

10 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Members,

Inquiry into Australia's Youth Justice and Incarceration System ('the Inquiry')

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. With over 300 organisational members spanning the social services sector, our vision is to achieve equality, opportunity, and wellbeing for all Queenslanders.

QCOSS' position

QCOSS and our members welcome the Inquiry.

The Inquiry follows the Australian Human Rights Commission report, "*Help way earlier! How Australia can transform child justice to improve safety and wellbeing*," ('the Help Way Earlier Report') which recommends increased national leadership in light of the failures of Australia's youth justice systems.¹

The Inquiry should provide a pathway forward to ensure our youth justice systems are compatible with our domestic human rights legislation and our international obligations.

In developing this submission, QCOSS has drawn upon our ongoing research and engagement with members of the community service sector and other key stakeholders who have a deep understanding of best practice in supporting young people and families. QCOSS also works with our community service sector to co-ordinate the Queensland Raise the Age campaign, which calls for the minimum age of criminal responsibility to be raised to 14. Additional consultation with our members has taken place to inform this submission.

Our sector delivers community-based interventions that deal with the root cause of crime, which are proven to improve the wellbeing of young people and reduce offending behaviour.

¹ Australian Human Rights Commission. (2024). *Help way earlier! How Australia can transform child justice to improve safety and wellbeing*.
https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_0.pdf



On the other hand, policies that rely on a punitive approach, including more reliance on detention, are not effective in reducing youth crime and are harmful to young people and the community.^{2,3}

In Queensland both the State Government and State Opposition have policies that will cause more children to spend more time in detention, including in adult watch houses.^{4,5} Currently in Queensland children are being subjected to harmful treatment that is deeply troubling and not consistent with our human rights laws.^{6,7,8}

This submission has been framed according to the terms of reference for the Inquiry. QCOSS also supports the submission prepared by the Network of Councils of Social Service across Australia.

The outcomes and impacts of youth incarceration in jurisdictions across Australia

On an average night in Queensland, there are 305.8 incarcerated children and young people.⁹ This is a higher nightly average than any other State or Territory in the country. Queensland also has the second highest rate of children's incarceration on a per capita basis in Australia, after the Northern Territory.¹⁰

The Children's Court of Queensland Annual report for 2022-23 noted that 8,119 children spent time in adult watch houses over the year. The report detailed that "...close to 1,000 children spent five or more days in the watchhouse and 146 of those children spent 15 or more days in the watchhouse".¹¹ The Queensland Family and Child Commission ('QFCC') explained that "over the four years prior to the end of 2022, the number of admissions to watch houses increased by 452 per cent and the number with a length of stay of more than 1 day increased by 163 per cent."¹²

Based on data now released daily by the Queensland Police Service ('QPS'),¹³ we know that as at 6am on the day of providing this submission, 25 children were in a watch house in Queensland. We also know that a child has spent as many as 13 days in a Queensland watch house. These are

² Sentencing Advisory Council. (2016). *Reoffending by children and young people in Victoria*, pp 51-53. https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria.pdf

³ Walsh T, Beilby J, Lim P, Cornwell L. (2023). *Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system*. <https://espace.library.uq.edu.au/view/UQ:55d7b70>

⁴ State of Queensland. (2024). *A Safer Queensland, Queensland Youth Justice Strategy 2024-2028*. Department of Youth Justice, p 18. <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/92dc8f1c-c8e3-439d-86e6-767fd12de899/a-safer-queensland-queensland-youth-justice-strategy-2024-2028.pdf>

⁵ Liberal National Party. (2024). *Youth Crime*. <https://online.lnp.org.au/youthcrime>

⁶ See, for example, Luu J, Elias M. (18 July 2024). *'Unfit for court with the capacity of a 5-year-old: The kids being locked up in a crime crackdown*. SBS News <https://www.sbs.com.au/news/the-feed/article/unfit-for-court-with-the-capacity-of-a-5-year-old-the-kids-being-locked-up-in-a-crime-crackdown/3vh6kffav>

⁷ 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>

⁸ Queensland Ombudsman. (2024). *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages*. <https://www.ombudsman.qld.gov.au/detention-inspection/inspections-and-reports>

⁹ Australian Institute of Health and Welfare. (2023). *Youth detention population in Australia 2023: Table S1 – Table 15*. <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/data>

¹⁰ Productivity Commission. (2024). *Report on government services 2024: youth justice services*, Table 17A.5. <https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>

¹¹ State of Queensland. (2023). *Childrens Court of Queensland Annual Report 2022-23*. Childrens court of Queensland. https://www.courts.qld.gov.au/_data/assets/pdf_file/0010/786466/cc-ar-2022-2023.pdf

¹² Queensland Family and Child Commission. (2023). *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, p 10. <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who%27s-responsible>

¹³ State of Queensland. (2024). *Watch-house data*. Queensland Police Service. <https://www.police.qld.gov.au/qps-corporate-documents/reports-and-publications/watch-house-data>

facilities that were designed to hold adults for up to 48 hours. This submission will further explore our concerns on the practice of holding children in watch houses in a subsequent section.

Compounding these high rates of imprisonment, recent policy and operational decisions are also resulting in high numbers of children charged with offences and children who are arrested. For example, after the introduction of the breach of bail offence for children, it was reported that 1,144 children were charged with 8,464 breach of bail offences over a 12 month period.¹⁴

Taskforce Guardian is a Queensland Police Service ('QPS') and Department of Youth Justice initiative which provides targeted responses across different communities. *Taskforce Guardian* "...is a rapid response team, deploying specialist support to target sudden surges in youth offending in areas across Queensland."¹⁵ Deployment teams consist of QPS detectives, case workers, court coordinators, restorative justice convenors, and Aboriginal and Torres Strait Islander cultural capability officers.¹⁶ One of the stated aims of *Taskforce Guardian* is to "decrease the overrepresentation of Aboriginal and Torres Strait Islander young people in the youth justice system."¹⁷ In May of this year it was reported that in the first 12 months of operations, *Taskforce Guardian* resulted in charges against "...almost 1,200 young people with more than 4,000 offences during 71 deployments".¹⁸

In 2023, a high visibility policing operation across Queensland, *Operation Victor Unison*, also resulted in startling numbers of arrests of young people. A media release explained, "...commencing on March 1, *Operation Victor Unison* focuses on preventing, disrupting, and investigating youth crime across Queensland at targeted intelligence driven locations including shopping centres, business and retail precincts, public spaces and residential areas."¹⁹ By October, the operation had resulted in 2,700 arrests of young people in relation to more than 5,000 offences.²⁰

To accommodate the growing demand on youth detention facilities, the Queensland Government intends to build two new youth detention centres in Queensland, costing hundreds of millions of dollars.²¹

In late 2023 the Queensland Family and Child Commission ('QFCC') released a report, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*.²² Within their report, they highlight that court bail refusals have increased and bail granted has decreased. Their report explains that in 2019 12.8 per cent of bail applications were refused. This increased to 20.3 per cent in 2022. They further noted that "...legislative and policy change has resulted in longer remand periods and an increase in young people on remand."²³ They also explain that the "...growth in time spent on remand awaiting court is significant – representing a 47.9 per cent growth over two years."²⁴ Additionally, the report outlined that youth detention centres have

¹⁴ 9 News. (May 5, 2024). *Queensland youth offenders caught breaching bail 8400 times as crime rates drop*. [Queensland crime: Queensland youth offenders caught breaching bail 8400 times as crime rates drop](https://www.9news.com.au/news/queensland-crime/queensland-youth-offenders-caught-breaching-bail-8400-times-as-crime-rates-drop) (9news.com.au)

¹⁵ State of Queensland. (2024). *Taskforce Guardian*. Department of Youth Justice.

<https://desbt.qld.gov.au/youth-justice/parents-guardians/programs-initiatives/initiatives/taskforce-guardian>

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Minister for Police and community Safety, the Hon. Mark Ryan. *1,200 charged as Taskforce Guardian marks one-year tackling youth crime*.

<https://statements.qld.gov.au/statements/100381>

¹⁹ Minister for Police and Corrective Services and Minister for Fire and Emergency Services, the Hon. Mark Ryan. *More than 7,600 arrests as part of a state-wide high visibility policing operation*. (29 October 2023).

<https://statements.qld.gov.au/statements/99022>

²⁰ Ibid.

²¹ State of Queensland. (2024). *Community safety plan for Queensland*, p 23.

https://www.qld.gov.au/data/assets/pdf_file/0029/477335/DPC9297-Community-Safety-Plan-single-pages-final.pdf?v2

²² Queensland Family and Child Commission. (2023). *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*.

<https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who%27s-responsible>

²³ Ibid, p 63.

²⁴ Ibid.

been routinely operating above safe capacity and have been understaffed.²⁵ Based on the June 2023 quarter, on an average night in Queensland 88 per cent of imprisoned children aged 10 to 17 were detained while on remand.²⁶

Rates of recidivism were explored in *Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System*.²⁷ The report outlined that, of the children who are sentenced to detention, 80 per cent will return to youth justice supervision within 12 months. The younger a child is when they are first sentenced, the more likely they will be to return to youth justice supervision again during childhood. Of the children ages 10 to 12 years who receive a supervised sentence, 94 per cent will return to youth justice supervision at some point.²⁸

The QFCC has also recently highlighted the gaps in support for children after they have experienced periods of incarceration in their report, *Exiting youth detention – Preventing crime by improving post-release support*.²⁹

One of our members, an Indigenous-led service providing support to families and children, reflected:

“Youth incarceration often leads to adverse outcomes, including disrupted education, employment challenges, and ongoing cycles of criminal behaviour. [We have] seen that young people who are incarcerated are at a higher risk of social disconnection and are more likely to reoffend once released. The impact of detention on mental health and social development can be profound, hindering their ability to reintegrate into society successfully.”

Our members have shared feedback about the difficulties young people face in seeking employment due to their involvement with the youth justice system, including difficulties in securing a blue card. This can prevent young people with lived experience of the youth justice system from working in roles where they would be uniquely positioned to provide support to other young people. The damaging long-term impacts of incarceration upon children are also well established.³⁰

Our members are frustrated with overly punitive and ineffective policy decisions that keep more children imprisoned for longer periods of time, resulting in added trauma for the child, their family and the community, particularly considering the reality that the rate of unique youth offenders has reduced by 32% since 2012-13.³¹

The over-incarceration of First Nations children

Counter to commitments made under the *National Agreement on Closing the Gap*, the youth justice system in Queensland continues to have a disproportionate impact on First Nations children. Of the young people who were incarcerated in the 2022-23 financial year in Queensland, nearly 70 per

²⁵ Ibid, pp 49-54.

²⁶ Australian Institute of Health and Welfare. (2023). *Youth detention population in Australia 2023*. Tables 14 and 32. <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/about>

²⁷ Walsh T, Beilby J, Lim P, Cornwell L. (2023). *Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system*. <https://espace.library.uq.edu.au/view/UQ:55d7b70>

²⁸ Ibid, 14.

²⁹ Queensland Family and Child Commission. (2024). *Exiting youth detention – preventing crim by improving post-release support*. <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/exiting-youth-detention>

³⁰ Queensland Council of Social Service. (2023). *Queensland Budget – 2024-2025, Invest in Queensland's youth services*, p 8. <https://www.qcoss.org.au/wp-content/uploads/2023/11/5.-Invest-in-youth-services-V2.pdf>

³¹ Minister for Police and Community Safety, the Hon. Mark Ryan. *Latest Crime Statistics from Queensland Police Service*. <https://statements.qld.gov.au/statements/100936>

cent identified as Aboriginal and/or Torres Strait Islander. Within the 10-13 year old age group, over 80 per cent identified as Aboriginal and/or Torres Strait Islander.³²

The Queensland Government has been criticised by the Productivity Commission in relation to their commitments under the National Agreement on Closing the Gap, which do not align with recent developments in the youth justice context:

“Governments are not consistently adhering to – and are sometimes contravening – the Agreement... It remains too easy to find examples of governments making decisions that contradict their commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people’s priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination... the Queensland Government made changes to bail laws that will mean more Aboriginal and Torres Strait Islander young people are incarcerated for longer periods of time. This is in the context of Queensland having one of the highest rates of Aboriginal and Torres Strait Islander young people in detention (40.9 per 10,000 young people aged [10-17] years were in detention in Queensland on an average day in [2021-22], compared to 22.3 per 10,000 nationally)...”³³

The Productivity Commission also discussed what is required to affect meaningful change in the broad context of the National Agreement on Closing the Gap. They observed:

“It has become clear that in order to see change, business-as-usual must be a thing of the past. Across the country, we have observed small tweaks or additional initiatives, or even layers of initiatives, as attempts to give effect to the Agreement. However, real change does not mean multiplying or renaming business-as-usual actions. It means looking deeply to get to the heart of the way systems, departments and public servants work. Most critically, the Agreement requires government decision-makers to accept that they do not know what is best for Aboriginal and Torres Strait Islander [Peoples].”³⁴

The youth justice system has an immensely harmful impact upon Aboriginal and Torres Strait Islander children and families. Our members have emphasised the need to invest in programs and solutions that are First Nations led, culturally safe, therapeutic, trauma informed and targeted to address root causes of offending. Solutions must be underpinned by a genuine commitment to human rights, including the right of Aboriginal and Torres Strait Islander Peoples to self-determination. The Aboriginal and Torres Strait Islander Community Controlled sector must be supported and empowered lead the way forward.

The degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention

In 2020, the *Human Rights Act 2019* (Qld) (‘Human Rights Act’) came into force. Among other important rights reflected in the Human Rights Act, there is an explicit recognition that “...every child has the right, without discrimination, to the protection that is needed by the child, and is in the child’s best interests, because of being a child.”³⁵ The increasing rates of detention of children and the lack of sufficient supports for vulnerable children and families point to this right being unjustifiably limited in the youth justice context in Queensland. In addition, the State Opposition policy of “*Adult Time, Adult Crime*”, while currently lacking in detail, points to a blatant disregard of the human rights of children in Queensland.

Our members are concerned about the young age at which a child can be incarcerated and the conditions in watch houses and youth detention facilities. Our members consistently highlight youth

³² Australian Government. (2024). Report on government services 2024: youth justice services. Productivity Commission, Table 17A.9.

<https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>

³³ Australian Government. (2024). *Review of the National Agreement on closing the Gap, study report, volume 1*. Productivity Commission, pp 79-80.

<https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>

³⁴ Ibid, p iii.

³⁵ *Human Rights Act 2019* (Qld) s 26(2).

detention centres offer inadequate access to education, support to meet cultural needs, health and mental health support, rehabilitative services and inadequate access to family and community.

Minimum age of criminal responsibility is ten years

QCOSS co-ordinates Queensland's campaign to raise the minimum age of criminal responsibility. The United Nations Convention on the Rights of the Child requires signatories to establish a minimum age below which children are presumed not to have the capacity to infringe the penal law.³⁶ In 2019, the United Nations Committee on the Rights of the Child outlined that the minimum age of criminal responsibility should be no lower than 14 years.³⁷ In the same year, the Committee specifically urged Australia to raise the age to this internationally accepted level.³⁸ Despite international pressure, substantial evidence, support from academic and medical experts and service providers who work with young people, this crucial human rights issue in Queensland has not been addressed. In Queensland children as young as ten years old can be charged with a criminal offence, separated from their family in a detention facility, and held in an adult watch house.

Watch houses are used to detain children

QCOSS and our members have concerns about the conditions and human rights violations children are enduring in Queensland watch houses. In 2023, the Queensland Parliament passed laws that ensured that the use of adult watch houses to detain children was lawful.³⁹ In moving these amendments, the Minister for Police and Corrective Services acknowledged that the practice of incarcerating children in watch houses was not compatible with the Human Rights Act and engaged a mechanism to override the Human Rights Act.^{40,41}

There are no legislated limits outlining how long a child can be imprisoned in an adult watch house. Our members include organisations who continue to witness the appalling conditions children are experiencing in watch houses. The Youth Advocacy Centre have outlined that watch houses are not suitable for children noting "...there are extremely limited facilities for visits by family; there are often no facilities for exercise or other age-appropriate activities; many children are staying for two weeks and in isolated incidents they may be staying for as long as five weeks; the children are being held in close proximity to adult prisoners; the police working in the watch houses often have no training in dealing with troubled young people."⁴²

Ongoing media coverage has shed further light on the damaging practice of holding children in adult watch houses. For example, reports of a 17 year old who had been incarcerated in a watch house

³⁶ United Nations Convention on the Rights of the Child, Article 40(3)(a).

³⁷ United Nations. (2019). General Comment No. 24 (2019) on children's rights in the child justice system. CRC/C/GC/24, (18 September 2019).

³⁸ United Nations. (2019). Concluding observations on the combined fifth and sixth periodic reports of Australia. (CRC/C/AUS/CO/5-6*), (1 November 2019).

³⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En

⁴⁰ *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

⁴¹ The Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services. (2023). *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 Statement of Compatibility for amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services.* [https://documents.parliament.qld.gov.au/bills/2022/3118/Child-Protection-\(Offender-Reporting-and-Offender-Prohibition-Order\)-and-Other-Legislation-Amendment-Bill-2022---SoC-to-Govt-ACID-4d7c.pdf](https://documents.parliament.qld.gov.au/bills/2022/3118/Child-Protection-(Offender-Reporting-and-Offender-Prohibition-Order)-and-Other-Legislation-Amendment-Bill-2022---SoC-to-Govt-ACID-4d7c.pdf)

⁴² The Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services. (2023). *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022, Statement about Exceptional Circumstances for amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services.* <https://documents.parliament.qld.gov.au/tp/2023/5723T1198-22EA.pdf>

⁴² 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>

for 32 days,⁴³ reports of another 17 year old who was struck three times with a police baton,⁴⁴ and reports of a 14 year old girl with foetal alcohol spectrum disorder and other intellectual disabilities who was injured when police were moving her into an isolation cell.⁴⁵ The ABC has also published a number of case studies described as *The Watch House Files*, which provide further details of devastating and utterly unacceptable scenarios.⁴⁶

Recently the Queensland Ombudsman, in their capacity as Inspector of Detention Services, released their *Cairns and Murgon watch-houses inspection report: Focus on detention of children*.⁴⁷ The report highlights several concerns including unsuitable infrastructure, inadequate admission processes, children being held in isolation, along with irregular and inconsistent access arrangements for important service providers.⁴⁸

Conditions in youth detention centres are not adequate

In addition to the conditions children face in watch houses, our members have also consistently raised concerns about the conditions in Queensland youth detention centres. This is supported by recent reports from independent bodies with relevant oversight functions. The Queensland Ombudsman has released the *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages*. Among other things, they principally raised concerns on the use of 'separation' due to staff shortages which can impact children's mental wellbeing and reduce access to services within the centre, including education. They noted that, when 'separation' is used in response to a behaviour incident, children can be held in rooms where they do not have access to basic facilities, such as a toilet, running water or a bed.⁴⁹

As outlined previously in this submission, the QFCC have raised concerns about Queensland Youth Detention Centres operating above safe capacity while also experiencing staff shortages.⁵⁰

The Child Death Review Board Annual Report 2022-23 provided an analysis on the ways in which the youth justice system failed to effectively help two boys who both died by suicide. The report noted that "...arguably, their experiences in detention serves to cause further trauma, disconnection and hopelessness."⁵¹ Both boys had spent significant amounts of time in isolation while incarcerated in youth detention centres in the 12 months leading up to their deaths. With respect to the first boy,

⁴³ Smee, B. (27 August 2023). 'I'll never forget': after 32 days without sunlight in a Queensland watch house, Nick's hair was falling out. The Guardian.
<https://www.theguardian.com/australia-news/2023/aug/27/queensland-watch-house-laws-teenagers-experience-human-rights-act>

⁴⁴ Blucher, A. (10 July 2024). "Jason' was beaten repeatedly with a baton in a watch house. An investigation found the use of force was 'reasonable". ABC News.
<https://www.abc.net.au/news/2024-07-10/indigenous-teenager-beaten-brisbane-police-watch-house-cctv/104070840>

⁴⁵ Luu J, Elias M. (18 July 2024). 'Unfit for court with the capacity of a 5-year-old: The kids being locked up in a crime crackdown. SBS News
<https://www.sbs.com.au/news/the-feed/article/unfit-for-court-with-the-capacity-of-a-5-year-old-the-kids-being-locked-up-in-a-crime-crackdown/3vh6kffav>

⁴⁶ Willacy M. (13 May 2019). 'the Watch House Files: Detention centres full, children locked in Queensland's police watch houses. ABC News.
<https://www.abc.net.au/news/2019-05-13/hold-the-watch-house-files/11046190>

⁴⁷ Queensland Ombudsman. (2024). *Cairns and Murgon watch-houses inspection report: Focus on detention of children*.
<https://www.ombudsman.qld.gov.au/detention-inspection/inspections-and-reports>

⁴⁸ Ibid.

⁴⁹ Queensland Ombudsman. (2024). *Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages*.
<https://www.ombudsman.qld.gov.au/detention-inspection/inspections-and-reports>

⁵⁰ Queensland Family and Child Commission. (2023). *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, pp 49-54.
<https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who%27s-responsible>

⁵¹ State of Queensland. (2024). *Child Death Review Board Annual report 2022-23*. Queensland Child Death Review Board, p 22.
<https://www.qfcc.qld.gov.au/sites/default/files/2024-08/Child%20Death%20Review%20Board%20Annual%20Report%202022-2023.pdf> .

of the 128 days spent in detention, 78.51% of that time was spent in separation. With respect to the second boy, of the 205 days spent in detention, 54.24% of that time was spent in separation.⁵² In light of their detailed analysis of the experiences of these two boys, alongside broader analysis of the youth justice system, the Child Death Review Board outlined a need to reappraise the response to youth crime and the purpose of youth justice.

Additional human rights concerns regarding the broader Queensland youth justice system

In addition to the human rights violations within detention facilities themselves, QCOSS and our members are also concerned that recent legislative changes and stated Queensland Government policy have not been consistent with the Queensland Government's commitments to the human rights of children and young people. It is disappointing that Queensland's new youth justice strategy does not mention the human rights of children and young people, nor how a commitment to human rights was drawn upon to inform the strategy.⁵³ Recent legislative changes which, in our view, are not rights-respecting include:

- The introduction of breach of bail as an offence for young people.⁵⁴ This legislative amendment engaged the override provision in the Human Rights Act.
- The introduction of 'serious repeat offender declarations', which impacts primary sentencing considerations.⁵⁵ This legislative amendment also engaged the override provision in the Human Rights Act.
- Amendments to Principle 18 of the Charter of youth justice principles in the *Youth Justice Act 1992 (Qld)* ('YJA'), the principle of detention as a last resort.^{56,57} In our view, the amendment was such that the YJA no longer properly embeds this internationally recognised principal.
- Amendments to make the Children's Court more accessible to parties other than the accused, including the media.^{58,59}
- Amendments to expand a trial utilising electronic monitoring devices in particular circumstances, despite there being no supporting evidence of effectiveness, and despite there being significant human rights concerns.⁶⁰

This is, unfortunately, not an exhaustive list. Many of these changes make it easier to detain children and young people, and fail to respect, protect and fulfil their human rights at different points of their involvement with the youth justice system.

The Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

Feedback received from our members outlines a need for the Commonwealth to take on a bigger role in the youth justice setting. In reflecting upon the state of the youth justice system in Queensland and other jurisdictions throughout Australia, members have raised that we are facing a human rights crisis. In light of the Commonwealth Government's international obligations, national leadership and co-ordination is now essential. Along with obligations relating to the rights of the child, freedom from torture and civil rights, our members also point to the standards contained in the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights

⁵² Ibid, p 38.

⁵³ State of Queensland. (2024). *A Safer Queensland – Queensland youth Justice Strategy 2024-2028*. Department of Youth Justice.

⁵⁴ *Bail Act 1980 (Qld)* s 29.

⁵⁵ *Youth Justice Act 1992 (Qld)* ss 150A and 150B.

⁵⁶ State of Queensland. (2024). *Queensland Community Safety Bill Explanatory Notes*, p 12.
<https://documents.parliament.qld.gov.au/bills/2024/3202/5724T723-6521.pdf>

⁵⁷ *Youth Justice Act 1992 (Qld)* Sch 1, item 18.

⁵⁸ State of Queensland. (2024). *Queensland Community Safety Bill Explanatory Notes*, pp 16-17.
<https://documents.parliament.qld.gov.au/bills/2024/3202/5724T723-6521.pdf>

⁵⁹ *Childrens Court Act 1992 (Qld)* s 20.

⁶⁰ State of Queensland. (2024) *Queensland Community Safety Bill 2024 Statement of Compatibility*, pp 77-85.
<https://documents.parliament.qld.gov.au/bills/2024/3202/5724T724-dfd9.pdf>

of Persons with Disabilities. They note the disproportionate impact of the youth justice system on Aboriginal and Torres Strait Islander children and children with a disability.

In considering possible processes, activities and structures that could be developed, our members have stressed a need to implement commitments, strategies and plans that are already in place. For example, mechanisms and activities related to the *National Agreement on Closing the Gap*, and *Safe and Supported – the National Framework for Protecting Australia’s Children 2021-2031*. Additionally, QCOSS welcomes the recent establishment of a National Commission for Aboriginal and Torres Strait Islander Children and Young People. The Commissioner, once appointed, should play a central role in working with First Nations Peoples, communities and organisations in these important next steps.

The Help Way Earlier Report makes a number of recommendations about how the Commonwealth Government could play a bigger role in the youth justice context, including appointing a Cabinet Minister for Children, establishing a ministerial Council for Child Wellbeing, introducing a national Children’s Act and Human Rights Act incorporating the convention on the Rights of the Child, and establishing a National Taskforce among Australian Governments for reform of child justice systems. Members who have been able to provide feedback informing this submission have indicated support for these and other recommendations from the report. QCOSS has been an active and ongoing supporter on the need for a federal Human Rights Act, in particular. The introduction of a federal Human Rights Act should influence additional States and Territories to adopt human rights legislation.

Our members also provided feedback on additional opportunities for the Commonwealth Government to take a more active role in relation to youth justice. Additional actions that were particularly emphasised by our members could include:

- removing Australia’s reservation to Article 37(c) of the Convention on the Rights of the Child, which prohibits detention of children in the same facilities as adults or in adult facilities
- ratifying the Third Optional Protocol to the Convention on the Rights of the Child, which enables children to bring complaints about violations of their rights directly to the United Nations
- developing a long term strategy to guide national youth justice reform
- conducting a Royal Commission into Youth Detention Centres in Australia. While the Inquiry is welcome, it has been raised that a Royal Commission would be able to delve more deeply into emerging concerns. It is felt that many issues are experienced commonly across the States and Territories, and a Royal Commission could effectively shine a light on widespread practices and systems which are not in keeping with Australia’s international obligations
- demonstrating leadership and encouraging stronger actions responding to recommendations made in the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability relating to youth justice.
- encouraging stronger uptake and implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment across the country.

There are also a number of contexts where the Commonwealth Government already plays an active role in addressing the root causes of youth offending, and where the Commonwealth Government could expand current activities. *A Safer Queensland – Queensland Youth Justice strategy 2024-2028* (‘the Youth Justice Strategy’) acknowledges the complex circumstances experienced by children in contact with the youth justice system. The Youth Justice Strategy outlines that “...of the young people in the youth justice system in 2022-2023:

- 81 per cent have used at least one substance
- 53 per cent are impacted by domestic and family violence
- 48 per cent are not enrolled in education, training or employment

- 30 per cent are in unstable and/or unsuitable accommodation
- 38 per cent of youth in custody have used ice/methamphetamine in the past
- 25 per cent have a parent who has been in custody
- 44 per cent have one or more mental health disorders and/or behavioural disorders (diagnosed or suspected)
- 44 per cent have one or more disabilities
- 16 per cent have one or more psychological behavioural issues.”⁶¹

Any discussion on approaches to youth crime must not be divorced from these root causes of problematic and anti-social behaviour.

In response to a recent Queensland Inquiry on youth justice, a community worker shared their reflections with QCOSS on the importance of holistic approaches to supporting young people:

“It is important to get in early to break the cycle. I have seen children dragged away from school and through the courts for stealing a sausage roll and a drink. Sometimes children go through a treadmill of court over months for a small shoplifting offence. Children are getting sucked into the system with prolific offenders... It perpetuates the cycle. I would like to see more wrap around services for each young person...so the child isn’t put through court and dragged out of school. These children need support to get into school, more boots on the ground to help them, help to go to footy training, basic dental health, grocery support to get food on the table and support for families.”

As of June 2023, there were 25,364 applications on the waitlist for the Queensland Social Housing Register, representing 41,484 people. There were 5,384 single parent family household applications. In the past three years alone, advertised median rents have increased throughout Queensland by 50 per cent on average.⁶² The most recent census data found that 23 per cent of all people experiencing homelessness were aged from 12 to 24 years.⁶³ Estimates from leading housing academics indicate there are about 150,000 households across Queensland whose needs for affordable housing are currently unmet.⁶⁴

Our members operating in the domestic and family violence sector report soaring levels of demand along with increased complexity of need. This feedback was echoed throughout the broader community service sector in our report, *State of the Sector 2024*.⁶⁵ In the 2023-24 financial year domestic and family violence offences accounted for 56.9 per cent of total assault offences in

⁶¹ State of Queensland. (2024). *A Safer Queensland – Queensland youth Justice Strategy 2024-2028*. Department of Youth Justice.

<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/92dc8f1c-c8e3-439d-86e6-767fd12de899/a-safer-queensland-queensland-youth-justice-strategy-2024-2028.pdf>

⁶² State of Queensland. (2024). *Median value of weekly rent paid for new tenancies commencing in each quarter*. Residential Tenancies Authority

<https://www.rta.qld.gov.au/forms-resources/median-rents-quick-finder/median-rents-quarterly-data>

⁶³ Australian Government. (2023). *Estimating Homelessness: Census*.

<https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/latest-release>

⁶⁴ Pawson H, Clarke A, van den Nouwelant R, Petersen H, Moore J, Sigler T. (2024). *Breaking Ground, progress update and assessment of Queensland’s housing crisis*, p 4.

https://www.qcoss.org.au/wp-content/uploads/2024/06/Report_Breaking-Ground_Progress-update-of-Queensland-Housing-Crisis_web.pdf

⁶⁵ Queensland Council of Social Service. (2024). *State of the Sector 2024*.

https://www.qcoss.org.au/wp-content/uploads/2024/09/State-of-the-Sector-2024_web.pdf

Queensland.⁶⁶ Most domestic violence offences are committed by adult males, and the victims are usually women and children.^{67,68}

QCOSS recently released a report, *Living Affordability in Queensland 2024*, which sought to establish whether five modelled low-income households in Queensland can afford a basic standard of living. The report documents the financial stress and deprivation faced by vulnerable households in Queensland. It found that only two of the five modelled households were able to meet a basic standard of living, with all five modelled households highly vulnerable to financial shocks and indebtedness.⁶⁹ Raising the rate of income support above the poverty line is essential to ensure low-income families in Queensland can afford a basic standard of living.

Governments must also prioritise resourcing for youth and family services and should seek to target the root causes of offending, including domestic and family violence, housing and homelessness, deepening experiences of poverty and cost-of-living pressures. Our detailed proposal for the Queensland Government to invest in Queensland's youth services is available in our budget submission which was made ahead of the 2024-25 Queensland State Budget.⁷⁰ The Community Controlled sector, in particular, must be funded far more comprehensively. There are numerous programs across the State achieving positive outcomes for children and their families, but those services are in desperate need of additional resourcing. Positive programs should also be funded more consistently across Queensland. Recently, a community worker in North Queensland reflected on a need for more resourcing in light of clear service gaps:

“In Townsville there is only one bed of rest as safe accommodation for children involved in justice system. More safe places are needed for children after hours. Most services close earlier...”

QCOSS also actively advocates on the need to improve sustainability of the community services sector, end Queensland's housing crisis, reduce the cost of living, give all children a good start, and advance women's equality.^{71,72}

The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

Through feedback provided to inform and guide this submission, our members expressed support for enforceable national minimum standards for youth justice. There are clear opportunities to set rights-respecting standards and expectations across the country.

In light of the immense impact the youth justice system has upon Aboriginal and Torres Strait Islander children and their families, our members emphasised that if national minimum standards are established, the development, design and monitoring of those standards should be First Nations led. The Aboriginal and Torres Strait Islander Community Controlled sector, in particular, should be engaged closely on this. Feedback from members also emphasised a need to ensure genuine

⁶⁶ Minister for Police and Community Safety, the Hon. Mark Ryan. *Latest Crime Statistics from Queensland Police Service*, (July 26, 2024).

<https://statements.qld.gov.au/statements/100936>

⁶⁷ Australian Institute of Health and Welfare. *Family, domestic and sexual violence*. (Accessed October 9, 2024).

<https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/fdsv-summary>

⁶⁸ State of Queensland. (2023). *Gender Equality Report Cards 2023, Queensland Women's Strategy 2022-27*.

<https://www.aihw.gov.au/family-domestic-and-sexual-violence/resources/fdsv-summary>

⁶⁹ Queensland Council of Social Service. (2024). *Living Affordability in Queensland 2024*.

https://www.qcoss.org.au/wp-content/uploads/2024/09/Report_Living-Affordability-in-Queensland-2024_web.pdf

⁷⁰ Queensland Council of Social Service. (2023). *Queensland Budget – 2024-2025, Invest in Queensland's youth services*.

<https://www.qcoss.org.au/wp-content/uploads/2023/11/5.-Invest-in-youth-services-V2.pdf>

⁷¹ Queensland Council of Social Service. (2024). *A fair share for all Queenslanders – Queensland Election Platform 2024*.

<https://www.qcoss.org.au/publication/queensland-election-platform-2024-a-fair-share-for-all-queenslanders/>

⁷² Queensland Council of Social Service. (2023). *Queensland Budget 2024-25: Our pre-budget submission*.

<https://www.qcoss.org.au/publication/queensland-budget-2024-2025-our-submission/>

participation of people with a disability in charting the way forward, particularly people with lived experience of the youth justice system.

One of our members highlighted the Aboriginal and Torres Strait Islander Child Placement Principle as an example where national minimum standards have been developed in a different context.⁷³ They noted, in particular, that the model required States and Territories to embed the principle into legislation. They also highlighted the essential role played by First Nations organisations in developing and advocating for the Principle, particularly noting the ongoing role of SNAICC – National Voice for our Children.

Conclusion

The current approach to youth justice and incarceration in Queensland and throughout many other jurisdictions in Australia is harmful. National leadership and co-ordination is essential. The way forward must be shaped with First Nations leadership and a clear commitment to the human rights of children.

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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⁷³ SNAICC – National Voice for our Children. *Aboriginal and Torres Strait Islander Child Placement Principle*. (Accessed October 8, 2024). <https://www.snaicc.org.au/our-work/child-and-family-wellbeing/child-placement-principle/>