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Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email only: lasc@parliament.qld.gov.au

Dear Committee Secretary

Submission on *Youth Justice and Other Legislation Amendment Bill 2021 (Qld)*

The Institute for Collaborative Race Research provides specialised additional support for those engaged in antiracist, anticolonial intellectual work. As an independent organisation, we are not tied to the institutional interests of any university, association, or academic discipline. Our primary purpose is to support scholarship which directly serves Indigenous and racialised communities.

We oppose the *Youth Justice and Other Legislation Amendment Bill 2021 (Qld)* (the **Bill**).

In our submission, the Bill is unjustifiably authoritarian, punitive and racist. It directly and disproportionately impacts on racialised communities, particularly in Townsville and South East Queensland. The Queensland Government's apparently fails to seriously consider the racialised impacts of these amendments¹.

We note that it is entirely foreseeable that the proposed bills will have significant and disproportionate impacts on Aboriginal and Torres Strait Islander young people. This will increase the already egregious and growing rates of incarceration and contacts with colonial justice systems. No serious assessment of these impacts and their likely consequences appears to have been undertaken.

¹ Cf following the Stephen Lawrence inquiry in the United Kingdom, all public bodies were required to assess the race equality dimensions of policies, procedures and practices. These were called Race Equality Impact Statements. They've now become Equality Impact Assessments.

Given the limited timeframe to comment on this Bill, we note that the observations in this submission are indicative and not exhaustive. We would welcome the opportunity to discuss our concerns with the Committee in further detail.

Proposed amendments to the *Youth Justice Act 1992 (Qld)*

The proposed amendments to the *Youth Justice Act 1992 (Qld)* (the **YJ Act**) are likely to be harmful and highly discriminatory in practice, especially for Aboriginal and Torres Strait Islander children. Even though Aboriginal and Torres Strait Islander children are disproportionately over-represented in the youth justice system,² in all of the explanatory materials published in relation to the Bill there is no serious consideration given to the likelihood that these children will be disproportionately targeted and affected by the proposed amendments.

Based on our reading of the *Report on Youth Justice (the Atkinson Report)*, published in 2018, there is limited evidence from the Queensland Government's own experts that the proposed amendments are urgent or that they will actually reduce children's repeated contact with the criminal legal system. We note the Atkinson Report did **not** recommend the introduction of electronic monitoring for children; rather, it recommended that the Queensland Government *examine* its use in light of a number of ethical and practical difficulties with implementation.³ Based on our review of the supporting materials to the Bill, it is not clear that the Queensland Government has undertaken any serious examination of these issues.⁴

At a structural level, race considerations are erased from the Queensland Government's assessment of the impact of the Bill on children. The Minister asserts in the Statement of Compatibility that electronic monitoring of children will not limit the right to equality and non-discrimination, on the basis that "residency in a particular area is not a ground of discrimination"⁵. We contend that the trial sites – Townsville, North Brisbane/Moreton and Logan/Gold Coast – represent highly racialised communities in Queensland. While race may be not be specifically mentioned or named in the legislation, it is clearly in operation. Electronic monitoring in these areas will disproportionately impact Aboriginal and Torres Strait Islander children and children from other racialised communities. Racial targeting does not need to be named to be in operation.

The Queensland Police Service and the Department of Children, Youth Justice and Multicultural Affairs estimate that up to 100 children may be considered for electronic monitoring as a result of the Bill.⁶ As far as we are aware, electronic monitoring is still used sparingly in the adult system and predominantly for adults who are post-sentence, rather than in the context of bail.⁷

² See Childrens Court of Queensland, *Annual Report 2019-20 (2020)*, pp20-21.

³ *Ibid*, p66-67.

⁴ See eg Statement of Compatibility, p8, which cites three sources about the use of electronic monitoring internationally to

⁵ Statement of Compatibility, p3.

⁶ Queensland Police Service and Department of Children, Youth Justice and Multicultural Affairs, Joint Departmental Brief on the Youth Justice and Other Legislation Amendment Bill 2021 to the Legal Affairs and Safety Committee, 4 March 2021, p3.

⁷ See Atkinson Report, p66; Josh Bavas, 'Electronic trackers have been fitted to 747 Queensland criminals but not all are monitored in real time', *ABC News*, 8 December 2018. Available at

Nationally, experts have raised concerns about the stigma associated with electronic monitoring, including serious mental health consequences for people subject to it.⁸ We note the case of a 30 year old Indigenous man in South Australia, who died after consuming lighter fluid, while he was subject to electronic monitoring and home detention bail in 2011. His partner gave evidence to the inquest into his death that he used lighter fluid while he was on bail as a substitute for alcohol and other drugs because of his bail conditions.⁹ It is unjustifiable to expose children and their families to the harmful consequences related to electronic monitoring, especially in the context of bail, where children have not been convicted of any offence.

The introduction of a presumption against bail for children charged with further indictable offences while they are on bail is also likely to have disproportionately racialised consequences, which have not been canvassed in the supporting materials for the Bill. The Minister's assertion that "allocating more resources to prevention and diversion is not a true alternative because this can be undertaken alongside a presumption against bail"¹⁰ wilfully ignores the negative consequences of subjecting greater numbers of children to imprisonment as a result of these amendments.

The fact that a small number of children are 'responsible' for a majority of offences is neither new nor remarkable in Queensland; for example, the Atkinson Report identified that "Queensland Youth Justice data from 2016-17 shows that 10% of child offenders are responsible for 43% of offences"¹¹. In relation to this cohort, the Atkinson Report stated:¹²

It is important [...] that child offenders are carefully assessed to determine the most appropriate response to their characteristics, offending histories and risks associated with potential further offending. Likewise the responses must address these factors to ensure both the protection of the community and ensure children receive the support they need to participate positively in society.

The proposed amendments to the YJ Act do not offer an appropriate response that is tailored to the specific needs of each of these children. Instead, the Bill proposes sweeping reforms that target 'serious recidivist youth offenders', without taking account of the structural racism that results in the continuing criminalisation of Aboriginal and Torres Strait Islander children and children from other racialised communities.

<https://www.abc.net.au/news/2018-12-08/traffic-offenders-among-queensland-criminals-gps-tracked/10595396>. Accessed 12 March 2021.

⁸ Miles Herbert, Fears Australia being 'turned into a prison' after surge in electronic monitoring of offenders', *The Guardian*, 1 September 2019. Available at <https://www.theguardian.com/australia-news/2019/sep/01/fears-australia-being-turned-into-a-prison-after-surge-in-electronic-monitoring-of-offenders>. Accessed 12 March 2021. See also Sarah Keenan, 'A prison around your ankle and a border in every street: Theorising law, space and the subject' in Andreas Philippopoulos-Mihalopoulos (Ed.), *Routledge Handbook of Law and Theory* (Routledge, 2019), pp71-90.

⁹ Coroners Court of South Australia, *Findings of Inquest – Justin Lee Gibson*, 30 January 2015, p3.

¹⁰ See Statement of Compatibility, p14.

¹¹ Bob Atkinson AO APM, *Report on Youth Justice* (Version 2, 8 June 2018), p27.

¹² *Ibid*, p28.

It is apparent that the “Four Pillars”,¹³ which underpin the recommendations in the Atkinson Report¹⁴ and the Queensland Government’s *Youth Justice Strategy 2019-2023*, have been superseded by the “hard line” approach canvassed in the Queensland Government’s *Five-Point Action Plan*¹⁵.

We reject the Government’s assertion that the *Five Point Action Plan* “complements” the *Youth Justice Strategy 2019-2023*¹⁶; any reading of this documents makes clear that this new approach to youth justice represents a judgement by the Queensland Government to prioritise its political interests in appearing ‘hard line’ in marginal electorates over the interests of Aboriginal and Torres Strait Islander children.

We draw the Committee’s attention to the extensive expertise that exists in First Nations Communities – in urban, regional and remote areas. We urge that populist and punitive strategies be abandoned in favour of genuine engagement, support and resourcing of First Nations community controlled crime prevention strategies.

Proposed amendments to the *Police Powers and Responsibilities Act 2000 (Qld)*

We are also concerned about the racial impacts of the proposed expansion of police search powers in the Bill. The proposed amendments to the *Police Powers and Responsibilities Act 1999 (Qld)* (the **PPRA**) allow police to use hand held scanners in safe night precincts for the stated purpose of detecting knives. Initially, it is proposed that these scanners will be used in the Surfers Paradise and Broadbeach Safe Night Precincts.

In their critical sociological study of the criminalisation of mugging in the United Kingdom, Hall et al describe a moral panic in the following terms:¹⁷

When the official reaction to a person, groups of persons or series of events is *out of all proportion* to the actual threat offered, when ‘experts’, in the form of police chiefs, the judiciary, politicians and editors *perceive* the threat in all but identical terms, and appear to talk ‘with one voice’ of rates, diagnoses, prognoses and solutions, when the media representations universally stress ‘sudden and dramatic’ increases (in numbers involved or events) and ‘novelty’, above and beyond that which a sober, realistic appraisal could sustain, then we believe it is appropriate to speak of the beginnings of a *moral panic*.

In our submission, the amendments to the PPRA appear to both respond to, and produce, a “moral panic” relating to a perceived threat of harm from young people using knives in public places. We note the public discourse appears to draw heavily on the testimony of senior police officers about the prevalence and seriousness of the problem of knife crime on the

¹³ The Four Pillars are 1) Intervene early, 2) Keep children out of court, 3) Keep children out of custody, and 4) Reduce reoffending.

¹⁴ Bob Atkinson AO APM, *Report on Youth Justice (Version 2, 8 June 2018)*, pp21-27.

¹⁵ Premier and Minister for Trade, Minister for Police and Corrective Services, and Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence, ‘Hard Line on Youth Crime’, Joint Media Statement, 10 March 2020. Available at <https://statements.qld.gov.au/statements/89510>. Last accessed 10 March 2021.

¹⁶ See Explanatory Notes to the Bill, p1.

¹⁷ Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke and Brian Roberts, *Policing the Crisis: Mugging, the State, and Law and Order* (Macmillan, 1978), p16.

Gold Coast and the particular implication of children and young people in this trend.¹⁸ We are disappointed that a decision appears to have been taken to politicise the genuine grief of a very small number of bereaved families rather than the available evidence.

In pointing out the construction of a moral panic, we are not seeking to minimise the tragic deaths on the Gold Coast. Rather, our interest is to point out how the construction of the moral panic in this instance erases the relevance of race in the incidents that preceded the Bill, as well as the racialised impacts that will flow from this radical expansion of police powers.¹⁹ The exercise of police powers across Australia continues to reflect the historical role of police in the “extensive regulation and surveillance” of Aboriginal and Torres Strait Islander people.²⁰

It has been repeatedly shown that Aboriginal and Torres Strait Islander people, and other racialised communities, are disproportionately subject to suspicion by police, which results in higher levels of criminalisation and imprisonment. There is a real risk that the expansion of police search powers will further undermine the relationship between police and racialised communities.

We believe police are likely to over-surveil and target children with these expansive powers, given that the Joint Departmental Brief identifies children under 18 years old as representing “a significant proportion of offenders” charged with possession of a knife in a public place or school in 2019-20.²¹ The Bill does not provide any special provisions to protect children who may be subject to additional or unwarranted surveillance by police.

In our submission, these amendments represent the end of any meaningful distinction between lawful and unlawful searches in Queensland. In the Minister’s own assessment, these provisions are incompatible with human rights.²²

Overall, we urge the Committee to recommend that the Bill should not be passed.

¹⁸ See eg, Greg Stolz and Jeremy Pierce, ‘Top cop’s plea to influencers over deaths in paradise’, *The Courier Mail (online)*, 24 September 2020; Toby Crockford, ‘“They think it’s Grand Theft Auto”: Police lash youths over knife death’, *Brisbane Times*, 24 September 2020. Available at <https://www.brisbanetimes.com.au/national/queensland/they-think-it-s-grand-theft-auto-police-lash-youths-over-knife-death-20200924-p55ytg.html>. Accessed 12 March 2021; Jessica Nagel, ‘“Life is not a video game”: Alarming knife trend among Australian youths’, *A Current Affair*, July 2020. Available at <https://9now.nine.com.au/a-current-affair/knife-crime-on-the-rise-jack-beasley-foundation-aiming-to-educate-young-people/9d67e404-e5b8-4208-8c6f-0277960d7a71>. Accessed 12 March 2021.

¹⁹ See generally Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke and Brian Roberts, *Policing the Crisis: Mugging, the State, and Law and Order* (Macmillan, 1978). See also Alison Whittaker, ‘One-Punch Drunk: White Masculinities as a Property Right in New South Wales’ Assault Causing Death Law Reforms’ (2020) *Australian Feminist Law Journal*. DOI: 10.1080/13200968.2020.1794427, esp p24.

²⁰ See Amanda Porter and Chris Cunneen, ‘Policing Settler Colonial Societies’ in Philip Birch, Michael Kennedy and Erin Krueger (Eds.), *Australian Policing: Critical Issues in 21st Century Police Practice* (Routledge, 2021), pp397-412, p399.

²¹ Queensland Police Service and Department of Children, Youth Justice and Multicultural Affairs, Joint Departmental Brief on the Youth Justice and Other Legislation Amendment Bill 2021 to the Legal Affairs and Safety Committee, 4 March 2021, p

²² Statement of Compatibility, pp20-21.

If you wish to discuss this submission further, we would be pleased to be contacted at admin@icrr.com.au

Yours sincerely,

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