

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

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Submitted by: Sisters Inside Inc.
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Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au



Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

Thursday, 11 January 2024

Dear Youth Justice Reform Select Committee,

We are pleased to provide the following submission for the Committee's review of youth justice reform in Queensland.

Who We Are and What We Do

Established in 1992, Sisters Inside is an independent community values based organisation which advocates for and behalf of criminalised and imprisoned women and girls and their families to end the incarceration of women and girls. Our policy advocacy is informed by our work alongside these women and children to address their individual needs. Our work is guided by our underpinning Values and Vision.¹ We believe that prisons are an irrational response to social problems that serve to further alienate socially marginalised groups in our communities, especially Aboriginal and Torres Strait Islander women and girls. Criminalisation is usually the outcome of repeated and intergenerational experiences of racism, violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use. First Nations women and girls are massively incarcerated due to systemic racism at the core of the Australian legal system.

Sisters Inside is uniquely placed to contribute to this consultation. We daily see the realities of prison life for women and girls in all places of custody throughout Queensland. We also work with women, girls and their families in the community following their release from prison. This work enables us to directly witness the wider consequences of criminal law policies and practices. We run a number of programs specifically working with children and young people, including our Crucial Connections, Young Women's Art Group, YANGAH Program, and Work Pathways Program. Further detail about these programs is provided below. Sisters Inside's youth workers have a wealth of knowledge drawn from their daily contact with criminalised young people. This submission is underpinned by the wisdom and insights of Sisters Inside and our 30 + years of expertise in this area. We commend this expertise to the Committee.

¹ Sisters Inside Inc., 'Values and Visions'. Available at: www.sistersinside.com.au/values.htm

Our Position on the Recent Reforms

Sisters Inside believes that the complete abolition of childhood incarceration is necessary to create a safe and just society that truly serves the ‘best interests’ of the child. Children need connection to country, family, and community. These connections cannot be built or maintained if children are in prison. Children need free and non-criminalising access education, health and social services. Most importantly, they need a home where they are loved and cared for as a child, not treated as a number. Ending child incarceration is not an outlandish or unrealistic proposal – since early 2022, Hawaii has worked to no have girls in detention.²

The Queensland community will never be made ‘safe’ by the state locking up and traumatising children. As we have argued for decades, children merely come out of prison angrier and more isolated from positive influences. Evidently, Queensland’s youth justice system has failed to stop children from committing “offences”. Criminalising children has never, and will never, result in a safer community in the long term. The Newman government’s rights-abusing ‘crackdown’ on children labelled ‘repeat offenders’ clearly did not work in 2014,³ nor will it work for the Labor Government now. In the face of this manifest failure, it is clear that the recent ‘crackdown’ on ‘youth crime’ only serves to perpetuate colonial violence by isolating and harming First Nations young people.

The only appropriate and evidence-backed response available to the Queensland government is to invest in keeping children and their families safe, well, and out of the criminal legal system. This can be done through expanding the resources across the State of presently existing programs, such as our YANGAH, Crucial Connections, and First Nations Art Group programs, so that they can work more intensively with more children. Unfortunately, a ‘tough on crime’ race-to-the bottom has resulted in both sides of Queensland politics ignoring this evidence in favour of policies that they hope will win them votes at the ballot-box, even if they inflict serious harm on the most disadvantaged children and fail to make Queenslanders any safer.

² Kelsey-Sugg, A. and Arnold, A. (2022) ‘Girls in Hawaii were once jailed for ‘offences’ like fleeing unsafe homes. Now they’re not locked up at all’, ABC News, 27 July. Accessed at: <https://www.abc.net.au/news/2022-07-28/hawaii-reduced-incarceration-to-zero-girls-imprisoned-here-s-how/101237740>

³ Price, S., Prenzler, T., McKillop, N., & Rayment-McHugh, S. (2022). ‘The evolution of youth justice conferencing in Queensland, 1990–2021’. *Current Issues in Criminal Justice*, 34(1), pp. 77-94; Walsh, T. and Fitzgerald, R., (2022) ‘Youth Justice, Community Safety and Children’s Rights in Australia’. *The International Journal of Children’s Rights*, 30(3), pp.617-643; O’Leary, J. (2014) ‘Out of Step and Out of Touch: Queensland’s 2014 Youth Justice Amendments’, *Current Issues in Criminal Justice*, 26(2), pp. 159-175.

Trends in Child Incarceration

In Queensland, the average number of young people aged 10 to 17 years in detention each day for the 2022-23 period was 283, which is the highest in the country.⁴ This is up from 111 in 1981, when consistent records began.⁵ The number of children in detention in Queensland is increasing, even though the number of children coming before the courts on charges is decreasing. Queensland is the only jurisdiction which has had an increase in the number of children in detention each day over the past four decades, every other jurisdiction having experienced a marked decrease.⁶ Queensland now has the highest rate of detention of all states at 4.8 per 10,000 children, followed by Western Australia at 3.9.⁷ It also has the highest rate of community-based supervision of all states at 16.7 per 10,000, again followed by Western Australia at 14.2.⁸ The only jurisdiction with higher rates than Queensland is the Northern Territory.

Queensland remands children at higher rates than any other state or territory. Children on remand make up 88 per cent of the children in custody – meaning only 12% of children in prison in Queensland have been sentenced. The average daily number of young people in unsentenced custody increased to 249 per day in 2022–23 – well above all other Australian jurisdictions. The average length of time spent on remand (pre-court and unsentenced detention) has also increased, up from 29 in 2019-20 to 51 in 2022-23. Shockingly, close to 1,000 children spent five or more days in the watch house, and 146 of those children spent 15 or more days in the watch house. Around half of all children who spend time in custody are released immediately when their case is heard by a court, having spent longer on remand than they would have on a sentence.

Queensland is a ‘hyper-incarcerator’ of First Nations children and the data reveals this problem is only getting worse.⁹ Indigenous children make up about 69 per cent of the children detained on average each day in 2022-23. The Northern Territory and Queensland had the highest rates of First Nations young people aged 10–17 in detention (50 and 45 per 10,000, respectively), compared to Victoria’s 7.7 per 10,000.¹⁰

⁴ Unless otherwise specified, the following statistics are taken from the Childrens Court of Queensland, *Annual Report 2022-23, 2023*.

⁵ Richards, K. and Lynham, M. (2010) ‘Juveniles in detention in Australia, 1981–2008’, *Australian Institute of Criminology Monitoring Reports no. 12*, Canberra: Australian Institute of Criminology; Complete national records are only available from 1981.

⁶ Goldson, B., Cunneen, C., Russell, S., Brown, D., Baldry, E., Schwartz, M., and Briggs, D. (2020) *Youth Justice and Penalty in Comparative Context*. London: Routledge.

⁷ Australian Government Productivity Commission. (2023) *Report on Government Services 2023: Youth Justice Services*, Canberra.

⁸ *Ibid.*

⁹ Cunneen, C., Baldry, E., Brown, D., Brown, M., Schwartz, M., and Steel, A., (2013) *Penal culture and hyperincarceration: The revival of the prison*. Farnham: Ashgate Publishing.

¹⁰ Australian Institute of Health and Wellbeing. (2023) *Youth detention population in Australia 2023*.

A Case Example: R v TSL

We begin by drawing the Committee's attention to R v TSL, a case before the court in Cairns in late 2023.¹¹ We consider Judge Fantin's judgement captures the tragic state of contemporary youth justice in Queensland and explains why a 'tough on crime' position is both unjust and ineffective. The case concerned a 15 year-old-boy with a 'lengthy criminal history' who was pleading guilty to the offence of attempted robbery in company. Between October 2022 and June 2023, the boy had spent 197 days in prison. In short, Judge Fantin refused to make a Serious Repeat Offender Declaration and sentenced TSL to a 12-month probation order, instead of a period of further detention. The following background was provided by Judge Fantin as reasons for not making a Declaration:

You are a boy who has had a profoundly disadvantaged childhood and upbringing. You are one of five children born to Aboriginal parents. Child Safety has been involved in your life since a very young age. You were exposed to domestic and family violence; and to your parents misusing substances...You have not been to school for years and you have not had the benefit of structured education to protect you from reoffending...You suffered a brain injury at two years of age which has affected your development and progress...In effect, you meet the criteria for an intellectual disability. You also meet criteria for some aspects of Attention Deficit Hyperactivity Disorder. Those diagnoses or conditions affect your ability in a variety of different ways. They affect your ability to communicate, your speech and language skills, your cognitive functions, that is, your ability to reason through a situation and to respond appropriately...You want to live with your mother on your release, although you understand that that is not a placement approved by Child Safety. Child Safety are seeking short-term accommodation for you and housing for you.

Judge Fantin also notes that the boy's treatment while on remand also provided reason to not impose any further detention order, explaining that 'for 58 days that you were remanded in a detention centre, on each of those days you spent less than two hours out of your cell. Many of those 58 days involved you being out of your cell for a matter of minutes only. For 13 days, you spent no time out of your cell at all; that is, you were locked in your cell for a full 24 hour period'. It was noted that no educational opportunities were provided to the boy during this time, and that while 'occupational therapy, psychology, speech pathology and community access through support worker' had been arranged for the boy through an NDIS package, 'none of those supports are going to be provided while you are in detention and they will only commence on your release'.

In our experience, this child – TSL – is representative of the vast majority of children that pass through the Children's Courts day after day. Judge Fantin's approach in this case should be a shining example to parliament: we must offer our children care, not captivity.

¹¹ [2023] QChC 21.

Impact of Reform

Breach of Bail Offence

Between March 2023 and October 2023, there have been 440 charges of the new breach of bail offence.¹² We have supported several girls charged with this new offence. In general, they were charged with this offence in the absence of any other allegations of new 'offending behaviour'. To be clear, this means these girls were given longer criminal records despite not engaging in any behaviour that is in itself a 'crime'; for example, girls were charged with this offences for not staying overnight at their registered address or breaching their curfew.

The bail conditions imposed on children are often unreasonably strict; in our experience, it is not unusual for 12-year-old children to be given 24-hour home curfews.¹³ The girls we support who have breached their residence or curfew conditions have usually done so because they were escaping violence, abuse, or lack of basic support at home. It is particularly concerning that 'home' for a considerable number of these girls is a Child Safety residential care placement.¹⁴ The state is failing in its duty to care for these children, and then criminalising the inevitable consequences of that failure when girls do not want to stay in unsafe or unsupportive placements.

In summary, the breach of bail offence does not decrease offending, it merely increases a child's contact with the police and courts and entrenches them even deeper in the cycle of criminalisation.¹⁵ More concerning, it potentially exposes children to greater harm and victimisation by making it illegal for them to escape unsafe housing situations.

Increased Use of Remand

As explained above, Queensland's exceptionally high rate of remand is largely responsible for its high children's prison numbers. As expected, the number of children on remand on an average day has increased, as has the average time a child spends on remand. Consequently, it has become common practice for children to be held in police watch houses for extended periods of time. Our youth workers have confirmed that they are seeing more children kept in watch houses for longer. After the legality of this practice was doubted in a case before the Supreme Court,¹⁶ the Government passed legislation in August 2023 explicitly making it lawful for children to be held in police watch houses intended for adults for extended periods of time, despite it being incompatible with the *Human Rights Act*.¹⁷ This provision will be in place until 2026, by which time three more child prisons are anticipated to be in operation.

¹² Brennan, D. (2023) 'Bail offences for young people skyrocket in Queensland', *National Indigenous Times*, 14 November. Accessed at: <https://nit.com.au/14-11-2023/8608/bail-offences-for-young-people-skyrocket-in-queensland>

¹³ Smee, B (2023) 'A crime not to go home': 24-hour curfews forcing Queensland children to live with violent offenders', *The Guardian*, 16 June. Accessed at: <https://www.theguardian.com/australia-news/2023/jun/16/24-hour-curfews-forcing-queensland-children-to-live-with-violent-offenders>.

¹⁴ To our knowledge, the percentage of children who have been charged with the breach of bail offence that are under a Child Protection Order is not presently available. We request that the Minister for Youth Justice release this information.

¹⁵ Walsh, T. (2023) 'Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System' (Report, April 2023); L McAra and S McVie, 'Youth Justice?: The Impact of System Contact on Patterns of Desistance from Offending' (2007) 4(3) *European Journal of Criminology* 315, 337; Richards, K. and Renshaw, L. (2013) *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, 63.

¹⁶ *Youth Empowered Towards Independence Incorporated v Commissioner of Queensland Police Service & Anor* [2023] QSC 174.

¹⁷ *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023*.

Children on remand are held in what has been described by Judge Horneman-Wren as ‘the harshest of conditions’.¹⁸ Children held on remand, be it in a detention centre or watch house, are very often kept in solitary confinement for most of their time in custody, without any access to exercise, learning activities, counselling, or normal human interaction.¹⁹ Sisters Inside supports children in watch house custody around Brisbane (funded) and Townsville (unfunded) on a regular basis and we can attest to the fact that watch house cells are concrete boxes unfit for habitation by any person, let alone young and typically highly traumatised children. There is no semblance of privacy, dignity, or respect provided to children in these spaces.²⁰ The children we work with are deeply affected by what they experience in watch houses, often becoming more withdrawn and distrusting.

Queensland’s policy and practice of remanding children at such high rates is racially discriminatory, as most of the 249 children held on remand on an average day are Indigenous. The racialised nature of this practice is even more stark when looking specifically at young children – between 1 September 2021 and 30 September 2022, 40 Aboriginal and Torres Strait Islander children aged 10–11 were detained in Queensland watch houses, compared to 3 non-Indigenous children of the same age.²¹

Labelling Children as ‘Serious Repeat Offenders’

The SRO declaration regime is ‘intended to authorise more punitive sentencing based on a prediction of future risk’.²² It carves into law a separate category of ‘othered’ children who are deemed to be such a ‘future risk’ that their incarceration is to be assumed. In effect, the children subject to these declarations are made less deserving of the typical legal rights and considerations afforded to children before the court. These children, often referred to as the ‘small cohort’, the ‘17 per cent’ of ‘serious high- risk offenders’ who must be ‘targeted’, have essentially been cast by politicians as irredeemable and fit only for containment.²³ The idea of ‘community safety’ has entirely overridden the human rights of these children. We remind the government that human rights are universal, inalienable, and unconditional. The fact that it is a small cohort of children that will be affected by the declaration provisions does not mean the denial of their human rights is appropriate, nor does it make the extreme suffering they will experience in prison any less significant. Moreover, ‘community safety’ and children’s human rights are not conflicting goals; in fact, research shows when children are treated with dignity and respect, they are more likely to desist from offending.²⁴

¹⁸ R v Nathan (a pseudonym) [2023] QChC 4.

¹⁹ Queensland Family and Child Commission. (2023) *Queensland Child Rights Report 2023*.

²⁰ Committee on the Rights of the Child, General Comment No. 24 on children’s rights in the child justice system, CRC/C/G/24 (18 September 2019) [46].

²¹ L Hilderley, S Jeffs and J O’Leary, Queensland Sentencing Advisory Council, *Sentencing of offences committed by children aged under 14 in Queensland* (Research Brief No. 2, March 2023). Accessed at:

https://www.sentencingcouncil.qld.gov.au/data/assets/pdf_file/0005/757013/sentencing-of-offences-committed-by-children-aged-under-14-in-queensland.pdf.

²² Explanatory Note, *Strengthening Community Safety Bill 2023*. Available at: <https://documents.parliament.qld.gov.au/tp/2023/5723T165-CA47.pdf>.

²³ Ibid; see also Palaszczuk, Queensland Legislative Assembly 2023: 13; Mullen, Queensland Legislative Assembly 2023: 437; Ryan, Queensland Legislative Assembly 2023: 39.

²⁴ L Forde, ‘Welfare, Justice and Diverse Models of Youth Justice: A Children’s Rights Analysis’ (2021) 29 *The International Journal of Children’s Rights* 920; H Kemshall, ‘Risks, Rights and Justice: Understanding and Responding to Youth Risk’ (2008) 8(1) *Youth Justice* 21; N Lynch and T Liefwaard, ‘What is Left in the “Too Hard Basket”? Developments and Challenges for the Rights of Children in Conflict with the Law’ (2020) 28 *International Journal of Children’s Rights* 89; R Smith, ‘Welfare versus Justice – Again!’ (2005) 5(1) *Youth Justice* 3.

The SRO declaration regime will not stop “youth crime”. Incarcerating children does not stop them from being involved in “crime”; at present, over 86.6% of children who spend time in detention will return to the youth justice system within 6 months.²⁵ We have never seen a child ‘rehabilitated’ through incarceration. It does not take an expert to realise that declaring a child to be a ‘Serious Repeat Offender’ will have a long-lasting negative labelling effect on the child’s own self-perception, as well as on their interactions with other authorities, such as schools.²⁶ In our view, the SRO declaration regime merely aims to cordons off a group of children to be locked up, forgotten about, and eventually shuffled off into adult prisons. SRO declaration allows police to racially profile Aboriginal children. As at September 2023, 29% (133) of the 452 children on the Queensland Police Service’s SRO index were subject to a Child Protection Order.²⁷ Additionally, of the two published cases where the Children’s Court considered making a SRO declaration, both children were under the ‘care’ of Child Safety.²⁸ In short, the children impacted by the SRO declaration regime are very often the Government’s legal responsibility, and yet that Government has effectively given up on them.

Laws of this nature have always been and always will be racist. In 1992 and again in 2014 the Western Australian government introduced mandatory detention sentences for children they labelled ‘hard-core juvenile criminals’ and ‘serious and repeat offenders’.²⁹ Nearly all the children detained under these laws – approximately 80-90% – were Aboriginal and from regional areas.³⁰ Queensland is on the same track – as at 30 September, almost 73 per cent of children on the QPS’s SRO index were Indigenous.³¹ This number is even higher in North Queensland, where 95% of the children on the list are Indigenous (as at March 2023).³² Since Queensland’s colonial inception, the government has created exceptional legal regimes to exercise control and enact violence over the lives of Aboriginal and Torres Strait Islander people, particularly children.³³ These legal regimes exclude First Nations people from the civil liberties protections afforded to white settlers. The violence of the Native Mounted Police is just one prominent example of this colonial practice.³⁴ Sisters Inside consider that recent youth justice reform in Queensland continues this long and sad history.

²⁵ Queensland Family and Child Commission, *Queensland Child Rights Report 2023*, 2023.

²⁶ J Deakin, C Fox and R Matos, ‘Labelled as “risky” in an era of control: How young people and respond to the stigma of criminalised identities’ (2020) *European Journal of Criminology* 1.

²⁷ Brennan, D. (2023) ‘Bail offences for young people skyrocket in Queensland’, National Indigenous Times, 14 November. Accessed at: <https://nit.com.au/14-11-2023/8608/bail-offences-for-young-people-skyrocket-in-queensland>. Data provided by the Minister in response to a question by Michael Berkman MP. This index is used by police to monitor the children targeted by the government’s 2023 amendments to the *Youth Justice Act*.

²⁸ R v DT [2023] QChC 8; R v TSL [2023] QChC 21.

²⁹ Tubex, H., Brown, D., Freiberg, A., Gelb, K., and Sarre, R. (2015) ‘Penal diversity within Australia’, *Punishment & Society*, 17(3), pp. 345–373; Goldson, B., Cunneen, C., Russell, S., Brown, D., Baldry, E., Schwartz, M., and Briggs, D. (2020) *Youth Justice and Penalty in Comparative Context*. London: Routledge.

³⁰ Blagg, H. (2008) *Crime, Aboriginality and the Decolonisation of Justice*. Annandale: Hawkins Press.

³¹ Brennan, D. (2023) ‘Bail offences for young people skyrocket in Queensland’, National Indigenous Times, 14 November. Accessed at: <https://nit.com.au/14-11-2023/8608/bail-offences-for-young-people-skyrocket-in-queensland>

³² Smee, B. (2023) ‘More than 95% of north Queensland children on internal police ‘blacklist’ are Indigenous’, The Guardian, 17 March. Available at <https://www.theguardian.com/australia-news/2023/mar/18/more-than-95-of-north-queensland-children-on-internal-police-blacklist-are-indigenous>.

³³ Cunneen, C. (2019) ‘Institutional racism and (in) justice: Australia in the 21st century’, *Decolonization of Criminology and Justice*, 1(1), pp. 29-51; Finnane, M. and Richards, J. (2010) ‘Aboriginal Violence and State Response: Histories, Policies and Legacies in Queensland 1860–1940’, *Australian & New Zealand Journal of Criminology*, 43(2), pp. 238-262; Hogg, R. (2001) ‘Penalty and Modes of Regulating Indigenous Peoples in Australia’, *Punishment & Society*, 3(3), pp. 355–379; Evans, J. (2009) ‘Where lawlessness is law: the settler- colonial frontier as a legal space of violence’, *The Australian Feminist Law Journal*, 30, pp. 3-22.

³⁴ Richards, J. (2008) *The Secret War: A True History of Queensland’s Native Police*. St Lucia: University of Queensland Press; Nettelbeck, A. and Ryan, L. (2018) ‘Salutary Lessons: Native Police and the ‘Civilising’ Role of Legalised Violence in Colonial Australia’, *Journal of Imperial and Commonwealth History*, 46(1), pp. 47-68.

‘Taskforce Guardian’

The ‘Taskforce Guardian’ co-responder teams of Youth Justice Workers and police officers rolled out in various locations since August 2023 have made children subject to unreasonable levels of monitoring and scrutiny, particularly around onerous curfew and residence bail conditions. Over-policing simply leads to net-widening that pushes criminalised children even deeper into the system, rather than providing them with the support they need.³⁵ The QPS recently proudly announced that the Taskforce resulted in has resulted in ‘more than 400 young people being arrested’ and ‘a total of 449 young people charged’.³⁶ Pouring money into ‘zero tolerance’ policing has never and will never ‘solve’ the problem of crime.

Taskforce Guardian is particularly harmful for First Nations children. Racist policing has caused untold harm in the lives of Indigenous children since colonisation. This has not changed. In a recent study by Weatherburn and Thomas, it was found that, adjusting for the effects of legally relevant factors, ‘Indigenous juvenile offenders (regardless of sex) are more likely to be prosecuted than cautioned, compared with their non-Indigenous counterparts’.³⁷ The children we work with say they feel harassed and bullied by police on a weekly basis. Clearly, this is no way to encourage children to ‘desist from crime’ – it simply makes them feel angrier and more isolated from the community.³⁸ Further, our workers in North Queensland have expressed that these ‘high visibility’ police patrols are making racist vigilante groups feel more emboldened to express racist vitriol and threats of violence.³⁹ We demand that ‘Taskforce Guardian’ be dismantled due to the harm it perpetrates.

This does not mean that children cannot be given supervision and ad-hoc support in the community. Amanda Porter’s work on Indigenous community patrols in New South Wales show how non-state alternatives can create safety outside of policing.⁴⁰ Community patrols do not have coercive powers, rather they focus on enhancing community safety and welfare by providing services such as transportation to safe places, connecting young people with support services, and safeguarding against homelessness, substance abuse and domestic and family violence. Porter says that

³⁵ Walsh, T. (2023) ‘Safety through support: Building safer communities by supporting vulnerable children in Queensland’s Youth Justice System’ (Report, April 2023); Van den Brink, Y. (2019) ‘Young, Accused and Detained; Awful, But Lawful? Pre-Trial Detention and Children’s Rights Protection in Contemporary Western Societies’, *Youth Justice*, 19(3), pp. 238-261.

³⁶ Queensland Police Service. (2023) *Taskforce Guardian make 400 arrests in youth crime crackdown*. Accessed at: <https://mypolice.qld.gov.au/centenary/2023/11/14/taskforce-guardian-make-400-arrests-in-youth-crime-crackdown/>

³⁷ Weatherburn, D., and Thomas, B. (2023). ‘The influence of Indigenous status on the issue of police cautions’. *Journal of Criminology*, 56(2-3), pp. 253-277. See also Allard T. et al (2010) ‘Police diversion of young offenders and Indigenous over-representation’ 390 *Trends & Issues in Crime and Criminal Justice* 1; Cunneen, C., Russell, S. and Schwartz, M. (2021) ‘Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction’, *Current Issues in Criminal Justice*, 33(2), pp. 170-190; Cunneen, C. (2020) ‘Youth justice and racialization: comparative reflections’ (2020) 24(3) *Theoretical Criminology* 521.

³⁸ There is an extensive body of literature on police legitimacy which is relevant for the committee to consider in this regard: Sarre, R. and Langos, C. (2013) ‘Policing Young People: Can the Notion of Police Legitimacy Play a Role?’, *Journal of the Institute of Justice and International Studies*, 13, 1.

³⁹ Messenger, A. (2024) ‘Alleged vigilantes charged with assaulting and restraining boys near Cairns’, *The Guardian*, 4 January. Accessed at: <https://www.theguardian.com/australia-news/2024/jan/03/alleged-vigilantes-charged-with-assaulting-and-restraining-boys-near-cairns>; Gair, S. and Zuchowski, I. (2023) ‘We can’t go shopping without police coming’: north Queensland’s at-risk youth feel excluded and heavily surveilled’, *The Conversation*, 23 August. Accessed at: <https://theconversation.com/we-cant-go-shopping-without-police-coming-north-queenslands-at-risk-youth-feel-excluded-and-heavily-surveilled-211885>.

⁴⁰ Porter, A. (2016) ‘Decolonizing policing: Indigenous patrols, counter-policing and safety’, *Theoretical Criminology*, 20(4), pp. 548-559; Porter, A. (2018) ‘Non-State Policing, Legal Pluralism and The Mundane Governance Of ‘Crime’’, *Sydney Law Review*, 40(4), pp. 445; Blagg, H. and Valuri, G. (2004) ‘Self-policing and community safety: The work of Aboriginal community patrols in Australia’ *Current Issues in Criminal Justice*, 15(3), 205.

transportation is a vital role played by patrols, but it has the additional benefit of enabling workers to build trusting relationships with children and take on a mentoring and advice role. Porter found that the independence of these patrols from the police service was critical to their success, as was their embeddedness in the local community.

‘Intensive Case Management’

We acknowledge that the Nous Group report commissioned by the Government made positive findings about the effectiveness of the Intensive Case Management approach that is used for children in the system who have been labelled ‘serious repeat offenders’.⁴¹ We are supportive of the Government’s funding of non-carceral approaches to youth “offending”. ICM was particularly commended in the report for its engagement work with the younger siblings of children in the criminal legal system that are deemed to be ‘high risk’. This is something that happens naturally at Sisters Inside – the siblings and cousins of the child we are working with in detention often want to come to our art groups because of the strong reputation we have with children.

As the Nous Group report acknowledges, however, there is a ‘lack of cultural capacity in the core delivery teams’ which makes its delivery to a cohort of primarily First Nations children inappropriate. We consider the ICM does not place sufficient emphasis on healing, cultural learning, or connection to country. We believe that First Nations children should be given support and diversion from being criminalised through structures that are Indigenous community-owned and managed, rather than government-run programs. There is extensive evidence to support that this is not only more culturally-appropriate, but also more effective in keeping children, families and communities safe in the long run.⁴²

Lastly, ICM – as with all casework approaches – is a ‘power over’ model where children have very little involvement in the decisions that are made about them, often by people they have never even met. This alienates children, making them apathetic and disinterested in the programs and activities they are required to undertake. Sisters Inside believes in our own ‘inclusive support’ model where children are treated as equals who have decision-making authority over their own lives. Criminalised girls, particularly those supported by the YANGAH Program through Sisters Inside, face a history of disempowerment and judgment. The Inclusive Support model prioritises respecting girls as equals, recognising their expertise on their lives, and allowing them to make decisions about their needs and goals. The program operates voluntarily, building trust through genuine support rather than imposing decisions on the girls. Unlike traditional case management, the Inclusive Support model acknowledges systemic issues contributing to their situations, emphasising that girls have the right and intelligence to make decisions about their lives, even if unconventional. Our youth

⁴¹ Nous Group. (2023) *Evaluation of Intensive Case Management* (prepared for prepared this report for the benefit of Department of Children, Youth Justice, and Multicultural Affairs). Accessed at: https://desbt.qld.gov.au/data/assets/pdf_file/0024/17457/icm-final-report.pdf

⁴² Cunneen, C. (2020) ‘Youth justice and racialization: comparative reflections’, *Theoretical Criminology*, 24(3), pp. 521-533; Allard T. et al (2010) ‘Police diversion of young offenders and Indigenous over-representation’ 390 *Trends & Issues in Crime and Criminal Justice* 1; Cunneen, C., White, R. and Richards, K. (2015) *Juvenile Justice: Youth and Crime in Australia*, Melbourne: Oxford University Press; Butcher, L. et al (2020). ‘Community engagement in youth justice program design’, *Australian & New Zealand Journal of Criminology*, 53(3), 369, 370-371, 373; Blagg, H., Tulich, T. and Bush, Z. (2015) ‘Diversionary Pathways for Indigenous Youth with FASD in Western Australia: Decolonising Alternatives’, *Alternative Law Journal*, 40(4), pp. 257=.

workers share power **with** the child – not **over** them. Sisters Inside focuses on recognising and nurturing the strengths, insights, and capabilities of girls rather than perpetuating negative assumptions. In our almost three decades of experience, we have seen how this approach creates more trusting and honest relationships between workers and children, which in turn helps more children to stay out of the system for longer. More information on Sisters Inside Inclusive Support Model can be found on our website.⁴³

Domestic Violence Orders

Though it was not the focus of any specific piece of Youth Justice reform, it is clear that changes to policing practices has resulted in a significant increase in applications for domestic violence orders involving young people as respondents, from 328 in 2019 to 424 in 2022/23.⁴⁴ Similarly, breaches of domestic violence orders have increased from 159 in 2019/20 to 364 in 2022/23. This is no doubt also contributing to Queensland's growing child prison population. Under Queensland law, parents cannot be the aggrieved in an order with their own child, so these protection orders relate to children's intimate personal relationships and relationships with carers, including Child Safety workers.

Sisters Inside has long argued against criminalisation as the solution to violence in domestic and family relationships.⁴⁵ We believe that it does not solve the underlying issues that led to the violence, nor materially help the victim, it merely creates further harm. For First Nations people, policing and carceral responses to domestic and family violence has the perverse effect of increasing their exposure to the violence of racialised policing.⁴⁶ We cannot use violence to solve violence.

Children's brains are still developing and learning about healthy relationships.⁴⁷ To stop engaging in violent interpersonal behaviours, they need strong positive role models, not a prison cell. Moreover, it is obviously inappropriate for children to be criminalised because of a breakdown in their relationship with a state-appointed carer, which is often the case behind these domestic violence orders. We demand that the Government take immediate action to reverse this concerning upward trend in domestic violence orders against children.

⁴³ Accessed at: <https://sistersinside.com.au/research-hub/>.

⁴⁴ Childrens Court of Queensland, *Annual Report 2022-23*, 2023.

⁴⁵ Sisters Inside and Institute for Collaborative Race Research (2022). *The State as Abuser: Coercive Control in the Colony* (Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 1 of the Women's Safety and Justice Taskforce) Accessed at: https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0005/691340/wsjt-submission-sisters-inside-and-institute-for-collaborative-race-research.pdf

⁴⁶ Buxton-Namisnyk, E. (2022) 'Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination', *British Journal of Criminology*, 62(6), pp: 1323–1340.

⁴⁷ A Burke, 'Under construction: Brain formation, culpability and the criminal justice system' (2011) 34(6) *International Journal of Law and Psychiatry* pp. 381

Unwinding the Damage: Legislative Changes

In the short term, the government needs to unwind the legislative changes made since 2020 which have resulted in Queensland's extremely high youth arrest and remand rate. The following provisions of the *Youth Justice Act 1992* must be removed or amended:

- Section 48AAA(2), which provides that a child 'must' be remanded if there is 'an unacceptable risk that the child will commit an offence that endangers the safety of the community or the safety or welfare of a person' and 'it is not practicable to adequately mitigate that risk by imposing particular conditions of release on bail'.
- Section 48AF 'show cause' bail provisions, which reverse the onus for prescribed indictable offences;
- The aspects of section 59A which provide that the police to are not required to consider alternatives to arrest for breach of a bail condition where a child is on bail for a prescribed indictable offence or breach of a domestic violence order (and related amendment to section 367 of the *Police Powers and Responsibilities Act 2000*);
- Section 150A, which enables a courts to make a Serious Repeat Offender Declaration;
- Section 246A, which limits judicial discretion where a child has breached their conditional release order imposed for a prescribed indictable offence;
- Further, the Youth Justice Principles must be amended to re-emphasise the paramountcy of the rights and best interest of the child.

Section 29 of the *Bail Act 1990* must be amended to once again state that the offence of breach of bail conditions does not apply to a defendant who is a child.

These changes must be made not only because they are an affront to the rights and dignity of children, but also because research tells us that the more children are pulled into the youth justice system and before the courts, the more likely they are to 'offend' again.⁴⁸ International research has consistently found 'minimal intervention, maximum diversion' is the most effective way of preventing children from becoming 'repeat offenders'. This is most effectively done through decriminalising children's 'offending' behaviour by making the age of criminal responsibility at least 15-years-old – the approach taken in Norway, Denmark, Sweden and Finland.⁴⁹ However, we believe that no child, even those older than 15 years, should ever be incarcerated.

Courts should be given expanded powers to dismiss charges at all stages of proceeding, even for more serious offences.⁵⁰ The principle of minimal intervention, maximum diversion is reflected in the youth justice legislation of Ireland and New Zealand. The *Irish Children Act 2001* states that 'any penalty... should cause as little

⁴⁸ Walsh, T. (2023) 'Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System' (Report, April 2023); McAra, L. and McVie, S. (2007) 'Youth Justice?: The Impact of System Contact on Patterns of Desistance from Offending', *European Journal of Criminology*, 4(3), 315; Richards, K. and Renshaw, L. (2013) *Bail and remand for young people in Australia: A national research project*, Australian Institute of Criminology, 63.

⁴⁹ Whyte, B. (2003) 'Young and Persistent: Recent Developments in Youth Justice Policy and Practice in Scotland', *Youth Justice*, 3(2), pp. 74; Goldson, B. (2009) 'COUNTERBLAST: 'Difficult to Understand or Defend': A Reasoned Case for Raising the Age of Criminal Responsibility', *The Howard Journal of Criminal Justice*, 48(5), 514.

⁵⁰ Walsh, T. (2023) *Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System*, (Report, April 2023), 89.

interference as possible with the child's legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances'.⁵¹ Likewise, New Zealand's *Oranga Tamariki Act 1989* similarly states that any sanctions imposed on children should 'take the least restrictive form that is appropriate' and that 'criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter'.⁵² Queensland's Youth Justice Act should be amended to include similar stipulations.

These changes can and must be made. The government know there are workable and more effective alternatives to policing and incarceration. The importance of increasing cautions and diversionary conferencing to keep children out of the system has been emphasised by the Government at various points in debates and media statements over the past 3 years.⁵³ This emphasis is a response to the plethora of reviews and inquiries commissioned by the government over the past decade, all of which have reported that keeping children out of the criminal legal system is the best way to prevent them from engaging in criminal behaviour.⁵⁴ The problem is that this evidence-backed approach is only deemed suitable for some children, whereas another cohort of children the 'serious repeat offenders' – who, we reiterate, are over 70% Indigenous children – are tracked, targeted, and trapped within a spiral of ever-worsening criminalisation. There is a long track-record of Indigenous children being excluded from measures aimed at keeping children out of the criminal legal system.⁵⁵ For example, in 2021–22, 40.7% of the 10–13-year-olds who were diverted from the system by the QPS were Aboriginal and Torres Strait Islander, whereas 61.8% of the 10–13-year-olds who were sentenced were Aboriginal and Torres Strait Islander.⁵⁶ We must implement decriminalisation, diversion and community care and support for all children, not just those deemed saveable.

Creating Brighter Futures: Alternatives to Criminalisation

Our YANGAH Program

The commission of offences by children on bail has been a major focus of recent reforms. If the government wants to address this problem, the solution is to expand and better fund existing bail programs run by Indigenous and community organisations. Since 2018, Sisters Inside has run a bail scheme in South East Queensland called YANGAH (meaning "get up" in the Yugambah language) that aims to improve the likelihood of a successful bail application, through ensuring girls' access to safe, secure accommodation, community-based services and support, legal representation, and individual and family support. The program also provides post-release support via outreach to enable girls to continue to meet their bail conditions. The YANGAH program

⁵¹ *Children Act 2001* (Ireland) s 96(2).

⁵² *Children, Young Persons and Their Families Act 1989* (NZ) s 208(f)(ii).

⁵³ For example, see Howard, Queensland Legislative Assembly 2023: 450; Butcher, Queensland Legislative Assembly 2023: 502; Fentiman, Queensland Legislative Assembly 2023: 16.

⁵⁴ Clancey, G., Wang, S., and Lin, B. (2020) 'Youth justice in Australia: Themes from recent inquiries', *Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice*, 605, pp. 1-18.

⁵⁵ Queensland Family and Child Commission, *Changing the Sentence: Overseeing Queensland's Youth Justice Reforms* (Report, 2021); Weatherburn, D., and Thomas, B. (2023). 'The influence of Indigenous status on the issue of police cautions'. *Journal of Criminology*, 56(2-3), pp. 253-277.

⁵⁶ Queensland Sentencing Advisory Council, *Sentencing of offences committed by children aged under 14 in Queensland* (Research Brief No. 2, March 2023).

focuses on assisting girls to identify and address their own needs and developing inclusive support plans which enable girls to meet their bail conditions. YANGAH workers build relationships with girls in the Brisbane Youth Detention Centre through a regular art group. We are hoping to soon expand YANGAH to North Queensland, based out of our Townsville office, however, that will depend on whether funding is made available to us by the Queensland Government.

In 2022-23, YANGAH worked with a total of 66 girls on bail. Of these 66 girls, 47 were Aboriginal and/or Torres Strait Islander girls and 15 were girls from non-white backgrounds. The girls we support in this program have all experienced some combination of violent victimisation, removal from their family, parental incarceration, drug addiction, and severe mental illness on a background of trauma. The exact activities each girl undertook as part of the program varied, but all re-engaged with some form of education or employment, participated in our art program, or attended our Cultural Healing Camp on Minjerribah. During 2022-23, 12 of these 66 girls were recriminalized and returned to prison because of new charges. Notably, 11 out of these 12 girls had an active Child Safety order. Though these are not entirely comparable statistics, this is in marked contrast to the 86.6% of children who were released from a youth detention centre in Queensland in 2021–22 who ‘reoffended’ (had a subsequent charged offence) within six months of release, and the 66% of children released from detention in 2021-22 who return within six months at the national level.⁵⁷

YANGAH workers perform many of the tasks parents typically would, such as driving the girls to doctor appointments, checking in on their whereabouts, and picking them up from unsafe situations. The girls receive important mentoring and guidance while being assisted with these day-to-day tasks. We focus on building secure attachments, as we know this is crucial for redirecting girls out of the criminal legal system. Secure attachments form a foundation of emotional stability and resilience. Girls with secure attachments are more likely to develop healthy coping mechanisms, self-esteem, and interpersonal skills – reducing their susceptibility to engage in risky behaviour. Strong emotional bonds also provide a reliable support system, enabling them to navigate challenges, address trauma, and seek guidance, ultimately fostering a positive path out of the criminal legal system.⁵⁸ A secure attachment with one person can have lasting effects on future relationships by serving as a blueprint for healthy interpersonal connections. This foundation enhances their ability to form secure, satisfying connections in adulthood, contributing to more resilient and fulfilling relationships throughout their lives.

Our service delivery is guided by our commitment to prioritising proactive measures that align with the unique challenges that girls face. This is underpinned by an understanding of trauma. Extensive research shows that girls who are criminalised usually have a history of trauma, which can include physical abuse, sexual assault, neglect, and/or family and domestic violence.⁵⁹ When girls are aware of how trauma

⁵⁷ Queensland Family and Child Commission. (2023) *Queensland Child Rights Report 2023*; Australian Institute of Health and Welfare. (2023) *Young People Returning to Sentenced Youth Justice Supervision 2021-22*. Accessed at: <https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/summary>

⁵⁸ Wright, M. et al (2019) ‘If you don’t speak from the heart, the young mob aren’t going to listen at all’: An invitation for youth mental health services to engage in new ways of working’, *Early Intervention in Psychiatry*, pp. 1506-1512.

⁵⁹ Silveira, S., Shah, R., Nooner, K., Nagel, B., Tapert, S., de Bellis, M. and Mishra, J. (2020). ‘Impact of Childhood Trauma on Executive Function in Adolescence – Mediating Functional Brain Networks and Prediction of High-Risk Drinking’. *Biological Psychiatry: Cognitive Neuroscience and Neuroimaging*, 5, pp. 499-509; Mendex, L., Mozley, M. and Kerig, P.

has affected them, they can begin to navigate their emotions and experiences more effectively, which is essential for breaking the cycle of criminalisation. Trauma-informed program development is a key to the success of the YANGAH Program. When programs and inclusive support take trauma into account, this leads to more effective and compassionate responses. By acknowledging and addressing the trauma these girls have endured, we can build on their strengths, rather than perpetuating a cycle of punishment that only exacerbates existing trauma.

Another key aspect of YANGAH is the delivery of pro-social activities for girls. Participation in activities allows girls to experience a more typical and positive childhood, counteracting the negative circumstances and experiences that may have led them into the criminal legal system.⁶⁰ Child specific activities provide opportunities for socialisation, skill-building, and emotional expression. By participating in age-appropriate activities, girls can develop crucial social skills, empathy, and a sense of belonging and inclusion in the community. It allows them to enjoy moments of joy, play, and creativity – essential components of a healthy childhood. This positive engagement can be a powerful tool for building resilience and fostering a positive self-image. It allows the formation of positive relationships with peers and adults, contributing to their emotional and social development.

Importantly, there is no end date to our support. We continue working with the girls for as long as they need us, which may be for several years. Long-term engagement was identified by Aboriginal community members in Butcher et al's research as a key factor for successful youth programs.⁶¹

Expansion of programs like YANGAH must be accompanied by changes to policing and court decision making. There is no evidence that strict monitoring and arresting young people when they breach bail conditions reduces reoffending.⁶² Rather, intense police supervision of children on remand only results in net-widening and makes children feel harassed and antagonised. Additionally, courts should only impose conditions of bail that are reasonably necessary and can realistically be complied with, taking into account the child's particular circumstances. The best way to approach breaches of bail by children, including serious breaches, is to reconsider their bail conditions with the aim of addressing the underlying issues that led to the breach.⁶³ Bail conditions must be tailored to the child's social needs.

(2020) 'Beyond Trauma Exposure: Discrimination and Posttraumatic Stress, Internalizing, and Externalizing Problems Among Detained Youth', *Journal of Interpersonal Violence*, 37(3), 1825.

⁶⁰ There is a large body of research showing that engagement in pro-social activities, particularly arts and sports, has a positive effect on children's wellbeing and desistance from crime. See, for example, Overbey, T., Diekmann, F., and Lekies, K., (2021) 'Nature-based interventions for vulnerable youth: a scoping review' *International Journal of Environmental Health Research*, 33(1), pp. 15-53; Ennis, G.M. and Tonkin, J., (2018) 'It's like exercise for your soul': how participation in youth arts activities contributes to young people's wellbeing', *Journal of Youth Studies*, 21(3), pp.340-359; Ware, V. (2014). *Supporting healthy communities through arts programs*. (Deakin University).

⁶¹ Butcher, L. et al, (2020) 'Community engagement in youth justice program design', *Australian & New Zealand Journal of Criminology*, 53(3), pp. 369-386.

⁶² Walsh, T. (2023) *Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System* (Report, April 2023); Wong, K., Bailey, B., and Kenny, D. (2019) *Bail Me Out: NSW Young Offenders and Bail* (Youth Justice Coalition) 3; Mazerolle, P. and Sanderson, J. (2008) *Understanding Remand in the Juvenile Justice System in Queensland*, (Griffith University) 15; P Gregoire, 'Reducing Indigenous Youth Incarceration: An Interview with Just Reinvest's Sarah Hopkins', Sydney Criminal Lawyers (Media Article, 29 May 2017) www.sydneycriminalallawyers.com.au/blog/reducing-indigenous-youthincarceration-an-interview-with-justreinvests-sarah-hopkins/.

⁶³ Ibid.

Our First Nations Art Group in Townsville

Sisters Inside's North Queensland office delivers a First Nations girls art group at Cleveland Youth Prison two days per week, which is facilitated by a First Nations Elder. Through the art group, we are able to build trusting relationships with the girls while they are inside, and continue to provide support and pro-social activities once they are released. We facilitate a weekly art group at our office for the girls in the community. Many of the girls return to communities outside of Townsville following release, meaning we are unable to continue in-person work; however, our Youth Worker will stay in contact with many of these girls by phone and send art supplies through the post so they can continue their art and its associated positive personal development. The program supports around 50 girls each quarter – all of whom are First Nations – with around 10 girls receiving more intensive support where it is required and requested by the girl.

This work has given us deep insight into the experiences of criminalised girls in North Queensland. The girls we support tell us they experience racism from the QPS, courts, schools, and employers and many have encountered racist vigilantism in the Townsville community. Many of the girls we support are in youth residential care accommodation. They tell us they feel uncomfortable making requests for sanitary products to predominantly male care staff. We are routinely told by girls that Child Safety will not assist them to pay for necessary items, such as identification documents, clothing, shoes and books. The girls we support have huge difficulties getting from A to B, they rely on their Child Safety carers for transport but often find them to be unavailable or unreliable. Evidently, there is a significant need to expand the YANGAH Program to North Queensland for these for girls.

Other Diversion and Support Programs

We run another program for youth in Brisbane – Crucial Connections. Each year, the program provides customised support for approximately 40 children aged 12 to 18 affected by criminalisation, who are homeless or at risk of homelessness. This includes children and young people with a history of parental imprisonment and those who are criminalised themselves. The program's first priority is to reduce children's risk of homelessness through building family connections, facilitating family reunification or otherwise ensuring safe, secure living arrangements. It also seeks to improve their capacity to live a life free of violence, poverty and criminalisation. The support provided is often very practical – helping young people to enrol in school (particularly flexi-schools), providing daily transport to education or training until they have established a routine, arranging and/or paying for safe accommodation until longer term arrangements are made, helping them to register for Centrelink benefits, covering the costs of public transport or food, or supporting young people to visit their mother in prison. As a Sisters Inside worker, eloquently expressed: "When we support a young person, we not only support that young person; we support their mother or their father or whoever their primary carer is to ensure that they are able to adequately care and supervise and be an engaged parent to their loved young person. In addition to that, we engage with the younger siblings of that family group to ensure that they also do not continue to engage in antisocial behaviour".⁶⁴

⁶⁴ Public Hearing, Inquiry into Youth Justice Reform in Queensland, Youth Justice Reform Select Committee, 23 November 2023. Accessed at: <https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/Transcript%20->

Sisters Inside also helps young women in Brisbane to enrol in accredited training through our Work Pathways program, and provide work experience at Barista Sistas, Sisters Inside's social enterprise coffee cart.

Outside of Sisters Inside's programs, other non-carceral sentencing options we support include family group conferencing, or Family-Led Decision Making for Indigenous children, on country programs, mentoring programs, and education programs.⁶⁵ The Mona Aboriginal Corporation in Mount Isa is one example of an organisation running a successful and well-respected on country program.⁶⁶ Reviews of Indigenous programs aimed at preventing children from coming into contact with the youth justice system were found by the Australian Institute of Criminology to have 'excellent practice'.⁶⁷ Children who engaged in these programs demonstrated healthier interpersonal relationships and reduced reoffending. However, it was found that the level of resourcing of the programs strongly influenced the ability of each program to fulfil its aims. Additionally, children's trust in program providers is critical to their success; for this reason, we believe that programs should always be independent of the police and embedded in the local community.⁶⁸

Dismantling Youth Residential Care

As discussed, children under the 'care' of Child Safety are among the most criminalised and incarcerated in Queensland, with up to 70 per cent of children in detention subject to Child Safety involvement.⁶⁹ Many children who have been removed from their families will end up in residential care, where they are cared for by undertrained and overworked staff.⁷⁰ We routinely support children in care who are criminalised for behaviour that would not attract the attention of police in a normal family context.⁷¹ For example, in *John (a pseudonym) v R* an 11-year old boy was charged with two offences that occurred within his residential care placement – firstly, stealing \$75 from a carer, and secondly, assault for throwing his phone at a carer out of frustration.⁷²

[%2023%20November%20-%20YJRC%20-%20Hearing%20-%20Inquiry%20to%20examine%20ongoing%20reforms%20to%20the%20youth%20justice%20system%20and%20support%20for%20victims%20of%20crime.pdf](#)

⁶⁵ Walsh, T. (2023) *Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System* (Report, April 2023); Winangali and Ipsos. (2017) *Evaluation: Aboriginal and Torres Strait Islander Family-Led Decision-Making Trials*; Pipi, K. et al (2018) *Summary Report: Formative evaluation of the iwi-led family group conference pilot prepared for Oranga Tamariki Wellington* (Evaluation report); Dawes, G. et al (2017) 'Keeping on Country: Understanding and Responding to Crime and Recidivism in Remote Indigenous Communities' *Indigenous Psychology*, 52(4), pp. 306-315; Secretariat of National Aboriginal and Islander Child Care. (2017) *Report on Aboriginal and Torres Strait Islander Family-Led Decision Making Trials*; Farruggia, S. et al. (2011) 'The Effectiveness of Youth Mentoring Programs in New Zealand', *New Zealand Journal of Psychology*, 40(3), pp. 52-70.

⁶⁶ Amnesty International Australia. (2016) "*Heads held high*": *Keeping Queensland kids out of detention, strong in culture and community* (Report).

⁶⁷ Stewart, J. et al. (2014) *Indigenous Youth Justice Programs Evaluation* (Report, Australian Institute of Criminology).

⁶⁸ Cunneen, C., Russell, S. and Schwartz, M. (2021) 'Principles in diversion of Aboriginal and Torres Strait Islander young people from the criminal jurisdiction', *Current Issues in Criminal Justice*, 33(2), pp. 170-190.

⁶⁹ Carmody, T. (2013) *Taking Responsibility: A Roadmap for Queensland Child Protection: Report of the Queensland Child Protection Commission of Inquiry*, 36. See also McMillan, K. and Davis, M. (2017) *Independent Review of Youth Detention Report*, 214; Walsh, T. (2019) 'From child protection to youth justice: Legal responses to the plight of 'Crossover Kids'', *University of Western Australia Law Review*, 46(1), pp. 90-110.

⁷⁰ Douglas, H. and Walsh, T. (2018) 'Adolescent Family Violence: What is the Role for Legal Responses?', *Sydney Law Review*, 40(4), pp. 499-523; Baidawi, S. and Ball, R. (2021) 'Aboriginal crossover children's characteristics, service needs and service responses: The views of Australian key stakeholders', *Children and Youth Services Review*, 129, pp. 106176

⁷¹ Ibid; Baidawi, S. (2020) 'Crossover Children: Examining Initial Criminal Justice System Contact Among Child Protection-Involved Youth', *Australian Social Work*, 73(3), pp. 280-295.

⁷² [2021] QChC 6; See also *MEA v Director of Public Prosecutions* [2021] QChC 21.

Further, children are often shuffled from placement to placement, an experience that is disjuncting and traumatising. As courts have acknowledged, removal from their families 'is itself traumatic, and may in fact 'replace one form of abuse with another'.⁷³ Children subject to Child Safety care are often homeless by the time they come to court with charges because the state has failed to find a suitable home placement. The teenage girls we support in YANGAH are often subject to Child Protection Orders, but self-place with their mothers because that is where they feel most comfortable and supported. The meddling of Child Safety in their lives by constantly opposing their requests to live with their mothers only serves as another barrier to their flourishing.

For these reasons, we believe that the abolition of residential care placements is essential to any effort to reduce 'youth crime'. Removing a child from their home often causes more harm than good for all involved. Children should, wherever possible, be allowed to self-place and families should be financially supported to care for children in the home. It is a disgrace that the State pays a 'foster carer' or a "residential care facility" to 'care' for a child but the child's family receives no State resources, financially or other to care for their child.

If children cannot live with their family then children should live in a home-like environment with non-criminalising and genuinely caring support that is available around the clock and facilitates contact with family members.⁷⁴

CONCLUSION

It is beyond any doubt that Queensland's youth justice laws and practices are in breach of both the state's own *Human Rights Act*, as well as international human rights protections in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. Current laws and practices in Queensland do not meet the standards set by the Beijing Rules, the Riyadh Guidelines, the Havana Rules, the Vienna Guidelines, and General Comment 24 of the UN Committee on the Rights of the Child on children's rights in youth justice.⁷⁵ This should bring us all great shame.

Youth justice reform under the Labor Government has continued the state's longstanding tendency to isolate Indigenous young people for harsh and cruel punishment.⁷⁶ There is a shameful contradiction between these laws which perpetuate colonial violence and the Government's recently passed 'Path to Treaty' legislation. It is difficult to have faith in the establishment of a robust 'Truth-telling and Healing Inquiry' by this treaty process when the government is simultaneously continuing to inflict serious harm on Indigenous children through the criminal legal system.⁷⁷ The

⁷³ Commissioner of Police v Jane Dean (a pseudonym) [2022] QChCM 3 [11]. See also Fox, B. et al (2015) 'Trauma changes everything: Examining the relationship between adverse childhood experiences and serious, violent and chronic juvenile offenders', *Child Abuse and Neglect*, 46, 163.

⁷⁴ Walsh, T. (2023) *Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System* (Report, April 2023).

⁷⁵ Goldson, B. and Muncie, J. (2015) 'Juvenile justice: International law and children's rights' in J D Wright (ed), *International Encyclopedia of Social and Behavioral Sciences* (Elsevier Ltd, 2nd ed, 2015); Kilkelly, U. (2008) 'Youth justice and children's rights: Measuring compliance with international standards', *Youth Justice*, 8(3), pp. 187-192; Tobin, J. (2019) *The UN Convention on the Rights of the Child: A Commentary* (Report).

⁷⁶
⁷⁷ Palaszczuk, A. and Crawford, C. (2023) 'Historic Path to Treaty legislation passes Parliament', media statement, Queensland Government, 10 May, available at:

government's stated aims of 'healing' and 'reframing' of the relationship between Indigenous and non-Indigenous people cannot be achieved while more Indigenous children are being caged for longer. Dismantling the systems which result in the hyper-incarceration of Indigenous young people is fundamental to decolonial justice.⁷⁸

<https://statements.qld.gov.au/statements/97711#:~:text=The%20Path%20to%20Treaty%20Bill%20provides%20the%20legislative%20framework%20to,peoples%20and%20the%20Queensland%20Government.>

⁷⁸ Kilroy, D. Lean, T. and Davis, A (2023). 'Abolition as a decolonial project' in Chris Cunneen, Antje Deckert, Amanda Porter, Juan Tauri, Robert Webb (eds), *The Routledge International Handbook on Decolonizing Justice*, Oxford: Routledge.

The cohort being targeted by the government's recent reforms total about 400 children.⁷⁹ It is not only possible to deliver comprehensive social support services to every one of these children, it is entirely realistic. Sisters Inside's YANGAH program supported 66 children last year on a small budget and with a team of less than 5 full-time staff – imagine what we could achieve with the \$2,068 per day that it costs to keep a child in youth detention.⁸⁰ Community safety and respect for the human rights of children go hand-in-hand. If the government has the political courage to unwind the disastrous 'tough on crime' reforms introduced over the past three years, and instead focuses on properly funding programs which support children to live healthy lives in the community, all Queenslanders will be better off and safer.

Yours sincerely,



Debbie Kilroy
CEO

⁷⁹ Gillespie, E. (2023) 'Nearly one in three children on Queensland's serious repeat offender list under protection order', The Guardian, 15 November. Accessed at: <https://www.theguardian.com/australia-news/2023/nov/16/nearly-one-in-three-children-on-queenslands-serious-repeat-offender-list-under-protection-order>

⁸⁰ Productivity Commission. (2023) *Report on Government Services: Youth Justice Services*. Accessed at: <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>.