

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

**Submission No:** 120 - including supplementary submission

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**Submitter Comments:**

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Dear Committee Secretary

I appreciate the opportunity to have appeared before the Committee on 24 November 2023 and to submit this written response to the *Inquiry into Youth Justice Reform in Queensland*. As Commissioner of the Queensland Family and Child Commission (QFCC) it is my role to advocate for the rights, safety and wellbeing of children and young people and continue to set high benchmarks for Queensland systems to support children, young people, and their families. In fulfilling my role, I am guided by listening to the firsthand experiences of children and young people in the youth justice system in Queensland.

In August 2023, the QFCC released the *Queensland Child Rights Report 2023*,<sup>1</sup> which included a significant chapter on the youth justice system in Queensland. The report highlights many of the issues already raised with the Committee, therefore rather than reiterating evidence already presented, I will summarise that I remain deeply concerned about:

- the government's decisions to override Queensland's Human Rights Act, particularly when that decision affects the human rights of children
- the over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system, which is disconnecting children and young people from Country and community and ensuring the cycle of intergenerational trauma continues
- the failure to raise the minimum age of criminal responsibility to at least 14, in accordance with United Nations recommendations, which creates a pathway to early arrest of young children, particularly First Nations children, and which ignores evidence that the earlier children have contact with police, the greater their likelihood of re-offending
- the practice of detaining children and young people in adult facilities such as police watchhouses and stations, which is disproportionately affecting Aboriginal and Torres Strait Islander children and young people who spend longer in watchhouses and stations<sup>2</sup>
- the practice of isolating children and young people (also known as separation and 'night mode') in youth detention facilities due to staffing shortages, including children and young people with disabilities, resulting in compromised basic rights.

In 2018, the British Medical Association called for the isolation of children and young people in UK detention centres to be abolished and prohibited:

**There is an unequivocal body of evidence on the profound impact solitary confinement can have on health and wellbeing.** Various studies indicate an increased risk of suicide or self-harm amongst those placed in solitary confinement. As children are still in the crucial stages of developing socially, psychologically, and neurologically, **there are serious risks of solitary confinement causing long-term psychiatric and developmental harm.** There is also clear evidence that it is counter-productive. Rather than improving behaviour, solitary confinement fails to address the underlying causes, and creates problems with reintegration.<sup>3</sup>

Unlike the child protection system, there is no internal agency review when a child or young person who has had contact with the youth justice system dies or there is a critical incident. Such reviews identify system failures, harmful practices, opportunities for intervention, including mental health support. Without an internal agency review for each child and young person, practices, such as isolation, that may lead to, or significantly contribute to, suicide or self-harm is hidden.

### Risk factors and lack of responses

The UN's Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, found that isolation will exacerbate any existing mental health conditions.<sup>4</sup> In Queensland it is reported that 33 percent of children in the youth justice system (including community-based supervision and youth detention) have a suspected or diagnosed mental health or behavioural disorder and 27 percent a suspected or diagnosed disability.<sup>5</sup> While these percentages are significantly higher than for the general community, they are higher again for the approximately 280 children in detention in Queensland on a given day

Children who progress deeper in the justice system are more likely to have experienced abuse and neglect, have mental health problems and be developmentally delayed.<sup>6</sup> The ground-breaking 'Banksia Hill study' (2018) found that 9 out of 10 children in Western Australia's Banksia Hill youth detention centre had severe neurodevelopmental impairment. These included problems with executive function, memory, cognition, attention and social skills.<sup>7</sup> There is no reason to expect the data for Queensland children in youth detention would be significantly different. An analysis of "adverse childhood experiences" and trauma among young people under youth justice supervision in South Australia (2022) also found 9 in 10 experienced a combination of maltreatment and household dysfunction.<sup>8</sup>

Currently in Queensland there is no way for children in the youth justice system who have been diagnosed with an intellectual impairment or developmental delay to be exited from the criminal system into health or disability support. Children with developmental disorders, or disabilities should not be in the youth justice system at all.

I continue to advocate for a comprehensive and collaborative approach to youth justice that focuses on early intervention and family support, addresses the key risk factors for youth offending behaviours and recognises that for many children and young people they themselves are victims - they experience higher rates of domestic and family violence and higher rates of abuse and subsequent removal by child protection. **A youth justice response will not address those risk factors and reduce youth offending.**

In Australia, and internationally, there is well-established link between experiences of family violence, and participation in youth offending. Large-scale quantitative studies and meta-analyses highlights a link exists between experiences of family violence and child abuse, and youth offending.

As highlighted in the 2022 Youth Justice Census, 53 percent of children in the youth justice system have experienced or been impacted by domestic and family violence. We expect, similar to 2019 Census results, First Nations children in youth justice would be victims of domestic and family violence at a higher rate, at least 10 percentage points higher than non-Indigenous youth justice cohort.

The failure to address domestic and family violence within family and community settings are key contributors to youth offending behaviour. We know that the more adverse childhood experiences, and maltreatment in adolescence, the greater the likelihood of participation in youth offending.

The crossover between children in the youth justice system and the high number of their families known to child protection (94 percent in the South Australian study) provides further evidence of families under strain and needing much more support from through ensuring equitable access to universal services, early intervention and targeted specialist support services rather than an overreliance on tertiary responses within the statutory child protection or justice systems.

The timing of child maltreatment and abuse is also a factor - young people whose maltreatment is chronic and persists from childhood into adolescence, or that starts in adolescence, are much more likely to be involved in crime and the juvenile justice system than those whose maltreatment is limited to their childhood<sup>9</sup>. This highlights the importance of early intervention - both early in life and **early in the pathway**.

In Queensland, the number of children on dual orders (that is a current child protection order and youth justice order) is 28 percent. While children on a child protection order are under the guardianship of the government, they often fall between the gaps in care and support, especially mental health, ensuring a safe environment when self-placing as an adolescent, and education.

Disengagement from education and low educational attainment are further risk factors for youth offending behaviour. Despite a focus on youth disengagement, the education system is still failing to provide educational opportunities for all children, including First Nations children (retention rates from Year 7 to Year 12 is only 63 percent) and those in out-of-home care (child protection). These failures are evident in Queensland, with 45 percent of those in youth justice system, totally disengaged from education, training, or employment.

For many of the children in the youth justice system, they have or are experiencing multiple and compounding factors, which a juvenile justice response will not address, nor will youth justice responses prevent contact with the system and reduce further escalation.

An emphasis on addressing underlying issues and risk factors before involvement in the justice system is key to achieving long term decline in youth crime. The solutions and responsibilities for promoting and protecting the rights of children and young people and the safety of communities exists largely outside of the youth justice portfolio and the formal criminal justice system.

## Child rights-based approach to youth justice

The first principle of Queensland's Charter of Youth Justice principles states the community should be protected from offences and, in particular, recidivist high-risk offenders. A long-term approach is needed to achieve this goal.

A child rights-based approach would encompass all the systems that can help prevent the entry of children into the youth justice system. For example, some children are still being diagnosed with a health issue for the first time while in detention. Instead, Queensland needs:

- universal health screening for 0-5 year olds to identify and treat health matters or disabilities that may detract from positive school, family and community participation
- more consistent, culturally affirming and free family support for poor families and families in regional and remote Queensland, noting that 71 percent of young people in youth justice come from the bottom two socio-economic quintiles<sup>10</sup>
- strengthened support for schools to introduce alternatives to suspending or excluding children whose behaviour is a result of unmanaged health matters or disabilities
- better access to a range of accommodation options for young people, especially those who are exiting from detention
- more funding for community-controlled organisations offering proven models of integrated support
- integration of culture and identity in healing trauma.

A rights-based approach also grants children, families and victims of crime the right to express their views freely, including in any court or related activities like diversion. Justice reinvestment would direct resources to communities to make decisions about early intervention programs. Participation of the child in decisions affecting them applies equally to matters of health, education, living arrangements and child protection.

Consequently, I emphasise the necessity for a cohesive, long-term plan that protects the rights of all children and promotes integrated responses. I strongly advocate for the development and implementation of a dedicated Children's Plan for Queensland that will:

- establish a clear vision for children and childhood in Queensland
- provide a long-term, comprehensive and overarching framework for all policy and decision-making that affects children, with clear investment commitments and implementation plans to ensure they are translated to effective action, and independent oversight to promote transparency and accountability
- place children at its centre, be informed by children themselves, and understand children holistically in the various contexts of their ecologies – their families, schools, communities – no matter where they are.

While there have been certain advances in Queensland with various plans and strategies aimed at benefiting children and young people, the system still lacks cohesion, leading to instances where children

and young people do not receive the support and services they and their families need. A Children's Plan will address the individual, social and economic dimensions of childhood, including the macro forces and structures that shape and determine children's experiences and outcomes from birth and throughout their lives. The Children's Plan would explicitly link to the United Nations Convention on the Rights of the Child and the *Queensland Human Rights Act 2019* to support the political commitments made to these documents. A dedicated and appropriately resourced Children's Plan can embody expressed commitments and shared accountability among all stakeholders and provide transparency to the government and communities.

The current approach to youth justice is ineffective and inconsistent with upholding child rights. Taking a child rights approach will not only improve outcomes for children and young people but also improve community safety and alleviate cost pressures on the system. Reform of the youth justice system should be guided by the United Nations Committee on the Rights of the Child *General comment No. 24 (2019) on children's rights in the child justice system* which provides contemporary guidance for implementing a youth justice system that promotes and protects children's rights. This approach aligns with the recommendations of the *Atkinson Report on Youth Justice*, focusing on early intervention, keeping children out of court and custody, and reducing re-offending.

The *Atkinson Report on Youth Justice* highlighted the need for a focus on education, vocational training and employment. It suggested increasing options for police to divert children who have committed offences from prosecution, such as through restorative justice programs, as well as expanding options for courts to divert children from detention centres, such as through probation, community-based supervision or treatment programs. The report also recommended increasing options for families to receive support and services to prevent youth offending and intervene early when there are signs of problematic behaviour.

As I highlighted during the hearing and in written follow up, there are international examples of alternatives to custody that have proven positive outcomes by emphasising proactive and family-centred strategies. The Justice Reform Initiative has published a report citing international, national and local intervention programs, alternatives to policing and mainstream court processes, bail support and in-prison programs.<sup>11</sup>

## What the Queensland government can do

1. **Implement a comprehensive Children's Plan for Queensland, which is appropriately funded and resourced to coordinate strategies and actions across government to better protect, promote and uphold the human rights of all children and young people in Queensland.**
2. Greater respect for children and young people's rights and for their voices to be heard and taken seriously – from the reform stage through to children and young people having a say about youth justice outcomes and transitioning out of the system. Equally, the community, especially those affected by crime, have the right to participate in developing solutions.
3. Effective evidence-based early intervention and prevention should be the focus to prevent children and young people from entering the system. The system needs to shift away from punitive measures to a more comprehensive and community-centred approach that prioritises restorative justice and equitable universal service access to end the cycle of poverty for all children.

4. To enable community discussion about evidence informed solutions, public education about the roles of the judicial and parliamentary systems, and the Queensland Human Rights Act, should be appropriately resourced. Similarly, specific strategies for correcting misinformation that cultivates fear are necessary to build public confidence.
5. Children and young people who have committed serious or violent offences need the opportunity to rehabilitate. Clear assessment of a child or young person's needs should determine the most effective response, including applying the principle of *doli incapax*. Trauma-informed care that addresses unmet needs and drivers of youth offending behaviours must be available early and to all, regardless of where they live, or whether they have entered a guilty plea, or been found guilty. Failing to address the root causes of offending perpetuates the continuation of such behaviours.
6. A skilled and adequately resourced workforce across the system is critical. Workforce planning should be undertaken to ensure that all parts of the system are staffed appropriately and are delivering therapeutic, trauma responsive and culturally appropriate support to children and young people in conflict with the law and those impacted by crime.
7. The Queensland government has committed, through the National Agreement on Closing the Gap, to be accountable for addressing Priority Reforms and socio-economic targets. This means developing strong partnerships with Aboriginal and Torres Strait Islander organisations to support thriving communities and self-determination and building and maintaining a strong Aboriginal and Torres Strait Islander community-controlled sector with sufficient resourcing to design and lead youth justice responses for children, young people and families. Family-led decision-making should be expanded across Queensland. On current trends, Queensland will struggle to achieve the Closing the Gap target for *outcome 11: reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent by 2031*. Create formal and transparent regulatory mechanisms for considering all future proposed legislation and policy change so that any impact on diverse communities, the Queensland Human Rights Act and on other commitments such as Closing the Gap, can be assessed prior to becoming law.
8. Review recent legislative and policy changes and the programs and practices that have been introduced to ensure alignment with the Queensland Human Rights Act and the Charter of Youth Justice Principles.
9. Divert children and young people from the system at the earliest stage possible. Redirect investment into evidence-based diversion programs that steer children and young people away from the criminal justice system and increase overall access to diversion programs.
10. Detention should be a measure of last resort, only when diversion has failed. Incarceration has been proven to have harmful effects, particularly on children and young people, and it perpetuates inequalities such as a lack of consistent access to quality health, education and therapeutic programs.
11. Where detention is necessary, detention practices should reflect international human rights standards, with a focus on therapeutic interventions and rehabilitation. An emphasis should also be placed on keeping children and young people connected to culture while in detention. Relationships and culture are critical to children and young people's wellbeing and to keeping them out of the youth justice system.

12. As standard practice (enacted through legislation), require comprehensive internal reviews by youth justice, which are provided to the Child Death Review Board, when a child or young person who has had contact with the youth justice system dies or suffers serious physical injury. The internal review must include information from other relevant government agencies involved in providing services to that child such as health and education.
13. Enhance support for children and young people during their transition out of detention, with a focus on successful reintegration into community and safe housing upon release.

If you or your officers have any queries in relation to this matter, they may contact me via email at

[REDACTED]

Yours sincerely

[REDACTED]

**Natalie Lewis**  
**Commissioner**  
**Queensland Family and Child Commission**  
10 January 2024

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<sup>1</sup> The state of Queensland (Queensland Family and Child Commission), 2023, *Queensland Child Rights report 2023*, available from <https://www.qfcc.qld.gov.au/child-rights/report>

<sup>2</sup> The state of Queensland (Queensland Family and Child Commission), 2023, *Who's responsible: understanding why young people are being held longer in Queensland watch houses*, available from <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who's-responsible>

<sup>3</sup> British Medical Association, 2018, *Joint Position Statement on solitary confinement of children and young people*, available from <https://www.bma.org.uk/media/1859/bma-solitary-confinement-in-youth-detention-joint-statement-2018.pdf>

<sup>4</sup> United Nations, 2011, *Interim report of the Special Rapporteur of the Human Rights Council of torture and other cruel, inhuman or degrading treatment or punishment*, available from <https://digitallibrary.un.org/record/710177?ln=en#record-files-collapse-header>

<sup>5</sup> Department of Youth Justice, 2022, *Youth Justice census summary*, available from [https://desbt.qld.gov.au/\\_\\_data/assets/pdf\\_file/0022/17086/census-summary-statewide.pdf](https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17086/census-summary-statewide.pdf)

<sup>6</sup> Cashmore, J. 2011. *The link between child maltreatment and adolescent offending: Systems neglect of adolescents*, Australian Institute of Family Studies available from: [https://aifs.gov.au/sites/default/files/fm89d\\_0.pdf](https://aifs.gov.au/sites/default/files/fm89d_0.pdf)

<sup>7</sup> Bower C., Watkins R., Mutch R., et al, 2018, *Prevalence of Foetal Alcohol Spectrum Disorder Among Young People in Youth Detention in Western Australia*, Telethon Kids Institute, available from <https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/>

<sup>8</sup> Malvaso C., Day A., Cale J, et al, 2022, *Adverse childhood experiences and trauma among young people in the youth justice system*, Australian Institute of Criminology, available from [https://www.aic.gov.au/sites/default/files/2022-06/ti651\\_adverse\\_childhood\\_experiences\\_and\\_trauma\\_among\\_young-people.pdf](https://www.aic.gov.au/sites/default/files/2022-06/ti651_adverse_childhood_experiences_and_trauma_among_young-people.pdf)

<sup>9</sup> Cashmore, J. 2011. *The link between child maltreatment and adolescent offending: Systems neglect of adolescents*, Australian Institute of Family Studies available from: [https://aifs.gov.au/sites/default/files/fm89d\\_0.pdf](https://aifs.gov.au/sites/default/files/fm89d_0.pdf)

<sup>10</sup> Australian Institute for Health and Welfare, 2022, *Youth Justice in Australia 2020-21*, Table S24a, available from <https://www.aihw.gov.au/about-our-data/our-data-collections/youth-justice>

<sup>11</sup> Justice Reform Initiative, 2023, *Alternatives to incarceration in Queensland*, available from [https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1685393777/JRI\\_Alternatives\\_QLD\\_FULL\\_REPORT.pdf?1685393777](https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1685393777/JRI_Alternatives_QLD_FULL_REPORT.pdf?1685393777)

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Queensland  
**Family & Child**  
Commission

**Inquiry Submission**

# **Youth Justice Reform Select Committee - Phase 2**

19 March 2024

Commissioner Natalie Lewis  
Queensland Family & Child Commission

## Youth Justice Reform Select Committee – Phase 2

*Inquiry Submission*

### Contents

Acknowledgement of Country .....	3
Summary of Commissioner’s Position .....	4
Priority Area 1 – Youth Justice Strategy .....	5
Priority Area 2 – Prevention & Early Intervention .....	7
Priority Area 3 – Reimagining Infrastructure .....	9
Priority Area 4 – Improving engagement .....	10
Priority Area 5 – Operation of the Act .....	11
Priority Area 6 & 7 – Public Confidence & Support .....	12
Appendix 1- QFCC Brief Proposal for Child-Centred Court Panel.....	13

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## Acknowledgement of Country

The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

## Summary of Commissioner's Position

Our youth justice system, despite varied efforts, is failing Queensland children at unacceptable rates. It requires an aspirational restructure, a foundational rights-affirming approach and a strategy embedded within a Children's Plan for Queensland that starts with a *promise*.

The administration of justice is complex and hard – but this is no excuse for breaching human rights obligations and failing our children. If there is no social justice and equity within our services, there is no justice at all. The way forward lies well beyond another strategy providing rhetoric without any significant structural change – *it starts with coming together to make a promise to Queensland children and young people:*

### We need to promise Queensland Children and Young People that we will:

Be unwavering in **upholding and affirming** their rights

**Listen** to their views and take their voices seriously

Be curious about their **best interests as human beings**, not offenders

Embed child-centred relational and developmental beliefs that see and support their identity and belonging **without** deficit and welfare-based **discrimination**

Ensure there is **one plan** for them if they come into contact with child protection, law enforcement, health/mental wellbeing and justice systems – led by family and respecting important relationships

Value, respect and support their **families, communities and connections**

Be wholly accountable to systemic challenges, barriers and abuses through **authentic accountability mechanisms**

Scaffold this promise with **real and courageous systems, processes and funding** that finds a way to keep it, **co-designed** with children and families.

Consequences for offending behaviour are an important aspect of arriving at a just outcome for victims and young people in conflict with the law, however they must not be administered without regard for the consequential erosion of a child's fundamental human rights. Just outcomes can be achieved without sacrificing or discarding the rights of victims or young people in the process and that is far more likely to achieve community safety for everyone.

## Priority Area 1 – Youth Justice Strategy

This promise is not idealistic. Nor is it unaware of strategic, structural and operational challenges – it provides a solid foundation within which to deal with them.

On an average day in 2021–22, there were 275 children and young people aged 10 years and over in youth detention in Queensland<sup>1</sup>. This figure was significantly higher than every other state in Australia and an increase from 2020-21.

Detention of children in watchhouses of 5 to 7-days has increased by 78 percent between 2019 and 2022 and the half-year numbers for 2023 (January to June) surpassed the full-year numbers for 2022 with 108 detentions in watch houses lasting more than two weeks.

In 2021–22, 86.6% of the young people who were released from a youth detention centre in Queensland reoffended within six months. That figure was 87.2% for Aboriginal and Torres Strait Islander children and young people<sup>2</sup>. First Nations children and young people are drastically over-represented at every point of the youth justice system, and this disparity continues to worsen.

Twice during 2023, the government asked parliament to override the application of the Human Rights Act 2019. The *Strengthening Community Safety Bill 2023* was introduced, signalling a sharp departure from the government's *Youth Justice Strategy 2019–2023* and significantly undermining any possibility of realising the strategy's goals, including keeping children and young people out of court and out of custody<sup>3</sup>.

Our system continues to:

- demonise children as offenders not humans;
- prefer 'offence' and 'offender-centred' interventions over person and child-centred approaches;
- prioritise archaic punitive approaches and punish children because of overstated assumptions about their responsibility;
- ignore the over-representation of children from low income families and the effect on families of a lack of access to appropriate health, housing and education;
- base policy on political point-scoring and populism rather than evidence and a sustained commitment to a transformational change agenda; and
- routinely ignore Queensland's legal and ethical obligations under the *United Nations Convention on the Rights of the Child* (UNCRC) and *Queensland's Human Rights Act 2019*.

<sup>1</sup> The average daily number of young people in youth detention is calculated based on the number who were physically located in a detention centre at 11:59pm on each day during the period.

<sup>2</sup> Children's Court Queensland. (2022). Annual report. <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>

<sup>3</sup> Queensland Government. (2023). *Strengthening Community Safety Bill: Statement of Compatibility*. <https://documents.parliament.qld.gov.au/tp/2023/5723T166-F46A.pdf>

A Youth Justice strategy needs to:

- form part of a long-term Children’s plan for Queensland, with specific attention and responsivity to their particular circumstances as young people in conflict with the law;
- be founded on an unwavering affirmation of children’s rights;
- ensure children’s views are listened to and acted upon;
- replace ‘offender’ based ‘corrective’ interventions with ‘person-centred’ interventions;
- work to support identity and belonging without deficit or welfare-based discrimination;
- connect to a ‘one plan’ approach for Queensland children and young people – where they are not subjected to multiple case plans, interventions and action plans as they shift through siloed systems;
- value, respect and support the role of families and community leaders in cultivating safe, inclusive environments for children and young people to grow up in;
- be wholly accountable to systemic challenges, barriers and abuses through authentic accountability mechanisms, and;
- keep the promise with courageous systems, processes and localised funding, co-designed with children, families and their local communities.

A Youth Justice strategy needs to be founded upon the key elements of the UNCRC and the *Queensland Human Rights Act 2019*. Children are not ‘incomplete adults’ waiting for adulthood and without critically important feelings and perspectives. They aren’t passive, their identity and wellbeing are not dependent solely on adult welfare or protection and their capacity to participate meaningfully in society must not be mediated by adults’ conceptions of childhood. They have rights that they deserve to enjoy universally, and inalienably. A child’s right to express themselves and have that expression meaningfully connected to and acted upon is not dependent on someone’s conception about whether they have the ‘maturity’ or the ‘morality’ – it is unconditional.

### **A Rights-Affirming approach for Youth Justice in Queensland**

A Rights-Affirming approach:

- begins with a shared agreement and aspiration that all children are entitled to enjoy their basic rights and a desire to collectively work towards realising this;
- structures aims and action around five guiding UNCRC principles – anti-discrimination (article 2), best interests (article 3), life and development (article 6), child participation (article 12/13) and guiding relationships (article 5);
- uses rights articles to measure outcomes;
- replaces deficit narratives and approaches with an emphasis on accountability of government, services and communities as duty-bearers, and rights-holders as experts in their own lives;
- ensures collaborative service and supports integration;
- addresses power imbalances by organising around the inalienability and interdependence of a person’s rights, and;

- can help us to reframe Queensland's relationship with its children – rather than children being simply passive, powerless, needing protection and subject to adults' interpretations of 'what's best'.

Through a rights-affirming approach, we can shift contexts and outcomes, resist assumptions that children are passive, naïve recipients, increase service provider accountability and harness authentic and collaborative voices and contributions to policy and practice.

## Priority Area 2 – Prevention & Early Intervention

Children need to flourish throughout their early development and their families and communities need to be supported where they identify a need – taking a rights-based approach means supporting children and families by spotlighting and addressing systemic barriers, including housing crises, cost of living pressures and other systemic challenges that create poverty.

### Underlying social factors

Children impacted by the effect of intergenerational, colonialist practices and structures, or experiences of developmental trauma, substance overuse, familial violence and cultural disruption are more likely to encounter law enforcement and the justice system<sup>4</sup>. Being in out-of-home care, with many systemic challenges that make that care inappropriate for children also makes contact more likely. Market-driven, individualist approaches to social policy lead to increasing numbers of families and children in poverty<sup>5</sup>. In 2020-2021, children living in poverty were nearly five times more likely to be subjected to youth justice supervision. This is because the youth justice system “effectively selects vulnerable, at-risk, traumatised children and young people”<sup>6</sup>.

A Queensland Youth Justice strategy needs to seriously and meaningfully address these underlying factors that make contact with the youth justice system more likely.

When these underlying factors emerge, a multi-disciplinary social approach must be employed to ensure children and families have meaningful access to holistic education, health, housing, domestic and family violence services and mental health and wellbeing services. Rather than siloing child protection, youth justice and other services, consistent holistic service provision should remain with a child throughout their experiences of statutory systems.

<sup>4</sup> Family Matters 2011 No 89 The link between child maltreatment and adolescent offending Systems neglect of adolescents

<sup>5</sup> Hancock, C. (2023). Ideologies of poverty and implications for decision-making with families during home visits. *Linguistics and Education* (78). <https://doi.org/10.1016/j.linged.2023.101231>.

<sup>6</sup> Kinner, S (2024) ABC Radio Interview <https://www.abc.net.au/listen/programs/healthreport/0915-youth-justice-system/103497794>

## When children come into contact with police

'Offending' behaviour is not just 'anti-social, lack of respect' behaviour as is commonly assumed within our communities. Particularly for children, 'worrying' behaviours occur on a spectrum, from completely developmentally appropriate curiosity to complex developmental and relational trauma.

The UNCRC recognises the need for diversionary measures to prevent young people from entering the criminal justice system. General Comment No. 24 (2019) on children's rights in the child justice system emphasises the importance of diversion as a preferred approach for most cases. The General Comment also stresses the need for diversion to be an integral part of the child justice system, and the importance of protecting children's human rights and legal safeguards in diversion processes and programs (in accordance with Article 40 of the UNCRC). This includes recognising the need for alternative measures for children under the age of criminal responsibility and setting the minimum age of criminal responsibility to at least 14.

Children and young people who are first arrested before the age of 14 may be three times more likely to become chronic adult offenders than those first arrested after the age of 14<sup>7</sup>.

Community-designed and community-based diversion programs have proven to be highly effective in reducing reoffending rates and providing positive outcomes for children and young people. These programs prioritise a holistic approach, addressing underlying issues and engaging with local communities.

Recognising the significant challenges created by continuing interstructural colonialist systems that First Nations children and young people face, First Nations-led place-based approaches have successfully reduced crime, criminal justice system contact, and youth justice contact<sup>8</sup>. They help to restore cultural authority and promote positive cultural identity and connection which are recognised protective factors for First Nations children. These approaches have also yielded significant cost savings, and notable improvements in cultural, social, and health and wellbeing. By adopting community-driven strategies, positive outcomes can be achieved across multiple domains. These initiatives involve community elders and leaders promoting cultural connections, healing and accountability. First Nations-led diversion and intervention programs, when appropriately resourced can significantly reduce the risk of reoffending among children and young people and achieve cost savings which can be reinvested into creating more social justice outcomes.

## When children are referred to the court system

In Queensland, custody has been demonstrated as consistently and predictably ineffective in preventing offending and reoffending. The more courts impose custodial sentences on Queensland children, the more likely they are to reoffend. Children who are in out-of-home care or have had significant interactions with the child protection system are significantly over-represented within groups of children who commit offences and First Nations children are over-represented even more so. Consistently, our legal obligations to protect and affirm children's rights are not being met.

<sup>7</sup> Amnesty International (2018) The sky is the limit Keeping young children out of prison by raising the age of criminal responsibility <https://www.amnesty.org.au/wp-content/uploads/2018/09/The-Sky-is-the-Limit-FINAL-1.pdf>

<sup>8</sup> Allison, F (2022) Redefining Reinvestment An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW Just Reinvest NSW <https://www.justreinvest.org.au/wp-content/uploads/2022/10/JRNSW-I-Reinvestment-Forum-I-Report>

The more Queensland court processes focus on and implement prevention, early-intervention, diversion and shared accountability with services connected to a child, the less likely offending behaviour becomes. The Queensland Family and Child Commission (QFCC) proposes a Child-centred Court Panel (CCP) pilot program for children aged 10-15 who offend in Queensland. This pilot includes an evaluation of its effectiveness in reducing youth offending and recidivism (see *Addendum 1 – Ref: D24/1704*).

## Priority Area 3 – Reimagining Infrastructure

Queensland needs to work critically to adopt contemporary, non-colonialist approaches to ‘justice’, including decommissioning youth detention centres.

Queensland is locking up children at alarming and increasing rates. We must reimagine how we see and value children and young people in our community. If ‘tough laws’ worked, Queensland would have seen a decrease in reoffending, which is consistently not the case. We incarcerate children because of our short-term satisfaction with ‘punishment’.

The practice of detention has been shown consistently to:

- adversely affect children’s mental health and wellbeing;
- break critical attachments and relationships;
- reduce or eliminate the effectiveness of social and therapeutic work already being completed with the child, and;
- significantly increase the likelihood of future offending.

As outlined in *Youth Justice Act 1992*, ‘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 circumstances’ (Principle 18: Charter of youth justice principles). Queensland needs to acknowledge and address its’ permissive and desensitised attitude to the incarceration of children. Normalisation of custody approaches for children has become entrenched alongside custody law changes – we routinely see 50+ children in watchhouses every day across the state – with no alarm going off for governments and policy makers. Our system has become desensitised to the catastrophic impact of incarceration on children. We must collaboratively decommission youth detention centres, underpinned by an urgent need to rid ourselves of the ‘need’ for detention centre capacity<sup>9</sup> and use them only as an *extreme* last resort in rare and individual instances where there are significant community safety worries.

<sup>9</sup> Atkinson, B (AO) (2018) Report on Youth Justice <https://desbt.qld.gov.au/youth-justice/reviews-reports/atkinson-report>

## Priority Area 4 – Improving engagement

Queensland needs to rethink what we mean by ‘positive’ programs.

Whilst it is critical we urgently reduce incarceration of children and young people in Queensland, it is equally important to listen to the voices of children and young people to learn how to design and implement ‘positive programs’ that work for them.

Over six months, the QFCC yarned with Aboriginal and Torres Strait Islander children and young people about their experiences of the Queensland youth justice system and presented their voices in the *Yarning for Change: Listen to My Voice* report<sup>10</sup>. Young people said that access to programs while in detention depended on factors such as peer conflicts, resourcing and staffing. They advised that the programs they had participated in, or enjoyed, were cultural programs and physical activities, such as hospitality training, bricklaying, football, gym, pool and landscaping. Young people identified factors that kept them strong while in detention:

- contact with family members in the community;
- peer support;
- family members in detention; and
- detention centre staff.

Young people advised that being sentenced helped to ease their minds in detention — they knew what they were working with and working towards. However, being on remand was mentally hard. Uncertainty around transitioning to community was also a frustration for young people.

The current Youth Justice system employs poorly evidenced assessments regarding a child’s ‘attitude’ and ‘level of remorse’ which, for many of these children, are ineffective and developmentally inappropriate. Interventions such as ‘aggression-replacement’ are archaic in principle and ineffective. Our child detention structures are based on historical ideas and policies that simply apply adult incarceration ideals to how we treat our children. Whilst our youth detention centres have teachers, youth workers and other staff who often ‘do their best’ with relational practices with children, the system and structure they work within make it difficult to have a more positive impact on a child’s life.

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<sup>10</sup> Queensland Family & Child Commission (2022) *Yarning for Change: Listen to my voice* <https://www.qfcc.qld.gov.au/sites/default/files/2022-11/Yarning%20for%20Change.pdf>

## Priority Area 5 – Operation of the Act

The concept of ‘serious repeat offender’ needs to be amended, and children’s rights need to be upheld within sentencing principles.

We know that children with experiences of developmental trauma are significantly more likely to encounter our justice system. Children’s isolation, lack of access to health treatment and education and neglect of other rights within the youth justice system, further exacerbate cyclic offending. If we combine this knowledge with an 80-90% reoffending rate for children who have been incarcerated, then we need to carefully readdress the concept of a ‘Serious Repeat Offender’ declaration.

Where the criteria for this declaration are met under the current legislation, it should be seen and acted upon as a ‘High Priority Support List’ instead, meaning the urgency is placed on addressing their assessment and support needs rather than surveillance and suppression activities. Our response should be to focus our collective accountability as *duty-bearers* to affirm the rights of these children. This declaration should increase the need to employ long-term treatment, non-punitive strategies and accountability of key services to uphold the rights of children. We must respond to the systemic impacts on a child that lead to ‘serious repeat offending’ rather than further punishing the child.

Children should only ever be arrested, detained, or imprisoned as a measure of last resort, for the shortest period, and all efforts should be made to apply alternative measures. A Youth Justice Strategy for Queensland needs to implement meaningful mechanisms that reflect ‘all efforts’ being made, including urgently increasing the age of criminal responsibility to 14 and removing unsentenced detention in watchhouses.

Queensland’s renewed focus on detention practices including commissioning new remand and detention centres for children is significantly contributing to youth offending and has profound psychological impacts on children. Community safety and collaboration must remain a focus, but the most effective way to protect communities is to avoid non-evidenced ‘tough-law’ approaches – a child-centred, compassionate response has been shown to significantly decrease offending and reoffending.

Principle two of the Youth Justice Act 1992 Charter states, ‘the system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing’<sup>11</sup>. The development of a new Youth Justice strategy makes it imperative that we re-structure our systemic approach to Youth Justice to make this principle a reality.

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<sup>11</sup> Youth Justice Act 1992 <https://www.legislation.qld.gov.au/view/pdf/inforce/2017-03-30/act-1992-044>

## Priority Area 6 & 7 – Public Confidence & Support

A community's authentic and perceived safety is critical. Supporting communities to feel safe as they live their lives is important. Kneejerk reactions to community concerns must be replaced with consistent, thorough, robust processes and long-term resourcing.

Any personal crime has a major effect on anyone who has experienced it. This includes their rights not being upheld. However, a Youth Justice strategy *must* stay true and consistent with evidence, ensuring a plan is collectively agreed upon and actioned. Despite certain narratives driven by media reporting and social media conversations, it is important to remember two critical points:

- offending by children in Queensland has decreased<sup>12</sup>, and;
- 'tough law' approaches including increases in law enforcement zero-tolerance, electronic monitoring, punitive incarceration strategies, isolation and remand detention in adult watchhouses have made future offending more likely from children subjected to them.

This makes it more critical that we 'stay on course' and avoid what has habitually been, and continues to be, a race to the bottom with Youth Justice policy. Tough laws and archaic approaches have made communities less safe– it's time to end this short term policy-making so we can all make our communities safer.

Increasing meaningful support for those who experience crime should be a focus of a Youth Justice strategy. If the government is committed to reducing offending, it needs to fundamentally transform systems (health, housing, education etc) to implement evidence-based legislation, policies and programs. An actual test of its commitment would be to introduce an insurance scheme for victims of crime. That is, those who experience crime by young people in Queensland should be compensated because the government fails to implement, action and monitor an evidence-based Youth Justice strategy. Victims of crime should be able to access financial compensation due to government policy failure.

A promise to our young people is a positive way to bring the entire Queensland community together in support and action.

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<sup>12</sup> Australian Bureau of Statistics (2022-2023) Recorded Crime – Offenders <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release>

# Child-centred Court Panel

## Pilot Proposal

### Background

In Queensland, custodial approaches to children who have committed offences have been demonstrated as consistently and predictably ineffective in preventing offending and re-offending. The more courts impose custodial sentences on Queensland children, the more likely they are to re-offend. Children who are in care or have had significant interactions with the Child Protection system are significantly over-represented within groups of children who commit offences and First Nations children are over-represented even more so. Consistently, our legal obligations to protect and affirm children's rights are not being met.

The more Queensland court processes focus on and implement prevention, early-intervention, diversion and shared accountability with services connected to a child, the less likely offending behaviour becomes. Including relevant services and people connected to a child within judicial processes means courts can have a greater impact on addressing underlying developmental and social factors, sharing information and ensuring accountability and collaboration for effective service delivery.

The Queensland Family and Child Commission (QFCC) is proposing a pilot program for children aged 10-15 years old who offend in Queensland that seeks to address the above issues, using an evidence-based alternative court panel process. This pilot includes evaluation of its effectiveness in reducing youth offending and recidivism.

### Meeting Youth Justice Strategy Pillars

#### Pillar 2:

##### Keep children out of court

Children and young people with early or low level offending have positive family and community influences, are engaged in education, training and alternative activities, and get support to address their behaviours.

#### Pillar 3:

##### Keep children out of custody

Children and young people who have offended have a safe place to live and are supervised and supported to repair harms, address behaviours, and reconnect with families and communities as an alternative to incarceration.

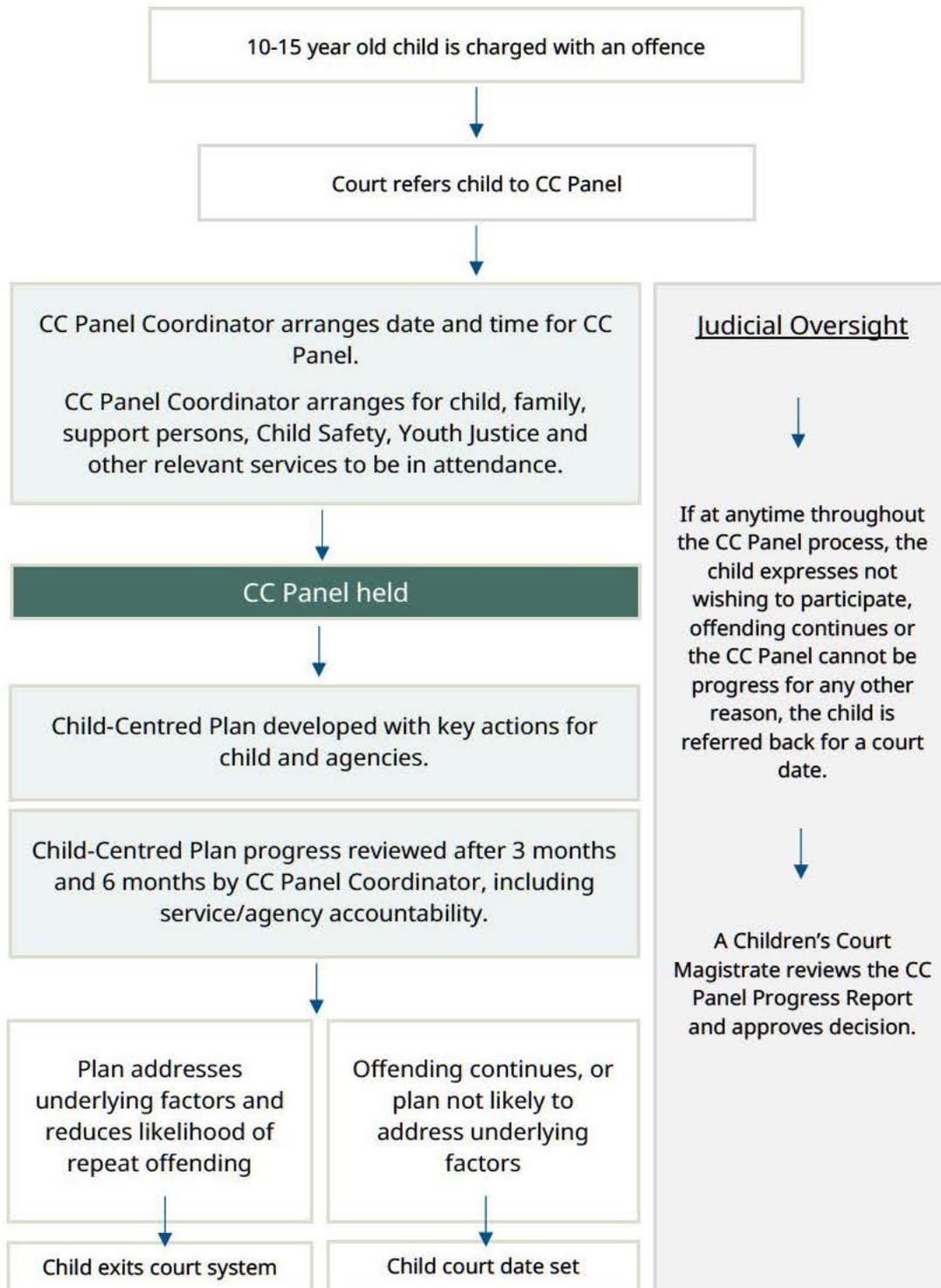
#### Pillar 4:

##### Reduce Re-offending

Children and young people who are repeat offenders get responses, punishments and support that work to stop re-offending and enable successful reintegration with their families, culture and communities.



## How the Pilot would work



## Pilot Scope

Children between 10 and 15 years of age charged with an offence.

Children on dual Child Protection and Youth Justice orders.

Children within 1-3 selected pilot regions in QLD.

## Logistical considerations

Existing QCAT infrastructure and or appropriate meeting locations with the region could be utilised for the panel.

CC Panels should be attended by services and people meaningful and relevant to the child. The pilot will also partner with key decision making delegation within key services to ensure focus actions are met when required.

Independent evaluation will be completed, measuring effectiveness of the pilot.