

16 May 2024

Committee Secretary
Community Safety and Legal Affairs Committee
Parliament House
George Street
Brisbane Qld 4000

By email: CSLAC@parliament.qld.gov.au

Dear Committee Members

Queensland Community Safety Bill 2024 ('the Bill')

Thank you for the opportunity to provide feedback in relation to the above.

About QCOSS

Queensland Council of Social Service (QCOSS) is Queensland's peak body for the social service sector. Our vision is to achieve equality, opportunity, and wellbeing for all Queenslanders.

QCOSS' position

QCOSS does not support the Bill. Many of the amendments proposed in the Bill are not rights respecting, nor evidence based.

QCOSS has drawn on the expertise of community service organisations in the development of this submission.

QCOSS, and our members, remain concerned that the "tough-on-crime" approach to youth crime in Queensland has resulted in catastrophic and traumatising outcomes that impact children as young as 10 years old. This Bill reflects yet another step in the wrong direction.

It is particularly alarming that the Bill seeks to remove the principle of detention as a last resort from the Youth Justice Act. It also seeks to implement a range of other harsh measures at a time when Queensland is already detaining more children than any other jurisdiction in Australia and when children are currently being held in adult watch houses for significant lengths of time. This trajectory must not continue.

QCOSS does not support the proposed amendments to definitions in the Domestic and Family Violence Protection Act 2012 ('the DFVP Act') to remove parent-minor child relationships from domestic and family violence responses.

Parent-minor child relationships and DFV responses

Domestic and family violence (DFV) services are currently facing soaring levels of demand for services and have limited capacity to engage with law reform processes that are limited by inadequate timeframes.

DFV services have highlighted particular concern in relation to amendments regarding parent-minor child relationships and DFV responses.

The Bill seeks to amend definitions in the DFVP Act to remove parent-minor child relationships from domestic and family violence responses. The Explanatory Notes position this amendment as being



connected to the Queensland Police Service (QPS) “requiring agility and flexibility to respond efficiently and effectively to calls for service”.¹

The current definition in the DFVP Act acknowledges that when specific behaviours are present in a relationship between a parent and a minor child, it is domestic violence. This is appropriate and reflects the reality that domestic violence can be a characteristic of many types of relationships.

The Explanatory Notes suggest that the QPS are currently using their resources to investigate instances of parent-child disciplinary matters that are not domestic violence. Our view is that behaviours that could be considered domestic violence should be investigated within relevant relationships, and minor children should not be excluded from this protection.

The proposed amendment is an efficiency provision and has been recommended without sufficient justification. There is no indication of how regularly the QPS is attending to incidents involving parent-minor child disciplinary matters. The pressure placed on QPS resources has not been quantified.

QCOSS members acknowledge the significant increase in demand and pressure on QPS services. However, efficiency measures should be designed in collaboration with other parts of the system that responds to domestic and family violence and should not be at the expense of the safety of children.

Youth Justice related amendments

Any legislative changes proposed in relation to the youth justice system should be developed through extensive consultation, especially with Aboriginal and Torres Strait Islander communities and community controlled organisations. They should also be guided by a human rights framework to ensure children are afforded special care in the protection of their human rights.^{2,3}

It is our view that a number of the proposed amendments in this Bill are not compatible with Queensland’s Human Rights Act (‘the HRA’) and are not reflective of a human rights respecting jurisdiction. While QCOSS is not in a position to comment on all aspects of the Bill, we have provided responses to the following proposed reforms in particular.

- **The principle of detention as a last resort must be maintained**

QCOSS does not support amendments to the principle of detention as a last resort. This principle aligns with the United Nations Convention on the Rights of the Child (‘the UNCRC’).⁴ While the proposed amendments may be superficial in practice, removing this important principle from the Youth Justice Act sends a troubling signal into a system that already detains more children than any other Australian jurisdiction.

- **Temporary transfers from watch houses to youth detention centres are not an adequate solution**

QCOSS calls for an immediate end to the use of adult watch houses to detain children. Our members have long held concerns about the damaging and harmful impacts of this practice, which must not continue.⁵ Proposed amendments to enable temporary transfers from watch houses to youth detention centres to facilitate participation in programs and physical exercise are not an adequate solution to this human rights crisis. The proposed amendment is also not

¹ Queensland Community Safety Bill 2024 Explanatory Notes, p 7.

² United Nations Convention on the Rights of the Child, November 20, 1989, *Preamble*, ‘United Nations Convention on the Rights of the Child’

<https://www.unicef.org.au/united-nations-convention-on-the-rights-of-the-child>

³ Human Rights Act 2019 (Qld) s 26(2).

⁴ United Nations Convention on the Rights of the Child, Article 37(b).

<https://www.unicef.org.au/united-nations-convention-on-the-rights-of-the-child>

⁵ See for example, Youth Advocacy Centre. (2019). Orange Paper 1 – *The use of Queensland watch houses to hold children*. <https://yac.net.au/wp-content/uploads/2022/10/YAC-Orange-Paper-1-QLD-Watch-Houses.pdf>

practical at a time when youth detention centres are already routinely operating above safe capacity, already suffer the effects of staff shortages, and can be subject to lockdowns.⁶

- **Childrens Court amendments are not fit for purpose**

QCROSS is concerned the amendments proposed by the Bill regarding who can be present during Childrens Court proceedings pose unacceptable limitations on the human rights of children who interact with the youth justice system. In Queensland, this includes children as young as 10 years old who commonly have significant challenges, including experiences of complex trauma and poverty.

In considering access arrangements to Childrens Court proceedings, it is vital to respect the rights outlined in the HRA. This includes the right to protection needed by the child, in the child's best interest,⁷ a child's right to privacy,⁸ and a child's right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation in the context of criminal charges.⁹ The UNCRC further emphasises the importance of ensuring a child's privacy is fully respected at all stages of the proceedings.¹⁰

Section 20 of the *Childrens Court Act 1992* (Qld), ('the CCA'), outlines who is entitled to be present during a Childrens Court proceeding, who may be present under certain circumstances at the court's discretion, and the circumstances under which the Court must exclude a person from the room. In considering any changes to the provision, and in determining whether any limitations upon the human rights of children are justified, it is important to first acknowledge the provision's limited application. The provision does not apply in the context of hearings to determine a charge on indictment.¹¹ As explained in the Youth Justice Benchbook, the provision does not apply to hearings in the Supreme Court, but it does apply in relation to proceedings such as bail applications when heard by the Children's Court.¹² There are a wide range of circumstances, especially in relation to the substantive hearings for more serious offending, where the protections and requirements of Section 20 are not enlivened.

Commitments to review arrangements for access to Childrens Court proceedings were made in the context of a specific situation that resulted in heightened community concern on this issue.¹³ However, these community concerns could be reduced through improved communication on the operation and application of the current laws. Much of the public discourse did not include an adequate explanation of the current law.^{14,15} This may have created confusion regarding access arrangements for media, victims, and families of victims in the context of substantive hearings to determine serious charges.

Our concerns in relation to these amendments include:

- the amendments would reflect a stronger default position of entitlement for persons who 'have a proper interest in the proceeding' and accredited media entities to attend

⁶ Queensland Family and Child Commission. (2024). *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, pp 49-56.

<https://www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf>

⁷ *Human Rights Act 2019* (Qld) s 26.

⁸ *Human Rights Act 2019* (Qld) s 25.

⁹ *Human Rights Act 2019* (Qld) s 32(3).

¹⁰ *United Nations Convention on the Rights of the Child*, Article 40(2)(b)(vii).

¹¹ *Childrens Court Act 1992* (Qld) s 20(5)(b).

¹² Childrens Court of Queensland. (2024). *Youth Justice Benchbook*, pp 16-17.

https://www.courts.qld.gov.au/_data/assets/pdf_file/0007/659977/cc-bb-youth-justice.pdf

¹³ Siganta T. Access to matters heard in Childrens Court in the spotlight after stabbing death of Ipswich grandmother. *ABC News*. February 11, 2024.

<https://www.abc.net.au/news/2024-02-11/childrens-court-public-and-media-access-in-queensland/103450710>

¹⁴ Brennan A. Miles government to consider open court access to journalists covering young defendants. *News.com.au*. February 13, 2024.

<https://www.news.com.au/national/queensland/courts-law/miles-government-to-consider-open-court-access-to-journalists-covering-young-defendants/news-story/6b57ba6347573f57f4df778c6cef51d6>

¹⁵ Riga R, Mahe D, Rigby M. Queensland government flags law changes to increase transparency around Childrens Court. February 13, 2024.

<https://www.abc.net.au/news/2024-02-13/queensland-childrens-court-access-victims-of-crime/103459622>

proceedings,¹⁶ which is not appropriate in a rights respecting youth justice setting. The threshold for media and persons with a proper interest for attending a Childrens Court proceeding should remain high. Even where a child is not publicly identified, media presence in Childrens Court proceedings and public reporting has the potential to result in damaging outcomes for the child while also undermining their need for privacy.

- While appropriate victim support and victim participation is important in youth justice processes, the proposed amendment may result in unintended negative consequences in a range of circumstances. This is especially so where matters may involve complex relationships, or where the nature of matters discussed warrants nuanced consideration of whether it is appropriate for a victim, or the relative of a deceased victim, to be present. The proposed amendment lessens the discretion of the Court to exclude a victim or a relative of a deceased victim from Childrens Court proceedings. A higher level of discretion, even in this context, should be maintained.
- Decisions affecting children should include consideration of the best interests of the child as a primary consideration.^{17,18} This should be incorporated into the matters a court must consider when determining whether to make an exclusion order.

Open justice and access for victims and victims representatives in legal processes is important, including in a youth justice setting. However, given the human rights protections that children are entitled to, and the complexity of matters canvassed in proceedings, increasing access should be carefully considered to ensure the policy intent and need is clearly defined and evidenced. In a human rights jurisdiction, government should adopt the least rights limiting option to achieve a legitimate policy outcome.

It is vital to create further clarity and understanding among community members on the existing arrangements that enable victims and their representatives and the media to participate in youth justice related proceedings and/or attend hearings. Any changes with respect to access to Childrens Court proceedings must respect the commitment to the special care and protection of children's human rights. Other options to expand victim participation include additional funding for restorative justice processes and appropriate resourcing to ensure victims understand important processes and decisions, remain updated along the way, and receive other forms of support as required.

- **The electronic monitoring trial should not be expanded**

QCROSS does not support the trial for electronic monitoring devices and it should not be expanded. Our members consistently outline that electronic monitoring devices will not assist in reducing reoffending and would have a harmful effect on children, causing feelings of stigma, as well as causing disengagement from social supports, pro-social activities and education. The trial is not supported by evidence that electronic monitoring devices are effective in a youth justice context. Vulnerable Queensland children should not be treated as test subjects for human rights limiting experiments that have no evidence of effectiveness.

- **Expansion of the trial for hand held scanners in public places**

QCROSS appreciates the intent to detect the unlawful possession of knives in public places. However, there is a need to carefully consider unintended consequences that could result from scanning operations. QCROSS members have raised concern that expanded powers and operations in this respect will result in increased interaction with police for young people. This can result in situations where police may also detect other minor offences for which the young person is then charged. The Griffith Criminology Institute conducted a 2022 Review of the Queensland Police Service Wandering Trial.¹⁹ Their report outlined limitations to the efficacy of

¹⁶ Proposed new sub-sections: *Childrens Court Act 1992* (Qld) s 20(1)(c)(iii)-(iv).

¹⁷ *Human rights Act 2019* (Qld) s 26 (2).

¹⁸ *United Nations Convention on the Rights of the Child*, Article 3(1).

¹⁹ Ransley J, Connell N, van Felius M, Walding S. (2022). *Review of the Queensland Police Service Wandering Trial*. Griffith Criminology Institute.

<https://documents.parliament.qld.gov.au/tp/2022/5722T1863-952D.pdf>

wandering and included concerns on inconsistent use of wandering in relation to different groups in society.²⁰

- **Disability needs of children while in detention**

The Bill proposes to insert a reference to disability services into the youth justice principles to highlight that a child's disability needs must be met while they are in detention. QCOSS is supportive of this amendment and urges further investment in disability assessments as a preventative measure prior to incarceration. As outlined in the Explanatory Notes, this amendment is in line with recommendations from the Women's Safety and Justice Taskforce.²¹

There is an over representation of children with disability in the youth justice system, particularly children with cognitive and psychosocial disabilities.²² Alongside ensuring the needs of children with disability are met, QCOSS members have highlighted a need to ensure that holistic assessments are taking place to understand the needs of children interacting, or at risk of interacting, with the youth justice system. This process should be undertaken with a view to inform the most appropriate response to a child's needs, including therapeutic interventions and alternatives to the youth justice system. Our members have also highlighted a need for training across relevant youth justice workforces to improve disability awareness and practices in the context of cognitive and psychosocial disability. These recommendations also align with recommendations from the Final Report from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('the DRC Final Report').²³

QCOSS encourages the Queensland Government to engage with all recommendations from the DRC Final Report, including those in relation to youth justice.

Conclusion

Measures aimed at improving community safety should be underpinned by community consultation and based on evidence. This is not adequately reflected in the Bill.

Following the introduction of Queensland's Human Rights Act, legislation and policy should be shaped and guided by a fundamental commitment to respect, protect and fulfill human rights across Queensland. This Bill includes amendments that are not consistent with the rights of Queensland's most vulnerable children and will exacerbate issues in the youth justice system, which is already at a crisis point.

Thank you again for the opportunity to provide our submission. If you have any questions, please contact Aimee McVeigh, Chief Executive Officer at aimee@qcross.org.au.

Yours sincerely



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Chief Executive Officer

²⁰ Ibid, p 82.

²¹ Women's Safety and Justice Taskforce. (2023). *Hear Her Voice, Report Two*, p 625.

https://www.womenstaskforce.qld.gov.au/_data/assets/pdf_file/0009/723843/Hear-her-voice-Report-2-Volume-2.pdf

²² Commonwealth of Australia. (2023). *Executive Summary, our vision for an inclusive Australia and Recommendations*. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, p 127.

<https://disability.royalcommission.gov.au/system/files/2023-11/Final%20report%20-%20Executive%20Summary%2C%20Our%20vision%20for%20an%20inclusive%20Australia%20and%20Recommendations.pdf>

²³ Ibid, pp 270-279.