Ending youth incarceration in Queensland

A joint submission to the Queensland Parliament Justice, Integrity and Community Safety Committee's inquiry into the Making Queensland Safer Bill 2024

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Change the Record and the Human Rights Law Centre

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Change the Record

Change the Record is Australia's only First Nations-led coalition of Aboriginal Community Controlled Organisations, legal, health, and family prevention experts. Change the Record has two key objectives: to end the mass incarceration of First Nations Peoples, and to end the disproportionate rates of family violence experienced by Aboriginal and Torres Strait Islander women and children.

Change the Record's work emphasises the importance of:

- investing in Aboriginal and Torres Strait Islander communities and First Nations-led service providers, to ensure that our people have access to culturally safe and responsive support services, early intervention, prevention and healing programs;
- shifting control and resources away from the criminal legal system and into First Nations-led community-based alternatives to policing and prisons;
- ending the incarceration of children and young people, including by raising the minimum age of criminal responsibility to at least 14 years of age (without exception) and shutting down juvenile detention centres across Australia;
- ensuring First Nations communities have control over the care and wellbeing of our children, with a particular emphasis on ending the forced removal of our children from their families, their communities and their culture;
- ending the disproportionate poverty and housing precarity experienced by First Nations peoples; and
- governments committing to Aboriginal and Torres Strait Islander self-determination and to addressing the ongoing effects of colonisation on First Nations peoples, including redress for the dispossession and systemic racism that our people experience to this day.

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Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre is a founding member of the Change the Record coalition, and a leading Australian human rights advocacy organisation that uses a combination of strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia.

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Acknowledgement

Chang the Record and the Human Rights Law Centre recognise and acknowledge Aboriginal and Torres Strait Islander People as the custodians and First Peoples of so-called Australia. With humility and gratitude, we acknowledge the Traditional Owners of the lands we work on and thank them for paving the way for us to continue the fight for justice in this country. Sovereignty was never ceded.

We pay our utmost respect to the families and communities of young lives lost in the system and will continue to work in solidarity towards justice.

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1. Executive summary

This submission is made to the Queensland Parliament Justice, Integrity and Community Safety Committee's inquiry into the Making Queensland Safer Bill 2024 (the Bill).

Change the Record and the Human Rights Law Centre strongly oppose the Bill. The Bill's headline amendments – prohibiting any consideration of the principle of detention as a last resort and imposing 'adult crime, adult time' – are, by the government's admission, contrary to both Queensland and international human rights law.

Due to consistent and ongoing government failures, First Nations children in Queensland are locked up at disproportionate rates compared to non-Indigenous children. Children with disabilities, unmet health needs and contact with the child protection system are also overrepresented in custody.

While imprisoning children of any age is dangerous policy, it must be pointed out that the Bill will affect children as young as 10. These are children in year four, children who still have their baby teeth and children who are now too young to use social media.

The Bill will unjustifiably exacerbate this crisis of mass incarceration. Locking up children causes irreversible harm, and puts them at risk of inhuman treatment and even death in custody due to the degrading conditions and practices that thrive within watch houses and prisons. It causes intergenerational damage in the communities that children are taken from. Too often these are Aboriginal and Torres Strait Islander communities. In these circumstances, and given the current state of the police and prison cells that children are detained in, we consider the Bill discriminatory and abusive.

In addition to being harmful, the Bill is in direct conflict with the claim in its title that it will make Queensland safer. The evidence is clear that sending a child to prison increases the likelihood that they will have repeated contact with the criminal legal system throughout their lives. The Bill therefore does not enhance community safety – it undermines it. There is also no evidence that the amendments in the Bill will deter offending.

The Committee's reporting deadline of 6 December 2024, only one week after referral from the Legislative Assembly, is vastly inadequate and undemocratic. It does not allow for the level of discussion and scrutiny that is required for a Bill of this much gravity. In the last term of government, the Premier, then Leader of the Opposition, described other youth justice amendments that departed from standard parliamentary process as having 'trashed the way this Parliament operates' and the government of the day as having 'trashed the remaining shred of its integrity credibility'.[1]

Instead of progressing the Bill, we call on the Queensland Government to provide Aboriginal and Torres Strait Islander community-controlled organisations and communities the resources to progress local solutions that address the unmet needs that lead to offending and to lead an alternative, community service response for children who are already interacting with the criminal legal system. This is the only way forward given the ongoing mass incarceration of First Nations people and multiple recommendations both in Queensland and nationally that remain unimplemented.

While the government has announced funding for intervention programs, there needs to be greater focus on, and more funding for, preventative initiatives that support families and communities to address root causes of offending without criminalising children. The goal should be to close prisons, not lock up more First Nations children.

[1] Queensland Parliament Hansard Record of Proceedings (24 August 2023), 2413. <https://documents.parliament.qld.gov.au/events/han/2023/2023_08_24_WEEKLY.pdf>

The criminal legal system has long been in crisis. We hope this Committee process will make it clear to all elected representatives that knee-jerk, 'tough on crime' policies do not work and a different way forward is essential. The calls for improvement in community safety despite Queensland locking up more children than any other Australian jurisdiction proves that a carceral approach has not worked. Doubling down will leave society worse off.

Please note that in the very limited time available this submission focuses on provisions that we expect will lock more children away in prison for longer and have severe, disproportionate impacts on Aboriginal and Torres Strait Islander children. The absence of commentary on other aspects of the Bill in this submission does not mean we endorse them.

As mentioned throughout the submission, we support the Committee being provided with more time for its inquiry. On 29 November 2024, we wrote to Committee members requesting them to call for an extension of time from the Legislative Assembly. We press for this request to be granted.

2. Recommendations

We recommend that the Committee's report on the Bill make the following recommendations:

1. The Bill should not be passed.

2. The Queensland Government should provide decision-making power, control and resources to Aboriginal and Torres Strait Islander community-controlled organisations and communities to build alternative, self-determined supports for First Nations children that meet their needs and divert them away from the criminal legal system.

3. The Queensland Government should urgently establish an alternative, community service-led model for children who are already interacting with the criminal legal system. This too should be a self-determined model led by Aboriginal and Torres Strait Islander community-controlled organisations and communities.

4. The Queensland Government should stop detaining children in adult watch houses.

5. The Queensland Government should prohibit, in law, the use of solitary confinement, strip searching and spit hoods on children in police cells and prisons.

6. If, against the advice of First Nations, legal and community sector stakeholders and experts, the Committee recommends the Bill be passed, the Bill should be amended so that:

    a. it does not apply to children under the age of 14;
    b. non-violent offences and offences which do not carry a risk of serious harm to another person are not captured in the 'adult crime, adult time' provisions;
    c. restorative justice orders remain an option for sentencing children;
    d. the Children's Court retains discretion to issue exclusion orders;
    e. it requires an independent review of the amendments 12 months from commencement;
    f. there are no override declarations under section 43(1) of the *Human Rights Act 2019* (Human Rights Act); and
    g. if recommendation 6(f) is not adopted, any override declaration is limited to 15 months from when it commences, with no provision for extension.

7. If the Committee recommends the Bill be passed, the Queensland Government should provide an immediate funding boost for existing First Nations, community, health and legal services that address the root causes of offending and support children in contact with the criminal legal system.

We put on the record that the Bill is regressive, breaches human rights, stands to cause immense harm to children and communities and blatantly disregards evidence. We strongly oppose it and call on the Committee to adopt recommendations 1-5.

We feel compelled to make recommendations 6-7 only to mitigate the disastrous and far-reaching impacts the Bill will cause if passed, and to highlight that the Bill is fundamentally wrong.

3. Context: a discriminatory criminal legal system and misleading political rhetoric

This is a Bill that will disproportionately affect Aboriginal and Torres Strait Islander children, families and communities. The submissions and evidence provided to the Committee must be considered in the context of systemic failures in the criminal legal system that primarily impact First Nations peoples and deeply misleading political rhetoric.

We call on the Committee to ensure that it considers all submissions from First Nations people and organisations in detail given their profound understanding of failings and opportunities relating to the criminal legal system. We would support an extension to the Committee's reporting date to ensure this occurs.

With the deeply disrespectful late-night abolition of the Truth-telling and Healing Inquiry, and the Pathway to Treaty, the government deprived Aboriginal and Torres Strait Islander people of the opportunity to share their experiences and evidence on many issues, including issues with the criminal legal system. We note that the abolition of the Inquiry occurred in the same year as the disbanding of the Youth Justice Reform Select Committee. This illustrates the structural violence that First Nations people in Australia often experience when trying to be heard.

Giving proper consideration to submissions from Aboriginal and Torres Strait Islander people, while it is no way a substitute for the Inquiry, is the bare minimum the Committee can do.

Overrepresentation of First Nations children and children with disabilities in custody

Queensland is the nation's outlier in youth incarceration, imprisoning more children than any other jurisdiction despite its smaller population.[2] Shockingly, over 70% of children in prison in Queensland are Aboriginal or Torres Strait Islander, rising to more than 80% for those aged 10 to 13.[3] The Bill will therefore have the greatest impact on Aboriginal and Torres Strait Islander children.

Any misconception that First Nations children commit more crimes is harmful and unsubstantiated. Systemic injustices, including discriminatory policing and limited access to support services, rather than increased criminality drive their overrepresentation in the criminal justice system.

There is an ongoing pattern of First Nations children being disproportionately impacted by ineffective 'tough on crime' policies adopted by Australian state and territory governments. In Queensland, recent examples include regressive bail laws, including reverse onus provisions and the criminalisation of bail breaches. This too required the Human Rights Act to be overridden.

[2] Australian Institute of Health and Welfare, Youth detention population in Australia 2023 (2023). <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/state-and-territory-trends>

[3] Australian Institute of Health and Welfare, Youth justice (2023) <https://www.aihw.gov.au/reports/australias-welfare/youth-justice>

Children with disabilities and complex health needs are also disproportionately represented, and it is concerning the human rights statement for the Bill does not acknowledge this. The Queensland Youth Justice Strategy's snapshot of young people in the youth justice system in 2022-23 includes these statistics:[4]

- 81% have used at least one substance
- 44% have one or more disabilities
- 44% have one or more mental health disorders and/or behavioural disorders (diagnosed or suspected)
- 38% have used ice/methamphetamine in the past
- 16% have one or more psychological behavioural issues

Given these statistics, it is clear that many First Nations children detained in police and prison cells in Queensland have complex health needs and disabilities. Our experience and countless inquiries have also shown that intergenerational trauma, poverty, out-of-home care, domestic and family violence, substance abuse, and homelessness are common experiences for children in the criminal legal system.

None of this can continue. Given the extent of the government's concession in the human rights statement for the Bill about Aboriginal and Torres Strait Islander children being most greatly impacted, and readily available information about the health and disability status of children in custody, if the Committee recommends that the Bill be passed we consider that it has not only accepted a discriminatory criminal legal system but endorsed it.

Connection with deaths in custody

More than three decades after the Royal Commission into Aboriginal Deaths in Custody, the rate of First Nations deaths in custody remains alarmingly high and disproportionate to non-Indigenous deaths in custody. Mass incarceration of First Nations people is a key factor. Aboriginal and Torres Strait Islander people represent just over 3% of Australia's population but over 33% of people in prison in 2023.[5] Ending deaths in custody requires ending the mass incarceration of First Nations people, and starts with ending mass incarceration of First Nations children.

Lack of progress against Closing the Gap

Target 11 of the Closing the Gap strategy aims to reduce the detention rate of Aboriginal and Torres Strait Islander youth (10-17 years) by 30% by 2031.[6] Key indicators include time spent in detention, unsentenced detention rates, and transitions between community supervision and detention. We are already failing this goal, with Queensland's progress worsening even without the Bill.[7] The Bill will set us back even further and undermine national efforts to achieve equitable justice outcomes. 'Adult crime, adult time' will set us back even further.

Misleading political rhetoric

The Queensland Government's approach to the Bill is a clear case of playing politics with the lives of First Nations children. Rather than engaging in meaningful, evidence-based reform to address youth offending, the government has opted for a populist approach that prioritises fear-driven soundbites

[4] Queensland Government, Department of Youth Justice, A safer Queensland: Queensland Youth Justice Strategy 2024-2029 (2024).
[5] Australian Institute of Health and Welfare, Adults in prison (2023), <https://www.aihw.gov.au/reports/australias-welfare/adults-in-prison>
[6] Closing the Gap, Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system: outcome 11 <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/7-difference/b-targets/b11>
[7] Productivity Commission, By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30%: Closing the Gap data dashboard <https://www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area11>

over substantive solutions. The Bill's focus on punitive measures under the banner of 'adult crime, adult time' is a political manoeuvre designed to exploit community fears, offering simplistic responses to complex issues while failing to address the systemic drivers of youth offending.

The Bill's explanatory notes suggest that its primary purpose is to fulfil an election commitment. However, electoral promises cannot justify legislation that severely undermines children's rights in such a substantial way. Enacting punitive measures with such a premise lacks legitimacy and does little to achieve lasting, evidence-based outcomes for community safety.

It is also misleading and far-fetched to claim that this legislation reflects the desires of Queenslanders. Queenslanders were not consulted on the specific changes proposed for inclusion in the Bill. For example, the government's election campaign suggested these measures would focus on violent crimes, however, the Bill's scope has expanded to include offences such as burglary and other non-violent offences. In addition, the government promised to remove the principle of detention as a last resort, but the Bill goes further than that and *prohibits* courts from having any regard to the principle,[8] undermining the separation of powers and taking a completely opposite approach to sentencing for adults.[9] Queenslanders have still not been provided evidence to justify why the changes are a necessary, effective and proportionate means of improving community safety.

Concerningly, the Bill also perpetuates a harmful narrative by positioning children against victims, creating a false dichotomy. Children who offend are often victims themselves – of abuse, trauma, neglect, or systemic disadvantage – and there is clear evidence that imprisoning children sets them up for a lifetime of interaction with the criminal legal system. Punitive measures that do not serve any rehabilitative purpose for vulnerable children fail children, victims and the broader community. A criminal legal system that harms and neglects children only deepens cycles of harm and disadvantage, ensuring it fails everyone.

4. Key concerns about the Bill

We are highly concerned that the following amendments to the *Youth Justice Act 1992* will increase the number of First Nations children in police and prison cells, as well as how long they spend in custody:

- removal of any consideration of the principle of detention as a last resort, including by prohibiting the courts from considering the principle
- application of adult minimum, mandatory and maximum sentences to children for 13 offences, including removing the option of restorative justice orders
- expansion of the definition of criminal legal history to include cautions, restorative justice agreements and contraventions of a supervised release order
- authorisation of children's criminal legal history to be considered in adult proceedings, including the retrospective application of this change
- lifting the maximum duration of probation orders to three years

Our key concerns are that these provisions raise major human rights issues, will not act as a deterrent and will pipeline First Nations children into harmful conditions that are incompatible with improving community safety.

We are also extremely concerned about the amendment to the *Children's Court Act 1992* which provides that media, victims and victims' representatives and families cannot be excluded from a

[8] Making Queensland Safer Bill 2024, cl 15, new s 150(1AA).
[9] *Penalties and Sentences Act 1992*, s9(2)(a).

courtroom. Again, this raises major human rights issues. It also risks a 'naming and shaming' culture that undermines the purpose of the Bill.

Human rights issues

If the Bill is passed, it will be the third time that the Queensland Government has overridden the Human Rights Act. All the overrides are related to youth justice and disproportionately impact First Nations children. We condemn successive governments' willingness to override the Human Rights Act to police and jail children. It is particularly shameful that the Crisafulli Government's first Bill seeks to override the Human Rights Act in relation to such foundational principles of youth justice and international law. The Bill is inconsistent with international human rights obligations, Queensland's own Human Rights Act and other Australian jurisdictions' youth justice legislation.

Documents tabled with Bill

On page 5 of the statement of compatibility for the Bill, the government concedes that the "laws are more punitive than necessary to achieve community safety". This astounding admission is one of several acknowledgments that the Bill breaches human rights. Others include:

- the application of adult sentencing and changes to the duration of probation orders are incompatible with human rights
- abolishing the principle of detention as a last resort is incompatible with human rights
- the amendments are in conflict with international standards including the United Nations Convention on the Rights of the Child (CRC) and the Minimum Rules for the Administration of Juvenile Justice
- the limitations to the relevant human rights are 'clear and deep'
- the amendments will treat children less favourably than adults in the same circumstances and therefore directly discriminate based on age
- there may be less restrictive options available

While the government considers that human rights impacts relating to the criminal history amendments and access to the Children's Court are justifiable, the statement of compatibility notes the following rights are limited:

- the right to enjoy liberty without discrimination (section 15(2))
- the right to equal protection of the law without discrimination (section 15(3))
- the right to equal and effective protection against discrimination (section 15(4))
- the right to life (section 16)
- the right to privacy and reputation (section 25);
- the rights of a child to protection in their best interests (section 26(2))
- the right to liberty and security of person (section 29(1))
- the right to a procedure that takes into account the child's age and the desirability of promoting rehabilitation (section 32(3))

In the time available we have not been able to conduct a detailed human rights analysis. However, from the government's analysis, four stark observations emerge.

First, it is unsurprising that the jurisdictional comparison in the explanatory notes for the Bill find no Australian precedent. Second, the statement of compatibility does not identify any issues with cultural rights of Aboriginal and Torres Strait Islander peoples under section 28 of the Human Rights Act, despite there being an obvious link between the right to liberty and security of person and cultural rights, including the right to maintain kinship ties under section 28(2)(b), nor does it identify the application of the protection from torture and cruel, inhuman or degrading treatment (section 17) and the requirement for humane treatment when deprived of dignity (section 30) which we consider are

engaged given the experience of open court for children in sensitive matters. Third, the statement of compatibility does not appear to identify that the Bill goes beyond removing the principle of detention as a last resort and actually *prohibits* judges from considering detention as a last resort. Fourth, it is a highly tenuous argument that the limitations to rights engaged by the criminal history and Children's Court amendments are justifiable under section 13 of the Human Rights Act.

In relation to the fourth point, we note that the following factors are some of the factors relevant to whether limitations to human rights are justifiable under section 13(2):

- the nature of the right – while all human rights are important, the human rights that are limited are particularly significant rights that relate to the physical safety of children, and include the right to life which under international law is 'the supreme right'[10]
- the importance of preserving the human right, taking into account the extent and nature of the human right – it is of utmost importance to preserve these human rights because they are significant rights that are engaged in the context of children, predominantly Aboriginal and Torres Strait Islander children who have experienced and continue to experience disadvantage within the criminal legal system, and children who have disabilities and complex health needs
- the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom
    - while the stated purpose of the criminal history provisions is to 'enable a court sentencing children and adults to have a more complete picture of the offender and be better placed to frame more appropriate sentences', we consider a better (more accurate) framing of the purpose is encouraging tougher penalties, because throughout the statement 'appropriate penalties that meet community expectations' is emphasised – this purpose is incompatible with human dignity, equality and freedom given Article 37(b) of the CRC
    - while the stated purpose of the Children's Court amendments is to support the rights of victims and their families and to support open justice and transparency, it is difficult to see how the scope of the limitation is in any way compatible with human dignity since it does not allow judges to make exclusion orders even where there is a risk to the safety of a person

We consider there are significant deficiencies in the statement of compatibility that the Committee must interrogate in detail.

Similarly, we find the analysis of fundamental legislative principles in the explanatory notes interesting given the overlap between human rights and fundamental legislative principles in the *Legislative Standard Act 1992* (Legislative Standards Act). Despite the major human rights issues that the government acknowledges, the explanatory notes provide limited commentary on fundamental legislative principles and conclude that any limitation to the rights and liberties of individuals under the Legislative Standards Act is justified. The commentary does not include the retrospective nature of the amendments to allow children's criminal histories to be considered in adult sentencing. In its report, we ask the Committee to consider whether the legislation has sufficient regard for fundamental legislative principles.

<u>Override declarations</u>

In relation to the government's proposal to override the Human Rights Act for the amendments to implement 'adult crime, adult time' and remove detention as a last resort, we note that under section 43(4) of the Human Rights Act, override declarations should only be made in exceptional

[10] Human Rights Committee, General Comment No. 36 on the right to life, UN Doc CCPR/C/GC/36 (30 October 2018).

circumstances. 'Exceptional circumstances' is an extremely high threshold that requires circumstances of immediate urgency. Examples of exceptional circumstances provided under section 43(4) section are 'war, a state of emergency, an exceptional crisis situation constituting a threat to public safety, health or order'.

The government has not established this threshold. In the statement about exceptional circumstances that was tabled with the Bill the government claims exceptional circumstances but does not substantiate that claim. The data it has chosen to present in the statement is for longer-term trends and there is no critical analysis of how this data demonstrates the necessary threshold for overriding the Human Rights Act. A conclusion is abruptly made that 'youth crime continues to be a serious issue'. We also cannot see how youth crime can reasonably be claimed as exceptional circumstances without any evidence that the Bill will effectively and immediately address youth crime.

We therefore do not consider that there are proper grounds for Parliament to rely on the override declaration power, and recommend that the override declarations are removed from the Bill.

We are also extremely concerned that the government is proposing to override the Human Rights Act for five years given the significance of the human rights incompatibility that it has admitted. This would inhibit the ability of Parliament to press for the Queensland Government to take steps towards a human rights compliant youth justice framework, and would enable the Queensland Government to evade accountability for sustained breaches of children's rights without any evidence to justify exceptional circumstances. Section 45(2) of the Human Rights Act allows a shorter period to be set, and there is precedent in Queensland for overrides being time bound.[11]

We have made it very clear in this submission that we oppose the Bill and, as above, we do not consider that there is any reasonable justification for override declarations to be made. However, if the Committee recommends that the government progresses the Bill with the override declarations, we call for:

- a legislative requirement for an independent review 12 months from when the Bill commences (we understand the Queensland Human Rights Commission is calling for the same); and
- any override declaration in the Bill to be limited to 15 months from when it commences, with no provision for extension.

This 15-month period would allow three months for an independent review to occur and for the results of the review to inform Parliament's assessment of whether overriding children's human rights can be justified. The results of the review would also provide a crucial opportunity to reassess the current, punitive approach and to pursue evidence-based reform.

Ineffective policy

Children do not have the same decision-making capacity as adults because their brains are still developing.[12] This is why the criminal legal system treats them differently to adults. It is why governments across Australia have been urged to raise the age of criminal responsibility to at least 14 years and why there is federal legislation banning children under the age of 16 from social media. We agree with the Queensland Human Rights Commissioner's statement that "a society that treats its children in the same way that it treats its adults is a society that's lost its way."

In addition to contravening international human rights law, there is another reason why all other states and territories have some requirement for consideration of the principle of detention as a last

[11] *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* ss 50M, 70, 72, 73, 74.
[12] Australian Medical Association, Submission to the Australian Human Rights Commission: National Children's Commissioner's youth justice and child wellbeing reform consultation (2023).

resort, and why almost all states have abolished mandatory sentencing. There is simply no evidence that removing detention as a last resort and introducing adult sentencing will reduce crime.

If the Bill is passed, Queensland will join Western Australia in being the only jurisdictions with minimum mandatory sentences for children, and will be out of step with longstanding recommendations to abolish mandatory sentencing.[13] [14]

Pipeline to prison

Given the Bill will be an ineffective deterrent for children and a key intention of the Bill is to facilitate harsher sentencing, the obvious effect of the provisions of the Bill that implement adult sentencing, allow criminal histories of children to be considered in the sentencing of adults and remove detention as a last resort is increased incarceration rates. As outlined earlier in the submission, this will disproportionately affect Aboriginal and Torres Strait Islander children.

As many stakeholders spoke about this issue at the public hearing in Brisbane on 2 December 2024, in the limited time available we would like to highlight issues that we expect will result in increased incarceration rates, and impact for First Nations children, which we did not hear, or are unsure were raised, at the hearing.

The amendment to increase the maximum period of probation from two to three years increases the monitoring and policing of children, and therefore the risk that a child will end up in prison for breaches of probation. There is a lot of discretion in how breaches of probation are treated. Given ongoing issues with systemic racism within the criminal legal system, we are concerned that over the additional year First Nations children will be disproportionately policed and subjected to harsh consequences.

The removal of restorative justice orders as a sentencing option will increase the risk of imprisonment by completely taking away a non-custodial option. It is also very shortsighted given the Bill's focus on the experience of victims – restorative justice is a well-established evidence-based framework that can provide accountability for actions without putting children behind bars. The Queensland Government is currently, in its own words, 'using restorative justice processes to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system'.[15] It follows that removing it as an option will lead to more Aboriginal and Torres Strait Islander children in custody.

We are also concerned that the amendments to allow childhood findings of guilt to be admissible in proceedings against adults are retrospective. The explanatory notes for the Bill state that childhood findings of guilt that apply *before the commencement* of the Bill will be admissible in proceedings against adults for offences that occur after the commencement. This approach expands the number of people whose childhood criminal histories are admissible and, in turn, the number who are subjected to harsher sentencing. Again, it will primarily be First Nations young people that feel these consequences.

In addition, we are concerned about scope creep. As noted on pages 7-8, during the election campaign 'adult crime, adult time' was pitched as a response to violent offences. We are concerned about the inclusion of offences such as burglary and unlawful use of a motor vehicle. These are just two examples of offences that can be established for conduct that is not dangerous to others, yet results in more Aboriginal and Torres Strait Islander children being caught in the criminal justice system. We echo QATSICPP's submission that non-violent offences should not be captured by the Bill and the

[13] Royal Commission into Aboriginal Deaths in Custody. National report (1991).
[14] Australian Law Reform Commission, Pathways to justice: inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples (2018).
[15] Queensland Government, About restorative justice conferences <https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-community-programs-and-services/restorative-justice-conferences/about>

Queensland Bar Association and/or Queensland Law Society's concerns at the Brisbane public hearing that the Bill applies regardless of the level of the child's involvement in the offence. The overreach will undermine the government's objectives while also exacerbating harm to children, again while failing to enhance community safety.

Rather than punishing and caging children, mostly Aboriginal and Torres Strait Islander children, Australia must comply with its international obligations by ensuring that all children and their families have the care and support needed to heal and eventually thrive.

Harmful conditions incompatible with community safety

As above, we expect this Bill will result in more Aboriginal and Torres Strait Islander children being imprisoned for longer. Any increase in incarceration of children is cause for major alarm. Prison simply does not work, and sending children to prison or increasing their risk of imprisonment undermines community safety. Prisons entrench cycles of disadvantage, abuse, and deprivation across generations.[16] They do not make communities safer.[17] [18]

Research shows that early contact with the criminal legal system significantly increases the likelihood of ongoing involvement with the system throughout a child's life.[19] The younger a child is when they first encounter the criminal legal system, the more likely it is that they will become entrenched in the criminal legal system.

The worst response to a child in crisis is to punish and isolate them from their communities and families. The medical evidence is clear that any engagement with the criminal legal system causes harm to a child.[20] Incarcerated children face a significantly increased risk of depression, self-harm, suicidality, and impaired emotional and social development.

The conditions of police and prison cells are dire.[21] [22] In custody children are deprived of any rehabilitative support or education, adequate food, natural light, adequate sleep, hygiene and normal social interaction and connection to community. Children are also at risk of being subjected to harmful practices including solitary confinement, isolation, strip searching, spit hooding and other use of force and restraints.

The conditions are so atrocious that children die in custody. The Queensland Child Death Review Board report published earlier this year found that two Indigenous boys died preventable deaths after being locked away for considerable periods of time in youth prisons.[23]

Children as young as 10 years old[24] are also being detained in deplorable conditions in adult watch houses. These are designed to imprison adults for short periods of time, yet children are detained

[16] Australian Human Rights Commission, Statement by Aboriginal and Torres Strait Islander Social Justice Commissioner <https://humanrights.gov.au/about/news/speeches/emrip-impacts-first-nations-engagement-justice-systems>
[17] Victorian Parliament Legal and Social Issues Committee, Inquiry into Victoria's Criminal Justice System (Final Report, 24 March 2022)
[18] Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Report Overview (17 November 2017).
[19] Walsh T, Beilby J, Lim P and Cornwell L. Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system (2023).
[20] Australian Medical Association, Submission to the Australian Human Rights Commission: National Children's Commissioner's youth justice and child wellbeing reform consultation (2023).
[21] Inspector of Detention Services, Cleveland Youth Detention Centre inspection report: focus on separation due to staff shortages (2024).
[22] Inspector of Detention Services, Cairns and Murgon watch-houses inspection report: focus on detention of children (2024).
[23] Queensland Family and Child Commission, Child Death Review Board Annual Report 2022-23 (2023).
[24] Queensland Family and Child Commission, Queensland Child Rights Report 2023 (2023) 31–32.

there for extended and increasing[25] periods of time. A recent Queensland Audit Office report outlined that Queensland's youth detention facilities are consistently operating above safe capacity.

Children in watch houses can see and hear adults that are detained there, and children have been reported to witness people who are "drunk, abusive, psychotic or suicidal".[26] In 2023, a Queensland watch house officer reported that there were incidents of adult prisoners exposing their genitals and imitating sexual acts to children of the opposite sex, and an incident where a girl was placed in a cell with two adult male prisoners.[27]

Children in cells are also subjected to inhumane practices such as solitary confinement and isolation, which can have devastating, long-term, and sometimes irreversible impacts on a child's mental health and overall well-being[28] and strip searching. Strip searching is a humiliating experience that has been found to be unnecessary, ineffective and replaceable by safer alternatives. Solitary confinement and strip searches are regular practices in Queensland. While we understand Queensland Police Service has committed to abolishing spit hoods, we are disappointed that this commitment has not been backed by action to prohibit the practice, in legislation, in both police and prison cells.

At page 7 of this submission, we highlighted that First Nations children and children with disabilities are disproportionately represented in custody. The criminal legal system fails to recognise this. Imprisoning children exacerbates the underlying causes of their behaviour. Instead of investing in appropriate supports and early intervention, governments across this continent have routinely opted to criminalise and imprison children who have experienced significant challenges, including disability, severe trauma, homelessness, family violence, and substance use.

Naming and shaming

We are very concerned about the provisions of the Bill that will remove the power of Children's Court judges to exclude media, victims and victims' representatives and family from attending court proceedings. In some cases this could result in serious safety risks. Another major concern is that this amendment supports a naming and shaming culture, which reduces the chances of rehabilitation.[29] [30]

We support the concerns about vigilante behaviour against Aboriginal and Torres Strait Islander people that QATSICPP raises in its submission.

5.Unintended and unexplored consequences

The timeframes for the inquiry mean there is insufficient time to work through potentially major unintended consequences. We would support an extension to the Committee's reporting date to ensure these, and all other unintended consequences raised by stakeholders, particularly First Nations stakeholders, can be addressed.

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[25] Queensland Family and Child Commission, Accountability and transparency key to watch house solution (Web Page, 12 December 2023) <https://www.qfcc.qld.gov.au/news-and-media/ accountability-and-transparency-key-watch-house-solution>

[26] *Re Richard Jones (a pseudonym)* [2023] QChCM 1, 11.

[27] The Guardian, 'Illegal' strip searches of children among claims made by Queensland watch-house whistleblower (27 February 2023) <https://www.theguardian.com/australia-news/2023/feb/27/strip-searches-of-children-among-claims-made-by-queensland-watch-house-whistleblower>

[28] Singh Y, Old enough to offend but not to buy a hamster: the argument for raising the minimum age of criminal responsibility, (2023) 30(1) *Psychiatry, Psychology and Law*, 51-67.

[29] Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Volume 2B (17 November 2017).

[30] NSW Legislative Council, Standing Committee on Law and Justice, The prohibition on the publication of names of children involved in criminal proceedings (April 2008).

Some of the implications and consequences we heard at the Brisbane public hearing and in discussions with community organisations that we are particularly concerned about include:

- a risk that the Bill could be incompatible with national direction on youth policy following the recommendations of the Senate inquiry into youth incarceration, due in July 2025
- lack of plan for minimising discriminatory policing
- children being reluctant to disclose information to the Children's Court, including mitigating factors, which may impact the Court's ability to impose an appropriate sentence and instead encourage harsher sentences
- risks of the administration of justice being prejudiced
- matters going to trial where they previously would not have
- increased demand on already overstretched youth prisons leading to inappropriate reliance on detention in adult watch houses
- risks flowing from the lack of modelling of impacts on watch houses, prisons and the courts
- resourcing impacts for legal and community services
- more funding required for existing housing, health care, education, employment/training and support worker programs that already engage with young people caught in the criminal legal system

6. Solutions

Ending the incarceration of children is the most effective way to uphold community safety and ensure that children are not subjected to cruel, inhuman or degrading treatment, punishment, and torture at the hands of police and prisons. We urge you to read our submission to the Senate Legal and Constitutional Affairs Committee on Australia's youth detention and incarceration system that outlines broader reform needed to stop youth incarceration.[31]

To stop the pipeline of children into prisons, the minimum age of criminal responsibility must be raised to at least 14 years old, without exception and without the introduction of new powers to police and detain children, alongside legislating a minimum age of detention of at least 16 years old. Dangerous and discriminatory bail and mandatory sentencing laws must be repealed, and police must be subjected to independent oversight. Access to diversion must be maximised, and power and resources transferred to Aboriginal and Torres Strait Islander community-controlled organisations and other services to build alternative, culturally safe responses backed by the evidence.

Governments across the country have consistently invested in police and prisons over public housing, support services and community-based, self-determined alternatives to criminalisation and incarceration. Successive failures by governments to pursue evidence-based reform in favour of 'tough on crime' politics has caused immense harm to First Nations children and communities in particular.

Countless inquiries and reports have outlined solutions that have been ignored or underfunded by successive governments: local community and health-based approaches led by First Nations people. Decision-making power, control and resources need to be with Aboriginal and Torres Strait Islander community-controlled organisations and communities to build alternative, self-determined supports for children and young people.

Extensive research supports the effectiveness of community-based, culturally appropriate responses to youth offending. Aboriginal and Torres Strait Islander community-controlled organisations are

[31] Change the Record and Human Rights Law Centre, Submission to Senate Legal and Constitutional Affairs Committee on Australia's youth justice and incarceration system: ending youth incarceration (2024).

uniquely positioned to deliver programs tailored to local needs, fostering supportive environments for at-risk youth. However, chronic underfunding has limited their reach and impact.

Empowering First Nations communities through co-designed youth justice policies ensures culturally safe, effective solutions. This approach fosters long-term positive outcomes by addressing the root causes of offending, such as socio-economic disadvantage and trauma, and diverting children from prison. This approach is important now more than ever given the recent silence from the federal government on national reform to raise the age of criminal responsibility.

While the Queensland Government has announced investment into intervention programs, it is not enough. There needs to be greater focus on and funding for early intervention before a child has contact with the criminal legal system. We are concerned that the Government's announcements regarding 'Gold Standard Early Intervention' will take time to roll out.[32] Funding for existing early intervention services is needed now.

Government should be funding existing early intervention, community-led programs as a priority. This should be done immediately if the Bill is to progress. We note that programs available as at May 2023 have been summarised in a Justice Reform Initiative report[33] and the organisations that have participated in the Committee process will be able to recommend programs for funding and assist with mapping. There are many existing services and programs that need to be supported to meet demand.

Decarceration is possible and has delivered positive outcomes for children and communities. In August this year, following two children's deaths in custody, Scotland banned children under 18 from being sent to prison.[34] This prohibition is intended to ensure that children are placed in safe, suitable accommodation and that their wellbeing and rehabilitation is at the heart of their care.[35]

Retribution-focused policies that ignore children's developmental needs fail to create safer communities. Instead, investment in rehabilitation and reintegration services has proven to yield significantly better outcomes, reducing reoffending, fostering safer and more resilient communities.

[32] LNP, LNP announces $100 million boost for Gold Standard Early Intervention (Media Release, 30 September 2024) <https://online.lnp.org.au/news/lnp-announces-$100-million-boost-for-gold-standard-early-intervention>
[33] Justice Reform Initiative, Alternatives to incarceration in Queensland (2023).
[34] *Children (Care and Justice) (Scotland) Act 2024.*
[35] Scottish Government, No under 18s in Young Offenders Institutions (Media Release, 2 September 2024) <https://www.gov.scot/news/no-under-18s-in-young-offenders-institutions>