



16 June 2023

Ms Anne Hollonds
National Children's Commissioner
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

By email: youthjusticereform@humanrights.gov.au

Dear Colleague

Youth Justice and Child Wellbeing Reform across Australia

Thank you for the opportunity to provide our submission to your consultation related to the above.

About QCOSS

Queensland Council of Social Service (QCOSS) is the peak body for the social service sector in Queensland. Our vision is to achieve equality, opportunity, and wellbeing for every person, in every community.

QCOSS position

Significant opportunities exist to improve the youth justice and related systems in Queensland. These include:

- Raising the minimum age of criminal responsibility to at least 14 without exception and providing a service and support response for children under the age of 14 who would otherwise be engaging with the criminal justice system.
- Proper application of Queensland's *Human Rights Act 2019*.
- Proper implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

We have responded to your specific questions below.

1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

Children who are involved with or who are at risk of involvement with the justice system often have complex needs. Many of these children have multiple physical and mental health challenges, disability and/or experiences of trauma.¹

In 2021, a total of 1,642 young people with a justice experience were surveyed in the Queensland Youth Justice Census. Of these:

- 18 per cent had an Active Child Protection Order
- 32 per cent had been living in unstable and/or unsuitable accommodation
- 51 per cent had experienced or been impacted by domestic and family violence
- 52 per cent were disengaged from education, training or employment

¹ McArthur, M., Suomi, A., & Kendall, B. (2021). *Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory, Final Report*. p.7. Australian National University.

- 31 per cent had at least one parent who spent time in adult custody
- 15 per cent had a disability (assessed or suspected), including 14 per cent who had a cognitive or intellectual disability
- 45 per cent had at least one mental health or behavioural disorder (diagnosed or suspected).²

In 2020-2021, Queensland statistics indicate the following:

- 10- to 17-year-olds from the lowest socioeconomic areas were five times more likely to be under youth justice supervision than those from the highest socioeconomic areas.³
- 87 per cent of 10-year-olds, 85 per cent of 11-year-olds, 76 per cent of 12- year-olds and 60 per cent of 13-year-old children accused in a court of law were Aboriginal and/or Torres Strait Islander.⁴
- Of children under 12 held in watch houses were Aboriginal or Torres Strait Islander.⁵

The disadvantage experienced by children involved with the justice system is also outlined in the 54 reasons report, *Putting Children First: A child rights approach to youth justice in Australia*.⁶

Exposure to the justice system at a young age perpetuates harm and often leads to more problematic behaviour. 96 per cent of children detained in Townsville’s youth jail are alleged to reoffend within the year of their release.⁷ Former Queensland Corrective Services Commissioner, Mark Rallings described the Queensland government’s current approach to children in youth justice as ‘criminogenic’.⁸

2. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

The following changes are required to protect the rights and wellbeing of children and young people interacting with the youth justice and related systems in Queensland:

- **Raising the minimum age of criminal responsibility to at least 14 without exception and providing a service and support response for children under the age of 14 who would otherwise be engaging with the criminal justice system.**

The MACR must be raised to 14 to align with minimum recommendations from the United Nations. Raising the MACR to 14 will prevent the ongoing criminalisation of young children, align with neuroscience and uphold the rights of children. Rather than criminalising young children through

² The State of Queensland. (2022). *Youth Justice Census Summary Statewide*. Department of Children, Youth Justice and Multicultural Affairs. <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/resources/census-summary-statewide.pdf>

³ The State of Queensland. (2021). *Children’s Court of Queensland Annual Report 2020–21*. pp.15, 21, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T2116.pdf>

⁴ The State of Queensland. (2021). *Children’s Court of Queensland Annual Report 2020–21*. pp.15, 21, <https://documents.parliament.qld.gov.au/tableoffice/tabledpapers/2021/5721T2116.pdf>

⁵ The State of Queensland. (2022). *Response to Question on Notice No. 1016 by the Minister for Police and Corrective Services*. <https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/1016-2022.pdf>

⁶ 54 Reasons. (2023). *Putting Children First: A child rights approach to youth justice in Australia*. p.19. https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia_April-2023.pdf.aspx

⁷ The State of Queensland. *Response to Question on Notice No. 1270 by the Minister for Children, Youth Justice and Multicultural Affairs*. <https://documents.parliament.qld.gov.au/tableOffice/questionsAnswers/2022/1270-2022.pdf>

⁸ Rallings, M. in Walker, J. (2023). Deadly Warning on Youth Crime. *The Australian*. https://todaypaper.theaustralian.com.au/infinity/article_popover_share.aspx?guid=b3f40cf3-5c37-4deb-83e4-e7f679ff0e5e

incarceration, governments must fund services and supports including evidence based, trauma informed, culturally safe programs to respond to the root cause of problematic behaviour.

- **Proper application of Queensland's *Human Rights Act 2019***

The Queensland Government recently overrode their own Human Rights Act when enacting the *Strengthening Community Safety Act 2023*. To do this, the government relied on a provision in the Human Rights Act that enables an override declaration in exceptional situations such as war, a state of emergency or an exceptional crisis situation constituting a threat to public safety, health or order.⁹

In passing the Strengthening Community Safety Act, the Queensland Government moved away from their own youth justice strategy, which contains the four pillars of intervene early, keep children out of court, keep children out of custody and reduce reoffending.¹⁰ The Act included harsher penalties and breach of bail as an offence. By including breach of bail as an offence, children who miss an appointment could breach bail conditions, be charged with a criminal offence and be imprisoned. These harsh measures are leading to the arrest and incarceration of more children.

The Strengthening Community Safety Act is not compatible with the Human Rights Act. Proper application of the Human Rights Act requires the member of parliament introducing the law to state and explain this. An override declaration was not justified as no state of emergency or exceptional crisis situation existed.

- **3. Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?**

Below we have identified factors and programs that show evidence of positive outcomes related to youth crime for children, families and communities.

- **First Nations leadership**

To address the overrepresentation of Aboriginal and Torres Strait Islander children within the justice system, governments must listen to First Nations communities, resourcing them to lead and design this important work.

In their submission to the Strengthening Community Safety Bill, Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) called for governments to uphold the principle of self-determination and invest in First Nations led solutions.¹¹

QATSICPP identify examples of effective First Nations led programs, such as:

- Indigenous Family Youth worker positions in Family Wellbeing Services
- Youth Justice Family Led Decision Making operating in four locations
- The Lighthouse after hours diversionary hub in Townsville
- Yapatjarrathati project in Mt Isa
- CRAICCHS After Hours Youth Hub in Cherbourg

⁹ The State of Queensland. (2019). *Human Rights Act 2019* (Qld). s43(4) <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2019-005>

¹⁰ The State of Queensland. (2022). *Youth Justice Strategy*. Department of Youth Justice. <https://www.cyjma.qld.gov.au/youth-justice/reform/youth-justice-strategy>

¹¹ Queensland Aboriginal and Torres Strait Islander Child Protection Peak. (2023). *Submission Strengthening Community Safety Bill 2023*. p.11. https://www.qatsicpp.com.au/wp-content/uploads/2023/02/QATSICPP-Submission_Strengthening-Community-Safety-Bill-_FINAL_2023.pdf

- the On Country program operating in Mount Isa, Townsville and Cairns.¹²

In the QCOSS webinar, ‘Diverting all young children from jails, watch houses and courts’,¹³ a representative from Jabalbina Aboriginal Corporation’s On Country program shared a success story of a boy who was previously involved with the justice system. The child had a lack of positive role models, gang involvement, a sense of worthlessness and an offending history that started from the age of thirteen. The boy experienced custody several times. In the webinar, the Jabalbina representative shared that with culturally safe support from On Country camps and cultural mentoring, the child has completely turned his life around and is now a mentor to other young people.

- **Community programs**

There is evidence that services and programs that support families and children when children are involved in the justice system are effective. For example:

- The Harbrow Mentoring Fire program in Cairns, effectively engaged with 1,920 young peoples over 15 weeks and transported 1,341 young people away from high-risk central areas.¹⁴
- A six-month review of the Resolve program through YFS in Logan highlighted that 94 per cent of young people improved their level of hope, 79 per cent met their identified goals and needs, and 88 per cent improved their wellbeing.¹⁵
- The Life Without Barriers Multisystemic Therapy Program showed a 43 per cent reduction in offending and 92 per cent reduction in nights in detention for participants in the two-year program. Unfortunately, this program did not receive government funding to continue.¹⁶

The Queensland Government has never funded a comprehensive state-wide program that meets the needs of children under the age of 14-years old interacting with the justice system. QCOSS’ [Youth Services Budget Ask 23-24](#)¹⁷ calls for the Queensland Government to fund a service system response to divert all children younger than 14 away from the legal system.

4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

Examples of where a national approach to issues related to youth justice are helpful are outlined below.

- **Unified approach to raising MACR to 14**

A national approach to raising the MACR to 14 would set a benchmark for a consistent approach across Australia that aligns with minimum recommendations from the United Nations.

In December 2022, the Standing Council of Attorneys General (SCAG) released a 2020 report stating that the ‘age of criminal responsibility should be raised to 14 without exception.’¹⁸ Most

¹² Queensland Aboriginal and Torres Strait Islander Child Protection Peak. (2023). *Submission: Strengthening Community Safety Bill 2023*. pp.16-17. https://www.qatsicpp.com.au/wp-content/uploads/2023/02/QATSICPP-Submission_Strengthening-Community-Safety-Bill-_FINAL_2023.pdf

¹³ QCOSS. (2023, 26 May). Diverting all young children from jails, watch houses and courts webinar. <https://www.youtube.com/watch?v=MmpYXoRHYIc>

¹⁴ James Cook University. (2022). *JCU Fire Project Evaluation*. p.18. (unpublished).

¹⁵ Youth and Family Service. *Resolve review, fact sheet* (unpublished). 2023.

¹⁶ Life Without Barriers. (2022). *Multisystemic Therapy: Community-based, family-driven treatment for young people*. (unpublished).

¹⁷ QCOSS. (2023). *Queensland Budget 2023: Invest in Queensland’s Youth Services*. <https://www.qcoss.org.au/wp-content/uploads/2023/02/2.0-Youth-services-budget-ask-23-24.pdf>

¹⁸ Government of Western Australia, Department of Justice. (2022). *Age of criminal responsibility working group draft report*. p.80. <https://www.croakey.org/wp-content/uploads/2022/12/age-of-criminal-responsibility-working-group-draft-report-20201.pdf>

governments have chosen not to listen to their own research, advice or recommendations related to this reform. A national approach to youth justice and child wellbeing reform would provide uniformity across jurisdictions.

In their April 2023 communique, SCAG identified that overrepresentation in adult incarceration (Closing the Gap target 10) is 'going backwards, and that significant and transformational criminal justice reform will be required by all Australian governments to turn the tide on First Nations adult incarceration'.¹⁹ In Queensland, reducing overrepresentation in the youth justice system is not progressing. A national approach to diverting all children under 14 from the justice system would work to address Closing the Gap targets 10 and 11.

- **Proper implementation of OPCAT**

Australia's ratification of OPCAT requires the Commonwealth and each state and territory government to nominate a National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments. Queensland is yet to nominate the agency that will hold this responsibility for the state and participate in the national NPM Network.

In February 2023, the UN Subcommittee on the Prevention of Torture (SPT) terminated their visit to Australia after being refused access to places of detention in Queensland and New South Wales.²⁰

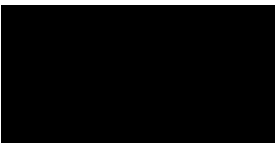
Conclusion

Significant opportunities exist to improve the youth justice and related systems in Queensland.

Coordination of youth justice policy reform at a national level presents an opportunity for consistent state and territory application of best-practice, human rights compliant responses to issues associated with children and the justice system.

Thank you again for the opportunity to provide our submission. If you have any questions, please contact Aimee McVeigh, Chief Executive Officer at [REDACTED]

Yours sincerely



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Chief Executive Officer

¹⁹ Attorney-General's Department. (2023). *Standing Council of Attorneys-General Communique April 2023*. <https://www.ag.gov.au/sites/default/files/2023-04/SCAG-Communique.DOCX>

²⁰ United Nations. (2023). *UN Torture prevention body terminates visit to Australia*. <https://www.ohchr.org/en/press-releases/2023/02/un-torture-prevention-body-terminates-visit-australia-confirms-missions>