

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

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ANTAR

Submission: Youth Justice Reform in Queensland

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ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

About ANTAR

ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy, and lobbying.

ANTAR is campaigning for the implementation of the Uluru Statement from the Heart, now focused on the establishment of a Makarrata Commission to oversee national agreement making and truth-telling as well as processes that promote the agency of First Nations people. We actively support State and Territory-based voice, treaty and truth-telling processes.

We also engage in national advocacy across various policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

'Prison does nothing to rehabilitate young people. It only perpetuates cycles of trauma and leads to further youth offending. Prison is no place for a child.'

June Oscar, Aboriginal and Torres Strait Islander Social Justice Commissioner¹

Introduction

Thank you for the opportunity to provide commentary on ongoing reforms to the youth justice system and support for victims of crime in Queensland.

ANTAR supports the goals of the Inquiry to examine ongoing reforms to the youth justice system and support for victims of crime, and in particular to consider matters of prevention, diversion and alternatives to detention.

It is widely known that Queensland, and in fact all States and territories in Australia, continues to uphold laws, policies and practices that impact negatively on the rights and well-being of children and young people and fail to serve the wider public interest.² This is particularly true for First Nations young people, many of whom face unique challenges of intergenerational trauma, institutional racism and social disadvantage in addition to the larger range of issues affecting children engaged with the criminal justice system (CJS).

As a non-partisan advocacy organisation working for justice, rights and respect for First Nations Peoples, ANTAR is particularly concerned about the overrepresentation of Aboriginal and Torres Strait Islander children in child protection and youth justice statistics both in Queensland and across the country. 49 percent of young people aged 10-17 under youth justice supervision are from Aboriginal and Torres Strait Islander backgrounds.³

¹ Australian Human Rights Commission, '[Governments must urgently address youth justice crisis](#)', Joint Statement

² Australian Human Rights Commission, [Call for Submissions](#)

³ [Rethinking Australia's Youth Justice System by Embracing Child Rights](#), Centre for Social Impact.

Across Australia, Aboriginal and Torres Strait Islander youth are 4.5 times more likely to be exposed to the CJS than their non-Indigenous counterparts.⁴ Between 2017 and 2021, First Nations youth aged 10-17 years were 16 to 25 times more likely to be detained than non-Indigenous youth.⁵ Criminal justice institutions tend to trap First Nations people in ongoing cycles of re-imprisonment.⁶ This is particularly true – and particularly damaging – for children and youth, for whom contact with the CJS in their early life often traps them in a cycle of poverty, instability and incarceration.⁷

Unfortunately, these national youth justice statistics are mirrored in Queensland, with the State landing on the higher end of the statistics on over-representation of First Nations youth in supervision and detention. Systems of detention, care and child protection in Queensland have not only largely failed to address the challenges faced by children and young people in care and detention, they have often exacerbated these problems.⁸

On an average day in 2021-22 in Queensland, 1,624 young people aged 10 and over were under youth justice supervision.⁹ Of these 1,624 young people, 64 to 66 percent were Aboriginal and Torres Strait Islander youth, despite First Nations young people making up only 7.8 percent of those aged 10-17 in the general population.¹⁰ In other words, on an average day in 2021-22 in Queensland, First Nations young people aged 10-17 were 21 times as likely as non-Indigenous young people to be under supervision and 23 times more likely to be in detention. In 2022-23, that number increased with First Nations young people being over 25.9 times as likely as non-Indigenous/other young people to have been in youth detention in 2022-23.¹¹

⁴ Allard T et al. '[Police diversion of young offenders and Indigenous over-representation](#)', *Trends & issues in crime and criminal justice* no. 390. Canberra: Australian Institute of Criminology (2010): 4.

⁵ '[Youth detention population in Australia 2021](#)' Australian Institute of Health and Welfare (2021)

⁶ Chris Cunneen, 'Surveillance, Stigma, Removal: Indigenous Child Welfare and Juvenile Justice in the Age of Neoliberalism', *Australian Indigenous Law Review*, vol. 19, no. 1, (2015): 42

⁷ Donald, B. B. 'Effectively addressing collateral consequences of criminal convictions on individuals and communities' *Criminal Justice*, vol. 30, no. 4 (2016): 33.

⁸ [Royal Commission into the Protection and Detention of Children in the Northern Territory](#) (2017): 9.

⁹ Australian Institute of Health and Welfare, '[Youth justice in Australia 2021-22](#)', 31 March 2023.

¹⁰ *ibid*

¹¹ Childrens Court of Queensland Annual Report 2022-23 (2023): 46.

We acknowledge that over the five years to 2021-22, on an average day in Queensland, the rate of First Nations young people under supervision decreased from 209 to 175 per 10,000.¹² While this reduction is welcome, progress remains too slow, and the aforementioned statistics – particularly in 2023, more than 30 years after the Royal Commission into Aboriginal Deaths in Custody, and with countless reports, inquiries and community-led solutions having been published on the topic – are unacceptable.

Summary of Recommendations

- Immediately ban the use of adult watch houses for youth detention;
- Commit to a long-term human rights-based approach to youth justice, underpinned by Australia’s commitment to the CRC and UNDRIP, including incorporating the CRC into Queensland State law;
- Urgently pivot away from a ‘tough on crime’ approach to youth justice and toward evidence based, trauma informed, culturally safe, therapeutic, rehabilitative and non-punitive approaches;
- Invest in holistic and comprehensive early intervention services and supports, including community-led programs focused on prevention and diversion;
- Increased investment in place-based and community-led justice reinvestment, with the redirection of funds currently allocated to increasing capacity of youth detention centres toward early intervention community programs using principles of justice reinvestment;
- Raise the minimum age of criminal responsibility from 10 to 14 with no exceptions, and ensure all children under the age of 14 are not incarcerated or otherwise punished under the criminal legal system, consistent with current medical understanding of child development and contemporary human rights standards;

¹² *ibid*

- Commit to addressing the problem of over-policing and surveillance of First Nations youth in Queensland;
- Provide sustainable long-term funding to and power-sharing with Aboriginal community-controlled organisations, as per Priority Reform 1 and 2 of the National Agreement on Closing the Gap;
- Renew investment toward Community Justice Groups (CJGs) and expand Murri Courts across Queensland, including providing sustainable funding for operation of the existing Courts;
- Invest in culturally appropriate pre-charge diversion programs and measures including warnings, cautions and 'On Country' diversion programs, including amending legislation to favour pre-charge measures and improving access to 'On Country' programs to ensure that all First Nations youth across Queensland have a chance to participate.

Rights-based approach

As noted by National Children's Commissioner Anne Holland in her submission to this Inquiry, children have human rights across the full spectrum of civil, cultural, economic, political and social rights as well as being in possession of unique rights as set out in the UN Convention on the Rights of the Child (CRC), which Australia ratified in 1990. All children in Australia, including children who commit criminal offences, are entitled to have their human rights protected.¹³

The CRC requires that 'no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment' (article 37(a)) and that 'every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age' (article 37(c)). Further, Article 37(c) of

¹³ [Submission No. 11](#), Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland, (15 November 2023): 1.

the Convention on the Rights of the Child (CRC) requires authorities to separate children from adults in detention.

Instead, the Queensland Government – as part of their ‘tough on crime’ approach – have focused on building a new remand centre to detain young people and increase capacity in youth detention centres, as well as passing legislative amendments in August 2023 which override the Human Rights Act in order to allow watch houses to act as youth detention centres.

Allowing children to be held in police watch houses built for adults while they await bail or placement at a youth detention centre – sometimes for lengthy periods of time and under poor conditions – shows a blatant disregard for international human rights law. The use of these watchhouses for children as young as 10 is a violation not only of their basic human rights but an explicit breach of Article 37 of the CRC.

As noted by Scott McDougall, Commissioner of the Queensland Human Rights Commission, Australia’s human rights obligations under the CRC and Queensland’s own Human Rights Act 2019 set out that children should only ever be arrested, detained, or imprisoned as a measure of last resort, for the shortest period of time, and that all efforts should be made to apply alternative measures.¹⁴

Further, Article 21 of the The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) outlines that:

States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.¹⁵

UNDRIP also recognises “in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training,

¹⁴ Convention on the Rights of the Child, arts 37(b), 40(3)(b); Human Rights Act 2019 (Qld), s 26(2).

¹⁵[United Nations Declaration on the Rights of Indigenous Peoples](#), United Nations.

education and well-being of their children, consistent with the rights of the child”.¹⁶

It is AN TAR’s firm belief that Queensland must commit not only in word but also in deed to a long-term human rights-based approach to youth justice, underpinned by Australia’s commitment to the CRC and UNDRIP.

It is AN TAR’s view that culturally safe and community-led pathways of restorative justice, rehabilitation and reintegration of First Nations children who have committed offences or are at risk of doing so are fundamental aspects of the ‘upbringing, training and education of children’, and are thus ultimately the right and responsibility of First Nations communities and families to determine, consistent with the rights of the child. Decisions about the discipline of First Nations children should be made by their communities, consistent with their rights under UNDRIP.

Early intervention

Queensland detains more children each day than any other State or territory and has the highest youth recidivism rate in Australia.¹⁷ For example, in the year to 31 March 2021, 95 percent of young people held in Townsville’s Cleveland Youth Detention Centre were alleged to have committed another offence within a year of their release.¹⁸

Incarcerating children is not keeping our communities safe. In fact, evidence-based research has shown that youth detention and other CJS responses that do not address the root causes for the offending behaviour end up contributing to their repeated recidivism.¹⁹ Studies have also shown that the

¹⁶ *ibid*

¹⁷ [Report on Youth Justice Services](#), Report on Government Services 2023, Productivity Commission, 24 January 2023.

¹⁸ Matt Eaton, ‘[If locking up children in youth detention only makes them repeat offenders, is there a better way?](#)’ ABC News, 9 November 2022.

¹⁹ Dr Molly McCarthy, ‘[Trends in youth offending in Queensland, 2008-2017](#)’, Griffith University (Dec 2019): 4.

earlier a child is exposed to the justice system, the more likely they are to reoffend.²⁰

In the interests of community safety, AN TAR strongly recommends the Queensland Government remove children younger than 14 from the justice system and invest in holistic and comprehensive early intervention services and supports, including community-led programs focused on prevention and diversion.

Providing early support to children, young people and families experiencing vulnerability can safeguard their wellbeing and development and prevent their entry to the statutory system.²¹ Whilst Queensland has increased total investment in family support services, as a proportion of budget the investment is reducing and Queensland's spend per child is among the lowest in the country.²²

In order to offer more robust and effective early intervention services, Queensland must immediately pivot away from its 'tough on crime' approach and toward the adoption of a rehabilitative and restorative approach that is able to detect and address the underlying causes of behaviour in its early stages. Unaddressed and significant family adversity, for example, remains a precursor to youth justice exposure.²³

AN TAR recommends the Queensland Government provide upfront investment in place-based and community-led justice reinvestment, with the redirection of funds currently allocated to increasing capacity of youth detention centres toward early intervention community programs. This should be done using principles of justice reinvestment that address known risk factors for First Nations youth, where "their issues with the law are either as a direct result of, or compounded by, the issues they face in their daily lives".²⁴ Justice reinvestment addresses these root causes and works on the principle that early

²⁰ [Review of the age of criminal responsibility](#), Australian Human Rights Commission (26 February 2020): 11.

²¹ Queensland Family and Child Commission [Annual Report 2022-23](#) (2023): 21.

²² *ibid*

²³ Queensland Family and Child Commission [Annual Report 2022-23](#) (2023): 30.

²⁴ [Report: Koori Court effective for young offenders](#), Western Sydney University (2018)

intervention, prevention and rehabilitation are far more socially and cost-effective than continuing to imprison the most marginalised members of our communities.²⁵

Address root causes

There has been exhaustive research on the root causes driving young people's involvement in youth justice systems, as well as their re-incarceration and recidivism. Children in the justice system have often experienced trauma, including being victim/survivors of domestic and family violence.

Furthermore, the Banksia Hill Project study found extremely high rates of disability and neurological conditions among children in the justice system who are not receiving proper support.²⁶ With respect to health and disability assessments for youth offenders, we support the recommendations put forward by Rev Dr Wayne Sanderson on behalf of ANTaR Queensland in their submission to the Select Committee. In particular, we wish to underscore the recommendation that health and disability assessments need to be mandated for all young offenders prior to charges being heard in the Magistrates Court as part of a commitment to addressing root causes of offending.²⁷

More broadly, it is crucial to recognise that much of the contact of Aboriginal and Torres Strait Islander children and youth with the CJS also arises because of differences in treatment of First Nations and non-Indigenous persons under the system, rather than because of differences in behaviour.²⁸

As such, while it is important to pay attention to and, where possible, mitigate individual risk factors for youth involved in criminal behaviour such as trauma,

²⁵ [Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#), Australian Law Reform Commission Report 133 (2017): 131.

²⁶ ['Nine out of ten young people in detention found to have severe neuro-disability'](#), Telethon Kids Institute, 2018.

²⁷ Rev Dr Wayne Sanderson, ['Ongoing reforms to the youth justice system and support for victims of crime'](#) Submission, 8 January 2024.

²⁸ Jeff Borland and Boyd Hunter, 'Does Crime Affect Employment Status? The Case of Indigenous Australians' *Economica*, New Series, Vol. 67, No. 265 (2000): 124.

disability, mental health issues, and barriers to housing and employment,²⁹ research suggests that the clearest indicators of risk of interaction with the criminal legal system are overwhelmingly structural. That is, poverty and disadvantage, as well as interaction with the child protection system and family violence (itself a symptom of the intergenerational trauma that has been caused by the ongoing structure of settler-colonialism in Australia).³⁰

Queensland Family and Child Commissioner Luke Twyford has stated that most criminal justice issues amongst youth in Queensland are driven by social disadvantage and disempowerment. The latest statistics from the Queensland Children's Court Annual Report 2022-23 confirm this. Of all the charges finalised against child defendants in the Magistrates Court, the largest number by far was for theft and related offences.³¹

As a member of The Queensland Sentencing Advisory Council's Aboriginal and Torres Strait Islander Advisory Panel states:

"The majority of it [theft] is to do with poverty. There's been numerous times where we've had to do restorative justice with places like Kmart, or other department stores, because the majority of the time the reasons why they're stealing is because obviously they have no money to buy the things, and it's actually because they need them. It's not because they're wanting to steal something for the high of it, it's actually because it's things that they need, like socks [or blankets or jumpers], because it's freezing cold, or toiletries, you know – things like that."³²

Thus it is ANTA's position that the focus on early intervention strategies for youth must be focused on social supports and programs that address root causes of social disadvantage as informed by First Nations youth, families and communities themselves. These strategies should be accompanied by systemic reform to – or abolition of – paternalistic, punitive and racist systems of child

²⁹ Change the Record [Blueprint for Change report](#), (2022): 8.

³⁰ '[Intergenerational trauma & family violence in Aboriginal & Torres Strait Islander communities](#)', Professor Victoria Hovane, and Dr Mark Wenitong, ANROWS keynote address, 2018.

³¹ Childrens Court of Queensland Annual Report 2022-23 (2023): 35.

³² Dr Klaire Somoray, Samuel Jeffs and Anne Edwards, '[Connecting the dots: the sentencing of Aboriginal and Torres Strait Islander peoples in Queensland](#)' The Queensland Sentencing Advisory Council, (March 2021): 38.

protection, policing and youth detention. Youth detention will not solve issues of poverty and disadvantage.

This must also be paired with a commitment to addressing the problem of over-policing and surveillance of First Nations youth in Queensland. The vast over-representation of First Nations children and young people at all stages of the youth CJS is widely recognised as beginning with disproportionate police intervention.³³ Police function as ‘gate-keepers’ whose discretion wields the power to control who will enter the system and how they will enter, often to the disadvantage of First Nations youth.³⁴ Research shows that police intervene in situations involving First Nations people in “unnecessary and provocative ways”, particularly for minor or non-violent offences.³⁵ First Nations youth are 2.9 times less likely to be cautioned than they are to appear in court.³⁶ This suggests that for First Nations young people, preventing initial contact with police is paramount.

Justice reinvestment

Building more youth detention centres is not an appropriate solution to youth offending and recidivism as the construction and running of such centres is not only costly, research indicates they do not reduce the number of repeat offenders.

The total justice system costs of Aboriginal and Torres Strait Islander incarceration in 2016 were roughly \$3.9 billion.³⁷ Of that, almost a quarter of a billion dollars was spent on Aboriginal and Torres Strait Islander youth.³⁸ States

³³ [‘Seen and heard: priority for children in the legal process’](#) Australian Law Reform Commission Report 84 (1997)

³⁴ Chris Cunneen, Barry Goldson, Sophie Russell, ‘Juvenile Justice, Young People and Human Rights in Australia’ *Current Issues in Criminal Justice* 23 (2016): 173.

³⁵ For more on the role of policing in Indigenous incarceration see Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police*, Allen & Unwin (2001)

³⁶ Troy Allard *et al.* ‘[Police diversion of young offenders and Indigenous over-representation](#)’. *Trends & issues in crime and criminal justice* no. 390. (2010): 4.

³⁷ Pathways to Justice, 127.

³⁸ Bianca Hall, ‘[Locking up Indigenous kids costs \\$236 million a year](#)’, Sydney Morning Herald, 16 March 2016.

and territories youth justice expenditure has increased by 46 percent since 2014-15.³⁹

Recent data from the Productivity Commission shows that in Queensland, the cost of incarcerating a child has risen to more than \$2,000 a day, with \$218 million spent on children's incarceration each year in the State.⁴⁰ These investments will continue to skyrocket, with Queensland building two new youth detention centres in addition to the already increased spending on youth detention centre capacity in 2019, with \$150 million spent on building the 32-bed West Moreton Youth Detention Centre and \$27 million spent on expanding the Brisbane Youth Detention Centre.⁴¹

As investment in incarceration rises, so too do rates of Aboriginal and Torres Strait Islander over-representation.⁴² It has long been clear to advocates and experts that we cannot imprison our way to a safer society, nor address First Nations over-representation with increased spending in the punitive prison system.

A justice reinvestment approach addresses root causes of offending and contact with the CJS and works on the principle that early intervention, prevention and rehabilitation are far more effective and cheaper than continuing to imprison the most marginalised members of our communities.⁴³ Pivoting to a justice reinvestment approach requires abandoning the current crisis-driven, punitive responses to offending behaviour in favour of therapeutic, restorative and trauma-informed early interventions, community support and local solutions to keep Aboriginal and Torres Strait Islander children and youth in their communities.⁴⁴ This is consistent with the Closing the Gap Agreement recommendation of structural reform which takes "a preventative and

³⁹ ['Putting Children First'](#), 87.

⁴⁰ [Alternatives to Incarceration in Queensland Full Report](#), Justice Reform Initiative (May 2023): 8.

⁴¹ *ibid*

⁴² Fiona Allison ['Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW'](#). Final Report, Just Reinvest NSW (2022): 8.

⁴³ [Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples](#), Australian Law Reform Commission Report 133 (2017): 131.

⁴⁴ *Our Youth, Our Way*, 41.

rehabilitative approach through justice reinvestment to child and adult incarceration".⁴⁵

There are many evidence-based justice reinvestment initiatives across the country that have proven to be effective alternatives to incarceration. For example, the North Stradbroke Island Youth and Social Justice Working Group in Terrangeri, Queensland create justice reinvestment and restoration initiatives for the local community. The community-controlled initiative was founded by Elders and focuses on promoting self-pride, self-worth and belonging in Quandamooka youth through culturally-based models.⁴⁶

In New South Wales, the Bourke Maranguka Justice Reinvestment project⁴⁷ has recorded a 38 percent reduction in charges across the top five juvenile offence categories, with an impact assessment finding the project achieved savings of \$3.1 million in 2017.⁴⁸

These First Nations-led initiatives – if properly funded – can be used as models to be adapted for other place and context-specific programs elsewhere in Queensland. A more complete list of case studies that engage alternative approaches to the criminal justice system (including evidence-based alternatives to policing, mainstream court processes and remand, as well as recommendations for early intervention, crime prevention and in-prison programs) can be found in the Justice Reform Initiative's comprehensive report, *Alternatives to Incarceration in Queensland*.⁴⁹

⁴⁵ [Leadership and Legacy Through Crises: Keeping our Mob safe](#), Close the Gap Report (2021): 6.

⁴⁶ [Alternatives to Incarceration in Queensland Full Report](#), Justice Reform Initiative (May 2023): 85.

⁴⁷ [Justice Reinvestment in Bourke](#), Just Reinvest

⁴⁸ Lorana Bartels, [Australian governments should follow the ACT's lead in building communities, not prisons](#), The Conversation, 21 February 2019.

⁴⁹ [Alternatives to Incarceration in Queensland Full Report](#), Justice Reform Initiative (May 2023)

First Nations-led solutions

Aboriginal and Torres Strait Islander people know what is best for protecting their peoples, their lands and their children. To effect positive, lasting outcomes in youth justice reform, governments must ultimately consistently and genuinely be led by, and invest in, Aboriginal and Torres Strait Islander solutions.⁵⁰ They must also engage in genuine power-sharing with and sustainable long-term funding to Aboriginal community-controlled organisations (ACCOs) so that they are able to consistently provide service delivery and solutions that are reflective of the needs and priorities of their communities.

This commitment to structural change – including the transfer of meaningful decision making to First Nations communities as per Priority Reform 1 and increased funding and capacity building for ACCOs as per Priority Reform 2 – was made in the National Agreement on Closing the Gap and has so far been not much more than a broken promise. This lack of tangible progress on the part of Federal, State and territory governments is a failure of implementation and will, not a lack of ‘know how’.

Community-led solutions to youth justice are already underway around the country in the form of holistic anti-violence programs, justice reinvestment, community restorative justice groups, Elder-led circle sentencing⁵¹ and First Nations courts such as Murri Court, as well as self-policing initiatives such as barefoot patrols.⁵² These are culturally appropriate initiatives that have potential to empower communities and respect First Nations self-determination.⁵³

In Queensland, Community Justice Groups (CJGs) currently operate successfully in over 41 communities. The \$19.4 million invested into CJGs over

⁵⁰ [Leadership and Legacy Through Crises: Keeping our Mob safe](#) Close the Gap (2021): 6.

⁵¹ Ivan Potas, Jane Smart, Georgia Brignell, Brendan Thomas and Rowena Lawrie [Circle Sentencing in NSW: A Review and Evaluation](#) (2003)

⁵² It should be noted that the narrow focus of some night patrols on immediate crime prevention do not address the underlying social causes of crime; however, they do provide a mechanism to address community safety and may address criminalization by diverting young people from antisocial or criminal activity in more culturally appropriate ways. For more, see: John Scott, Elaine Barclay, Margaret Sims, Trudi Cooper & Terence Love, ‘Critical Reflections on the Operation of Aboriginal Night Patrols’ *The Palgrave Handbook of Criminology and the Global South* (2018)

⁵³ Cunneen 2007; 2015

four years to increase their capacity will expire soon.⁵⁴ ANTAR strongly recommends this funding is expanded and renewed.

Murri Courts, which hold widespread community respect and have been proven to positively change lives, operate in 15 locations across the State but are still lacking in certain communities. In Logan, for example, there is no Murri Court despite the region having the fourth highest First Nations population in Queensland.⁵⁵ ANTAR calls for the establishment of new Murri Courts as well as increased and consistent funding, resourcing and support.

Research also shows that where possible, collaborating with juveniles who are at risk of offending or have been previously engaged with the CJS in the design and implementation of initiatives aimed at reducing their offending improves outcomes.⁵⁶

Eliminate watch houses

Watch houses are not appropriate for any young person. The Queensland Government must urgently get children out of watch houses, following the evidence-based advice from the First Nations-led Change the Record campaign and the 180 organisations and experts spanning human rights, legal, disability rights, health and community sectors who recently voiced their vehement opposition to the determination of the Queensland Government to continue to impose punitive and carceral measures onto vulnerable and marginalised children.⁵⁷

ANTAR calls for an immediate end to using watch houses to detain children in Queensland.

⁵⁴ Grace Nakamura, '[Queensland Indigenous elders fed up with lack of support in current Logan court system](#)', ABC News, 14 July 2023.

⁵⁵ *ibid*

⁵⁶ Kelly Richards, Lisa Rosevear and Robyn Gilbert, '[Promising interventions for reducing Indigenous juvenile offending](#)', Indigenous Justice Clearinghouse (March 2011): 6.

⁵⁷ [Open Letter to QLD Government](#), Change the Record, 25 August 2023.

In the 2020-21 financial year there were between 53 and 99 distinct young people aged between 10-18 years in court-ordered custody in watch houses each month.⁵⁸

Queensland Public Guardian Natalie Siegel-Brown has highlighted how the conditions in watch houses violate the basic human rights of young people on a daily basis:

“I have visited the Brisbane watch house, and seen with my own eyes children who are cold, who are hungry, who haven’t accessed any real outdoor air for two weeks or more, and who have little or no access to education. Some are being held in these conditions for weeks at a time.”⁵⁹

Conditions in watch houses include exposure to aggressive adult detainees, a lack of appropriate facilities for girls, sensory deprivation including 24-hour artificial light and no access to sunlight, lack of access to showers or clean clothes and young people sleeping on yoga mats in shower stalls.^{60 61} At times, children have been held for up to 40 days in cells designed to hold adults for less than 24 hours.⁶²

These conditions contribute to and exacerbate the root causes of youth offending. As Ricky, a 14 year old First Nations person from Cairns who has been incarcerated 15 times in his short life, explains:

“[Being in solitary confinement] made me into a very violent person towards people, the way I talk to them, the way I act around them... It’s just made me feel like it’s the end of the world, I don’t really care. I just want to hurt people, that’s the feeling I get, because I’m a very hurt

⁵⁸ [‘Use of Police Watch Houses in Queensland’](#), Youth Advocacy Centre Inc, nd.

⁵⁹ Ben Smee and Eden Gillespie, [‘Keeping kids in watch houses: why the Queensland government could change the law to suit itself’](#), The Guardian, 25 August 2023.

⁶⁰ [‘Advocates say children are being held in adult watch houses in Queensland for weeks at a time’](#), ABC News, 7 Feb 2023.

⁶¹ [‘Magistrate grants girl bail amid concern she would join dozens of children held in adult watch houses for weeks’](#), The Guardian, 8 Feb 2023.

⁶² [‘Court orders urgent transfer of three children detained unlawfully in Queensland watch houses’](#), The Guardian, 4 August 2023.

person too when I'm in there for that long. I hurt a lot in there too, you know.”⁶³

‘On Country’ diversion programs

ANTAR strongly supports the use of diversionary programs, both at the point of policing (pre-charge) and court as well as on release from custody. Research suggests that pre-court diversionary measures such as cautioning and court-based diversionary methods such as Youth Justice conferencing can be effective both in keeping First Nations youth out of detention, and as a process that reduces reoffending.⁶⁴

Access to diversionary programs for First Nations youth, however, remains a challenge, with research showing that young First Nations offenders are less likely than their non-Indigenous counterparts to receive a police caution and more likely to be referred to court.⁶⁵

Research from the Jumbunna Institute on diversion and youth cautioning for First Nations individuals suggests that diversionary mechanisms are more powerful when they are delivered in a culturally appropriate way.⁶⁶ This includes not only how the cautions are delivered but also the location in which it is delivered. As such, ANTAR recommends that culturally appropriate pre-charge diversion programs are more significantly invested in and developed in order to be available to all First Nations youth across Queensland, and that legislation is amended to favour pre-charge measures for First Nations youth including verbal and written warnings, cautions and referral to ‘On Country’ diversion programs.

⁶³ [‘Violent and vulnerable: Ricky, 14, has been to jail 15 times. In Queensland’s youth justice system, he lost hope’](#), The Guardian, 7 June 2023.

⁶⁴ [‘Doing Time - Time for Doing - Indigenous youth in the criminal justice system’](#), House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system Final Report (June 2011)

⁶⁵ *ibid*

⁶⁶ Professor Chris Cunneen, Dr Amanda Porter, Professor Larissa Behrendt, [‘Discussion Paper: Aboriginal Youth Cautioning’](#), Jumbunna Institute for Indigenous Education and Research University of Technology, Sydney (2018): 7.

Further, this research outlines that the essential building blocks for successful models of First Nations youth cautioning include shared jurisdiction, partnerships and 'On Country' practices.

'On Country' models adopt a highly localised, holistic and whole-of-community approach to working with First Nations young people, Elders, community and partner organisations.⁶⁷ The aforementioned Maranguka Justice Reinvestment project in Bourke, NSW, for example, is an example of a highly successful 'On Country' diversionary practice. It is important that diversionary programs utilise a 'whole of community' approach, employing a coordinated strategy which works in partnership with existing service providers.⁶⁸

Many 'On Country' diversion programs are rooted in principles of social connectedness and belonging, as well as connection to Country and cultural practices. These are strengths and evidence-based protective factors which enable First Nations young people to feel strong and resilient.⁶⁹

Conclusion

As National Children's Commissioner Anne Holland has noted, Australia cannot continue to simply tinker with broken systems.⁷⁰ The ongoing and worsening crisis of youth justice in Queensland, and in particular the over-representation of First Nations youth in criminal justice systems, is evidence of a broken system. The countless inquiries, reports and evidence-based recommendations on the topic are proof that the status quo is not working, and that minor reform will get us more of the same results. The research is very clear that the current approach in Queensland has been highly ineffective in terms of building safer communities and reducing crime.⁷¹

⁶⁷ Professor Chris Cunneen, Dr Amanda Porter, Professor Larissa Behrendt, '[Discussion Paper: Aboriginal Youth Cautioning](#)', Jumbunna Institute for Indigenous Education and Research University of Technology, Sydney (2018): 57.

⁶⁸ Ibid, 70.

⁶⁹ Ibid, 43.

⁷⁰ [Submission No. 11](#), Youth Justice Reform Select Committee inquiry into youth justice reform in Queensland (15 November 2023): 6.

⁷¹ [Alternatives to Incarceration in Queensland Full Report](#), Justice Reform Initiative (May 2023): 10.

Queensland urgently needs to abandon its 'tough on crime' approach in favour of evidence-based solutions that are focused on rehabilitating children and young people. This approach must be trauma informed, culturally safe, therapeutic, rehabilitative and non-punitive. Incarcerating children as young as 10 is a recipe for more harm, the antithesis of community safety, and a continuation of settler-colonial policy that has only ever brought misery, control and violence. Instead, a fundamental paradigm shift is needed toward a rights-based decarceration model in which children are treated with compassion, community and care. All children are sacred and deserve to have their rights respected. When they are broken, hurting and in need – as is the case with those who engage in behaviour that harms others – they deserve not punishment but our collective care and healing, and culturally safe guidance to lead them to a better way.

ANTAR thanks the Committee for the opportunity to contribute to its Inquiry, and sincerely hopes that the submissions received in this process do not merely gather virtual dust as they join the libraries of reports and recommendations on the topic of youth justice and First Nations over-representation. First Nations communities already have the solutions. They need to be listened to, respected, funded and supported to implement these solutions in the ways that will best serve their communities and the needs of the young people that will become their future.