ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited

Response to Stronger Laws Consultation

February 2023

Table of Contents

February 2023 1

QATSICPP Response to Stronger Laws Consultation 3

- Who we are 3
- Our commitment 3
- Factors driving the criminalisation of our young people 3
- Our responses to Stronger Laws consultation questions 5
- Our solutions 10
- Our Recommendations 15
- Contact details 16

References 17

QATSICPP Response to Stronger Laws Consultation

Who we are

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) welcomes the opportunity to provide a response to the *Youth Justice and Other Legislation Amendment Bill 2021* (the Bill) on behalf of our members. Our membership includes 35 Aboriginal and Torres Strait Islander Community-Controlled Organisations across Queensland. At the community level, our members provide services, advice and support relating to the safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and families. Our members are committed to our overarching purpose and vision that all Aboriginal and Torres Strait Islander children and young people are physically, emotionally and spiritually strong; live in safe, caring and nurturing environments within their own families and communities; and are afforded the same life opportunities available to other children and young people to achieve their full potential, This includes access to culturally safe and secure service provision.

Our commitment

We welcome working with the Queensland Government and Aboriginal and Torres Strait Islander leaders to strengthen youth justice responses that address underlying causes of offending and embed evidence-based, trauma informed and culturally safe responses. We are one of many Aboriginal and Torres Strait Islander representative groups (inclusive of our legal, health, housing and education partners) that are ready and willing to co-create transformational change that empowers us to address the complex issues facing our families and impacting on the wellbeing and safety of the broader community.

To achieve this the Queensland Government and Aboriginal and Torres Strait Islander leadership need to come together to reform Queensland's youth justice system. The government has already made commitments, through the National Agreement on Closing the Gap (Priority Reform One: Formal partnerships and shared decision making) to transform their relationships with Aboriginal and Torres Strait Islander communities. In practical terms, this commitment means upholding and enacting the principle of self-determination and investing in First Nations solutions. Where governments have shown a genuine commitment to shared decision making and investment in First Nations communities, there is clear evidence that change is possible and progress can be made (for example, the impact of the Maranguka Justice Reinvestment Project in Bourke).[1]

We want to strengthen responses to our young people and have governments recognise that trauma-based behaviours can lead to impulsive and unsafe responses impacting community safety. If the Queensland Government proceeds with the changes outlined in the '*Tough laws made even tougher*' media statement released on 29 December 2022, without consideration of trauma-informed, culturally safe and evidence-based responses that take into account neurological science, we know that Aboriginal and Torres Strait Islander children, families and communities will be significantly and disproportionately impacted in a negative way.

Factors driving the criminalisation of our young people

We know that the solution for addressing young people coming into the criminal justice system isn't to build a bigger system, it is to look further upstream and eliminate the need for increased punitive responses.

As outlined in the final report of the *Royal Commission into Aboriginal Deaths in Custody* (Vol. 1, p. 1.7.1):

[1] KPMG, 2018

> The more fundamental causes of over-representation of Aboriginal people in custody are not to be found in the criminal justice system but those factors which bring Aboriginal people into conflict with the criminal justice system in the first place ... [and] the most significant contributing factor is the **disadvantaged and unequal position** in which Aboriginal people find themselves in society - **socially, economically, and culturally.**[2]

Twenty years on from this report, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs published the report *Doing Time – Time for Doing* which also concluded that the impact of intergenerational trauma, poverty and social and economic disadvantage was leading our children and young people into contact with the criminal justice system..[3] These impacts are felt and experienced in the present by Aboriginal and Torres Strait Islander children in a variety of ways, including;

- being impacted by intergenerational trauma, which has been proven to affect their neurological, psychological and even physical development.[4]
- high rates of exposure to domestic violence, sexual abuse and neglect [5]
- high rates of intellectual disability and cognitive impairment, which research links to being more likely to have police contact, be charged, be imprisoned and receive longer sentences.[6] A recent study with a group of young people in Western Australia's youth justice system found 89 percent had at least one domain of severe neurodevelopmental impairment, and 36 percent were diagnosed with Foetal Alcohol Spectrum Disorder (FASD).[7]
- frequent out-of-home care placements which disrupts or prevents access to treatment and support, resulting in placement breakdown and homelessness (and consequently extended periods of time in youth detention)[8]. The latest data available from the Australian Institute of Health and Welfare suggests that nationally almost 30 percent of Aboriginal and Torres Strait Islander people in detention had been in out-of-home care in the five years prior.[9]
- a high prevalence of diagnosable trauma related mental illness [10]
- high rates of substance misuse with research suggesting drug use and crime can both develop in response to a range of other factors such as poverty, trauma, mental health issues and a lack of engagement with education and employment [11]

To heal trauma and overcome such significant challenges requires culturally safe, trauma informed, intensive and often ongoing support.[12] Yet recent inquiries in Queensland and Victoria found a significant lack of effective prevention, intervention and individualised support to meet the specific needs of Aboriginal and Torres Strait Islander children and young people in terms of diversionary practices. The Healing Foundation found that across Australia there was *"little evidence of criminal justice diversions that recognise and seek to address the trauma associated with the behaviours that lead to Indigenous incarceration and a continued reliance on incarceration as a response*" (p.12)[13]

Aboriginal and Torres Strait Islander leadership has been calling for change to this system's approach for decades, but despite this advocacy little has shifted. The last three Family Matters report cards have shown no substantive increase in early intervention funds for family support and child wellbeing[14].

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[2] Royal Commission on Aboriginal Deaths in Custody,1991a
[3] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs,2011
[4] van der Kolk, 2007
[5] Atkinson, 2018; QFCC, 2022
[6] Victorian Legal Aid 2011 in Baldry et al 2015
[7] Bower et al, 2018
[8] AIHW 2020; Sentencing Advisory Council, 2020
[9] AIHW, 2022
[10] NT Commission, Healing Foundation, 2013; NSW Law Reform Commission, 2010
[11] Goldstein, 1985 as cited in Forsythe & Adams, 2009
[12] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011; Higgins & Davis, 2014; Baldry et al, 2015
[13] Healing Foundation, 2016
[14] SNAICC, 2022

In Queensland our children and young people are provided youth services primarily by non-Indigenous organisations, with a small number of community run Aboriginal and Torres Strait Islander services providing support in the youth services sector. This is despite repeated calls from First Nations leadership for increased resourcing to see children and young people better supported. The rapidly increasing over-representation of Aboriginal and Torres Strait Islander children aged 10-13 in detention in Queensland is one of the consequences of this limited investment in our children and young people.[15]

The 2021 amendments to the *Youth Justice Act 1992* (Qld), which QATSICPP and other Aboriginal and Torres Strait Islander organisations opposed, led to a significant increase in the numbers of children and young people in detention on remand[16]. So much so, that in the review of the Youth Justice reforms published in March 2022, Bob Atkinson concluded that there had been low uptake of GPS monitoring technology because the *'Show Cause'* reforms meant that of the pool of young people the technology could apply to, the vast majority were on remand in detention instead of in the community.

Given that children on remand in detention do not have access to the same level of restorative and rehabilitative services as sentenced children, and the lack of evidence about the effectiveness of such services to reduce reoffending of Aboriginal and Torres Strait Islander children, QATSICPP is deeply concerned that the *'Show Cause'* amendments are doing very little to address children's' offending behaviour in the medium to long term, and in fact may be compounding their offending behaviour.

The expiration of the *Youth Justice Strategy 2019-2023* and subsequent development of a new strategy provides an opportunity for the Queensland Government to make a genuine commitment to partner with Aboriginal and Torres Strait Islander peoples to develop and deliver trauma-informed and culturally safe responses to youth justice at a systemic level.

Our responses to Stronger Laws consultation questions

There is a cohort of young people in Queensland who are behaving in a way that poses a threat to community safety. The community is rightly concerned and is seeking answers to how levels of offending can be reduced. Extensive research about the efficacy of approaches to youth offending, including scientific knowledge about brain development, provides compelling evidence that many of the Queensland Government proposed reforms will not meet the stated goal of increasing community safety.

Neurological science suggests that the frontal lobes of the brain, responsible for executive functions such as decision making, impulse control and emotional processing, are some of the last parts of the brain to develop, not reaching full maturity until a person reaches their mid-20s. This underdeveloped executive functioning is linked with high-risk behaviours and a lack of emotional regulation, which are key drivers for contact with the criminal justice system.[17] This maturation of executive function is often more complex for Aboriginal and Torres Strait Islander children, who are disproportionately impacted by intergenerational trauma and neurological conditions such as FASD. Research has found that trauma can impede children's healthy brain development, further impacting on their ability to self-regulate, and therefore heightening the likelihood and degree of their risky behaviours.[18]

The evidence and neuroscience surrounding child and adolescent development highlight the ineffectiveness of punitive punishments as a deterrent to youth offending and highlight the need for a different response. The Queensland Government has not incorporated this evidence into a whole of system response and instead has relied on increased punitive measures that have adversely impacted on First Nations young people.

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) analysis of youth justice data in 2022 identifies that at every decision-making point in the youth justice process, (charging and arrest, decision to charge a

[15] ROGS, 2023
[16] Atkinson, 2022
[17] McEwan, 2017; Prior et al, 2011; McGrath & Weatherburn, 2012
[18] Atkinson, 2013; Menzies, 2019

nearby child as a co-offender, consideration of diversionary options, consideration of police bail or exercises of power, consideration of court bail, length of time on remand waiting for police disclosure or completion of the brief), a decision maker will exercise their discretion that results in Aboriginal and Torres Strait Islander children and young people being disproportionately disadvantaged at each stage, especially those aged 10 to 13 years old.[19]

The Queensland Treasury (2022) Crime Report, Queensland 2020–21, provides evidence on the inconsistent response from the Queensland Police Service (QPS); when comparing data across the number of arrests, cautions and community conferencing orders, of First Nations young people compared to non-Indigenous young people. The number of arrests represented **69.4 percent** of responses to Aboriginal and Torres Strait Islander children and young people, but only 46.4 percent of responses to non-Indigenous children and young people.[20] The table below provides further detail about different QPS responses to children and young people aged 10-17.

Table 1: Comparison across three response types from QPS to children and young people aged 10-17

Option	First Nations	Non-Indigenous
Arrest	10,911 occasions 69.4 percent	8,423 occasions 46.4 percent
Caution	4,215 occasions 26.8 percent	8,732 occasions 48.1 percent
Community conference	577 occasions 3.6 percent	989 occasions 5.4 percent

Source: https://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2020-21.pdf

QATSICPP and our members tacitly understand that First Nations children, young people and families need far more comprehensive preventative and diversionary support earlier in life to prevent them becoming serious repeat offenders.

In 2021-2022 the Queensland government spent $218.6 million on youth detention[21] and$120.2 million on community supervision youth justice orders[22], This far outweighs the investment in restorative justice and alternative diversion processes for the same period ($7 million)[23]. A lack of publicly available data means it is not possible to state what proportion of Queensland government funding is put towards early intervention in youth justice. There is a need for significantly increased transparency to enable the community to meaningfully engage in discussions about how resources invested in preventing and responding to youth offending are allocated.

The recent “tough on crime” measures have not been accompanied by a commitment for any additional funding for diversionary responses across the youth justice continuum or detailed any investment in Aboriginal and Torres Strait Islander community led responses.

Serious repeat offenders need a more nuanced response than extended periods of detention and need considerably more support than they are currently receiving if we are to reduce the rate of recidivism. . Whether they are in detention or in the community, serious young offenders need a restorative approach, characterised by trauma informed and culturally safe healing responses[24].

We are very concerned that the proposed amendments to the Bill were announced without consultation with First Nations leaders, including the Queensland First Children and Families Board, particularly given the high rate of Aboriginal and Torres Strait Islander children, young people, and families in contact with the youth justice system. ,This seems directly at odds with the Queensland Government’s intention to cultivate a new relationship with First

[19] ATSILS, unpublished
[20] Queensland Treasury, 2022
[21] ROGS, 2022
[22] Ibid
[23] Ibid
[24] QATSICPP Youth Justice evidence review

Nations peoples as part of the Path to Treaty and its commitments to the National Agreement on Closing the Gap.[25]

Where relevant, we have provided specific responses to the measures proposed below:

1. Increasing the maximum penalty for stealing a car from 7 years to 10 years' imprisonment
2. A more severe penalty of 14 years if the offence is committed at night, where the offender uses violence or threatens violence, is armed or pretends to be armed, is in company or damages or threatens to damage any property
3. Increased penalties for criminals who have boasted about these crimes on social media

We oppose these increases in maximum penalties as they unfairly/incorrectly treat children the same as adults, contain no restorative or rehabilitative justice elements and will mean First Nations children potentially spending longer in non-therapeutic detention facilities. This will likely lead to further increases in over-representation, with research from Australia and overseas suggesting detention is likely to entrench children and young people further into the criminal justice system[26]. An evidence review conducted by the US based *The Sentencing Project* found that:

> *New research also makes increasingly clear that young people's ability to desist from delinquent behavior is tied to their progress in developing "psychosocial maturity," including the abilities to control impulses, delay gratification, weigh the consequences of their actions, consider other people's perspectives, and resist peer pressure. Research finds that incarceration slows young people's psychological maturation – exactly the opposite of what's needed to foster positive behavior changes and promote desistance from delinquency.[27] (p.5)*

These measures seem to be distinctively out of alignment with the Queensland Government's *Working Together Changing the Story: Youth Justice Strategy 2019-23,* where the key pillars are all about keeping kids out of custody and repeat youth offenders receiving "responses, punishments and support that work to stop re-offending and enable successful reintegration with their families, culture and communities."

Our research[28] informs us that these measures will result in increased time in detention, nor will they reduce offending or recidivism rates, and they will not assist children and young people to reintegrate with their family, culture and community.

Changes to youth justice laws that seek to increase maximum penalties fail to understand child and adolescent brain development, as well as how trauma affects the brain, in that children are unlikely to take into consideration more severe penalties as part of their decision making about offending behaviour. There is considerable research to suggest the level of punishment applied in sentencing children and young people has had minimal influence on subsequent behaviour.[29]

4. Amend the Youth Justice Act requiring courts to take into account previous bail history, criminal activity and track record when sentencing.

QATSICPP does not believe this amendment to the Act enhances the current provisions around sentencing. Currently the *Youth Justice Act 1992* (Qld) requires the court to take into account the child's previous history of

[25] State of Queensland, 2022
[26] The Sentencing Project, 2022, Hommel et al, 2015
[27] The Sentencing Project, 2022
[28] QATSICPP, 2022.
[29] Huizinga, Schumann, Ehret and Elliott, 2004; McGrath & Weatherburn, 2012

offending, with an aggravating factor including where the child has committed the offence while on bail or while the child was subject to a court order.[30]

It is unclear whether the intent of this proposed change to the Act is to take into account a broader range of historical material so that sentences can be more severe, or if it is to ensure an expanded range of material is considered to help ensure sentencing that creates the best opportunities for rehabilitation, reintegration and healing.

QATSICPP is deeply concerned that changes that support in increase in the severity of sentencing will:

- result in a waste of government funding as resourcing is dedicated to detaining children instead of addressing the underlying causes of their offending behaviour;
- result in our children and young people spending longer periods of time in a youth detention system which evidence suggests has very limited effectiveness in achieving rehabilitation and reducing re-offending;[31]
- disproportionately impact on Aboriginal and Torres children, young people and families, creating increased disconnection and compounding already existing high levels of trauma.

A comprehensive set of effective and appropriate early intervention programs for First Nations children and young people, as well as a youth detention model which is rehabilitative in focus is required to support best outcomes for Aboriginal and Torres Strait Islander children and young people presenting before the criminal justice system,

5.The construction of two new youth detention centres.

We are opposed to the opening of two new detention centres and measures which increase the time children and young people spend in the current detention system. This proposal seems in direct contradiction with the Queensland government's commitment under the National Agreement on Closing the Gap, which outlines a target to reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years old) in detention by 30 percent.

QATSICPP is deeply concerned about the unsuitability of Queensland's current detention centres for First Nations children and the potential harm these facilities pose to our youth. Recent media stories revealed a surge in prison numbers and chronic staff shortages at detention centres resulted in children being locked in their cells for extended periods and others held in adult watch houses for weeks. An Aboriginal boy spent almost 24 hours in solitary confinement on Christmas Eve 2022 because of staff shortages at a Queensland youth detention centre[32]. Further, a 15-year-old Indigenous boy with an intellectual disability was only recently granted bail after he spent 15 nights locked in the Mount Isa watch house[33].

These stories and a range of others that have come to light over the past five years[34] continue to occur against a backdrop of considerable research that indicates that in detention, young people with trauma histories are at significant risk of this trauma compounding further, which has the potential to increase their distress and in turn their complex behaviours.[35] Twenty-two years on from the Royal Commission into Aboriginal Deaths in Custody, the findings regarding suicide and other health risks arising from long periods in detention provide significant insight into the negative outcomes that detention creates for Aboriginal and Torres Strait Islander young people. This ground-breaking report provided significant recommendations regarding the use of police watch houses for juveniles:

[30] Queensland Sentencing Council, 2021
[31] QATSICPP,2022
[32] Lynch, 2023
[33] Ibid
[34] ABC News, 2021; Queensland Ombudsman, 2019
[35] Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017; Baldry et al, 2015

Except in exceptional circumstances, juveniles should not be detained in police lockups. In order to avoid such an outcome in places where alternative juvenile detention facilities do not exist, the following administrative and, where necessary, legislative steps should be taken:

a. Police officers in charge of lockups should be instructed that consideration of bail in such cases be expedited as a matter of urgency;
b. If the juvenile is not released as a result of a grant of bail by a police officer or Justice of the Peace then the question of bail should be immediately referred (telephone referral being permitted) to a magistrate, clerk of Court or such other person as shall be given appropriate jurisdiction so that bail can be reconsidered.
c. Government should approve informal juvenile holding homes, particularly the homes of Aboriginal people, in which juveniles can lawfully be placed by police officers if bail is in fact not allowed; and
d. If in the event a juvenile is detained overnight in a police lock-up every effort should be made to arrange for a parent or visitor to attend and remain with the juvenile whether pursuant to the terms of a formal cell visitor scheme or otherwise (Vol 5. 242)[36]

Twenty years on, this recommendation is still not fully implemented. Instead, the Queensland criminal justice system continues to systemically breach children and young people's human rights, through detaining children in police watch houses and inadequate detention facilities.[37] This is extremely concerning given the short and long-term mental health impacts for children and young people experiencing this detention including significantly increasing their risk of self-harm and harm to others.

QATSICPP is also concerned that there has been no systematic review of effectiveness of programs that First Nations children and young people take part in whilst in detention in Queensland. In his report on the Queensland youth justice system, Commissioner Bob Atkinson found no mandatory training for the youth detention centre workforce on cultural competency or trauma informed approaches.[38]

This lack of cultural competence is not acceptable given that Aboriginal and Torres Strait Islander children aged 10 to 13 years represent 83 percent of all children in the same age range in detention or on a community supervision order in Queensland[39]. Given current resourcing pressures experienced in youth detention facilities, QATSICPP is concerned about the capacity and capability to adequately resource new facilities, and of the fundamental human rights of children and young people entering these facilities.

It is QATSICPP's view that the current model for Queensland youth detention centres do not meet young people's rehabilitative needs. This includes a lack of adequate assessment and treatment for any intellectual disability or mental health concerns. Children and young people on remand are significantly disadvantaged as they are unable to participate in a range of programs that may be beneficial to improving their long term prospects of staying out of the criminal justice system.

Recently released Productivity Commission data reveals 56 percent of Queensland juveniles aged 10-17 who were sentenced either to detention, probation, bail or parole were back before a courtroom within a year. This percentage is higher than any other state and territory in Australia. This data, which most likely reflects underreporting, draws stark attention to the fact that the status quo is not addressing serious repeat offending and highlights both the need for more effective responses to divert children and young people from the youth justice system, as well as a new model for youth detention in Queensland.

In his review, Commissioner Atkinson found evidence to support cultural healing approaches from both Australia and Canada[40]. Atkinson's report recommended cultural healing approaches be explored in conjunction with On Country programs as an alternative response for Aboriginal and Torres Strait Islander children at a variety of points in the system, including for children sentenced to detention.

[36] Royal Commission into Aboriginal Deaths in Custody, 1991b
[37] ABC News, 2022; Amnesty International, 2021
[38] Atkinson, 2018
[39] ROGS, 2023
[40] Atkinson, 2018

6. A $9.89 million fast-track sentencing program in Brisbane, Townsville, Southport and Cairns so children spend less time on remand and more time serving their sentences.

QATSICPP is cautiously supportive of this measure, given the majority of children and young people are currently in detention on remand, and our previously highlighted concerns about the impact detention is having on our children.

However, we are wary that 'fast tracking' should not result in rushed decision making, and lack of proper processes (including access to proper legal representation for our children and families), and therefore ultimately longer sentences for our children and young people. We are eager to see more detail on what resources this new program will be allocated and call for the Queensland Government to engage in a genuine partnership with First Nations communities and leaders to ensure this program is implemented in an effective and appropriate away for our children and young people.

We suggest a first step in reducing the amount of time children and young people are spending on remand is to conduct a thorough review of the systemic drivers for this issue, with a focus on achievable measures that could be implemented to expedite matters, particularly in cases where children and young people may have already served out potential sentences on remand or where charges are likely to be dropped. Reducing the numbers of children and young people on remand will be critical to reducing the numbers of children being detained in watch houses due to a lack of available space in youth detention centres.

Our solutions

Critical areas of focus

It is QATSICPP's view that there are more effective solutions that improve community safety and that are less harmful to Aboriginal and Torres Strait Islander children, young people, their families and communities. These alternative approaches involve enabling the Aboriginal and Torres Strait Islander community to lead youth justice interventions and create solutions, achieving better resourced and more effective ways of meeting our children's needs than through supervision and incarceration.

Grounding responses in culture

Aboriginal and Torres Strait Islander peoples have been raising and nurturing their children in safe environments for over 60 thousand years, a tradition which survived to present day, despite the impacts of colonisation. At a recent forum involving QATSICPP member organisations working in the youth justice sector, one participant talked about the need to ground youth justice responses in how Aboriginal and Torres Strait Islander communities raise children into successful young adults:

> *"For our people, culturally when we took kids from young kids to young adults – we nurtured , we met their needs social, economic and spiritual needs, we educated them on how meet their own needs (both in terms of being independent economically and managing their relationships) and we disciplined, through lore and law –we do this through talking the kids through the consequences, it is not about dealing with the kids harshly."*

This framing of responses to children and young people's behaviours in the context of their ongoing growth and development is well aligned with the principles of restorative and rehabilitative justice.

Restorative and Rehabilitative Justice

Restorative justice broadly refers to programs and approaches which aim to achieve reparation, resolve conflict and heal harms caused by crime through a collective process bringing together different people involved with the offence.[41] Restorative justice programs in Australia commonly involve victim–offender mediation, conferencing, and circle sentencing. Both Australian and international evidence has shown restorative justice can produce significant benefits to victims, offenders and their communities, through improved experiences of the justice system and reduced re-offending.[42]

One example of successful restorative justice program is that of Iwi Panels in New Zealand. Iwi panels use a restorative justice process integrated with Māori cultural practices and are focused on diverting people from further entrenchment in the court system. The program is widely supported by Māori leaders across New Zealand and involves a panel of community members, an offender, victim and their family to discuss the offence committed, address harm caused and develop a plan that addresses factors related to the offending and help get the young person on a more positive life trajectory. A more widely used program in youth justice in New Zealand is Family Group conferencing, which incorporates Māori traditions of extended family-centered meetings into the western justice system and has been widely used by the police and courts as a diversionary measure. Evaluations of both programs show both have had a positive impact on the intensity and frequency of re-offending. [43]

Research about the use of restorative justice conferencing in Queensland found that whilst it had a positive impact on re-offending rates, it remained substantially underutilised, mainly due to the discretionary gatekeeping role of police and a lack of thorough and ongoing systemic implementation[44]. QATSICPP recommends that further work be undertaken to make restorative justice conferencing a more culturally safe and accessible option for Aboriginal and Torres Strait children and young people.

It should be noted that restorative justice conferencing is just one avenue for restorative justice in our youth justice system and there remains significant unexplored potential in terms of how else it might be implemented in Queensland. The Ngunnawal Bush Healing Farm in ACT is an example of a restorative approach which could be utilised in responding to offending behaviour. The farm use a therapeutic community approach, traditional healing concepts, cultural programs and life skills training to tackle underlying social and emotional issues[45]. Similarly, Aboriginal leader Keelen Mailman has long been advocating for rehabilitation facilities for Queensland's low-risk Indigenous criminal offenders.[46] A cost benefit analysis conducted by the Healing Foundation indicates that healing centres and therapeutic communities typically return, on average, a benefit to cost ratio (BCR) of over 4 to 1, primarily from reduced rates of incarceration and recidivism.[47]

Another promising culturally relevant restorative justice initiative is the NSW Youth Koori Court, which is an alternative case management process for Aboriginal young people charged with a criminal offence. It has the same powers as the Children's Court but uses culturally based process to better engage Aboriginal and Torres Strait Islander people in the court process. Evaluations show the NSW Youth Koori Court has been effective in reducing the incarceration and intensity of re-offending amongst Aboriginal youth.[48]

QATSICPP calls on the Queensland Government to partner with First Nations leaders and communities around the state in refocusing our youth justice system (in practice as well as policy) towards a restorative justice approach.

[41] Shapland et al, 2011, Marshall, 1996
[42] Price et al, 2022; Department of Child Safety, Youth and Women, 2018
[43] Akroyd, 2016; Spier & Wilkson, 2016
[44] Price et al, 2022
[45] ACT Health, 2023
[46] Brisbane times, 2020
[47] Healing Foundation, 2012.
[48] Ooi and Rahmann, 2022

Self-determination: Aboriginal and Torres Strait Islander led responses

Our leaders, organisations and communities have been calling for years for more decision-making responsibility and more resources to address the challenges communities face, and to heal our people from the intergenerational trauma that they have experienced.

Evidence supports this approach, with research suggesting that youth justice services better suited to the needs of Aboriginal and Torres Strait Islander people can be shaped through ensuring Indigenous communities, leaders and young people are given sufficient decision-making input on the development of legislation, policies and services.[49] Research shows that the importance of local solutions for local problems, co-design or led by the community, cannot be overstated; Butcher et al[50] highlight the importance of community engagement in uncovering new learnings about how to meet the needs of Aboriginal rural young people who offend, as well as highlighting why programs based upon universal explanations of human behaviour and are divorced from context and environment are not effective in addressing the over-representation of Aboriginal and Torres Strait Islander children and young people in youth justice. Evaluations of effective community led response to justice issues have identified the following as critical elements of success:

- importance the community placed on government buy in,
- the partnership between the community and services, and;
- the transition of power and decision making to cultural authorities to enhance the ability of the community to take on the leadership role in areas where government initiatives had previously failed.[51]

Investment in healing intergenerational trauma

There is a range of evidence that suggests there is a growing correlation between the increasing numbers of Aboriginal and Torres Strait Islander children and young people involved in Queensland's youth justice system and the failure to adequately invest in dealing with the impacts of intergenerational trauma for our children and young people, and that this is at the root of their behaviour.

Recent research by QATSICPP has found the most important solution to increasing Aboriginal and Torres Strait Islander children and young people's access to healing support to overcome the impacts of Domestic and Family Violence (DFV) is to invest in culturally designed family and child-centric responses.[52]

Yet whilst there has been some small growth in the number of community-controlled organisations providing early intervention and diversion youth services, these services still only represent a very small proportion of services operating in Queensland and there are currently very few involved in the delivery of intensive, trauma-informed services for children and young people. This is despite the research and evidence making strong links between First Nations children and young people's experiences of DFV and their interaction with justice systems.

In Queensland, whilst there is funding provided by DCYJMA to community-controlled Family Wellbeing Service providers to employ a small number of DFV and Indigenous Youth Workers, there is a gross underinvestment in supporting families and children to heal and overcome the impacts of trauma that are often the basis of their pain-based behaviours. Instead, Aboriginal and Torres Strait Islander children and young people are provided youth services primarily by non-Indigenous organisations, including government managed youth justice services (Youth Justice).

Our recent experience suggests that where Aboriginal and Torres Strait Islander organisations are funded to provide responses to offending or at-risk youth, there is some reluctance on the part of Youth Justice to share information and collaborate. In consulting with our member organisations to inform this submission, one manager commented:

[49] Atkinson 2019, ALRC, 2018, Higgins & Davis, 2014
[50] Butcher et al, 2020
[51] Riboldi & Hopkins, 2019
[52] Morgan et al, 2022

"We have limited number of referrals from YJ – this is a problem when the community is calling for the government to fund community organisations but then Youth Justice is a gate keeper to families and young people actually accessing the programs… younger kids is an area where we need to do more, community programs shouldn't be restricted by the age of criminality.

We do a lot of managing and monitoring instead of prevention and intervention …they are getting referred to us when they are in detention – but really we need to be in there when they start disengaging from school, in that early intervention stage."

There is an urgent need to ***scale up and further resource promising community led initiatives*** where they have shown success. In contrast to initiatives rolled out by government, initiatives which are driven by First Nations communities are likely to have greater whole of community support and be more effective in achieving their aims. Promising initiatives include:

- **The *Indigenous Family Youth Worker*** positions embedded within Family Wellbeing Services (FWS) at community-controlled organisations across Queensland have provided critical support to First Nations young people at risk and provide a good example of service delivery coordinated across child protection and youth justice. A review of evidence shows strong support for the role of family support in reducing offending in childhood and adolescence.[53] Scaling up this support could involve residential programs for families in crisis.
- ***The Lighthouse*** model after hours diversionary service operated by the Townsville Aboriginal and Islander Health Service. Critical to the program's ability to success in engaging young people was the cultural and community knowledge of the youth workers themselves.[54]
- ***Youth Justice Family Led Decision Making*** pilot. This program is currently in operation in four locations and is focused on bringing children and their families together to work through, solve challenges and lead discussions that affect their lives in the context of children living full and happy lives outside of contact with the youth justice system. An evaluation of this program by *Inside Policy* found the program's delivery by Aboriginal and Torres Strait Islander community controlled organisations were enabling factors for cultural safety and healing though access to cultural advisors, engagement with cultural programs and empowerment in decision.[55]
- **The *CRAICCHS After Hours Youth Hub*** in Cherbourg supports young people's positive mental health, wellbeing and resilience, in culturally sensitive ways. The Hub provides practical services, such as showers, places to rest, food, washing machines, and transport home at night as well as fun, entertainment, and positive social opportunities. Advice from the community in Cherbourg suggests that when the Hub is able to operate at full capacity, high risk and offending behaviour from the youth in the community has been reduced.

Unfortunately, our experience is that it is rare for promising youth justice initiatives to receive long term investment; creating a dearth of evidence needed for long term investment decisions and limiting the ability of services to reach their full potential and capacity. The practice of short term funding agreements should cease and the ongoing commitment and investment to build community based responses along the youth justice continuum should be realised.

Aboriginal and Torres Strait Islander Community Controlled organisations have a strong track record in recent years of providing effective early intervention services that divert people from statutory systems. An evaluation of FWS delivered by community-controlled organisations across Queensland found that 91% of families stay out of the child protection system (within 6 months) if all of their needs are met after receiving support from a FWS[56].

[53] Homel et al, 2015
[54] O'Reilly et al, 2019
[55] Inside Policy, 2020
[56] ABT and Associates, 2021

In terms of health outcomes, community-controlled health services in Queensland have been found to be integral to improving access to and meeting the health needs of First Nations communities[57]. The Queensland Government now needs to utilise the strong service infrastructure present in our community-controlled organisations to increase the capacity of our communities across multiple areas to address the drivers for Aboriginal and Torres Strait Islander children and young people's overrepresentation in the state's youth justice system.

Listening to children and young people

In the current public policy debate about how to best respond to young people's offending behaviour one set of perspectives is largely absent: the voices of children and young people themselves. A recently released report by the Queensland Family and Child Commission (QFCC) contains some powerful insight from young people in Queensland's youth justice system. In compiling the 'Yarning for Change: Listen to my voice' report, QFCC researchers spoke with over 70 Aboriginal and/or Torres Strait Islander children and young people at risk of contact with, or with an experience of the youth justice system.

Almost half of the young people spoken with talked to the researchers about their early childhood experiences with the Child Safety system and how these experiences impacted on their functioning. They spoke about the impacts of family disconnection:

> *"Like once you're taken away from your family you just lose all that respect for everyone I guess. And so, I don't know, you just don't listen to anybody anymore."(p.8)*

The young people also talked about their experiences of the education system and barriers to their continuing engagement with school, such as racism, mental health issues and their basic needs not being met.

> *"But I would go to school, again I'd be like oh yeah, look at all these kids and think oh yeah youse are lucky, what-not. And they'd have all this stuff, they would have all this nice stuff and I never got any of that, never got anything as a kid. I just got what I was given and put up with it. I just... I don't know. It just made me not wanna go to school too 'cause it just, you know I'd just look at other kids and think, fuck, you know, they have such a good life, I don't wanna be, you know goin' somewhere where everybody else is having a good time and I'm sitting here watching it. And so I just stopped going to school." (p11)*

Those young people who had experienced court processes commonly felt uninformed and ignored throughout the process.

> *"They don't let me like, they don't let me explain what I want them to say to the Judge. They just say what they wanna say."(p.11)*

When asked about what kept them strong and out of the youth justice system, much of what young people said was about relationships. Their connections to other people, such as family, friends and supportive adults, influenced their behaviours and their motivation to change (this included Youth Justice and other support workers). The report noted that young people's "*connection to Elders, culture, family, kinship and community support was critical to keeping them out of the youth justice system."* (p.22**)** Listening to and understanding this message from young people is fundamental to effective youth justice responses at the individual and systemic level.

[57] Campbell et al, 2018; Baba et al, 2014

Changing models of youth detention

There is a growing body of evidence on how detention environments should and can be trauma-informed through an emphasis on structure, safety, consistency, and fair treatment.[58] A key focus for those operating detention environments needs to be on providing the stability that trauma survivors require to facilitate trauma recovery.[59] There are some short term improvements which can and should be made to Queensland's detention centres, such as regular and ongoing trauma and cultural awareness training for all staff and the delivery of regularly evaluated programs that show benefit for First Nations children (for example, in the Yarning for Change report Young people expressed their desire to engage in more cultural programs but advised that this was not always available due to lack of community resources and staff).

In the medium to long term there needs to a significant redesign of how Queensland approaches the design of services and facilities for those children and young people who need to be detained for their own safety and that of the community. This includes investment in the development of alternative approaches such as secure assessment centres, which focus on the holistic assessment of children and young people's needs and rehabilitation activities based on these assessments. For early (and more effective) responses to prevent children from failing in youth justice systems, it is critical to identify preventable health issues through timely assessments in a range of areas. Examples from jurisdictions such as Hawaii suggest assessment centres can be used to dramatically reduce the demand on traditional detention facilities.[60]

Raising the age

Continued early contact with the youth justice system is significantly disadvantaging many Aboriginal and Torres Strait young people, consigning them at young ages to a criminal identity, detaining them in youth detention facilities from 10 upwards for petty crimes and damaging their family and community ties[61]. This is contributing to the cycle of trauma and disadvantage for future generations. A significant change such as raising the minimum age of criminal responsibility gives us an opportunity to introduce a new way of approaching and addressing trauma-based behaviours that is more flexible and sustainable and can halt the impact of intergenerational distress.

Our Recommendations

QATSICPP calls on the Queensland Government to work with us and other First Nations leaders and organisations on the following measures to develop and implement stronger and more effective responses to youth crime:

> **The Queensland Government work in genuine partnership with Aboriginal and Torres Strait Islander leaders, elders and community to develop and implement youth justice responses in Queensland, starting with the co-design of a generational plan to reduce the over-representation of First Nations youth in the system, similar to *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families* (2017-2037).** The Queensland First Children and Families' Board must be given a greater oversight role in shaping and assessing Youth Justice responses that reduce offending and recidivism.
>
> **Design and implement a more comprehensive set of responses to prevent and respond to youth offending that are trauma informed and address the core drivers for young people's behaviour**. This includes supporting the First Nations development, design and where relevant, expansion of a

[58] Council of State Governments 2010 in Miller and Najavits 2012:3; Royal Commission into the Protection and Detention of Children in the Northern Territory,2017
[59] Miller and Najavits 2012 in Healing Foundation, 2016
[60] Australian Broadcast Commission, 2022.
[61] QFCC, 2022

range of healing, family wellbeing, youth leadership, and youth services as outlined in the 'Critical Elements' section above.

In partnership with First Nations people, develop and implement alternatives to the current model of youth detention in operation in Queensland that are effective in increasing community safety and reducing re-offending. In addition to this, on Country programs and healing centres should also be explored as alternative sentencing options.

Raise Queensland's Minimum Age of Criminal Responsibility to 14 years of age. As their mental health and trauma needs escalate due to limited culturally appropriate early interventions available to them, the trauma of First Nations children and young people becomes criminalised. QATSICPP supports raising the minimum age of criminal responsibility to 14 years of age as this would fundamentally shift the focus from addressing children's behaviour through judicial processes, supervision and detention to meeting the needs underlying their behaviour through community and culturally led care, support and healing.

Develop ongoing mechanisms for children and young people's voices in the development of systems, services and programs designed for their benefit. Without sufficient investment in trauma-informed, culturally strong, community-based healing responses to their experiences of intergenerational trauma Aboriginal and Torres Strait Islander children and young people are coming into contact with the youth justice system. Their voices need to be central to our understanding of their experiences and ongoing healing and rehabilitative needs.

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