

Spotlight

Youth Justice in Queensland



A child rights approach would:

- Urgently address the incompatibility of the *Strengthening Community Safety Act 2023* with human rights principles and reinstate the protections provided by the *Human Rights Act 2019*.
- Raise the minimum age of criminal responsibility to 14 years.
- Address the missed compliance deadline for the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT)—specifically, establish effective oversight mechanisms to monitor and prevent human rights violations in places of detention, including those detaining children and young people.
- Continue the commitment to reduce the over-representation of Aboriginal and Torres Strait Islander children and young people in the Queensland youth justice system.
- Uphold the principle of self-determination, by:
 - Strengthening the Aboriginal and Torres Strait Islander community-controlled sector, including adequate resourcing to design and lead youth justice responses for children, young people and families.
 - Expanding family-led decision-making across Queensland.
- Conduct a comprehensive review of bail and remand laws to ensure fairness and proportionality for children and young people. The review should also identify any unintended consequences for specific groups, such as the use of harsh bail conditions instead of therapeutic alternatives.
- Redirect investments into evidence-based diversion programs that steer children and young people away from the criminal justice system.
- Implement rights-respecting practices throughout the youth justice system, with a focus on prioritising the wellbeing of children and young people. Prioritise non-judicial measures, such as diversion, mediation, and counselling, for children and young people accused of having committed crimes. Whenever possible, opt for non-custodial sentences like probation or community service.
- Improve access to court assessments for children and young people involved in legal proceedings and ensure continuity of health and therapeutic care for those within the system.
- Ensure that children and young people with disability are not detained unsentenced and that their detention is subject to regular judicial review. While children and young people with disability are still being detained, ensure appropriate supports and accommodations are provided during their detention period.
- Continue the progress that has been made in removing spit hoods from watchhouses, by introducing additional measures to eliminate harmful and inhumane practices that violate the human rights of detained children and young people. This includes addressing isolation and detention in adult facilities (i.e. watchhouses).
- Enhance support for children and young people during their transition out of detention, with a focus on successful reintegration into community and securing housing upon release.
- Promote children and young people’s active participation in decision-making processes that affect them and provide comprehensive rehabilitation programs tailored to their needs.
- Explore the feasibility of implementing multi-agency collaborative panels earlier to prevent children and young people’s interaction with the youth justice system.
- Ensure that children and young people in the youth justice system receive information about their rights and how to make complaints.
- Provide transparent information about the allocation of youth justice funding and in particular investment in prevention and early intervention funding (differentiating new and existing).
- Establish a youth justice peak body to strengthen the sector’s advocacy and representation.
- Ensure public accessibility to judicial and administrative judgments and decisions regarding children and young people. This includes disclosing the criteria used to assess the best interests of the child.

The incarceration of children and young people represents the most severe form of punishment within the criminal justice system. Article 37 of the UNCRC states that the arrest, detention or imprisonment of a child must only be used as a measure of last resort and for the shortest possible time. This chapter puts a spotlight on youth justice and explores what is currently happening in Queensland.

Criminalisation of children and young people

On an average day in 2021–22, there were 275 children and young people aged 10 years and over in youth detention in Queensland.^{viii} This figure is significantly higher than every other state in Australia and an increase from the 2020–21 average of 229. Males make up the vast majority of children and young people in youth detention in the state (on average between 86 per cent and 90 per cent). In 2021–22, the proportion of females in youth detention was 11 per cent, slightly up from the previous year (10 per cent).³³

Aboriginal and Torres Strait Islander children and young people are drastically over-represented at every point of the youth justice system, and this disparity continues to worsen. Aboriginal and Torres Strait Islander children and young people account for 65–72 per cent of children and young people in youth detention on an average day.³⁴ This is at odds with the *National Agreement on Closing the Gap* which aims to reduce the rate of Aboriginal and Torres Strait Islander children in detention by at least 30 per cent by 2031.³⁵

In 2021–22, Aboriginal and Torres Strait Islander children and young people were over 21.4 times more likely to be in youth detention than non-Indigenous children and young people.³⁶

Minimum age of criminal responsibility

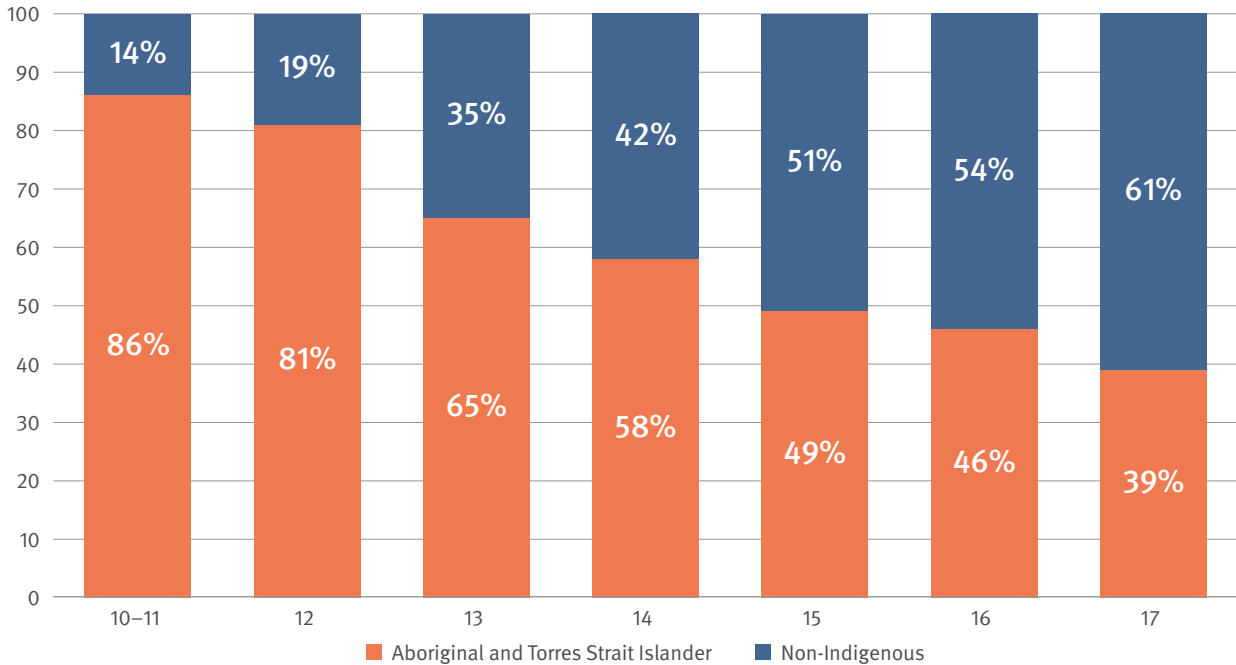
In Queensland, children continue to be held criminally responsible from the age of 10 years, despite recommendations made by the UN Committee^{ix} and the Council of Attorneys-General to raise the age to 14 years.³⁷ In early 2022, the Queensland Parliament's Community Support and Services Committee examined the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, which sought to raise the minimum age of criminal responsibility to 14 years. The Committee recommended the Bill not be passed but did recommend the Queensland Government continue to work with all state and territory Attorneys-General to consider increasing the minimum age of criminal responsibility from 10 to 12 years, falling short of the UNCRC recommendations.³⁸

Aboriginal and Torres Strait Islander children are the most profoundly affected by the current age of criminal responsibility. Figure 3.1 shows that Aboriginal and Torres Strait Islander children are especially over-represented in the younger age groups (10–14 years of age).

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

ix The UN Committee encourages States parties to take note of scientific findings in the fields of child development and neuroscience, and to increase the minimum age of criminal responsibility to at least 14 years. The UN Committee also recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age. See General Comment No. 24 (2019) on children's rights in the child justice system.

Figure 3.1. Proportion of child defendants by First Nations status, age at the time of offence (Queensland, 2021–22)



Source: Queensland Children’s Court Annual Report 2021–22, using data obtained from the Department of Children, Youth Justice and Multicultural Affairs (former). ‘Other’ includes those who do not identify as Aboriginal or Torres Strait Islander, or whose status is unknown or not stated.

International human rights

Under the UNCRC, children and young people have the right to get legal help and be treated fairly if they have been accused of breaking the law (Article 40, UNCRC). Children and young people who break the law must not be treated cruelly. They must not be put in a prison with adults and must be able to keep in contact with their family (Article 37, UNCRC).

While Articles 37 and 40 of the UNCRC specifically address the due process rights of the child, the government also has an obligation to uphold all rights under the UNCRC regardless of whether a child or young person is involved with the criminal justice system. For example, all children and young people have the right to a full life, where they are able to survive and develop (Article 6, UNCRC). Children and young people have the right to be free from discrimination (Article 2, UNCRC) and have their opinions heard and taken seriously (Article 12,

UNCRC). Children and young people have the right to be protected from harm (Article 19, UNCRC). Children and young people have the right to good quality health care (Article 24, UNCRC) and to a standard of living that is good enough to meet their physical and mental needs (Article 27, UNCRC). Children and young people have the right to share their culture, language and religion with others (Article 30, UNCRC).

The United Nations General Comment No. 24 (2019) on children’s rights in the child justice system guides governments on how to respect, protect and fulfill the rights of children and young people who come into contact with the justice system. It covers various aspects of youth justice, including the treatment of children in pretrial detention, right to a fair trial, access to legal representation, use of diversion measures, and rehabilitation and reintegration of children and young people who have offended.³⁹

There are other international human rights instruments that protect the rights of children and young people involved with the youth justice system, including:

- The *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), ratified by Australia in 1989.
- The *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT), ratified by Australia in 2017.
- The *United Nations Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Australia in 2008.
- The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), supported by Australia in 2009.
- The *United Nations Standard Minimum Rules for Administration of Juvenile Justice* (Beijing Rules).
- The *United Nations Guidelines for the Prevention of Juvenile Delinquency* (Riyadh Guidelines).
- The *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* (Havana Rules).
- The *United Nations Standard Minimum Rules for Non-Custodial Measures* (Tokyo Rules).

Youth justice policy and legislation in Queensland

Youth Justice Act 1992:

This act sets out Queensland's criminal jurisdiction relating to children, underpinned by a charter of youth justice principles. These principles include that the community should be protected from offences and, in particular, recidivist high-risk offenders, and that the youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing. Consideration should be given to a child's age, maturity and, where appropriate, cultural and religious beliefs and practices.

Following a review of Queensland's youth justice system in June 2018, the *Atkinson Report on Youth Justice* recommended the state government adopt four pillars as its policy position on youth justice:⁴⁰

- Intervene early.
- Keep children out of court.
- Keep children out of custody.
- Reduce re-offending.

The report highlighted the need for a focus on education, vocational training and employment. It suggested increasing options for police to divert child offenders from prosecution, such as through restorative justice programs, as well as expanding options for courts to divert children from detention centres, such as through probation, community-based supervision or treatment programs. The report also recommended increasing options for families to receive support and services to prevent youth offending and intervene early when there are signs of problematic behaviour.⁴¹

In December 2018, this position was accepted in the government's *Working Together Changing the Story Youth Justice Strategy 2019–2023*.⁴² Despite this commitment and significant investment, in recent years we have observed a shift away from the four pillars, to enacting policies that continue to disproportionately impact Aboriginal and Torres Strait Islander children and young people and increase the likelihood of unsentenced detention.⁴³

In February 2021, the Queensland Government announced tough new measures to further address youth crime, focusing on serious repeat offenders and strengthening bail laws for children and young people. This included legislative changes to strengthen how children and young people who offend are dealt with in the court system, such as:

- a presumption against bail for children and young people who commit certain offences while on bail for a prescribed indictable offence (for example, unlawful use of a motor vehicle as a passenger (or passenger in a stolen vehicle) and entering premises with intent to commit an indictable offence)

- courts having the ability to consider whether parents, guardians and others are willing to support the child or young person to comply with bail conditions before bail is granted^x
- a new principle in the Youth Justice Act stressing that the community should be protected from recidivist high-risk offenders
- legislating the requirement that in sentencing children and young people, courts consider whether offences were committed while on bail.

In 2021, the Queensland Government also established the Youth Justice Taskforce (the Taskforce), to focus on serious repeat offenders and these new reforms.⁴⁴

In the news:
Tougher laws made even tougher

“The construction of two new youth detention centres.”

“Young offenders will be in custody for longer to make sure they can complete requisite rehabilitation and reform programs set out by the courts.”

<https://statements.qld.gov.au/statements/96885>

In March 2023, the Queensland Government passed amendments to the Youth Justice Act with the introduction of the *Strengthening Community Safety Act 2023*.⁴⁵ The government asked parliament to override the application of the Human Rights Act to provisions of the bill which it admitted were **incompatible** with the *Human Rights Act 2019* and could not be justified,⁴⁶ including making breach of bail an offence for children and young people and enable their bail history to be considered during sentencing. This is the first time Queensland has overridden its Human Rights Act. In doing so, it has placed significant limitations on children’s rights. The Queensland Human Rights Commission stated:

“Some of the rights unreasonably limited by the Bill are specially protected under international law and should never be subject to such an override... A dangerous precedent will be established for future governments to override human rights as a result of a public controversy. It is at these times of heightened public anxiety that maintaining robust protections of human rights is of greatest importance.”⁴⁷

The new measures signal a sharp withdrawal^{xi} from the government’s *Working Together Changing the Story Youth Justice Strategy 2019–2023* and significantly undermine the possibility of realising the strategy’s goals, including keeping children and young people out of court and out of custody.⁴⁸

x In 2022–23 the Intensive Bail Initiative (IBI) operates in five locations, through which the Family Partnership service, aims to support families to aid a child or young person’s compliance with their bail conditions. The Family Partnership service includes brokerage funds to purchase specialised services, or goods to enable a family’s commitment to the court.

xi Other amendments to the *Youth Justice Act 1992* signalling a withdrawal from the *Working Together Changing the Story Youth Justice Strategy 2019–2023* include the *Community Services Industry (Portable Long Service Leave) Act 2020* and the *Youth Justice and Other Legislation Amendment Act 2021*.

Human rights legislation in Queensland

On 1 January 2020, substantive provisions of the *Human Rights Act 2019* commenced, placing new obligations on public entities in Queensland. Section 33 of the Act specifically applies to children and young people in the criminal process, stating that:⁴⁹

- An accused child who is detained, or a child who is detained without charge, must be segregated from all detained adults.
- An accused child must be brought to trial as quickly as possible.
- A child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

There are also other rights protected in the Human Rights Act including:

- recognition and equality before the law (section 15)
- right to life (section 16)
- protection from torture and cruel, inhuman or degrading treatment or punishment (section 17)
- right to privacy, family and home (section 25)
- protection of children (section 26(2))
- cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28)
- right to liberty and security of person (section 29)
- humane treatment when deprived of liberty (section 30)
- right to a fair hearing (section 31)
- rights in criminal proceedings (section 32)
- right not to be tried or punished more than once (section 34)
- retrospective criminal laws (section 35)
- right to education (section 36)
- right to access health services (section 37).

Our oversight of the youth justice system

One of the key roles of the QFCC is to oversee and publicly report on the performance of the youth justice system. We draw on the experiences of children and young people, insights of stakeholders, available data and evaluations of system performance to identify changes to laws, policies, programs and services that can improve outcomes for children, young people and their families.

Changing the Sentence: Overseeing Queensland's youth justice reforms

In 2019, the QFCC examined activities and projects related to pillars two and three of *Working Together Changing the Story: Youth Justice Strategy 2019–23*: 'keep children out of court' and 'keep children out of custody'. We also considered the over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system. Our report, *Changing the Sentence: Overseeing Queensland's youth justice reforms*,⁵⁰ highlighted the need for investment in prevention and early intervention. The system needs to focus on reducing factors that contribute to children and young people committing crime, and specialised services for children and young people in the statutory system who are committing most of the crime.

If there is to be a genuine impact on youth crime, children and young people must be treated consistently with a child rights approach, which places an emphasis on the rehabilitation and social reintegration of children who engage in criminal behaviour, rather than a law and order approach which places an emphasis on punishment. Decision-making about services and support for Aboriginal and Torres Strait Islander children and young people must also be transferred to local communities and community-controlled organisations.

Yarning for Change: Listen to my Voice

Through *Yarning for Change: Listen to my voice*, the QFCC heard from 76 Aboriginal and Torres Strait Islander children and young people about their experiences of the Queensland youth justice system. We heard that young people want to be listened to, respected and actively involved in the decisions that impact them.⁵¹

“ ...just everyone making all of the decisions for me without like, letting me have a say as well. Like, I would like to know more about what’s going on around me so I’m not left stressing out and over thinking in myself.

Female, age undisclosed, Yarning for Change

Children and young people shared their experiences in the child protection system, detention periods, court proceedings and interactions with law enforcement. Disconnection from kin, community and culture; disengagement from education during and after detention; and experiences of discrimination were critical contributors to youth crime and the most significant obstacles to children and young people’s wellbeing. Children and young people emphasised the significance of relationships and having individuals who care and support them. They said that the people in the system and their communities make the most significant difference.

Yarning for Change provides a crucial opportunity to integrate the perspectives of Aboriginal and Torres Strait Islander children and young people into discussions about how to enact meaningful change and what is most likely to succeed for them and their communities.

Child Rights Youth Justice Monitoring Framework

In 2022, the QFCC designed a framework to monitor child rights in the youth justice system. The data-based framework has two system-wide performance measures (recidivism and diversion) underpinned by children and young people’s experience within the system. We measure system delivery that is critical to child rights across three pillars: treatment of the accused; health and wellbeing; and culture and identity. The whole system is enabled by adequate funding.

A child rights approach is essential in a youth justice context because it recognises that every child has the right to be treated equally, without discrimination based on their status or circumstances. It prioritises the best interests of the child in all actions concerning them, ensures that they have the right to participate in decisions affecting them, and guarantees their right to life, survival and development. A child rights approach also provides a long-term solution to youth offending by addressing the root causes of crime and recognising the specific needs of children and young people who come into contact with the youth justice system. It is more effective in reducing crime than a punitive approach and is more cost-effective than custodial measures. By promoting child rights, the system can foster public trust and confidence and protect children from unjustified incursions on their rights.⁵²

System-wide performance

Recidivism

If the system is consistently upholding children and young people's rights and applying the principle of diverting offenders from further progression into the youth justice system, it should contribute to lower rates of recidivism. In 2021–22, 86.6 per cent of the young people who were released from a youth detention centre in Queensland reoffended within six months (i.e. had a subsequent charged offence). That figure was 87.2 per cent for Aboriginal and Torres Strait Islander children and young people.⁵³

The interplay between recidivism and diversion is complex. For example, it is possible that as diversion increases, the rate of recidivism may also increase as those who have committed more serious offenses make up a larger proportion of those in the statutory system. The data shows that a small proportion of offenders (17 per cent) are disproportionately responsible for offences committed by young people in Queensland (48 per cent of all convicted charges).⁵⁴

Many of the children and young people who shared their experiences through *Yarning for Change* had experienced multiple admissions to youth detention. One young person had been in youth detention 28 times. The United Nations has stated that the overuse of detention in the administration of justice to children is exacerbated by:

“a lack of effective child welfare systems; lack of support for family environments; excessive criminalisation; low minimum age of criminal responsibility; harsh sentencing; discrimination; socioeconomic reasons; and a lack of resources in the administration of justice.”⁵⁵

Diversion

The UNCRC recognises the need for diversion measures as a means of preventing young people from entering the criminal justice system. General Comment No. 24 (2019) on children's rights in the child justice system emphasises the importance of diversion as a preferred approach for the majority of cases. The General Comment calls for governments to invest in prevention, early intervention and multidisciplinary approaches, as well as to extend the range of offences for which diversion is possible. The General Comment also stresses the need for diversion to be an integral part of the child justice system, and the importance of protecting children's human rights and legal safeguards in diversion processes and programs (in accordance with Article 40 of the UNCRC). This includes recognising the need for alternative measures for children under the age of criminal responsibility and setting the minimum age of criminal responsibility to at least 14 years of age.

The *Atkinson Report on Youth Justice* states that diverting low-risk young offenders from the criminal justice system is 'the most effective and efficient way to proceed'. Children and young people who are first arrested before the age of 14 years may be three times more likely to become chronic adult offenders than those first arrested after 14 years.⁵⁶ Youth justice diversion programs play a crucial role in steering children and young people away from the formal criminal justice system, promoting their rehabilitation⁵⁷ and supporting restoration of harm done to victims.⁵⁸ Community-designed and community-based diversion programs have proven to be highly effective in reducing reoffending rates and providing positive outcomes for children and young people. These programs prioritise a holistic approach, addressing underlying issues and engaging with local communities.^{59,60}

Recognising the unique cultural context and challenges faced by Aboriginal and Torres Strait Islander children and young people, diversion practices led by Aboriginal and Torres Strait Islander communities have shown promising results. First Nations-led place-based approaches have demonstrated remarkable success in reducing crime, criminal justice system contact, and youth justice contact. These approaches have also yielded significant cost savings, along with notable improvements in cultural, social, and health and wellbeing measures.⁶¹ By adopting community-driven strategies, positive outcomes can be achieved across multiple domains. These initiatives involve community elders and leaders promoting cultural connections, healing and accountability. Aboriginal and Torres Strait Islander-led diversion programs foster a sense of empowerment and reduce the risk of reoffending among children and young people.⁶²

In Queensland, services are delivered **across the youth justice system** to support low-risk, medium-risk and serious repeat offenders. The Youth Justice Department funds non-government organisations to provide early intervention and prevention services to complement early childhood development, health services and educational services. Services include family wellbeing services, adolescent sexual offending services, On Country program, bail support services, young offender support services and legal advocacy services. Youth Justice also partner with other government departments to identify and engage with at-risk children and young people, divert them from the youth justice system, and follow up on complex bail monitoring strategies.⁶³

The Justice Reform Initiative recently highlighted evidence-based alternatives to detention in Queensland. The report sets out examples of community-led programs, place-based initiatives, services, policies and alternative justice approaches (including at the point of contact with police and courts) that are working to reduce the numbers of people in prisons across Australia and internationally.⁶⁴ Diversion strategies must also

be approached through a child protection lens, recognising that children and young people involved in the justice system often require support and guidance rather than punishment. By prioritising the wellbeing and development of young people, diversion programs can create opportunities for growth and positive change.

Working Together Changing the Story contains principles and actions to divert children from the justice system.⁶⁵ In 2021, the QFCC provided an analysis of the activities and projects to keep children out of court and out of custody. The report found evidence of initiatives that showed success in reducing re-offending, however the lifespan of funding is often limited and programs are not designed to provide ongoing support to children and young people once their court proceedings or bail conditions are completed. For diversion activities to contribute to long-term changes, they must involve the child or young person's family, and provide health, social and emotional support.^{66xii} While we acknowledge the vast scope of diversionary programs that are needed to address youth offending and the significant and dedicated work being undertaken across Queensland, the data we consider in this initial report are forms of diversion by police and courts.

Police diversion

In 2021–22, the police issued 14,589 cautions to young people, an increase of 6.6 per cent from the previous year.⁶⁷ This exercise of police discretion is a positive step forward, as police are an important link between a child or young person and diversion or early intervention programs. As of February 2023, 26.4 per cent of current Queensland Police Service officers were trained to administer cautions to children and young people and 5.7 per cent had completed a Police Youth Diversion Online Learning Product. From September 2022, all recruits will complete youth justice, police cautioning and police youth diversion training as part of the Recruit Training Program. The material provides theory and practical elements for cautioning youths.⁶⁸

xii The Queensland Audit Office is undertaking an audit to assess whether youth justice strategies and programs are effective in reducing crime by serious repeat offenders and improving community safety. It is anticipated to be tabled in early 2024.

Court diversion

Restorative justice seeks to address the needs of both the offender and the victim. It aims to repair the harm caused by the offense by involving all affected parties in a dialogue or mediation process. This approach allows victims to have a voice, express their feelings, and receive answers to their questions. At the same time, it offers offenders an opportunity to take responsibility for their actions, make amends and understand the consequences of their behaviour.⁶⁹ Restorative justice processes are voluntary and often require significant work by frontline staff to ensure that children and young people and their families are ready and willing to engage in the process. In 2021–22, there were 3004 restorative justice referrals (43 per cent were for Aboriginal and Torres Strait Islander children and young people), a 5 per cent decline from the previous year.⁷⁰ Restorative justice processes include group conferencing (involving an offender and victim) and alternative diversion processes (offender only). In 2021–22, a total of 1527 children and young people participated in a restorative justice process (38 per cent were Aboriginal and Torres Strait Islander children and young people).⁷¹

Funding

Funding matters in youth justice because it directly affects the availability and quality of prevention, program and service delivery, rehabilitation and reintegration services. By investing in these areas, the youth justice system can reduce recidivism rates, promote positive behaviour change and support the successful transition of children and young people back into their communities. Additionally, funding allows the implementation of evidence-based practices and the provision of adequate staffing and resources. This includes qualified professionals, such as case workers, counsellors, psychologists and educators, who can provide appropriate support and guidance. Insufficient funding can result in understaffed facilities, limited access to resources and reduced program availability. This compromises the quality of care and support for children and young people in the justice system.

The Productivity Commission’s report of youth justice services⁷² showed that the average cost per day per child or young person in community-based services was \$245 in 2021–22, a decrease from \$259 in 2020–21. By comparison, the average cost per day per child or young person in detention-based services was \$2086 in 2021–22, an increase from \$1920 in 2020–21. Community-based services are generally more cost-effective than detention-based services. Community-based options, such as diversion programs, probation, counselling and rehabilitation services, offer a more supportive and less restrictive environment for children and young people. Adequate funding is needed to establish and maintain these programs, which can provide tailored service delivery, address underlying issues, and promote positive behaviour change.

The Queensland Government has made a significant investment in outsourced service delivery, with approximately \$30.5 million invested in 2022–23, a six-fold increase in the last ten years.⁷³

“ Instead of what happens after a teen does something and gets into trouble, more action should be put into keeping us out of trouble in the first place. Take preventative measures instead of dealing with consequences.

Female, 15 years, Growing Up in Queensland

Treatment of the accused

In January 2023, Australia failed to meet the extended compliance deadline for the Optional Protocol to the Convention Against Torture (OPCAT). Ratified by Australia in 2017, OPCAT is important in protecting the rights of people in places of detention. Implementation requires compliance with OPCAT obligations by all states and territories. Some progress has been made, such as the establishment of the Commonwealth Ombudsman's Office as both the Commonwealth National Preventive Mechanism (NPM) and the coordinator of the Australian NPM network, the designation of some NPMs and the passing of dedicated OPCAT legislation. There is still much work to be done to meet basic OPCAT commitments. The UN Subcommittee on the Prevention of Torture (UNSPT) suspended its visit to Australia in October 2022 and terminated it in February 2023 due to a lack of cooperation by some states, including Queensland (prevented access into mental health facilities). The UNSPT cited this as "a clear breach by Australia of its obligations under OPCAT." Australia is one of only four countries to have ever had the UNSPT suspend or terminate a visit.⁷⁴

Watchhouses

A watchhouse is a facility, usually attached to a police station, designed to hold people (with or without charge) for a short period of time.

“ It was horrid. The most...yeah, it's so bad in there...captivity at its best. No sunlight. The radio – broken... no yard time. Hygiene very bad, you can't brush your teeth. You get a shower if you're lucky.

Male, 18 years, Yarning for Change

“ If you come on weekends, they don't give you showers, they make you wait until Monday... if you're locked in on Friday, you've got to stay in there in your same clothes. And don't have a shower until Monday...and they make you drink a tap on top of the toilet... the tap on top of the toilet.

Male, 18 years, Yarning for Change

In the General Comment No. 24 (2019) on children’s rights in the child justice system, the UN Committee stated:^{xiii}

“Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – “unless it is considered in the child’s best interests not to do so” – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.”

Table 3.1 shows that there were 8030 admissions of children and young people into police watchhouses or stations in 2021–22 in Queensland (for the purposes of this report, we refer to being held in a ‘watchhouse’ as being held in either a police station or a police watchhouse^{xiv}).

The data shows that children as young as 10 are being detained in watchhouses. This contravenes the UNCRC and highlights the limited ability of *doli incapax* as a safeguard to protect young children. In its previous concluding observations, the UN Committee expressed its serious concerns with children and young people in detention not being separated from adults. In 2019, the UN Committee recommended that, in cases where detention is unavoidable, the government should ensure that children are detained in separate facilities, including during pretrial detention, and their detention should be regularly and judicially reviewed.⁷⁵

Table 3.2 shows the length of stay of children and young people held in police watchhouses in 2021–22. The QFCC is deeply concerned about the use of watchhouses to detain children and young people, and even more concerned about the use of police stations for detention. We question the provision of services, supports and facilities that can be provided to a child or young person held in a police station for a week or more.

Table 3.1. Number of times children and young people were held in custody in a watchhouse or police station (Queensland, 2021–22)

Age	10	11	12	13	14	15	16	17	Total
Number	46	111	453	907	1474	1813	1670	1556	8030

Source: Queensland Police Service, March 2023.

Notes:

1. This data is preliminary and may be subject to change.
2. Data relates to the number of times a person was in a police watchhouse for all reasons between 1 July 2021 to 30 June 2022.
3. A person in a watchhouse multiple times in the period is counted multiple times.
4. A person in a police watchhouse for multiple days is counted as once (regardless of length of stay).
5. Data does not represent the average number of days spent by children in a police watchhouse.
6. Age of a person is calculated as at the date of starting police custody.

xiii General Comment No. 24 (2019) on children’s rights in the child justice system. <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

xiv Holding cells at a police station are intended to hold prisoners for short periods (i.e pending release or transfer to a watchhouse). While also for temporary holding, watchhouses are designed to hold persons overnight or for 24 hours or longer. Extracted from Queensland Police Service Operational Procedures Manual: Chapter 16 – Custody. <https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual>

Queensland is yet to fully implement its requirements under OPCAT, which would improve independent oversight of youth detention facilities. The *Inspector of Detention Services Act 2022* establishes an independent inspector of detention services within the Queensland Ombudsman who has functions including inspecting places of detention, such as youth detention centres and watchhouses. Police stations are not listed as a place of detention in the Act. The Act sets a minimum standard to inspect each youth detention centre at least once every year.⁷⁶ The *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2023* came into effect on 2 June 2023. The Act is intended to remove barriers that prevented UN officials from visiting places of detention in 2022.⁷⁷ Even with the passage of this legislation, steps must be taken to ensure that there is sufficient resourcing and description of the functions within the independent inspector to consider the special needs for children and young people in places of detention to meet the minimum requirements under OPCAT.

“ It suffices to say that conditions in watchhouses are harsh and that adult detainees are often drunk, abusive, psychotic or suicidal. Although children may be kept in separate cells, those cells are usually open to the sights and sounds of the watchhouse. Equally, there is no facility to deliver education or the therapeutic interventions that are sometimes available in detention centres.

Magistrate Mac Giolla Ri, Mt Isa^{xv}

Table 3.2. Number of times children and young people were held in watchhouses and police stations by length of stay (Queensland, 2021–22)

Length of stay	Watchhouses	Stations
1 day or less	5822	1021
2 days	354	4
3 to 4 days	390	4
5 to 7 days	288	1
8 to 14 days	144	1
15 or more days	0	1
Total	6998	1032

Source: Queensland Police Service, March 2023.

Notes:

1. This data is preliminary and may be subject to change.
2. Data relates to the number of times a person was in a police watchhouse for all reasons between 1 July 2021 to 30 June 2022.
3. A person in a watchhouse multiple times in the period is counted multiple times.
4. A person in a police watchhouse for multiple days is counted as once.
5. Data does not represent the average number of days spent by children in a police watchhouse.
6. Length of stay has been calculated as the difference between custody start time and custody end time in minutes, and then converted to days.
7. Police watchhouses are based on those where the organisational unit name contains 'station' but included in the police watchhouses data.

Not only does this practice violate children’s rights, it also breaches the Queensland Police Service Operational Procedures Manual⁷⁸ and the charter of principles in the Youth Justice Act.⁷⁹ With the state government’s recent measures to address youth crime, we expect the number of children and young people being held in police watchhouses to increase. The Youth Advocacy Centre has shared similar concerns raised by children and young people held in Queensland watchhouses, including a lack of: access to family, adequate food and nutrition, information about their rights, health care, exercise, hygiene, education and activities.⁸⁰

xv Re Richard Jones (a pseudonym) [2023] QChCM 1. <https://archive.sclqld.org.au/qjudgment/2023/QChCM23-001.pdf>

Case study

BA, DC, FE v State of Queensland [2022] QCAT 332

On 30 June 2022, the Queensland Human Rights Commission referred a matter to the Queensland Civil and Administrative Tribunal (QCAT) relating to three complainants who alleged age discrimination and limitations of their human rights. The complainants, all under the age of 18 years at the time, complained about detention in the Cairns watchhouse for periods longer than two days, the conditions of that detention and failure to segregate children from adults.

QCAT firstly found that a complainant did not need to be 18 years or older to make a valid complaint of discrimination on their own behalf and did not require a litigation guardian (provided they were ‘Gillick competent’). QCAT assessed the competency of each of the applicants and directed that one of the applicants be appointed a litigation guardian. QCAT considered that the rights to equality, protection of families and children, and fair hearing were limited by requiring a litigation guardian. That limitation was justified to ensure a fair hearing for all parties based on reliable and informed instructions from a competent party.

Unsentenced detention

Unsentenced detention is when a person is detained while awaiting the outcome of their court matter or sentencing. The use of unsentenced detention for children and young people in Queensland has risen in recent years, remaining above the national average.⁸¹ This results in many children and young people experiencing imprisonment unnecessarily and for longer periods of time than is required.^{xvi} On an average day in 2021–22, 238 children and young people were in detention in Queensland who were not sentenced. This figure increased from 202 in the previous year. It means that 86 per cent of young people in custody are unsentenced and have spent on average 43 nights in detention unsentenced, a substantial increase from the average of 36 nights in 2020–21. Most of these children and young people are being held in custody by a court until their next court appearance.⁸²

The Youth Justice and Other Legislation Amendment Bill 2021 substantially increased the use of unsentenced detention in Queensland’s youth justice system. In the statement of compatibility under the *Human Rights Act 2019*, it was considered that while reversing the onus of bail would lead to more children experiencing limitations to their right of liberty,

this was outweighed by the importance of protecting community safety in situations of unacceptable risk to the community.⁸³

Many children and young people are serving more time in custody than would otherwise have been ordered by the courts. Over 2021–22, in 75.9 per cent of all court appearances involving a child or young person on remand (with at least one proven finalisation), they were released from custody with no time remaining to serve. This figure was 74.4 per cent for Aboriginal and Torres Strait Islander children and young people.⁸⁴

“ In my view, it becomes a cruel and unusual punishment to detain a child for what is presently an unknown period, in knowledge of the fact that he should, ultimately, in all likelihood, not be sentenced to detention for the offences for which he is being held in custody.

Judge Horneman-Wren SC, Ipswich^{xvii}

xvi In the UN Committee’s 2019 concluding observations concerns were expressed about the high number of children in detention, including on remand. The UN Committee recommended that the Government actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial sentences such as probation or community service.

xvii *R v Nathan* (a pseudonym) [2023] QChC 4. <https://archive.sclqld.org.au/qjudgment/2023/QChC23-004.pdf>

Time to judicial outcome

Improvements have been made to reduce the average time taken to finalise matters in 2021–22 compared with the previous year (down from 102 days to 84 days for the Children’s Court and down from 304 days to 286 days for the Children’s Court of Queensland).⁸⁵ Timely judicial processes must not compromise a defendant’s ability to receive adequate legal support, have a voice in their matter and receive proper cognitive and mental health assessments.

Separation

Separation (also known as isolation or solitary confinement) is a form of deprivation of liberty.^{xviii} It limits opportunities for children and young people to experience leisure and recreation, with possible detrimental impacts on health and wellbeing.⁸⁶ Despite this evidence, children and young people are being routinely subject to separation in Queensland detention centres. In response to a parliamentary question about the number of times and duration that children and young people had spent in separation, the following data were provided for 2021–22:

- there were 30,255 instances of separation between 6 and 12 hours
- there were 519 instances of separation between 12 and 24 hours
- there were 83 instances of separation lasting more than 24 hours.

There were 2863 separations involving young people under 14 years of age and 25,801 separations involving Aboriginal and Torres Strait Islander children and young people.⁸⁷ In its 2019 concluding observations, the UN Committee explicitly recommended prohibiting the use of isolation on children and young people.⁸⁸

A Cairns Magistrate recently published evidence about a 13-year-old boy who suffers from Foetal Alcohol Syndrome and Attention Deficit Hyperactivity Disorder. During the last 87 days he spent in detention, he had been confined to his cell for 20 hours or more per day for 78 days. For ten of those days, he was confined to his cell for 24 hours per day.

“ To detain a 13 and 14 year old child in a detention centre for such a long period of time is a significant punishment. To detain a young person who has your deficits and impairments, for the offence in question, for such a long period of time is, in my view, completely contrary to the regime of the Youth Justice Act and the youth justice principles. Particularly principle 18, that a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.

Magistrate Fantin, Cairns^{xix}

Through *Yarning for Change*, young people told the QFCC that they felt isolated during their time in detention when they were forced to remain in their rooms for long periods of time. Their separation was due to either behavioural issues (of theirs or other young people) or staffing shortages.⁸⁹

xviii Article 37 (c) of the UNCRC states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person. General Comment 24 adds that solitary confinement should not be used for a child. Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others.

xix *R v TA* [2023] QChC 2. <https://archive.sclqld.org.au/qjudgment/2023/QChC23-002.pdf>

“ At this point in time, ‘separation’ mostly means locking children in their cells because the ratio of staff to children is below the level set in the Certified Industrial Agreement between the Department and the unions representing the staff at the centre. The separation report confirms that when staff numbers at [detention centre] falls below a certain point, children are locked in their cells. Such staff numbers ought to be entirely predictable. One would have hoped that such occasions would be rare but a review of David’s (pseudonym) separation report discloses that out of the 21 days covered by the report, David’s unit was appropriately staffed on only 1 day... On average, David was locked in his cell, for 21 hours and 23 minutes per day or, to put it another way, David was only out of his cell for 2 hours and 37 minutes instead of the expected 12 hours per day.

Magistrate Mac Giolla Ri, Mt Isa^{xx}

The Department of Youth Justice has provided information about the use of separation in Queensland youth detention centres, including compliance with the requirements outlined in the **Youth Justice Regulation 2016**. Separations approved under the Regulation must be absolutely necessary for the protection of a person, property or to restore order in the detention centre. Separations must also respect and uphold the human rights of the child or young person affected. Separations are broken into two categories, non-incident and incident related

separations. A non-incident related separation is required when a young person is ill, when a young person requests it or for routine security purposes. Incident related separations require approval from a relevant delegate with the approval level increasing the longer the separation continues.^{90,91}

Restrictive practices

The UNCRC states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37, UNCRC).

In August 2022, the Queensland Parliament Estimates Committee heard that safety hoods (‘spit hoods’) had been used eight times on children and young people in watchhouses between 2019 and 2022.⁹² The Queensland Police Service reviewed this practice and, in September 2022, announced a ban on the use of spit hoods in police watchhouses. Spit hoods have since been removed from police watchhouses, however further protections are needed to ban their use through legislation.

The Queensland Police Service reports that over 2021–22, there were 2490 instances of force^{xxi} used by police on children and young people. 62 per cent of these were on Aboriginal and Torres Strait Islander children and young people, and 80 per cent were on males. In at least 77 incidents, the child or young person was injured as a result. There were 333 reported instances where force was used on children under 14 years of age.⁹³

With the commencement of the new *Strengthening Community Safety Act 2023*, we are concerned that fewer children and young people will be diverted from the youth justice system creating further pressure on detention centres. The inevitable consequence will be more children and young people held in police watchhouses for longer, exposing them to unacceptable physical and psychological harm. As the data shows, Aboriginal and Torres Strait Islander children and young people will be disproportionately impacted by this decision.

xx *Commissioner of Police v David Taylor* (a pseudonym) [2023] QChCM 2. <https://archive.sclqld.org.au/qjudgment/2023/QChCM23-002.pdf>

xxi Use of force includes firearm, taser, spithood, batons, oleoresin capicum (oc) spray, open/closed hand tactics, restraining accoutrements, police dog, police horse, other object and police pursuit. Timeframe covers July 2021 to June 2022.

Criminalising children and young people in care

Children and young people with experience in out-of-home care are at particular risk of having contact with the youth justice system. In its 2019 concluding observations, the UN Committee highlighted the over-reliance on police and the criminal justice system when dealing with children and young people's behavioural problems and an under-reliance on appropriate therapeutic services.⁹⁴

Government youth justice data shows that, on 30 June 2022, 3.8 per cent of children and young people on a child protection order were also on a youth justice order. For Aboriginal and Torres Strait Islander children and young people this figure increased to 5.9 per cent.⁹⁵ This data excludes children and young people who are remanded in custody or on conditional bail programs, and so the actual figure is likely to be significantly higher. Data from the 2022 Queensland Youth Justice Census shows that 28 per cent of children and young people in detention were on an active child protection order.⁹⁶ The Australian Institute for Health and Wellbeing has previously reported an overlap of 54 per cent.⁹⁷

Case study

The following information is an extract of a recent case heard in the Mt Isa Magistrate Court on 3 February 2023. The full decision can be found online in the [Childrens Court of Queensland library](#). This case was selected as it summarises familiar experiences of children and young people in out-of-home care and all-too-common breaches of their rights, including access to education and facilitation of family contact.

A review of Isla's (pseudonym) circumstances for the bail applications disclosed the following causes of Isla's offending since going into the care of Child Safety:

- Isla was placed in a care home with girls who are known juvenile property offenders and she has bonded with those girls. It is reasonably clear that this is what led to her property offending, though it is not in evidence that these particular girls are her co-accused on the current offences.
- Isla has had four different Child Safety case workers. It is not difficult to see how such a fragmented relationship with Child Safety could be perceived by Isla as a lack of care and, figuratively, drive her into the arms of her anti-social peers, from whom she can expect more meaningful acceptance and interaction.
- Isla has not attended school, despite expressing desire to attend school and even to play basketball at school. On 31 January, almost 5 months after she came into the care of Child Safety, Isla still did not have an enrolment, so there is still no school she can attend.
- Isla has not seen her siblings or had consistent contact with them. Her younger siblings, for whom she was often a primary carer, are now also in the care of Child Safety and are placed in a remote community to which Isla has previously had substantial connection. A Christmas visit to her siblings was arranged by Child Safety but Isla missed the plane. Isla told the Court that she had no idea a visit had been arranged.

The QFCC has found that children living in out-of-home care often receive harsher treatment when they come into contact with the criminal justice system, compared with other children.⁹⁸ For example, they are more likely to be refused bail due to lack of appropriate accommodation within the community. Children known to both the child protection and youth justice systems have a greater likelihood of experiencing poorer life outcomes, such as poor mental and physical health and increased difficulties connecting to their culture and accessing education, employment and housing.

“ And they didn’t give my mum a chance. They just stole me...I reckon if I stayed, if I wasn’t in child safety, I would’ve got to know my culture... I was learning a bit of language when I was younger with all my family, my Dad’s brother and now, I hardly know any of my culture. I could’ve known.

Male, 17 years, Yarning for Change

In a recent Children’s Court case involving a 16-year-old with cognitive impairment, the magistrate had no option but to deny the young person bail, despite the young person already serving 44 days in detention, as Child Safety was not able to provide an appropriate placement that would meet his needs (his cognitive ability was assessed to be of a child aged approximately 5–6 years).⁹⁹

When the government removes children and young people from their parents, it assumes the role of both guardian and duty bearer. The government has a responsibility to ensure that children and young people in the child protection and youth justice systems are properly cared for and live a full life. It must work towards what is in the best interests of the child or young person.

Health and wellbeing

Children and young people in the youth justice system have higher rates of mental health concerns, traumatic experiences and cognitive and intellectual disabilities.^{100,101} Evidence shows that their experience in the youth justice system not only leads to further trauma and poorer health but increases the likelihood of reoffending.^{102,103}

The QFCC heard from young people that attending programs helped keep them strong while in detention. However, they said they did not always have access to programs, and this was a particular issue for girls.¹⁰⁴

“ They have programs sort of much easier and better. But this side doesn’t have programs, whereas that side, they go to school, get programs and what not.

Female, 16 years, Yarning for Change

Mental health, alcohol and drugs

Adverse childhood experiences and trauma are drivers of offending behaviour.¹⁰⁵ Multiple adverse childhood experiences have a cumulative effect on children and young people’s brains, wellbeing and development. They contribute to poorer health outcomes and increase the likelihood of significant social disadvantage.^{106,107} 2022 youth justice census data estimates that 35 per cent of children and young people in youth justice custody had at least one mental health or behavioural disorder (suspected or diagnosed) and 83 per cent used at least one substance (alcohol, tobacco or other drug). 40 per cent used ice and other methamphetamines.¹⁰⁸

Available data also shows that children and young people are self-harming and attempting suicide while in detention in Queensland (Table 3.3). Research has found that adverse childhood experiences are a major risk factor for suicide in children and young people involved in the youth justice system.¹⁰⁹ Youth justice census data from 2022 shows that 39 per cent of children and young people in youth detention had been living in unstable or unsuitable accommodation, 56 per cent had experienced domestic and family violence and 35 per cent had a parent who had also been in custody.

Table 3.3. Incidents of self-harm and attempted suicide of children and young people in custody, not requiring hospitalization (Queensland, 2021–22)

	No. of children
Aboriginal and Torres Strait Islander	52
Non-Indigenous	112
Total	164

Source: Australian Government Productivity Commission Report on Government Services 2023: Youth justice services.

In Queensland, youth justice staff assess any mental health, suicide or self-harm concerns disclosed by young people or their parents/carers. Staff are responsible for maintaining safety and risk management plans as part of the case plan implementation and review process. They collaborate with Queensland Health and community health stakeholders to ensure appropriate mental health supports are in place for young people. They identify relevant engagement strategies to implement as part of the programs and services being delivered to reduce reoffending. Multi-Agency Collaborative Panels (MACPs), involving relevant government and non-government organisations, also work together to address the underlying factors that contribute to offending by young people.¹¹⁰

The Forensic Child Youth Mental Health Service also provides a range of services across the state, including a Court Liaison Service and therapeutic support to children and young people in detention centres and on community-based orders. These services are offered by various teams across the state. However, there is inequity in the provision of services, with limited access to mental health assessments and services, particularly for children and young people in regional and remote areas.¹¹¹ The mental health system is facing pressure due to the rise in children and young people with very acute needs being held in watchhouses. In addition, staffing shortages in youth detention centres limit children and young people’s access to services.

The impact of some of these issues has been highlighted in the Queensland Children’s Court Annual Report:

“The Forensic Child Youth Mental Health Service continues to provide significant services to children throughout the State, but they continue to be chronically understaffed. They assess children as required at the Childrens Court and they treat young people whilst in detention, when they are released on bail and when they are on other orders. They are unable to provide assessments or reports to the Childrens Court of Queensland. It remains a significant concern that there is a chronic shortage of mental health professionals that are able to assist young people in the youth justice system, both at the assessment and treatment stage. It leads to large delays in the resolution of charges and leaves children’s significant mental health issues untreated.”^{xxii}

xxii Childrens Court Report 2021–22. <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>

The United Nations *Beijing Rules* outline that to aid young people’s reintegration into society they must be protected and supported in their educational, social, vocational, psychological, medical and physical needs, based on their age, sex and personality.¹¹² Youth detention in Queensland is not rehabilitative; it does not prevent traumatised children and young people from re-offending.¹¹³ The statutory system is inflicting further harm on children and young people by subjecting them to methods of torture and inhuman treatment, as described in the previous section. Without addressing the root cause and social determinants of offending behaviour, we cannot expect children and young people to leave detention healed and with the tools necessary to live productive lives.

Disability

In addition to protections under the UNCRC, the *United Nations Convention on the Rights of Persons with Disabilities* states that people with disability have the right to effective access to justice on an equal basis with others, including through the provision of appropriate accommodations.¹¹⁴ In their 2019 concluding observations, the UN Committee urged that children and young people with disability must not be detained indefinitely without conviction and their detention should undergo regular judicial review.¹¹⁵

“The identification and management of cognitive impairments is an area that presents a significant gap in the youth justice arena. The lack of identification of impairments can lead to significant miscarriages of justice when capacity issues arise and the poor management of impairments inhibits a young person’s ability to understand and engage with the court process.”^{xxiii}

In 2022, it was estimated that 12 per cent of children and young people in detention in Queensland had foetal alcohol spectrum disorders (diagnosed or suspected) and 37 per cent had a least one cognitive, intellectual, physical or sensory disability (diagnosed or suspected).¹¹⁶ This data is captured by case managers/workers and should therefore be treated with caution. While there is a lack of comprehensive data on children and young people with disability in the youth justice system, data that is available shows that they are over-represented in the youth justice system.

In Queensland, multi-disciplinary teams operate in youth detention centres to assess and provide supports for young people with a diagnosed or suspected disability. Youth justice staff work with the Department of Education and Queensland Health to provide supports for physical disability, learning disability, developmental delay and foetal alcohol spectrum disorder while children and young people are in detention. Justice liaison officers, provided by the National Disability Insurance Agency (NDIA) are also available to assist families and other service providers with navigating the NDIS system and ensuring children and young people get service packages appropriate to their needs.¹¹⁷ However, while in custody the youth justice system is responsible for the daily care and support needs of the child or young person, which means that while in custody children and young people may not receive funded supports from their NDIS plan.¹¹⁸

In 2018, speech-language pathologists were introduced in Queensland youth detention centres. They work directly with children and young people to support diagnosis and provide necessary programs. They also work with stakeholders to support case management and continuity of service as children and young people prepare to exit detention. The speech-language pathologists have developed plain language documents to support children and young people’s induction to detention, and help them understand the legal system.

xxiii Childrens Court Report 2021–22. <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>

Youth Justice advised the QFCC that further work is underway to strengthen the way the system works with children and young people with disability, including:

- developing and embedding screening tools to help staff identify when a child or young person has a suspected disability
- working with partner agencies to improve assessment methods and whole-of-government services to children and young people with disability
- developing a neurodevelopmental framework for practice, outlining the knowledge, skills and attitudes required of staff working with children and young people with disability
- developing practice standards for all staff when working with children and young people with disability, outlining expectations of all youth justice workers.

Assaults

The UNCRC states that governments must do all that they can to ensure that children and young people are protected from violence and abuse (Article 19, UNCRC). In its review of government services, the Productivity Commission reports on ‘assaults in custody’ as a measure of whether the government is providing a safe and secure environment for children and young people in detention (see Table 3.4).¹¹⁹ This data does not speak to children and young people’s views and experiences of safety and security while in youth detention or police custody.

Table 3.4. Incidents of children and young people in custody with injuries as a result of an assault (excludes serious assaults) (Queensland, 2021–22)^{xxiv}

	No. of children
Aboriginal and Torres Strait Islander	67
Non-Indigenous	30
Total	97

Source: Australian Government Productivity Commission Report on Government Services 2023: Youth justice services.

Note. Data reported for this indicator need to be interpreted with caution. The thresholds for recording an assault and the extent to which minor injuries are included may differ across jurisdictions.

Education

The 2022 youth justice census data shows that 45 per cent of children and young people in Queensland detention had totally disengaged from education, training or employment.¹²⁰ The Productivity Commission’s data indicates that 100 per cent of children and young people in youth detention in Queensland are enrolled in an education or training course.¹²¹

A recent case heard in the Cairns Children’s Court reveals that out of the 94 days a young person spent in youth detention, largely in separation, there is evidence of her attending the education unit on one day only.

^{xxiv} The types of actions that constitute assaults include intentional acts of direct infliction of force and violence (for example, fistfights) and intentional acts of indirect and nonconfrontational force or violence (for example, administering illicit drugs or poison, spiking food or drink, and setting traps). Types of injuries include bruises, cuts or lacerations, open wounds, fractured or broken bones or teeth, burns or scalds, poisoning, dislocations and sprains, and concussions.

“ On the question of access to educational programs, the evidence is to the effect that for the entire time the child has been remanded in detention, she has attended the education unit at [Detention Centre] for one day only. It is possible, on the most favourable construction of the documents, that she may have attended the education unit on another day. But there is no dispute that that is the highest it goes. That is, while the child has been in detention, she has not been afforded adequate access, or indeed almost any access, to education. If she were released on bail there is a plan, at least, to seek her enrolment in year 11 at high school; something which is clearly in her interests, but more importantly in the interests of the community.

Magistrate Fantin, Cairns^{xxv}

Despite high levels of disengagement from education prior to entering youth justice, children and young people in the statutory system value education and feel that it's essential to achieving better life outcomes.¹²²

“ I loved school. School was amazing. There was at a point where I didn't like going to school, I actually wanted to give up and just drop out, but I stuck it through because I wanted to finish it for my family.

Female, 18 years, Yarning for Change

The UN Committee has stated that every child or young person of compulsory school age has the right to education that is tailored to their needs and abilities and is designed to prepare them for a return to society and future employment.¹²³ Attention should be given to children and young people who disengage from education, as the data shows that this is a tangible precursor for offending behaviour.

Transition planning

Limited data is available regarding children and young people's experience with transitioning out of youth detention and any supports provided. The Productivity Commission has proposed a future indicator, 'secure housing on exit', as a measure of the government's objective of assisting young people in detention to return to the community.¹²⁴ Evidence shows that a lack of suitable housing options contribute to an increased risk of incarceration.¹²⁵

Young people told us that poor transition planning and delays in accessing services resulted in them reoffending once they were released from detention.¹²⁶ This is a particular concern for children and young people transitioning from detention back to residential services provided by Child Safety, where a housing placement is not always confirmed until a child or young person is given bail, leaving insufficient time for appropriate transition planning.

xxv *Director of Public Prosecutions v JG* [2023] QChC 3. <https://archive.sclqld.org.au/qjudgment/2023/QChC23-003.pdf>

“ As far as I can determine Jane’s (pseudonym) offending and failure to engage with probation is directly linked to the fact that she does not have somewhere suitable to live and has limited access to helpful adults who can help her develop the life skills she needs...When Jane does not have suitable accommodation, she goes hungry and steals food. When Jane does not have suitable accommodation, she must spend time in company of adults who behave in anti-social ways that expose her to profound risks. When Jane does not have suitable accommodation, she spends time on the street associating with other bored children and, together, they formulate and carry out plans to enter businesses and homes and to steal cars.

Magistrate Mac Giolla Ri, Mt Isa^{xxvi}

“ I’ve told child safety and everyone not to leave it a week. Like, I want all my support straight away before I get distracted and go do some dumb shit. What happened, they say, ‘Oh, we can’t see you today. We have to see you next week.’ Look what happened. I had nothin’ else to do so I went on the drugs straight away.

Male, 17 years, Yarning for Change

MACPs play an important role in transition planning to ensure that a young person at high-risk of offending has appropriate wrap-around supports from government and non-government agencies upon release from detention. On 1 March 2022, the newly established 72-hour release plans commenced across Queensland. They are designed to ensure that immediate needs and supports are in place when a child or young person is released from youth detention. They provide better information sharing and more structured engagement of children and young people exiting detention. As of 30 June 2022, 293 plans had been completed for children and young people across the state.¹²⁷ Ensuring children, young people, families and communities are actively involved at all stages of transition planning, and their perspectives are taken seriously, is critical to their success.

The QFCC supports the establishment of MACPs in legislation.^{xxvii} While the key agencies are predominately Youth Justice and the Queensland Police Service, MACPs provide an opportunity for other relevant agencies to be involved in the planning and implementation of the 72-hour release plans and transition more generally (for instance, Child Safety and Housing).

Through *Yarning for Change: Listen to my voice*, we heard that relationships are critical to keeping children and young people out of the youth justice system.¹²⁸ Cultural supports and continuity of relationships must be embedded into MACPs and their focus must continue to be on diversion. Early intervention, minimal criminal justice system intervention, activities that promote rehabilitation and proactive community engagement are critical to breaking the cycle of offending and detention.

xxvi Commissioner of Police v Jane Dean (a pseudonym) [2022] QChCM 3. <https://archive.sclqld.org.au/qjudgment/2022/QChCM22-003.pdf>

xxvii The MACP system was inserted as Part 8A of the *Youth Justice Act 1992* by the *Strengthening Community Safety Act 2023*.

Culture and identity

Relationships and culture are critical to children and young people’s wellbeing. Sound relationships keep them strong, influence their behaviours and sustain them when incarcerated or removed from their families. They also help young people stay motivated to engage with supports and participate in diversion programs. Connection to Elders, culture, family, kinship and community is critical to keeping children and young people out of the youth justice system.¹²⁹

Data is not yet available to report on children and young people’s ‘family engagement with youth justice services’. The Productivity Commission has proposed three indicators designed to measure the importance of families and the involvement of communities, particularly Aboriginal and Torres Strait Islander communities:¹³⁰

- the proportion of young people participating in group conferencing whose family is engaged
- the proportion of young people subject to community-based supervision whose family is engaged
- the proportion of young people subject to detention-based supervision who have contact with their family.

Data provided by Youth Justice shows the proportion of youth justice detention centre and service centre staff who identify as Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and female (Table 3.5). Research has shown that Aboriginal and Torres Strait Islander staff are important in creating a safe environment for children and young people while in detention.¹³¹ These staff members can provide cultural support, bridge communication gaps and create a more culturally safe and sensitive environment for children and young people. Similarly, culturally and linguistically diverse and female staff are important in responding to the unique needs of children and young people in the youth justice system.

Table 3.5. Proportion of youth justice detention centre and service centre staff who identify as Aboriginal and Torres Strait Islander, culturally and linguistically diverse, and female (Queensland, 2023)

Staff	Aboriginal and Torres Strait Islander	Culturally and linguistically diverse*	Female
Total	7.49%	3.28%	55.41%

Source. Department of Youth Justice, Employment, Small Business and Training.

Note. Data is current at 10/02/2023 and subject to change.

*Speaks a language other than English at home.

Family-led decision-making

Family-led decision-making (FLDM) is a key initiative of the *Working Together Changing the Story, Youth Justice Strategy Action Plan 2019–2021*. FLDM uses a culturally safe decision-making process that involves Aboriginal and Torres Strait Islander families, community stakeholders (including community-controlled organisations) and Youth Justice officers. It empowers Aboriginal and Torres Strait Islander families to make positive decisions that affect their child’s behaviour, safety and ongoing needs.

In Queensland, FLDM has been trialled in four sites (Brisbane and Moreton Bay Region, South-east Region, Toowoomba and Cairns), led by Aboriginal and Torres Strait Islander community-controlled organisations.¹³² On 31 March 2023, there were 61 service outlets, of which 24 were Aboriginal and Torres Strait Islander community-controlled organisations or businesses. These organisations receive approximately a third of all youth justice outsourced service delivery funding across Queensland in 2022–23.¹³³

On Country program

In 2021, the state government committed about \$5.6 million over four years to pilot the On Country program in three sites. The program targets Aboriginal and Torres Strait Islander children and young people who have repeatedly come into conflict with the law and have high and complex needs. The programs are designed and led by Aboriginal and Torres Strait Islander community-controlled organisations to:

- reduce rates of offending and reoffending
- strengthen children and young people's cultural and spiritual connections through the active efforts and participation of local community leaders, Elders and Traditional Owners
- strengthen family relationships, community connections and positive self-identity
- re-engage children and young people with education, training and employment
- refer children, young people and families to other support services.¹³⁴

In 2021–22, 150 children and young people participated in the On Country program led by community-controlled organisations. For example, On Country healing camps (funded through Community Partnership Innovation Grants) are being delivered by Jabalbina Yalanji Aboriginal Corporation in Far North Queensland.

In August 2022, the government announced funding to extend the existing programs to provide intensive support to young people exiting custody, particularly in the 72 hours post release when they are most vulnerable and at the highest risk of reoffending.¹³⁵

Murri Courts

Murri Courts operate within the Magistrate Court framework but they link Aboriginal and Torres Strait Islander defendants to culture and services with a focus on rehabilitation. Elders or respected persons from the community are present in Murri Court to help the Magistrate understand the lives and culture of Aboriginal and Torres Strait Islander people.

There are currently 14 locations throughout Queensland where Murri Courts operate, but Youth Murri Court only operate in some of the Magistrates Court jurisdictions. A pilot program operates in the Childrens Court of Queensland in Cairns, however uptake is low.¹³⁶ The Murri Court evaluation found a strong desire to have more Youth Murri Courts operating throughout the state.¹³⁷ The courts have also acknowledged that more needs to be done to make the Childrens Court and Childrens Court of Queensland more relevant for Aboriginal and Torres Strait Islander people.¹³⁸

Data gaps

Collecting statistical data and other information is critical for monitoring implementation of the principles and provisions of the UNCRC. The following gaps have been identified:

- the direct voices of children and young people who are being profoundly impacted by systems
- children and young people's experience of safety and security while in detention
- children and young people's access to therapeutic mental health services and assessments across the youth justice system
- children and young people's access to disability services and assessments across the youth justice system
- evidence of the involvement of family and kin in the services provided and decisions impacting children and young people
- reliable information on the rates and circumstances of children and young people on dual orders (child protection and youth justice).