

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

Submission No: 132
Submitted by: Office of the Public Guardian
Publication:
Attachments: See attachment
Submitter Comments:



Inquiry into youth justice reform in Queensland

**Submission to the Youth Justice Reform
Select Committee**

January 2024

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About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity and children and young people in the child protection system or staying at a visitable site.

OPG provides individual advocacy services to children and young people through the following functions:

- child advocacy, which offers person-centred advocacy for children and young people in the child protection system (including those who may also be in the child protection system), and elevates their voice and participation in decisions that affect them, and
- community visiting, which monitors and advocates for the rights of children and young people in the child protection system (including foster, kinship and residential care), and all children and young people staying at visitable sites (youth detention centres, police watchhouses, authorised mental health services and other residential facilities).

OPG provides an entirely independent voice for children and young people to raise concerns and express their views and wishes. When performing these functions, OPG will seek and take into account the views and wishes of the child to the greatest practicable extent.

OPG also promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through its guardianship, investigations and adult community visiting functions.

The *Public Guardian Act 2014* provide for the Public Guardian's legislative functions, obligations and powers relating to children and young people, including those performed by OPG's community visitors and child advocates as delegates of the Public Guardian.

Position of the Public Guardian

The Public Guardian welcomes the opportunity to provide a submission to the inquiry into youth justice reform in Queensland. The views of the Public Guardian contained in this submission do not represent the views of the Queensland Government.

This submission and our recommendations address the issues raised in the inquiry's terms of reference where they relate to the experiences of OPG and the children and young people we support. A summary of the Public Guardian's recommendations appears below.

The Public Guardian recommends:

1. The Committee consult with children and young people who have had a youth justice experience about the matters being considered in the inquiry and any proposed reforms to address youth offending.
2. Increased investment in early intervention and stronger collaboration between service systems to appropriately respond to the needs of children and young people, including First Nations children and young people, those with a disability and those in the child protection system.

3. Increased investment in preventative strategies and diversionary options that address the underlying causes of offending behaviour in children and young people, including developmentally and culturally appropriate, trauma-informed responses aimed at mitigating a child's adverse childhood experiences.
4. The development and operation of targeted strategies and youth diversion programs by, or in partnership with, Aboriginal and Torres Strait Islander communities and/or Aboriginal and Torres Strait Islander-controlled organisations, to help address the overrepresentation of First Nations children and young people in the youth justice system.
5. The minimum age of criminal responsibility should be increased to 14 years of age for all offences.
6. The provisions in the *Strengthening Community Safety Act 2023* and the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* which override the *Human Rights Act 2019* be repealed.

OPG's role in the youth justice system

Community visitors

Through the community visitor program, the Public Guardian advocates on behalf of children and young people detained in police watchhouses and youth detention centres on a range of matters. These include:

- human rights concerns for children and young people detained in youth detention centres and police watchhouses
- excessive length of stays for children and young people in police watchhouses,
- extended separations for young people due to staff shortages in youth detention centres
- the location and physical state of police watchhouses
- security, behaviour management and high-risk behaviours of children and young people who are detained
- co-location of children with adults in police watchhouses
- service provision in police watchhouses and youth detention centres
- age and gender related issues, including longer average stays in watchhouses for female children and young people
- delays in identifying a placement for children residing in out-of-home care placed on bail, or children likely to be granted bail if a child protection placement were available.

OPG prioritises visits and advocacy to children and young people in police watchhouses and youth detention centres due to their level of vulnerability.

Youth detention centres

In 2022-23, community visitors undertook 1,416 visits to Queensland's three youth detention centres and raised 1,465 issues on behalf of children and young people in the centres. These issues included concerns relating to:

- reintegration planning to the community, particularly appropriate, supported and safe accommodation options upon a child's release from detention
- access to services, including cultural, therapeutic, education/vocational and disability support

- living conditions within youth detention centres
- extended separations for young people due to staff shortages in youth detention centres.

Police watchhouses

In 2022-23, community visitors undertook 926 visits to police watchhouses across Queensland and raised 1,281 issues on behalf of children and young people in the watchhouses.

These issues included concerns relating to:

- safety, wellbeing, service support, medical treatment, legal access, and complaints by children and young people while in watchhouse custody
- ensuring children and young people are kept informed, can contact people outside the watchhouse (such as legal representation and family contact) and can lodge complaints to external complaint bodies in line with their right to do so
- child protection concerns, including community follow up for dual order children and their Youth Justice Officer.

Child advocates

OPG's child advocates provide complementary advocacy for children in the child protection system who are also involved in the youth justice system. They are not a direct legal representative for a child or young person but assist youth justice defence lawyers and the court to understand the views and wishes of the child and the underlying issues impacting on their involvement in the youth justice system, such as experience in the child protection system, being subjected to trauma, and/or decision-making capacity issues.

Factors contributing to children and young people's offending

In OPG's experience, a significant proportion of children and young people who engage with the youth justice system have a range of complex and often prejudicial circumstances that impact their behaviour. The behaviours of children and young people that lead to incarceration can be a manifestation of childhood abuse and neglect. This is further exacerbated for children with neurodevelopmental disorders, who have commonly experienced multiple system failures in the health, education, child protection and justice systems in identifying the child's needs and intervening before the child or young person enters detention. It is often the case that their disability-related behaviours of concern are attributed with criminal intent and the child or young person is prosecuted by the youth justice system, when appropriate support from another service system may have a preventative or rehabilitative effect.

Research conducted in the Banksia Hill Detention Centre in Western Australia, [*Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia*](#),¹ found high levels of undiagnosed foetal alcohol spectrum disorder and other neurodevelopmental impairment amongst the young people incarcerated in the detention centre. The research recommended formal neurodevelopmental assessment for all young people entering the justice system and comprehensive training for detention centre staff. This research aligns with the experience of community visitors and indicates that inadequate identification and provision of care and

¹ Bower C, Watkins RE, Mutch RC, et al. *Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia*. BMJ Open 2018.

support early in a child or young person's life, coupled with lack of collaboration and transition between service systems, are avoidable factors that can lead to a child or young person encountering the youth justice system.

Similarly, children in the child protection system are often disadvantaged by traumatic environmental factors related to their upbringing that can lead to criminal behaviour, including child abuse or neglect, homelessness, mental health issues, and drug or alcohol use, which can manifest through the child's carer and may also be experienced by the child directly. These traumatic experiences have a lasting impact on the life trajectory of these children and influences behaviour, sometimes materialising as criminal offending. Criminalising the trauma and behavioural manifestations of these children creates a vicious cycle of disadvantage and only further isolates and victimises the children most in need of the community's support and protection.

Education is critical to improving outcomes for children and young people, including reducing contact with the youth justice system. OPG has observed young children being subjected to suspensions and exclusions from school and even prep, which risks ongoing disengagement from the education system from a young age. In OPG's experience, children and young people with learning disabilities, particularly where these conditions are undiagnosed or unsupported, are at even greater risk of disengaging from school and subsequent exposure to the youth justice system. The importance of education is further substantiated by statistics from the former Department of Children, Youth Justice and Multicultural Affairs, which state that 55% of children in the statutory youth justice system are disengaged from education, training or employment.²

Issues within youth detention environments

As discussed above, community visitors have a unique insight into the issues that exist within the police watchhouses and youth detention centres, which helps to identify key areas for reform and ensure the rights, interests and wellbeing of children and young people are protected. These include access to services and improving living conditions within the youth detention centres, and reintegration planning to the community.

OPG has ongoing concerns that children and young people with complex needs are losing access to health, education, cultural and therapeutic support within the youth detention environments. In 2022-23, 18% of issues raised by OPG's community visitors on behalf of children and young people in youth detention centres were about access to participation in education and vocational services. Limited access to formal education further isolates children and young people in detention from their peers, impacting their opportunity to successfully reintegrate into society upon release.

Chronic overcrowding in Queensland youth detention centres and staff shortages also regularly result in lockdowns, separation, and extended periods of isolation for children, limiting their access to services and support. Children and young people are confined to their rooms for extensive periods and experience more frequent mental health impacts. For example, in the matter of [R v TSL \[2023\] QChC 21](#), a young person was remanded in a detention centre for 197 days – for 58 days, the young person spent less than two hours out of their cell, and for 13 days, the young person was locked in their cell for a full 24 hour period. This environment further exacerbates the trauma experienced by vulnerable children

² Department of Youth Justice Pocket Stats 2019-20, available at <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/yj-pocket-stats-2019-20.pdf>, viewed 14 June 2023.

and young people and is counterintuitive to the idea of detention serving as a form of rehabilitation for children and young people who have engaged in antisocial behaviour.

OPG has held longstanding concerns about police watchhouses across the state being utilised contingently to detain children and young people on remand for periods longer than what is deemed ordinarily acceptable in a temporary and primarily adult environment. The number of children in police watchhouses, particularly for prolonged periods, is not conducive to the safety and psychological wellbeing of children, and by nature and design is entirely inappropriate to meet their specific needs. This is particularly relevant in view of the overrepresentation of Aboriginal and Torres Strait Islander young people, those under children protection orders and those with trauma histories in custody, all of whom require targeted attention to rehabilitate and reduce the potential for recidivism.

In conducting visits to police watchhouses, OPG has been made aware of the unacceptable conditions being experienced by children as young as 10 years old. Children and young people have reported the use of force, strip searches, overcrowding and having to sleep in common areas with lights on 24 hours a day, lack of access to personal hygiene items such as underwear, toothbrush, or a daily shower, being co-located with adults experiencing the effects of drugs, alcohol or psychosis, and lack of access to fresh air or sunlight. OPG has also observed the impacts of prolonged periods of isolation on the physical and emotional wellbeing of a child or young person when they are held in a police watchhouse and the subsequent impacts on their ability to reintegrate into society.

The Committee may be aware the Queensland Family and Child Commission (QFCC) recently completed a review of Queensland's use of police watchhouses in 2023 to understand why children are increasingly being held for extended periods.³ The review made five recommendations for immediate implementation to reduce the time children are detained in watchhouses, including improving cross-agency collaboration, transparency of record-keeping and public reporting, and reducing unsentenced detention.

Strategies for particular children and young people

To better protect the rights and wellbeing of vulnerable children and young people, the Public Guardian recommends the development of strategies and diversionary options that address the reasons why children and young people are committing offences.

In developing any reforms to address youth offending, the Public Guardian recommends the Committee engage directly with children and young people who have had a youth justice experience about the matters being considered in the inquiry. Listening to their experiences and ideas would give children and young people a sense of agency in this process, and it also would align with their rights to participate in matters that affect them. These children and young people will have a very good idea of what they need and by including their views and ideas, it will assist decision makers to develop more effective responses to youth offending, and may also create a shared sense of ownership and commitment to the reforms.

³ The State of Queensland (Queensland Family and Child Commission) - *Who's responsible: Understanding why young people are being held for longer in Queensland watch houses*, November 2023.

Recommendation 1:

The Committee consult with children and young people who have had a youth justice experience about the matters being considered in the inquiry and any proposed reforms to address youth offending.

Children and young people with a disability

For children and young people with neurodevelopmental disorders, priority must be placed on early intervention and stronger collaboration between service systems to identify and appropriately respond to their needs, no matter where they reside in Queensland. These include appropriate mental health services and funding for assessment for formal diagnosis of people with intellectual disabilities and acquired brain injury. Funding for the development of individualised positive behaviour support plans is required alongside training for family, and professionals such as teachers, implementing the plan. The rights and wellbeing of these vulnerable children and young people at risk of entering the youth justice system could be better protected through investment in preventative strategies, as opposed to punitive measures.

Children and young people in the child protection system

For children and young people with a child protection history, prioritising early intervention would support governments to deliver youth justice reforms consistent with the four pillars detailed in the 2018 *Report on Youth Justice* prepared by Bob Atkinson AO (the Atkinson Report). Intervention strategies could incorporate parenting programs, access to targeted social services, mental health and disability assessment and services, drug and alcohol services and educational supports that focus on both physiological and brain-based behaviour regulation. This would require government investment in programs outside of the youth justice system; however, this investment could ultimately reduce the need for such programs within the youth justice system if children and young people were provided with the tools, resources and support necessary to encourage positive behaviour. The flow on effects to the child or young person, their family and the community have the potential to be significant.

First Nations children and young people

In considering diversion and preventative strategies for children and young people, the overrepresentation of Aboriginal and Torres Strait Islander children must be addressed. In 2022-23, 46% of the children and young people visited by community visitors and 40% of the children and young people supported by child advocates were Aboriginal and/or Torres Strait Islander. The high proportion of First Nations children and young people supported by OPG can be attributed to the overrepresentation of First Nations children and young people in the child protection and youth justice systems.

Targeted strategies are urgently required, including cultural competency training to ensure that service delivery is culturally appropriate. In this regard, it is recommended that youth diversion programs in remote communities are developed and operated by, or in partnership with, Aboriginal and Torres Strait Islander communities and/or Aboriginal and Torres Strait Islander controlled organisations. The importance of early intervention was highlighted in a recommendation from the Support and Services Committee report into *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*. In its report the Committee recommended that, "...any alternative proposal to the youth justice system considered by the Queensland Government should include adequate and effective diversion programs and services, including place-based and culturally appropriate practices, to support young people and

address factors which lead to offending behaviour".⁴ OPG notes the delegated authority initiatives introduced by the then Department of Children, Youth Justice and Multicultural Affairs which allows for Aboriginal and Torres Strait Islander children and young people, families, communities and the organisations that support them to have greater control over how authority is exercised and how government bodies work with families. Partnership initiatives such as delegated authority will play a critical role in addressing the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system.

If the youth justice system is to truly protect the rights and wellbeing of children and young people, government must recognise the value of investment in early interventions that promote children and young people's education, health and wellbeing and the prevention of antisocial behaviours that can lead to offending. Considering the overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system, such investments for these children are particularly critical.

Recommendation 2:

Increased investment in early intervention and stronger collaboration between service systems to appropriately respond to the needs of children and young people, including First Nations children and young people, those with a disability and those in the child protection system.

Recommendation 3:

Increased investment in preventative strategies and diversionary options that address the underlying causes of offending behaviour in children and young people, including developmentally and culturally appropriate, trauma-informed responses aimed at mitigating a child's adverse childhood experiences.

Recommendation 4:

The development and operation of targeted strategies and youth diversion programs by, or in partnership with, Aboriginal and Torres Strait Islander communities and/or Aboriginal and Torres Strait Islander-controlled organisations, to help address the overrepresentation of First Nations children and young people in the youth justice system.

Age of criminal responsibility

Any strategies to better protect the rights and wellbeing of children and young people who engage with the youth justice system must include consideration of increasing the age of criminal responsibility.

OPG has consistently advocated for an increase to the age of criminal responsibility from 10 to 14 years of age in Queensland. This aligns with the [United Nations Convention on the Rights of the Child \(General comment: no.24 \(2019\) on children's rights in the child justice system\)](#), which encourages state parties, including Australia, to raise their minimum age of criminal responsibility to at least 14 years. Australia's current age of criminal responsibility is well below the United Nation's minimum standard and represents a significant breach of the human rights of Australian children.

⁴ Report No. 16, 57th Parliament - *Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*, March 2022, p.41.

Such early contact with the criminal justice system at 10 years of age increases the chances of recidivism and re-incarceration, leading to an almost inevitable progression to the adult corrections system. The Australian Institute of Health and Welfare study, [Young people in child protection and under youth justice supervision – 2020-21](#), provides a detailed examination of the trauma experienced by children in the child protection system, which reduces their ability and opportunities to learn and develop empathy. This can become a precursor to engaging in antisocial or criminal behaviour and early exposure to the youth justice system.

OPG is also of the view that children aged under 14 years should not be placed in detention and no child under the age of 18 years should be held in any adult facility. As discussed above, the detention environment is not equipped to appropriately respond to children who have likely experienced trauma, and in fact may often exacerbate or retrigger the trauma for the child or young person, leading to escalating behaviours of concern and continued exposure to the youth justice system.

Recommendation 27.1 of the [Royal Commission report into the Protection and Detention of Children in the Northern Territory](#) (NT Royal Commission report) proposes that youth under the age of 14 years not be ordered to serve a time of detention unless strict criteria are met relating to the seriousness of the offence and the risk presented to the community.⁵

Recommendation 5:

The minimum age of criminal responsibility should be increased to 14 years of age for all offences.

National and international initiatives

The Committee may be aware the National Children’s Commissioner is conducting a project into youth justice and child wellbeing reform across Australia. The project is investigating opportunities for reform of youth justice and related systems, and exploring ways to reduce children’s involvement in crime, including through prevention and early intervention. OPG considers a national approach to youth justice and child wellbeing reform would be a welcome initiative to ensure that Australia is meeting its international human rights obligations across the country. Such an approach should include investment in early intervention strategies, a commitment to end children and young people being held in police watchhouses and an increase to the age of criminal responsibility.

QFCC released an issues paper in 2022, [Designing a better response to youth offending in Queensland - Raising the age of criminal responsibility: Issues paper](#) (QFCC issues paper) which details a number of programs designed to address antisocial or potentially criminal behaviour and those at risk of entering the criminal justice system in the future, including the [youth and family support service](#) offered in Queensland. The QFCC issues paper discusses (on page 29) the youth justice diversionary strategies in New Zealand where criminal proceedings are deemed to be a last resort, with most youth offending handled by the police through issuing cautions, initiating alternative action plans or holding family group conferences. In New Zealand, youth justice conferences must be held before matters are referred to Youth Court. The Scottish Government has also introduced strategies to reduce children and young people’s involvement in youth justice and child protection systems. These strategies and associated implementation plan include an increase to the age of criminal responsibility from eight to 12 years, and

⁵ Royal Commission into the Protection and Detention of Children in the Northern Territory, Volume 2B, 2018, p. 420.

a commitment to end the use of youth detention centres for children under the age of 18 years.⁶ Chapter 26 of the aforementioned NT Royal Commission report also details alternative youth justice and detention models adopted throughout Australia and internationally.

Impacts of the residential care system

The Committee may be aware the Queensland Government is conducting a comprehensive review of the residential care system in Queensland with independent oversight by QFCC. OPG has observed that issues in the residential care system increase the risk of children and young people coming into contact with the youth justice system.

Children and young people under the custody or guardianship of Child Safety are remaining on remand in a police watchhouse or detention centre for prolonged periods, in part, because they have not been provided with a residential care placement. In some circumstances, children and young people are refused bail by the court on the basis that they do not have an appropriate placement or are unable to apply for bail or a bail review due to limited bail merit because of the lack of appropriate placement. In some instances, there is limited risk of the child reoffending or not appearing before the court. In other instances, the child or young person has been granted bail by a Magistrate or has completed their sentence but remains in detention and is unable to be released until a suitable placement is sourced.

Children and young people are being placed in inappropriate residential care that is inadequate to meet their individual care and support needs. This fails to uphold their right to a safe and stable living environment, and places them at significant risk of further criminalisation and return to a watchhouse or detention. Residential care units, which are closed between 9am and 3pm daily, are not appropriate placement options for bail or conditional release from detention, both of which may involve a 24-hour curfew.

The commissioning arrangements for residential care placements are inadequate and do not meet the needs of children and young people who present with complex behaviours and/or may be frequently transitioning in and out of youth detention. Child Safety's legislative obligations to ensure permanency, safe care and connection and a stable living environment apply to all vulnerable children and young people and are especially critical for children and young people demonstrating complex behaviours. Certain children and young people can become known to residential service providers, who will not offer placements due to the complex behaviours described in the referral paperwork. To alleviate this issue, referral paperwork should be drafted in a way which fairly represents the strengths of the young people as well as their complex support needs. These behaviours often stem from disability, mental health and trauma, and may be outside the child or young person's control, particularly in the absence of appropriate supports. OPG has raised this issue in our submission to the residential care review.

Queensland's residential care model can expose children and young people to the risk of physical harm, sexual abuse and psychological harm, and can expose the child or young person to an environment that increases their propensity for further offending.

The lack of stable and safe placement, as well as the lack of appropriate supports in the community, increases children and young people's exposure to the criminal justice system and their risk of reoffending. In OPG's experience issues with placement, such as inappropriate placement matching,

⁶ Scottish Government, 2022, *Keeping the promise to our children, young people and families*, <https://www.gov.scot/publications/keeping-promise-children-young-people-adults-families/documents/>.

inadequate supervision and support in the placement, movement between placements, placement breakdown, periods of homelessness and accessing non-approved placements, are all factors that can be linked to increased involvement in offending.

Queensland's residential models of care are not suited to young people in their teenage years due to restrictions on socialising with friends and partners. These young people do not enjoy the same freedoms as their peers living at home with their families, such as to have safe gatherings and sleepovers, which can also contribute to offending behaviours. Boredom and a lack of age-appropriate activities in residential care (such as technology, computers and gaming consoles) is also a factor in young people spending time in public places with peers and can contribute to offending.

A persistent systems issue is the criminalisation of children and young people in residential care who demonstrate challenging behaviours. OPG is aware of several residential care providers contacting police when children and young people in the residence exhibit challenging, but not necessarily criminal, behaviours. This can often occur in response to situations that likely would not have come to police attention in a family home environment. Being subjected to a police response for this behaviour at an early age entrenches a negative attitude to law enforcement in these young people and a lack of trust in the adults responsible for caring for them. Such behaviour is invariably a response arising from childhood trauma, where the child or young person feels helpless, trapped and pushed beyond their ability to cope. With the reliance upon police to manage such behaviours by adopting a criminal response to conduct that would not be treated as such in a family home, these children become stigmatised and their behaviours labelled as criminal. Firm deterrence, such as the imposition of penalties, is required for service providers who default to a police presence in response to the behaviour of children and young people in their care that is not criminal in nature.

Upholding the Human Rights Act 2019

OPG is gravely concerned the *Human Rights Act 2019* has twice been overridden in 2023 to the detriment of children and young people under the [Strengthening Community Safety Act 2023](#) and the [Child Protection \(Offender Reporting and Offender Prohibition Order\) and Other Legislation Amendment Act 2023](#). Reforms which expressly infringe the human rights of children and young people cannot be the solution to the youth justice emergency in Queensland. It is critical that any reforms proposed by the inquiry ensure the highest standard of human rights recognition. Upholding the human rights of all Queenslanders should be the foundation of every reform to the youth justice system moving forward – anything less should not be acceptable or tolerated in a progressive, rights-based society.

Recommendation 6:

The provisions in the *Strengthening Community Safety Act 2023* and the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* which override the *Human Rights Act 2019* be repealed.

Conclusion

The achievement of genuine public safety requires government recognition of the value of investment in early interventions that promote children and young people's education, health and wellbeing and the prevention of antisocial behaviours that can lead to offending. Intervention strategies could incorporate parenting programs, access to targeted social services, mental health and disability assessment and services, drug and alcohol services and educational supports that focus on both physiological and brain-

based behaviour regulation. This would require government investment in such programs outside of the youth justice system. However, early intervention could ultimately reduce the need for such programs if children were provided with the tools, resources and support necessary to not engage in criminal activity at the outset.

OPG appreciates the issues are complex and nuanced, and any solutions must balance the needs of children and young people with the safety of the community and support for victims of crime. We trust the Committee will consider the issues raised in this submission in conducting their inquiry and in developing recommendations. OPG is optimistic that the inquiry will yield positive outcomes for both the community and for children and young people in the youth justice system who are experiencing trauma and disadvantage. OPG will continue to raise the views and experiences of children in detention so they can help shape a better youth justice system for the future – a system that addresses the underlying causes of youth crime and reduces the need for any child to be detained.