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16 March 2021

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Committee Secretary

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Legal Affairs and Community Safety Committee on the Youth Justice and Other Legislation Amendment Bill 2021 (the Bill).

The QFCC is a statutory authority of the Queensland Government seeking to give practical effect to the rights of all children and young people in Queensland through awareness, advocacy and accountability. Under the *Family and Child Commission Act 2014* (Qld) the QFCC is responsible for promoting the safety, wellbeing and best interests of children and young people.<sup>1</sup>

The QFCC acknowledges the need to address serious recidivist youth offending and support community safety. However, amendments must be balanced with children's rights under the *Human Rights Act 2019* (Human Rights Act) and the United Nations *Convention on the Rights of the Child*.<sup>2</sup>

This submission suggests opportunities to further safeguard children in contact with the justice system, without compromising the interests of the community. These relate primarily to proposed amendments to the *Youth Justice Act 1992* (the Act), while taking into account the Bill's statement of compatibility with human rights.<sup>3</sup>

In all instances where children are in contact with the justice system, the QFCC advocates for fair and proportionate responses for children that take into account their histories and the extent of their vulnerabilities. These measures are particularly important for Aboriginal children and Torres Strait Islander children, and children with disability, who are overrepresented in youth justice statistics.

<sup>1</sup> *Family and Child Commission Act 2014* (Qld), S4

<sup>2</sup> United Nations 1989, *Convention on the Right of the Child* accessed 03 March 2021  
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

<sup>3</sup> *Youth Justice and Other Legislation Amendment Bill 2021 Statement of Compatibility* accessed 03 March 2021  
<https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2021/5721T196.pdf>

**Bail decision making and youth detention centre capacity**

The *Youth Justice Strategy 2019-2023* (Youth Justice Strategy) and *Youth Justice Strategy Action Plan 2019–2021* demonstrate the Queensland Government's commitment to four 'pillars' of youth justice: intervene early, divert children from court, keep children out of custody, and reduce reoffending. These pillars can be achieved by delivering evidence-based interventions that address the needs of each child.<sup>4</sup>

Any amendments to the Act regarding bail decision-making should place equal weight on all four pillars. The Bill proposes amendments requiring a child accused of an indictable offence while on release to show cause to receive bail.<sup>5</sup> Further work may be necessary to support children at risk of entering detention in this way, to make sure the Queensland Government remains committed to keep children out of custody.

Amendments to the Act regarding bail decision-making must also be applied fairly. The Bill proposes amendments to bail conditions that increase a child's reliance on a parent or another person to support them.

The capacity, capability or willingness of a parent to provide the required support and supervision is outside the control of young people. The success of this provision will rely on the willingness or ability of parents, guardians, or Child Safety to meet these obligations.

Provisions should be put in place to make sure vulnerable children, including children living in out-of-home care, have equal access to bail and funded support to prevent reoffending.

Section 32(3) of the Human Rights Act stipulates 'a child charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation'.<sup>6</sup> The statement of compatibility does not address this section of the Human Rights Act. It would be appropriate for the Committee to seek clarification about how the amendments in the Bill relating to bail decision making will be compatible with this section.

Provisions in the Bill to limit bail access for repeat serious offences could result in the youth detention centres exceeding their safe capacity. As part of our oversight role, the QFCC will seek to monitor the impact of these provisions with a view to protecting the rights, safety and wellbeing of young people.

**Use of GPS electronic monitoring as a condition of bail**

Electronic monitoring devices allow young people an opportunity to remain in their community while on bail. However, they carry social stigmas that have the potential to undermine the rehabilitation of a young person by preventing them from engaging in positive activities (e.g. sport, education, training, and employment).

Electronic monitoring is unlikely to prevent reoffending if children don't have access to the support they need to address their underlying trauma and the behaviours and experiences that lead to offending. These supports could include supported accommodation, health and mental health support, and assistance with education or training to help with future employment.

<sup>4</sup> The State of Queensland (Department of Child Safety, Youth and Women) *Working Together Changing the Story: Youth Justice Strategy 2019–2023* and *Youth Justice Action Plan 2019–2021* p.5-8 accessed 03 March 2021 <https://www.youthjustice.qld.gov.au/reform/youth-justice-strategy>

<sup>5</sup> *Youth Justice Act 1992* (Qld), Schedule 1 Charter of youth justice principles, n. 17.

<sup>6</sup> *Human Rights Act 2019* (Qld), s.32(3).

Research shows children may be less receptive to deterrence measures such as electronic monitoring.<sup>7</sup> This is especially true for children with disability or mental illness,<sup>8</sup> who are overrepresented in youth justice statistics.<sup>9</sup>

The QFCC has spoken to a young person with lived experience in the youth justice system who told us:

Young people need to have a purpose, to feel genuinely cared for and to have somewhere safe to live. We need a holistic approach. If a young person doesn't feel supported, nothing else matters.

Proposed amendments in the Bill would prevent a child on bail with a tracking device condition from living outside a prescribed geographical area.<sup>10</sup> This provision could risk infringing an Aboriginal or Torres Strait Islander child's or family's right under the Human Rights Act to maintain a connection with their ancestral land, by preventing them from moving to live on their ancestral land.<sup>11</sup> It would be appropriate for the Committee to seek clarification about how the amendments in the Bill will be compatible with this section of the Human Rights Act.

To make sure the use of electronic monitoring as a condition of bail is effective, the proposed 12-month trial must be fully and independently evaluated. This would need to include an assessment of the effectiveness as a deterrent to offending, as well as impacts as experienced by the children involved in the trial. The evaluation report should be published to support public confidence.

Additionally, it will be important to determine the kinds of data that the electronic monitoring devices will collect, how the data will be stored, who will have access and how it will be used prior to these amendments coming into effect.

### **Monitoring electronic tracking devices**

The Bill inserts an authority for Queensland Corrective Services (QCS) to undertake the monitoring functions for electronic tracking devices. This includes having personal contact with children to resolve alerts. QCS will need to establish a risk management strategy in the context of these new responsibilities, including making sure staff in contact with children have the appropriate training to work safely with vulnerable children in trauma-informed ways.

### **Aboriginal children and Torres Strait Islander children in contact with the justice system**

Aboriginal children and Torres Strait Islander children, who are overrepresented at all points in the justice system,<sup>12</sup> may be disproportionately impacted by amendments in the Bill. The 2018 *Report on Youth Justice* found differences in the way Aboriginal children and Torres Strait Islander children are treated in the justice system contributes to their overrepresentation.<sup>13</sup>

<sup>7</sup> Henning, Juvenile Justice, supra note 27, at 28 cited in Weisburd, K., (2015) *Monitoring Youth: The Collision of Rights and Rehabilitation* Iowa Law Review; Iowa City Vol. 101, Iss. 1

<sup>8</sup> Ibid.

<sup>9</sup> Bower, C., Watkins, R., Mutch R., et al 2018, *Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia*, BMJ Open 2018 online <https://bmjopen.bmj.com/content/bmjopen/8/2/e019605.full.pdf> accessed 03 March 2021; Jesuit Social Services 2015

<sup>10</sup> Youth Justice and Other Legislation Amendment Bill 2021, Clause 26 proposed new section 52AA(1)(e) p. 23

<sup>11</sup> Human Rights Act 2019 (Qld), s.28(2)(d)

<sup>12</sup> The State of Queensland (Department of Youth Justice) 2019, *Youth Justice Pocket Stats 2018-19* accessed 4 March 2021 <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/pocket-stats-18-19.pdf>

<sup>13</sup> The State of Queensland (Department of Child Safety, Youth and Women) 2018, *Report on Youth Justice* version 2, pp. 107-110 accessed 09 March 2021 <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/youth-justice-report.pdf>

The current youth justice strategy, *Working Together: Changing the Story*, seeks to reduce this over-representation. This focus should continue. Implementation of this Bill should be properly considered to avoid disproportionately impacting Aboriginal children and Torres Strait Islander children. Courts and police should develop culturally safe practices that acknowledge and are respectful of Aboriginal and Torres Strait Islander cultures.<sup>14</sup> Provisions in this Bill should not replace diversionary and restorative practices that address the underlying drivers of offending.

The proposed reforms may increase the demand for legal representation and bail support services. Programs delivering services to Aboriginal children and Torres Strait Islander children and their families need to be community-led. Providing additional resourcing to community-led organisations and local communities will help them to manage an increase in demand for services.

### **Other considerations**

The Queensland Government has accepted recommendation 8.R1 of the 2017 Queensland *Independent Review of Youth Detention* to create an independent statutory office of the Inspector of Custodial Services to conduct oversight and monitoring of youth detention.<sup>15</sup> Independent inspection is also required for Queensland to comply with its obligations under the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment.<sup>16</sup> Independent inspection could help strengthen public trust in the youth justice system and provide safeguards for children's rights while in detention. Once in place, the custodial inspector should have the role of monitoring the length of time children spend in police watch houses while waiting to be transferred to a youth detention centre.

In addition, the United Nations Committee on the Rights of the Child recommends raising the age of criminal responsibility to 14 years.<sup>17</sup> This has been discussed by the Council of Attorneys-General.

I trust this information has been of assistance to you in your consideration of the Bill. If you or your officers have any queries in relation to this matter they may contact Tony King, Executive Director Corporate and Communications, on [REDACTED] or [REDACTED].

Yours sincerely



Cheryl Vardon  
**Principal Commissioner**  
**Queensland Family and Child Commission**

<sup>14</sup> Atkinson, J 2013, *Trauma-informed services and trauma-specific care for Indigenous Australian children*, Australian Institute of Health and Welfare, Closing the Gap Clearinghouse, Resource sheet no. 21, p. 8.

<sup>15</sup> McMillan K and Davis M 2017, *Independent review of youth detention*, accessed 8 March 2021 <http://www.youthdetentionreview.qld.gov.au/>.

<sup>16</sup> Ratified on 21 December 2017: United Nations *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment*, accessed 8 March 2021 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

<sup>17</sup> United Nations Committee on the Rights of the Child 2019, *General comment No 24 (2019) on children's rights in the child justice system*, UN Doc CRC/C/GC/24 para 22.