

GUIDANCE ON ENGAGING IN THE MAKING QUEENSLAND SAFER BILL 2024

On Thursday 28 November the Queensland Government introduced a Bill to legislate the "Adult Crime, Adult Time" policy and remove the principle of detention as a last resort from the *Youth Justice Act 1992* (Qld) ('the Youth Justice Act'), among other changes. The Making Queensland Safer Bill 2024 (Qld) ('the Bill') includes provisions that seek to override Queensland's Human Rights Act. The Bill will be considered by a Parliamentary Committee who are required to provide a report back to Parliament by Friday 6th December. The Bill is slated to pass in the following week.

OPPORTUNITIES TO ENGAGE:

To assist community organisations wishing to develop a submission, QCOSS has developed this resource which includes information about the Bill and outlines some of our positions on these legislative changes.

The Bill has been referred to the Justice, Integrity and Community Safety Committee for consideration. The Committee have called for submissions by 12:00pm, Tuesday 3 December 2024.

You can read the Bill and associated materials, which are available online:

- [Making Queensland Safer Bill 2024](#)
- [Explanatory Notes to the Bill](#)
- [Statement of Compatibility with Human Rights](#)
- [Statement about exceptional circumstances](#)

There's a webpage dedicated to the [Committee Inquiry](#). That space contains important information about the Inquiry and will host materials relevant to the Inquiry. If you are interested in writing a submission, please review any information from the Committee carefully. They will provide advice about any important deadlines or requirements they have.

QCOSS will also be holding a submission consultation and discussion session on Monday 2 December at 10:00am. If you work with a community service organisation and would like to attend the session or if you would like to share any thoughts about these proposed changes in the law in the meantime, please email us (research@qcross.org.au). We are keen to hear your views as we develop our own submission.

OUR POSITION ON THE PROPOSED CHANGES:

This document does not cover all of the changes introduced by the Bill. To gain an understanding of all of the major changes in the Bill, the [Explanatory Notes](#) and the [Statement of Compatibility](#) are a good place to start.

The [United Nations Convention on the Rights of the Child](#) outlines that children in contact with the justice system should be “...treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”

Legislative changes relating to youth justice should be guided by a human rights framework to ensure children are afforded special care in the protection of their human rights. Among other rights, Queensland's Human Rights Act includes the right to protection needed by the child, in the child's best interest; the right to privacy; the right to freedom from torture and cruel, inhuman or degrading treatment; and a child's right to treatment which is appropriate to the child's age when they are convicted of an offence

■ Adult Crime, Adult Time

The *Adult Crime, Adult Time* laws will mean children can receive the same sentences for certain offences as adults. Youth offenders will be sentenced under the Criminal Code, rather than the Youth Justice Act. This will apply to 13 offences including murder, manslaughter, grievous bodily harm, burglary, robbery, and dangerous operation of a vehicle.

This means the maximum sentences for young people convicted of these offences will increase significantly. For example, if a child is found guilty of dangerous operation of a vehicle and they cause death or grievous bodily harm to another person, they could face imprisonment of up to 20 years. If a child is sentenced to 'life detention' for one of the relevant *Adult Crime, Adult Time* offences (other than murder), they will serve a minimum period of 15 years in detention. If a child is found guilty of murder, they will face a mandatory minimum period of imprisonment of 20 years.

Due to the minimum age of criminal responsibility in Queensland, this can apply to children as young as just 10 years old.

The *Human Rights Act 2019* (Qld) ('the Human Rights Act') outlines a child's right to treatment that is appropriate to the child's age when they are convicted of an offence (see [Section 33, Subsection 3](#)). The Government has acknowledged in their [Statement of Compatibility](#) that these laws are not compatible with human rights.

Children do not have the same decision-making capacity as adults, are at a different developmental stage of their lives, and experience different vulnerabilities. This is why it's important to have different approaches for young people in contact with the criminal justice system compared to adults, including different approaches to rehabilitation that incorporate therapeutic supports to meet their specific needs.

The United Nations Committee on the Rights of the Child provided guidance on the application of the child justice system in their [General Comment No. 24 \(2019\) on children's rights in the child justice system](#). They outline “...the child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the

commission of the offence.” The Committee recommended that any governments that limit the applicability of their child justice system should “...change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence.” In the same General Comment, the Committee also urged governments to raise the age of criminal responsibility to at least 14 years based on established findings regarding brain development in children and young people.

The proposal will also not make communities safer, where tough-on-crime approaches are often ineffective. Recidivism was explored in a recent research report, [Safety through support: Building safer communities by supporting vulnerable children in Queensland's Youth Justice System](#). It 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 aged 10 to 12 years who receive a supervised sentence, 94 per cent will return to youth justice supervision at some point. Detaining children for longer periods of time is also concerning when Queensland's youth detention facilities are already full. A [recent Queensland Audit Office Report](#) outlined that Queensland's youth detention facilities are consistently operating above safe capacity.

The *Adult Crime, Adult Time* proposal is a step in the wrong direction, it will not make communities safer and is not consistent with Queensland's human rights obligations to children, nor international best practice.

■ Removing the principle of detention as a last resort

The Bill also seeks to remove the principle of detention as a last resort from the [Charter of Youth Justice Principles](#) in the Youth Justice Act. This principle was already amended by the *Queensland Community Safety Act 2024* (Qld) earlier this year. Previously the principle required that “a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.”

Following recent amendments, it currently reads as follows:

“A child should be detained in custody—

- a) where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient; and
- b) for no longer than necessary to meet the purpose of detention.”

The Bill proposes to remove the principle all together and removes other provisions from the Youth Justice Act that also reflect the principle. Additionally, the Bill seeks to add a specific requirement that in sentencing a child for an offence a court must not have regard to any principle that a detention order should only be imposed as a last resort or any principle that a sentence that allows the child to stay in the community is preferable. The Bill also seeks to require courts to have primary regard to any impact of the offence on a victim.

The government has acknowledged that the removal of the principle of detention as a last resort is not compatible with human rights.

We do not support the removal of, nor prior amendments to, the principle of detention as a last resort. This principle is derived from the UN Convention on the Rights of the Child. Removing the principle from the Youth Justice Act sends a troubling signal into a system that already detains

more children than any other Australian jurisdiction on an average night. The removal of this safeguard is particularly concerning in the context of detention of children in adult watch houses. The principle should be fully restored and maintained.

■ Children's criminal history and expanded access to Childrens Court proceedings

The Bill proposes a new definition of a child's criminal history to include cautions, restorative justice agreements and contraventions of supervised release orders. The Bill proposes to allow a person's child criminal history to be admissible if they are sentenced as an adult. Admissibility of a child's criminal history would be limited for a period of five years from the date of the outcome for the last childhood offence. The Bill also proposes to lessen the discretion of Childrens Court Judges to limit access to Childrens Court proceedings preventing exclusion order for victims, victims' representatives, victims' relatives, the representatives of relatives of a deceased victim, and persons holding media accreditation.

The proposed amendment to expand access to Childrens Court proceedings may result in unintended negative consequences. This is the case where matters may involve complex relationships, or where the nature of matters discussed warrants nuanced consideration of who can be present during proceedings. Open justice and access for victims and victims representatives in legal processes is important, including in a youth justice setting. However, these changes have the potential to impact children who often have significant challenges, including experiences of complex trauma and poverty.

Proposed changes regarding children's criminal history and Childrens Court Proceedings do not sufficiently respect the human rights of children and undermine the ability of children in contact with the justice system to effectively move forward with their lives.

What we're calling for instead of tougher laws

We are calling for reforms to the youth justice system to be based on the evidence of what makes communities safer, and for any changes to ensure the rights of children and victims are respected.

The criminal justice system has a disproportionate impact upon Aboriginal and Torres Strait Islander children and their families. Of the young people who were incarcerated in the 2022-23 financial year in Queensland, over 70 per cent identified as Aboriginal and/or Torres Strait Islander. Within the 10-13 year old age group, this figure increases to over 80 per cent ([Report on Government Services 2024](#)). The right of First Nations Peoples to self-determination, which is acknowledged in the preamble of Queensland's Human Rights Act, must shape the way forward.

Children living with disability are also disproportionately impacted by the youth justice system. [The Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability](#) highlighted that children with disability are exposed to an increased risk of violence, abuse, neglect, and exploitation. The measures proposed by the Bill will be ineffective on numerous fronts in this context. Presuming longer prison sentences will deter children from engaging in offending behaviour is flawed, particularly for children whose decision-making is further impacted by disability. Detention is also very harmful for children, particularly children living with disability. The Government should be working with organisations and communities who have particular expertise with respect to the needs of children and young people with disability who are in contact or are at risk of contact with the criminal justice system.

The [Queensland 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.”

Rather than introducing increasingly tougher approaches to children and young people in contact with the justice system, we recommend:

- The Queensland Government review the operation of Queensland’s youth justice system to identify immediate opportunities to streamline and improve the effectiveness of responses across the continuum. This must start by engaging with First Nations Peoples and a diverse range of organisations and community leaders to chart a way forward.
- The voices of Aboriginal and Torres Strait Islander children, families, and communities must be central to all policy and service delivery decisions. The youth justice system must be co-designed with Aboriginal and Torres Strait Islander leaders, ensuring that decisions reflect the priorities, knowledge, and cultural practices of those most affected by the system.
- Prioritise investments and policies that enable the community services sector, with a particular focus on Aboriginal and Torres Strait Islander community-controlled organisations, to lead the way in addressing the root causes of youth crime and make all Queenslanders feel safe in their communities.
- Fund and implement an alternative, community service-led response to children under the age of 14 years old who are interacting with the justice system. The response must be supportive and therapeutic in nature. It should also adopt principles of restorative justice, ensuring that the needs of victims continue to be met.
- End the use of adult watch houses for the detention of children and create viable pathways for diversion and rehabilitation, including community services available 24/7 for young people and families across Queensland.