

A First Nations child is 24 times more likely to be imprisoned than any other child,²⁷ and First Nations children made up more than 90% of children aged 10-13 held in watchhouses for more than three nights between 2019-2020.²⁸ Raising the age of criminal responsibility from 10 to 14 years would significantly assist in reducing the mass overrepresentation of First Nations People in custody.

Primary factors causing overrepresentation of First Nations' young people in the youth justice system are the disadvantaged and unequal position socially, economically and culturally that First Nations people hold within our community.²⁹ Such factors include higher rates of disability and cognitive impairment, exposure to domestic violence and neglect, substance misuse, out-of-home care placements impacting on ability to obtain treatment and support and causing homelessness, and the impact intergenerational trauma has on psychological and physical health.³⁰

For example, although the First Nations population makes up a small percentage of the whole Australian population, in 2018-19, 43 per cent of all children in care were First Nations children.³¹ The Child Safety and Human Rights framework encourages that children be placed with a kin and that First Nations children maintain their connection to community, culture and traditions.³² Despite this, it is reported that between 2013-14 and 2018-19, 44 percent of Aboriginal and Torres Strait Islander children were placed with a non-Indigenous carer.³³ We note that although there has been an increase in the number of First Nations children in care, there has been no increase in availability of family-based placement for foster or kinship care.

To address these disproportionate statistics, it is necessary for adequate prevention, intervention and personalised support services to meet specific needs of Aboriginal and Torres Strait Islander people and families. In addition, there is a need for tailored support services for Aboriginal and Torres Strait Islander children at risk of becoming entrenched in the youth justice system.

Currently there are some services within the Logan community that provide tailored cultural support and programs for Aboriginal and Torres Strait Islander children. For example, ATSICHS has a youth service which provides free support for young people aged 8-21 years who live in the Brisbane and Logan areas to help with engagement with education and employment, health and support to connect with their local community.³⁴ Gunya-Meta is another non-profit organisation which

²⁷ Amnesty International Australia, 'Indigenous kids by raising the age' (2020), <[CAG should seize the opportunity to transform the lives of Indigenous kids by raising the age - Amnesty International Australia](#)>; Australian Institute of Health and Welfare, 'Youth Justice in Australia 2016-17' Report, (2018).

²⁸ Qld Department of Youth Justice, 'Answer to Estimates Pre-hearings, Questions on Notice No 16,' (2020).

²⁹ Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited, 'Response to Strengthening Community Safety Bill 2023,' (2023).

³⁰ *Ibid*, 4.

³¹ Queensland Government, 'Family support and child protection system (Report 1: 2020-21)' (2021), 33.

³² *Child Protection Act 1999* (Qld), s 5C; *Human Rights Act 2019* (Qld), s 28.

³³ Queensland Government, *above n 31*.

³⁴ Youth Service - ATSICHS (atsichsbrisbane.org.au).

“provides education to the Indigenous community to assist in social and emotional well-being along with opportunities for job training.”³⁵

These and similar services have limited capacity due to funding constraints. Investment in such early intervention services is crucial to reduce the overrepresentation of young Aboriginal and Torres Strait Islander children in the youth justice system.

We also support the expansion of the Youth Murri Courts into all Children’s Courts in Queensland. This program should be an integral part of the youth justice response in Queensland. This culturally appropriate program increases the level of participation of the Aboriginal and Torres Strait Islander communities with the engagement of community Elders and Respected Persons. This program promotes self-determination and accountability, and also aims to facilitate improvements in the young person’s physical and psychological health and improve engagement with community.

The “Youth Murri Court has also been utilised as an ‘early intervention’ court, in an attempt by Elders to engage with the young people and reduce the risk of further offending behaviour that might lead to incarceration. This has had implications for the operation of the court, but has strong support among Elders as a measure to address crime and anti-social behavioural problems”.³⁶ The availability of a Youth Murri Court is also supported by the youth justice principle that “if practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child’s community”.³⁷

The role of Community Justice Groups (CJG) is also an important consideration in this youth justice response. Despite the recommendation of the Australian Institute of Criminology that CJGs develop and implement culturally appropriate services as a strategy to improve the availability of rehabilitative and diversionary programs for Aboriginal and Torres Strait Islanders,³⁸ it has been our experience that these groups are not well-funded and are unable to develop such programs.

Further, in sentencing an Aboriginal or Torres Strait Islander young person, the court must have regard to any submissions made by a representative of the community justice group in the child’s community that are relevant to sentencing the child. For example, the child’s connection with community, family or kin, cultural considerations, and any consideration relating to programs and services.³⁹

Due to lack of funding, CJG members are sometimes not available to attend Court, and lack of access to the young person, particularly if that young person is detained in the watchhouse or detention centre, means that these factors cannot be addressed and considered by the court in sentencing.

Child Protection System

The youth justice system significantly overlaps with risk factors for involvement with the child protection system.

³⁵ <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiM-fbX74-DAXW81zgGHWOGCCIQFnoECACQAQ&url=https%3A%2F%2Fwww.gunyameta.org%2F&usg=AOvVaw2wSXbuGD6YBcGb3gWIhB1X&opi=89978449>.

³⁶ *Evaluation of the Queensland Murri Court: Final report* (aic.gov.au) xiii.

³⁷ *Youth Justice Act 1992* (Qld), Schedule 1.

³⁸ *Evaluation of the Queensland Murri Court: Final report* (aic.gov.au), xvii.

³⁹ *Youth Justice Act 1992* (Qld), s 150(1)(i).

There is a concerning number of children in residential care who become involved with the youth justice system.⁴⁰ It is our experience that children in the child protection system in residential care are being criminalised. Along with other advocates, we strongly support measures to decriminalize children in residential care facilities, particularly when legal proceedings are commenced against young people in care for minor offences.

Fast-Track Sentencing Pilot - Brisbane

YFS Legal has been involved in the Brisbane pilot of fast-track sentencing since commencement in March 2023. While it has not yet formally been evaluated, it is our experience that this interagency collaboration and coordinated approach is an effective response to address issues of delay in the lower court and reduce time young people spend on bail and remand.

Recommendations

YFS Legal submits that there are significant changes which need to be made to the youth justice system to reduce recidivism rates.

The current punitive approaches which are being relied on more and more by government are clearly failing to achieve their purpose and a different evidence-based approach is necessary to see change that will ultimately protect the community.


As a youth justice principle, detention must remain as a last resort.


We highlight the need to raise the age of criminal responsibility to 14 years and substantially increase access to early intervention services, including tailored culturally safe programs for Aboriginal and Torres Strait Islander young people, through adequate funding.


It is our position that implementing these key changes will successfully assist in diverting young people from the youth justice system and reduce the overrepresentation of Aboriginal and Torres Strait Islander children and young people in custody.

Thank you for your consideration.

Yours faithfully,


Christopher John
Chief Executive Officer


Candice Hughes
Kamilaroi woman
Principal Solicitor


Natalia Radajewski
Solicitor

⁴⁰ Queensland Family and Child Commission, 'Queensland Child Rights Report 2023' (2023), 36.

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

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1 March 2024

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

Via Email: youthjustice@parliament.qld.gov.au

Dear Committee,

Re: Phase 2 of the Inquiry into Youth Justice Reform in Queensland

Thank you for the opportunity to provide feedback on Phase 2 of the Inquiry into Youth Justice Reform ("the Inquiry").

YFS Legal is a community legal centre based in Logan, providing advice and representation to children and young people in the criminal justice system in Logan and surrounding areas. YFS Legal also assists in delivering the Children's Court duty lawyer service at the Beenleigh Children's Court.

YFS Legal supports the Inquiry's goals to instigate continuing reform in the youth justice system, to improve young people's transition back into the community, and the support for victims of crime.

We acknowledge that Queenslanders have the right to be and feel safe in their communities. The current approach to youth justice in Queensland is not working: it perpetuates a cycle of punitive and retributive strategies, is ineffective, and has not made any meaningful change to ongoing issues. Instead, it diminishes the effectiveness of early intervention and promotes the detainment of children and the dismissal of their human rights.

We submit that Queensland's youth justice system will continue to fail both victims and offenders and neglect to uphold community safety, unless there is a change to the implementation of legislation, policies, and programs focused on early intervention, prevention, reducing recidivism, and enhancing community safety.

Early Intervention

It is our position that the Queensland Government must adequately fund community organisations to provide appropriate and culturally safe early intervention programs. Rather than perpetuating punitive and reactionary measures, the system should pursue a community centred approach that is client and family focused.

Assessments, intervention and prevention strategies that support children and their families to access health, education, housing, and other services are best managed and conducted by local community organisations.

It is our experience that many young people and their families have a distrust of government organisation and often have currently, or previously, engaged the support of such community organisations. The flexibility and experience of community organisations is best suited to provide individualised, targeted and intensive support of both the young person and their families.

YFS Ltd,¹ based in Logan is an example of such an organisation. YFS has a range of teams that work specifically with families and children, young people, those affected by substance abuse, financial counsellors, domestic and family violence support, housing, employment services, social enterprise, and legal services. YFS' integrated service model of providing a collaborative and integrated service delivery, aims to support people with complex social and legal needs to access social justice and improve their life outcomes. YFS also works with other local community organisations to support clients' needs.

Many community organisations, such as YFS are already involved in the youth justice system through their work with both young people and their families. These community organisations must be appropriately funded to respond to community needs.

The Atkinson Report on Youth Justice concludes that "the Queensland Government adopt four pillars as its Youth Justice policy; and that they underpin all responses related to children who are offending or at risk of offending."² This Report highlights that "integrated and coordinated responses to both the child and their family have the best chance of success, specifically those involving schools, community organisations, state government, and federal and local government agencies."³

Early intervention must also focus on access to health and cognitive and mental assessments. "Children involved in the youth justice system are significantly more likely to have undiagnosed or untreated health issues. Children with mental health concerns, childhood trauma, cognitive and intellectual disability, and substance abuse concerns, are over-represented in the youth justice system."⁴

We note that the Atkinson Report reports that "many stakeholders expressed concern that children who repeatedly offend may have significant health and wellbeing issues that contribute to their offending behaviour, and that they will often progress quickly through the youth justice system without receiving a health, mental health or disability assessment that could help inform suitable interventions."⁵ We do note the inequity of services across the State, particularly for children and young people in regional and remote areas with limited access to mental health assessments and services.⁶

Detention facilities

Detaining children in detention centres and watchhouses is an ineffective method of criminal deterrence and inflicts long-term harm on adolescents, which increases the likelihood of future recidivism.

¹ [Home - YFS](#)

² Bob Atkinson AO, 'Report on Youth Justice' (2018), p 21.

³ Bob Atkinson AO, 'Report on Youth Justice' (2018), p 22.

⁴ Bob Atkinson AO, 'Report on Youth Justice' (2018), p 21; NSW Law Reform Commission 2010, Consultation Paper 5. People with cognitive and mental health impairments in the criminal justice system: An overview, [CP05 \(nsw.gov.au\)](#)

⁵ Bob Atkinson AO, 'Report on Youth Justice' (2018), p 40.

⁶ Queensland Family and Child Commission (2023) Queensland Child Rights Report, [Queensland Family & Child Commission :: Queensland Child Rights Report 2023 :: Spotlight: Youth Justice in Queensland \(qfcc.qld.gov.au\)](#), page

Detention should only be utilised as a last resort when methods of diversion have proven ineffective pursuant to the *Youth Justice Act 1992*. In such instances, detention practices should embody human rights standards and focus on keeping the child connected to community and culture; ensuring a child remains in touch with their community can greatly benefit their transition back to it.

Our current system is alarmingly inadequate in this regard. The treatment of children in our detainment facilities is in breach of the *Human Rights Act 2019* and an unacceptable reflection of the reality underlying Queensland's youth justice system.

When reimagining youth justice infrastructure, consideration must also be given to the health and mental health of the young people. We note the Youth Justice Census Summary (2018 to 2022) reports that at least 33% of young people (subject to supervision or restorative justice process, in custody at a watchhouse, youth detention facility or adult jail), have at least one mental health and / or behavioural disorder.⁷

First Nations led solutions

It is well known that Aboriginal and Torres Strait Islander children and young people are over-represented in the justice system. To ensure that Queensland meets its Closing the Gap justice targets, the Inquiry must explore First Nations-designed and led initiatives.

A First Nations child is 24 times more likely to be imprisoned than any other child,⁸ and First Nations children made up more than 90 per cent of children aged 10-13 held in watchhouses for more than three nights between 2019-2020.⁹ Raising the age of criminal responsibility from 10 to 14 years would significantly assist in reducing the mass overrepresentation of First Nations people in custody.

Primary factors causing overrepresentation of young people in the youth justice system are the disadvantaged and unequal position socially, economically and culturally that First Nations people hold within our community.¹⁰ Such factors include higher rates of disability and cognitive impairment, exposure to domestic violence and neglect, substance misuse, out-of-home care placements impacting on ability to obtain treatment and support and causing homelessness, and the impact intergenerational trauma has on psychological and physical health.¹¹

For example, although the First Nations population makes up a small percentage of the whole Australian population, in 2018-19, 43 per cent of all children in care were First Nations children.¹² The Child Safety and Human Rights framework encourages that children be placed with kin and that First Nations children maintain their connection to community, culture and traditions.¹³ Despite this, it is reported that between 2013-14 and 2018-19, 44 per cent of Aboriginal and Torres Strait Islander children were placed with a non-Indigenous carer.¹⁴ We note that although there has been an increase in the number of First Nations children in care, there has been no increase in availability of family-based placement for foster or kinship care.

⁷ [YJ Census Summary Statewide \(desbt.qld.gov.au\)](https://desbt.qld.gov.au)

⁸ Amnesty International Australia, 'Indigenous kids by raising the age' (2020), <[CAG should seize the opportunity to transform the lives of Indigenous kids by raising the age - Amnesty International Australia](#)>; Australian Institute of Health and Welfare, 'Youth Justice in Australia 2016-17' (Report, 25 May 2018).

⁹ Qld Department of Youth Justice 2020, 'Answer to Estimates Pre-hearings, Questions on Notice No 16.'

¹⁰ Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited. (2023). *Response to Strengthening Community Safety Bill 2023*.

¹¹ Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited. (2023). *Response to Strengthening Community Safety Bill 2023*, page 4.

¹² Family support and child protection system (Report 1: 2020–21), page 33.

¹³ Child Protection Act 1999 (Qld), s 5C; *Human Rights Act 2019* (Qld) s 28.

¹⁴ Family support and child protection system (Report 1: 2020–21), page 33.

To address these disproportionate statistics, it is necessary for adequate prevention, intervention, and personalised support services to meet specific needs of Aboriginal and Torres Strait Islander people and families.

In addition, there is a need for tailored support services for Aboriginal and Torres Strait Islander children at risk of becoming entrenched in the youth justice system. Investment in such early intervention services is crucial to reduce the overrepresentation of young Aboriginal and Torres Strait Islander children in the youth justice system.

Improving response to victims

Youth offending can have a widespread impact on communities and families. Varying options of support services for victims of youth offending should be made accessible throughout the State, regardless of remoteness. This includes funding community legal centres to support and assist victims to access services, including making applications to Victims Assist Queensland.

Conclusion

YFS Legal submits that significant legislative and policy changes are required to reform the youth justice system in Queensland. These must be based on early intervention, health and mental health assessments, appropriate case management support, diversionary options, and alternatives to detention.

Adequately funded community organisations, including Aboriginal and Torres Strait Islander community-controlled organisations, must be included in this response if we are to achieve a reduction in offending and community safety.

Thank you for your consideration.

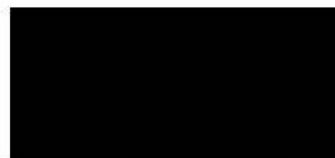
Yours faithfully



Christopher John
CEO
YFS Ltd



Candice Hughes
Kamilaroi
Principal Solicitor
YFS Legal



Natalia Radajewski
Solicitor
YFS Legal