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By email: youthjusticereform@humanrights.gov.au.

Submission re. Youth Justice and Wellbeing reform

The Youth Advocacy Centre (YAC) appreciates the opportunity to provide a submission on youth justice and child wellbeing reform across Australia.

YAC operates in Queensland. It is a community legal and social welfare agency for children and young people aged 10-18, particularly those involved in, or at risk of involvement in the youth justice system.

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

Factors that contribute to children's and young people's involvement in the youth justice system is often diverse and complex. Factors include, but are not limited to:-

- Delayed neurodevelopment, cognitive impairments and behavioural conditions.
- Mental health conditions, both diagnosed and undiagnosed.
- Neglect, physical, psychological, emotional or sexual abuse.
- Trauma from exposure to and or experience of domestic violence.
- Neglect, homelessness and poverty.
- Substance abuse of illicit drugs, prescription medication and alcohol.
- Family disfunction or the breakdown of the family circle experienced through a death of a parent, incarceration of a parent or the separation of parents.
- Lack of support from pro-social guardians or role models within the immediate or extended family circle.
- Disengagement from education.
- Cultural barriers.
- Discrimination or racism.
- Unemployment.
- Literacy, numeracy or learning difficulties.
- Limited availability or inability to access to health, mental, education and social services or support.

Aboriginal and Torres Strait Islander children and young people have additional factors that contribute to their contact with the youth justice system. These factors include disconnect from community and family, lack of identity with culture and intergenerational trauma.

Aboriginal and Torres Strait Islander children also experience systemic or institutional racism and discrimination. For example, in comparison to non-indigenous children, they are less likely

to be cautioned upon first contact with police or to be diverted by police for conferencing for subsequent contact with police.^[1]

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?

There are many barriers that need to be changed so that the youth justice and related systems protect the rights and wellbeing of children and young people.

For the purposes of this submission, YAC identifies that the government approach, lack of resourcing and over policing are significant barriers that hinder positive changes within the youth justice system.

1. Government Approach

In Queensland, the longstanding approach of the Government has been politically driven relying on a system of incarceration of children and young people who are involved with the youth justice system. This has been demonstrated by:

- the recent changes that came into effect 22 March 2023, through the *Strengthening Community Safety Act 2023* amending the *Youth Justice Act 1992* and other legislation, and
- the planned construction of two additional youth detention centres in Queensland.

The legislative changes saw the following: -

- the Bail Act amended so that breaching a condition of bail such as curfew and no contact with co-accused is an offence for children.
- removed the mandatory requirement for police officers to consider alternatives to arrest for a child who is on bail for certain prescribed indictable offence, or for contravention of certain domestic violence orders.

YAC has observed that the creation of breach of bail offences for children and young people ignores the disadvantages and vulnerabilities that they experience. For example, a child or young person may be subject to bail conditions to remain at a certain address with a 24-hour curfew. However, they may flee the residential address to avoid experiencing domestic violence or other abuse. In choosing personal preservation, they will be in breach of their bail and face being incarcerated.

The current stance of the Government is punitive in nature and undoubtedly, will result in an increased rate of incarceration of children and young people. It has resulted in the undesirable breaches of human rights for children and young people who are in custody at watch houses throughout Queensland as the detention centres have no capacity accommodate them.

The evidence has shown that the incarceration of children and young people is an ineffective and expensive solution.^[2]

The punitive approach of the Government needs to change and adopt policy outcomes focused on prevention, early or therapeutic interventions. States like Victoria and New South Wales have demonstrated that such an approach results in lower rates of children's prison population.^[3]

2. Inadequate Financial Resourcing

Another barrier is a lack of financial resources to fund preventative, rehabilitative and or therapeutic interventions along with diversionary alternatives.

For Aboriginal and Torres Strait Islander children, the access to community-based initiatives and culturally appropriate First Nations led Courts is limited due to lack of funding. It was recognised in the Childrens Court of Queensland Annual Report 2021-2022 at paragraph 13 that:

“First Nations young peoples continue to be overrepresented in the youth justice system. The Youth Murri Court operates in some of the Magistrates Court jurisdictions including Cairns, Rockhampton and Mackay, however, more needs to be done to make the Childrens Court a more relevant place for First Nations peoples.” ^[4]

According to the report of the Productivity Commission in 2023, over \$218 million dollars were spent for the operation of the youth detention centres.^[5] In 2019, \$150 million was spent on building the West Moreton Youth Detention Centre and \$27 million dollars spent on expanding the Brisbane Youth Detention Centre.^[6]

Significant money is being spent on the operation and construction of detention centres. If the Queensland Government funds used in building and operating detention centres were invested in prevention and early intervention this would eliminate or reduce the contact of children and young people within the youth justice system.

3. Adverse Police Practices

Both the historical and current practice of policing has resulted in the over policing of communities, particularly Aboriginal and Torres Strait Islander communities. In comparison to non-indigenous children, they are less likely to be cautioned upon first contact with police or to be diverted by police for conferencing for subsequent contact with police.^[7]

For Aboriginal and Torres Strait Islander children this has contributed to their over representation in the youth justice system. At paragraph 17 of the Childrens Court of Queensland Annual Report 2021-2022, it stated:

“.... First nations young peoples continue to be substantially overrepresented in the younger age groups with 86 percent in the 10-11 age group, 81 percent in the 12-year-old group, 65 percent in the 13-year old group and 58 percent in the 14-year-old group.”

The framework of policing needs to be adapted to accommodate for the cultural and complex vulnerabilities of Aboriginal and Torres Strait Islander communities.

There is also more scope for police to generally exercise their discretion in using diversionary options such as restorative justice conferencing. It has been noted that it remains underutilised in Queensland.[\[8\]](#)

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?

Throughout Australia there has been reforms which has successfully resulted in reducing children’s and young people’s involvement in youth justice and child protection systems.

In this submission, YAC has identified only a small number of these successful reforms in Queensland within the youth justice system.

Early intervention and prevention reforms has demonstrated positive outcomes in this area. This was demonstrated by the Jonathan Thurston Academy, which has implemented the ‘You Got This’ program for those aged nine to 16 years in seven Queensland locations. The aim of the program is to improve the confidence, courage, and self-belief of children and young people experiencing disadvantage. In Cairns, the program resulted in a reduction of offending.[\[9\]](#) There were 9 out of ten young people with prior offending history who did not offend within nine months of completing the program.[\[10\]](#)

Another positive reform is providing alternative vocational services to disadvantaged children and young people including those involved within the youth justice system. For example, the Transition to Success (T2S) program facilitated by Youth Justice in Queensland resulted in a lower offending rate by those who participated in the program, reduced time in custody and days of supervision on an order.[\[11\]](#) The program targets young people aged over 15 in the youth justice system. It aims to reduce the offending of its participants by engaging them with education, training, and employment while developing their social and wellbeing.[\[12\]](#)

Reforms enabling the facilitation of diversionary options, particularly pre-court, have reduced children’s and young people’s involvement in the youth justice system. In Queensland, children who were cautioned for their first contact with police were less likely to have any subsequent contact with the youth justice system.[\[13\]](#) Similarly, for children and young people who participated in restorative justice conferences, this resulted in no further offending or significantly reduced offending.[\[14\]](#)

Reforms allowing for First Nations led Courts have proven to be culturally appropriate and highly effective. For instance, the Youth Koori Court pilot in New South Wales resulted in fewer children being incarcerated in detention and reduced the days spent by children in custody.[\[15\]](#) Queensland similarly has the Murri Court for both youth and adults. Participants reported that

the involvement of Elders encouraged court attendance and even reduced contact with justice system because of cultural accountability and engagement with supports.[\[16\]](#)

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?

Children and young people come from disadvantaged backgrounds and experience vulnerabilities, which are often complex in nature.

The benefit of a national approach is consistency and joint accountability between the states for youth justice and child wellbeing reform across Australia.

YAC recognises that there would be reciprocal benefits of learning and adopting approaches for early intervention and diversion.

For instance, states such as Queensland, the Northern Territory and Western Australia would have the opportunity to learn from states like Victoria and New South Wales have a low rate of incarceration because of:

- a. their focus on early intervention and diversion for children and young people; and
- b. implementation of community-based led programs, placed – based initiatives, diverse social services, policies, and alternative diversionary processes.

The success of their approach in Victoria and New South Wales is evidenced by the decrease in the children’s prison population.[\[17\]](#)

The first step of reform would be raising the age of criminal responsibility to 14 years of age across Australia. In Queensland, the minimum age of criminal responsibility is 10 years of age. Research has shown that 10-year-olds have not developed the maturity to comprehend and competently engage in the criminal justice system.[\[18\]](#)

In Queensland, there are children aged 10 to 13, being incarcerated due to criminal offending. Human rights are breached when they are exposed to the watch house environment where they have limited access to services and family contact. This in turn compounds pre-existing trauma already experienced by that child or young person because of their adverse backgrounds and experiences.

Raising the age of criminal responsibility would provide the best opportunity to address the underlying issues of children and young people outside the youth justice system. It would also contribute to reducing the over-representation of Aboriginal and Torres Strait Islander children and young people who experience additional layers of vulnerabilities.

The second step would be to establish a Commission that would oversee the consistent implementation of reforms and ensure the accountability of each state in adopting the national approach.

Thank you for your consideration

Katherine Hayes

CEO

Youth Advocacy Centre

[1] Little, S., Allard, T., Chrzanowski, A. & Stewart, A. (2011). *Diverting young Indigenous people from the Queensland youth justice system: The use and impact of police diversionary practices and alternatives for reducing Indigenous over-representation*, Griffith University, <https://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>.

[2] Productivity Commission (2023). *Report on government services 2023*, Youth justice services, table 17A.10

[3] Australian Bureau of Statistics (2023). *Prisoners in Australia 2022*, table 15, <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#state-territory>.

[4] Children's Court of Queensland (2022). *Children's Court of Queensland: Annual report 2021–22*, https://www.courts.qld.gov.au/data/assets/pdf_file/0010/756649/cc-ar-2021-2022.pdf at page 4, paragraph 13.

[5] Productivity Commission (2023). *Report on government services 2023*, Youth justice services, table 17A.10

[6] Queensland Government (30 April 2019). 'Palaszczuk Government announces historic new investment in youth justice reform', media release, <https://statements.qld.gov.au/statements/87221>.

[7] Little, S., Allard, T., Chrzanowski, A. & Stewart, A. (2011). *Diverting young Indigenous people from the Queensland youth justice system: The use and impact of police diversionary practices and alternatives for reducing Indigenous over-representation*, Griffith University,

<https://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>.

[8] Children's Court of Queensland (2022). *Children's Court of Queensland: Annual report 2021–22*, <https://documents.parliament.qld.gov.au/tp/2022/5722T2094-21DD.pdf>.

[9] Queensland Government (2023). 'Study finds success in Far North youth program', media statement, <https://statements.qld.gov.au/statements/97670>.

[10] Queensland Government (2023). 'Study finds success in Far North youth program', media statement, <https://statements.qld.gov.au/statements/97670>.

[11] Deloitte Access Economics (2018). *Transition to success: Evaluation report, Department of Child Safety, Youth and Women*, <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/t2s-evaluation-report.pdf>.

[12] Deloitte Access Economics (2018). *Transition to success: Evaluation report, Department of Child Safety, Youth and Women*, <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/t2s-evaluation-report.pdf>.

[13] Little, S., Allard, T., Chrzanowski, A. & Stewart, A. (2011). *Diverting young Indigenous people from the Queensland youth justice system: The use and impact of police diversionary practices and alternatives for reducing Indigenous over-representation*, Griffith University, <https://www.premiers.qld.gov.au/publications/categories/reports/assets/diverting-young-people-from-the-justice-system.pdf>.

[14] Restorative Justice (2018). *Twelve-month program evaluation: Restorative Justice Project*. <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/performance-evaluation/program-eval/restorative-justice-evaluation-report.pdf>; Children's Court of Queensland (2021). *Children's Court of Queensland: Annual report 2020–21*, https://www.courts.qld.gov.au/data/assets/pdf_file/0003/714873/cc-ar-2020-2021.pdf.

[15] Australian Law Reform Commission (2017). *Specialist courts and diversion program*, <https://www.alrc.gov.au/publication/incarceration-rates-of-aboriginal-and-torres-strait-islander-peoples-dp-84/11-access-to-justice-issues/specialist-courts-and-diversion-programs/> 11.24–11.34.

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[17] Australian Bureau of Statistics (2023). *Prisoners in Australia 2022*, table 15, <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#state-territory>.

[18] Elly Farmer, '*The age of criminal responsibility: developmental science and human rights perspectives*' (2011) 6(2) *Journal of Children's Services*, 86, 87.