

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

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Dear Committee Secretary

I appreciate the opportunity to have appeared before the Committee on 24 November 2023 and to submit this written response to the *Inquiry into Youth Justice Reform in Queensland*. As Commissioner of the Queensland Family and Child Commission (QFCC) it is my role to advocate for the rights, safety and wellbeing of children and young people and continue to set high benchmarks for Queensland systems to support children, young people, and their families. In fulfilling my role, I am guided by listening to the firsthand experiences of children and young people in the youth justice system in Queensland.

In August 2023, the QFCC released the *Queensland Child Rights Report 2023*,<sup>1</sup> which included a significant chapter on the youth justice system in Queensland. The report highlights many of the issues already raised with the Committee, therefore rather than reiterating evidence already presented, I will summarise that I remain deeply concerned about:

- the government's decisions to override Queensland's Human Rights Act, particularly when that decision affects the human rights of children
- the over-representation of Aboriginal and Torres Strait Islander children and young people in the youth justice system, which is disconnecting children and young people from Country and community and ensuring the cycle of intergenerational trauma continues
- the failure to raise the minimum age of criminal responsibility to at least 14, in accordance with United Nations recommendations, which creates a pathway to early arrest of young children, particularly First Nations children, and which ignores evidence that the earlier children have contact with police, the greater their likelihood of re-offending
- the practice of detaining children and young people in adult facilities such as police watchhouses and stations, which is disproportionately affecting Aboriginal and Torres Strait Islander children and young people who spend longer in watchhouses and stations<sup>2</sup>
- the practice of isolating children and young people (also known as separation and 'night mode') in youth detention facilities due to staffing shortages, including children and young people with disabilities, resulting in compromised basic rights.

In 2018, the British Medical Association called for the isolation of children and young people in UK detention centres to be abolished and prohibited:

**There is an unequivocal body of evidence on the profound impact solitary confinement can have on health and wellbeing.** Various studies indicate an increased risk of suicide or self-harm amongst those placed in solitary confinement. As children are still in the crucial stages of developing socially, psychologically, and neurologically, **there are serious risks of solitary confinement causing long-term psychiatric and developmental harm.** There is also clear evidence that it is counter-productive. Rather than improving behaviour, solitary confinement fails to address the underlying causes, and creates problems with reintegration.<sup>3</sup>

Unlike the child protection system, there is no internal agency review when a child or young person who has had contact with the youth justice system dies or there is a critical incident. Such reviews identify system failures, harmful practices, opportunities for intervention, including mental health support. Without an internal agency review for each child and young person, practices, such as isolation, that may lead to, or significantly contribute to, suicide or self-harm is hidden.

### Risk factors and lack of responses

The UN's Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, found that isolation will exacerbate any existing mental health conditions.<sup>4</sup> In Queensland it is reported that 33 percent of children in the youth justice system (including community-based supervision and youth detention) have a suspected or diagnosed mental health or behavioural disorder and 27 percent a suspected or diagnosed disability.<sup>5</sup> While these percentages are significantly higher than for the general community, they are higher again for the approximately 280 children in detention in Queensland on a given day

Children who progress deeper in the justice system are more likely to have experienced abuse and neglect, have mental health problems and be developmentally delayed.<sup>6</sup> The ground-breaking 'Banksia Hill study' (2018) found that 9 out of 10 children in Western Australia's Banksia Hill youth detention centre had severe neurodevelopmental impairment. These included problems with executive function, memory, cognition, attention and social skills.<sup>7</sup> There is no reason to expect the data for Queensland children in youth detention would be significantly different. An analysis of "adverse childhood experiences" and trauma among young people under youth justice supervision in South Australia (2022) also found 9 in 10 experienced a combination of maltreatment and household dysfunction.<sup>8</sup>

Currently in Queensland there is no way for children in the youth justice system who have been diagnosed with an intellectual impairment or developmental delay to be exited from the criminal system into health or disability support. Children with developmental disorders, or disabilities should not be in the youth justice system at all.

I continue to advocate for a comprehensive and collaborative approach to youth justice that focuses on early intervention and family support, addresses the key risk factors for youth offending behaviours and recognises that for many children and young people they themselves are victims - they experience higher rates of domestic and family violence and higher rates of abuse and subsequent removal by child protection. **A youth justice response will not address those risk factors and reduce youth offending.**

In Australia, and internationally, there is well-established link between experiences of family violence, and participation in youth offending. Large-scale quantitative studies and meta-analyses highlights a link exists between experiences of family violence and child abuse, and youth offending.

As highlighted in the 2022 Youth Justice Census, 53 percent of children in the youth justice system have experienced or been impacted by domestic and family violence. We expect, similar to 2019 Census results, First Nations children in youth justice would be victims of domestic and family violence at a higher rate, at least 10 percentage points higher than non-Indigenous youth justice cohort.

The failure to address domestic and family violence within family and community settings are key contributors to youth offending behaviour. We know that the more adverse childhood experiences, and maltreatment in adolescence, the greater the likelihood of participation in youth offending.

The crossover between children in the youth justice system and the high number of their families known to child protection (94 percent in the South Australian study) provides further evidence of families under strain and needing much more support from through ensuring equitable access to universal services, early intervention and targeted specialist support services rather than an overreliance on tertiary responses within the statutory child protection or justice systems.

The timing of child maltreatment and abuse is also a factor - young people whose maltreatment is chronic and persists from childhood into adolescence, or that starts in adolescence, are much more likely to be involved in crime and the juvenile justice system than those whose maltreatment is limited to their childhood<sup>9</sup>. This highlights the importance of early intervention - both early in life and **early in the pathway**.

In Queensland, the number of children on dual orders (that is a current child protection order and youth justice order) is 28 percent. While children on a child protection order are under the guardianship of the government, they often fall between the gaps in care and support, especially mental health, ensuring a safe environment when self-placing as an adolescent, and education.

Disengagement from education and low educational attainment are further risk factors for youth offending behaviour. Despite a focus on youth disengagement, the education system is still failing to provide educational opportunities for all children, including First Nations children (retention rates from Year 7 to Year 12 is only 63 percent) and those in out-of-home care (child protection). These failures are evident in Queensland, with 45 percent of those in youth justice system, totally disengaged from education, training, or employment.

For many of the children in the youth justice system, they have or are experiencing multiple and compounding factors, which a juvenile justice response will not address, nor will youth justice responses prevent contact with the system and reduce further escalation.

An emphasis on addressing underlying issues and risk factors before involvement in the justice system is key to achieving long term decline in youth crime. The solutions and responsibilities for promoting and protecting the rights of children and young people and the safety of communities exists largely outside of the youth justice portfolio and the formal criminal justice system.

## Child rights-based approach to youth justice

The first principle of Queensland's Charter of Youth Justice principles states the community should be protected from offences and, in particular, recidivist high-risk offenders. A long-term approach is needed to achieve this goal.

A child rights-based approach would encompass all the systems that can help prevent the entry of children into the youth justice system. For example, some children are still being diagnosed with a health issue for the first time while in detention. Instead, Queensland needs:

- universal health screening for 0-5 year olds to identify and treat health matters or disabilities that may detract from positive school, family and community participation
- more consistent, culturally affirming and free family support for poor families and families in regional and remote Queensland, noting that 71 percent of young people in youth justice come from the bottom two socio-economic quintiles<sup>10</sup>
- strengthened support for schools to introduce alternatives to suspending or excluding children whose behaviour is a result of unmanaged health matters or disabilities
- better access to a range of accommodation options for young people, especially those who are exiting from detention
- more funding for community-controlled organisations offering proven models of integrated support
- integration of culture and identity in healing trauma.

A rights-based approach also grants children, families and victims of crime the right to express their views freely, including in any court or related activities like diversion. Justice reinvestment would direct resources to communities to make decisions about early intervention programs. Participation of the child in decisions affecting them applies equally to matters of health, education, living arrangements and child protection.

Consequently, I emphasise the necessity for a cohesive, long-term plan that protects the rights of all children and promotes integrated responses. I strongly advocate for the development and implementation of a dedicated Children's Plan for Queensland that will:

- establish a clear vision for children and childhood in Queensland
- provide a long-term, comprehensive and overarching framework for all policy and decision-making that affects children, with clear investment commitments and implementation plans to ensure they are translated to effective action, and independent oversight to promote transparency and accountability
- place children at its centre, be informed by children themselves, and understand children holistically in the various contexts of their ecologies – their families, schools, communities – no matter where they are.

While there have been certain advances in Queensland with various plans and strategies aimed at benefiting children and young people, the system still lacks cohesion, leading to instances where children

and young people do not receive the support and services they and their families need. A Children's Plan will address the individual, social and economic dimensions of childhood, including the macro forces and structures that shape and determine children's experiences and outcomes from birth and throughout their lives. The Children's Plan would explicitly link to the United Nations Convention on the Rights of the Child and the *Queensland Human Rights Act 2019* to support the political commitments made to these documents. A dedicated and appropriately resourced Children's Plan can embody expressed commitments and shared accountability among all stakeholders and provide transparency to the government and communities.

The current approach to youth justice is ineffective and inconsistent with upholding child rights. Taking a child rights approach will not only improve outcomes for children and young people but also improve community safety and alleviate cost pressures on the system. Reform of the youth justice system should be guided by the United Nations Committee on the Rights of the Child *General comment No. 24 (2019) on children's rights in the child justice system* which provides contemporary guidance for implementing a youth justice system that promotes and protects children's rights. This approach aligns with the recommendations of the *Atkinson Report on Youth Justice*, focusing on early intervention, keeping children out of court and custody, and reducing re-offending.

The *Atkinson Report on Youth Justice* highlighted the need for a focus on education, vocational training and employment. It suggested increasing options for police to divert children who have committed offences 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.

As I highlighted during the hearing and in written follow up, there are international examples of alternatives to custody that have proven positive outcomes by emphasising proactive and family-centred strategies. The Justice Reform Initiative has published a report citing international, national and local intervention programs, alternatives to policing and mainstream court processes, bail support and in-prison programs.<sup>11</sup>

## What the Queensland government can do

- 1. Implement a comprehensive Children's Plan for Queensland, which is appropriately funded and resourced to coordinate strategies and actions across government to better protect, promote and uphold the human rights of all children and young people in Queensland.**
2. Greater respect for children and young people's rights and for their voices to be heard and taken seriously – from the reform stage through to children and young people having a say about youth justice outcomes and transitioning out of the system. Equally, the community, especially those affected by crime, have the right to participate in developing solutions.
3. Effective evidence-based early intervention and prevention should be the focus to prevent children and young people from entering the system. The system needs to shift away from punitive measures to a more comprehensive and community-centred approach that prioritises restorative justice and equitable universal service access to end the cycle of poverty for all children.

4. To enable community discussion about evidence informed solutions, public education about the roles of the judicial and parliamentary systems, and the Queensland Human Rights Act, should be appropriately resourced. Similarly, specific strategies for correcting misinformation that cultivates fear are necessary to build public confidence.
5. Children and young people who have committed serious or violent offences need the opportunity to rehabilitate. Clear assessment of a child or young person's needs should determine the most effective response, including applying the principle of *doli incapax*. Trauma-informed care that addresses unmet needs and drivers of youth offending behaviours must be available early and to all, regardless of where they live, or whether they have entered a guilty plea, or been found guilty. Failing to address the root causes of offending perpetuates the continuation of such behaviours.
6. A skilled and adequately resourced workforce across the system is critical. Workforce planning should be undertaken to ensure that all parts of the system are staffed appropriately and are delivering therapeutic, trauma responsive and culturally appropriate support to children and young people in conflict with the law and those impacted by crime.
7. The Queensland government has committed, through the National Agreement on Closing the Gap, to be accountable for addressing Priority Reforms and socio-economic targets. This means developing strong partnerships with Aboriginal and Torres Strait Islander organisations to support thriving communities and self-determination and building and maintaining a strong Aboriginal and Torres Strait Islander community-controlled sector with sufficient resourcing to design and lead youth justice responses for children, young people and families. Family-led decision-making should be expanded across Queensland. On current trends, Queensland will struggle to achieve the Closing the Gap target for *outcome 11: reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30 per cent by 2031*. Create formal and transparent regulatory mechanisms for considering all future proposed legislation and policy change so that any impact on diverse communities, the Queensland Human Rights Act and on other commitments such as Closing the Gap, can be assessed prior to becoming law.
8. Review recent legislative and policy changes and the programs and practices that have been introduced to ensure alignment with the Queensland Human Rights Act and the Charter of Youth Justice Principles.
9. Divert children and young people from the system at the earliest stage possible. Redirect investment into evidence-based diversion programs that steer children and young people away from the criminal justice system and increase overall access to diversion programs.
10. Detention should be a measure of last resort, only when diversion has failed. Incarceration has been proven to have harmful effects, particularly on children and young people, and it perpetuates inequalities such as a lack of consistent access to quality health, education and therapeutic programs.
11. Where detention is necessary, detention practices should reflect international human rights standards, with a focus on therapeutic interventions and rehabilitation. An emphasis should also be placed on keeping children and young people connected to culture while in detention. Relationships and culture are critical to children and young people's wellbeing and to keeping them out of the youth justice system.



12. As standard practice (enacted through legislation), require comprehensive internal reviews by youth justice, which are provided to the Child Death Review Board, when a child or young person who has had contact with the youth justice system dies or suffers serious physical injury. The internal review must include information from other relevant government agencies involved in providing services to that child such as health and education.
13. Enhance support for children and young people during their transition out of detention, with a focus on successful reintegration into community and safe housing upon release.

If you or your officers have any queries in relation to this matter, they may contact me via email at [REDACTED].

Yours sincerely

[REDACTED]

**Natalie Lewis**  
**Commissioner**  
**Queensland Family and Child Commission**  
10 January 2024

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<sup>1</sup> The state of Queensland (Queensland Family and Child Commission), 2023, *Queensland Child Rights report 2023*, available from <https://www.qfcc.qld.gov.au/child-rights/report>

<sup>2</sup> The state of Queensland (Queensland Family and Child Commission), 2023, *Who's responsible: understanding why young people are being held longer in Queensland watch houses*, available from <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who's-responsible>

<sup>3</sup> British Medical Association, 2018, *Joint Position Statement on solitary confinement of children and young people*, available from <https://www.bma.org.uk/media/1859/bma-solitary-confinement-in-youth-detention-joint-statement-2018.pdf>

<sup>4</sup> United Nations, 2011, *Interim report of the Special Rapporteur of the Human Rights Council of torture and other cruel, inhuman or degrading treatment or punishment*, available from <https://digitallibrary.un.org/record/710177?ln=en#record-files-collapse-header>

<sup>5</sup> Department of Youth Justice, 2022, *Youth Justice census summary*, available from [https://desbt.qld.gov.au/\\_\\_data/assets/pdf\\_file/0022/17086/census-summary-statewide.pdf](https://desbt.qld.gov.au/__data/assets/pdf_file/0022/17086/census-summary-statewide.pdf)

<sup>6</sup> Cashmore, J. 2011. *The link between child maltreatment and adolescent offending: Systems neglect of adolescents*, Australian Institute of Family Studies available from: [https://aifs.gov.au/sites/default/files/fm89d\\_0.pdf](https://aifs.gov.au/sites/default/files/fm89d_0.pdf)

<sup>7</sup> Bower C., Watkins R., Mutch R., et al, 2018, *Prevalence of Foetal Alcohol Spectrum Disorder Among Young People in Youth Detention in Western Australia*, Telethon Kids Institute, available from <https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/>

<sup>8</sup> Malvaso C., Day A., Cale J, et al, 2022, *Adverse childhood experiences and trauma among young people in the youth justice system*, Australian Institute of Criminology, available from [https://www.aic.gov.au/sites/default/files/2022-06/ti651\\_adverse\\_childhood\\_experiences\\_and\\_trauma\\_among\\_young-people.pdf](https://www.aic.gov.au/sites/default/files/2022-06/ti651_adverse_childhood_experiences_and_trauma_among_young-people.pdf)

<sup>9</sup> Cashmore, J. 2011. *The link between child maltreatment and adolescent offending: Systems neglect of adolescents*, Australian Institute of Family Studies available from: [https://aifs.gov.au/sites/default/files/fm89d\\_0.pdf](https://aifs.gov.au/sites/default/files/fm89d_0.pdf)

<sup>10</sup> Australian Institute for Health and Welfare, 2022, *Youth Justice in Australia 2020-21*, Table S24a, available from <https://www.aihw.gov.au/about-our-data/our-data-collections/youth-justice>

<sup>11</sup> Justice Reform Initiative, 2023, *Alternatives to incarceration in Queensland*, available from [https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1685393777/JRI\\_Alternatives\\_QLD\\_FULL\\_REPORT.pdf?1685393777](https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1685393777/JRI_Alternatives_QLD_FULL_REPORT.pdf?1685393777)