ChildProtectionPeak

Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited

Submission to Community Safety Bill 2024

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Acknowledgement of Country

QATSICPP would like to acknowledge the traditional custodians across all the lands that make up the state of Queensland. We would like to acknowledge the oldest living culture of Aboriginal and Torres Strait Islander peoples and the continued connections to Country, language, and tradition. We would like to acknowledge Elders past and present and acknowledge future generations of Aboriginal and Torres Strait Islander children and young people and the bright future they will have.

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Introduction

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is the newly announced youth justice peak body for Queensland. As Queensland's Youth Justice peak, along with our 38 members and strategic partnerships, we will focus on creating safer communities by building strengthened partnerships with government, service providers and community organisations. QATSICPP's work in both the child protection sector and in youth justice aims to support the government and key partners to create safer communities through advocating for new approaches and programs that can change the life trajectory of children, young people and families who interact with the justice systems.

QATSICPP seeks to increase our collective understanding of the factors driving youth offending and identify alternatives to traditional detention to ensure that young offenders don't cycle in to becoming serious repeat offenders. This includes working constructively with all parts of the system to reverse the over-representation of Queensland's First Nations children in detention.

QATSICPP welcomes the opportunity to provide input on the *Community Safety Bill 2024* (the Bill).

QATSICPP supports the Bill's intent to keep communities safe and reduce the recidivism rates of serious repeat offenders and high-risk offending behaviours of young people in Queensland. We are however, deeply concerned about the ongoing detention of Aboriginal and Torres Strait Islander children, especially in harmful environments like adult watch houses. This situation threatens their rights to live with their families and maintaining cultural connections and access to education.

Significant change to policy and legislation is required to ensure that Queensland will meet its commitments under the national agreement to close the gap in the overrepresentation of First Nations young people in justice systems by 30 percent. The measures proposed in the Bill are likely to widen this gap.

QATSICPP Response to the Bill

We have provided specific responses to aspects of the Bill below;

1.Amendments to the Childrens Court Act 1992 - to enable Childrens Court criminal proceedings to be more open to victims, the family of deceased victims,

victims' representatives, people with a proper interest in the proceedings, and the media.

QATSICPP views the changes proposed by this aspect of the Bill as unnecessary and potentially harmful. Reporting by the media following most recent cases that youth matters being heard in front of a magistrate defaults to a closed court, are factually incorrect. As noted in the Consultation guide released for the Bill, when dealing with a matter on indictment, sections 20(2) to 20(4) of the Children's Court Act do **not** apply, and those proceedings **are** open to the public.

The only exception to this is certain criminal proceedings before a Childrens Court Judge that do not occur pursuant to an indictment (e.g., bail applications whilst the matter is still before a Childrens Court Magistrate, sentence reviews and appeals pursuant to section 222 Justices Act 1886 (Qld).[i] In these cases, the court may still decide to close proceedings to victims and the media.

In recent high-profile cases, the Children's Court judge was able to close proceedings because the hearing fell under the category of an administrative hearing; he closed the court because of his concerns that intense media scrutiny would be prejudicial for the accused. [ii] This same power to close the court would not be available in the case of the full trial of the victim's murder, as murder is an indictable offence.

The proposed changes therefore have little tangible impact in increasing victim and media access to the justice process for serious crimes, as they would only increase access to administrative hearings related to the matter, not hearings in which the substantive matter of the case is explored.

The proposed legislation also does not seem to be grounded in evidence about what works in creating justice systems which are transparent and afford greater justice to victims. QATSICPP is unaware of any empirical evidence, referred to in the Bill's consultation guide or elsewhere, which supports the changes to court access for the media and victims which the Bill outlines. Whilst there is considerable material pointing to the advantages of restorative justice for both offenders and victims, there is little to suggest court access alone will make a substantial difference for victims across the board.[iii]

Whilst Clause 112 Section 4 of the Bill does include some protections for children, these protections do not include a test on whether providing access to the court to certain individuals is in the best interests of the child. This same clause empowers a magistrate to issue and exclusion order when necessary to avoid bias in the proper administration of justice or to safeguard any individual, including the child. However, this clause does not permit the issuance of an order that would bar victims, their representatives or the family members of deceased victims from accessing the court.

Removing children's protections in the children's court to privilege the role of victims over children who are not yet convicted of a crime could weaken a fundamental principle of law – the presumption of innocence. By removing the necessary special conditions, it may be interpreted as the child being treated as if they were guilty and being prejudicial to their case.

Furthermore, providing victims, victims representatives and the media more open access to Children's Court matters will undoubtedly lead to a reduction in privacy for children charged with offences.

Most concerningly, the Bill appears to be in direct contradiction to the Queensland Human Rights Act, the principles of the Queensland Youth Justice Act and the United Nations Convention on the Rights of the Child.

2.Electronic Monitoring Devices - Expansion of eligibility

QATSICPP acknowledges the intent of electronic monitoring as an effective alternative to detention to increase community safety and reduce reoffending by children and young people. However, we do have significant concerns about the ability of electronic monitoring to be an effective and appropriate response to ensure community safety whilst keeping children out custody. We believe that electronic monitoring should only serve as an interim measure, whilst other approaches are explored.

The evidence we have reviewed suggests there has been low uptake electronic monitoring due to a range of factors, including the 'Show Cause' amendments to the Youth Justice Act made in 2021 and judicial discretion tending to favour remanding a child in custody rather than considering them suitable for electronic monitoring.[iii]

QATSICPP has significant doubts on the benefits of electronic monitoring and is concerned the practice may impair young people's rehabilitation. A meta-analysis of 34 international studies found that electronic monitoring is shown to have little appreciative effect on recidivism rates.[iv] Reviews to date of Queensland's electronic monitoring scheme for children and young people have reached the same conclusion. There also questions over the effectiveness of electronic monitoring as a means to increase community safety; the Queensland Police Service's Briefing Paper to the Youth Justice Reform Select Committee reported that approximately one third of court ordered young people have breached their bail undertaking whilst the subject of an EMD.[v]

QATSICPP is very concerned that the introduction of ankle bracelet style monitoring will compound the trauma our children involved with the Youth Justice system have experienced. Highly visible ankle bracelets are commonly associated with dangerous sex offenders and have the obvious potential for creating stigma and shame for children subject to their use. These devices also represent a traumatic symbol for older Aboriginal and Torres Strait Islander community members of past colonial practices used to subjugate our people who are likely to be sharing households with the children affected.

QATSICPP also has doubts about the practical application of electronic monitoring. The use of electronic monitoring presumes children and young people have access to safe, appropriately sized housing and healthy family environments. We know this is not the case for many children and young people who continue to be involved with the youth justice system. In 2023 the Youth Justice Minister also questioned the practicality of a broad uptake of electronic monitoring, "*because active participation of the child is needed to ensure the device is charged*."[vi]

In summary, QATSIPP has concerns that the expansion of electronic monitoring will have negative unintended consequences. Without sufficient evidence for its effectiveness, this proposal risks causing further criminalisation, stigmatisation and recidivism of Aboriginal and Torres Strait Islander children, young people, and families subject to youth justice intervention. It is difficult to see how electronic monitoring will address the complex social issues and systems failures that are evident in the characteristics of our children committing offences.

If the Queensland Parliament chooses to proceed with this aspect of the Bill , QATSICPP strongly urges the government to engage with and invest in Aboriginal and Torres Strait Islander

organisations to provide support to ensure any First Nations youth subject to electronic monitoring receive wraparound, culturally safe support. Without sufficient support to provide safety and healing, electronic monitoring risks becoming nothing more than a compliance activity which responds to the symptom rather than cause of youth offending.

3.Expanding the trial of hand held scanner provisions in public places in the Police Powers and Responsibilities Act 2000 (Jack's Law)

QATSICPP supports the Queensland Government in their efforts to improve community safety by reducing the number of dangerous weapons on our streets. However, we are wary of unintended consequences of the new wanding powers in terms of how they may widen the net and bring more children and young people into the youth justice system.

In their submission to the Youth Justice Select Committee, the Aboriginal and Torres Strait Islander Legal Services (ATSILS) noted:

> *Several instances of ATSILS' being engaged to represent individuals that were the subject of wanding by police where knives or weapons were not found on their person, however, small amounts of drugs … it appeared that individuals that were known to police as drug users, for example, were being profiled by police as candidates for wanding as a means to search them for drugs without the need for meeting the reasonable suspicion threshold.*[vii]

There is also significant evidence to suggest Aboriginal and Torres Strait Islander children and young people continue to experience significant racism, discrimination and violence both in educational settings and their communities.[viii]

Our own Domestic and Family Violence (DFV) research "*You Can't Pour from an Empty Cup*" highlighted that the failure to provide effective healing and supports to young people who experienced DFV was resulting in many Aboriginal and Torres Strait Islander children entering child protection and youth justice systems as a result of cumulative trauma.[ix]

One impact of this trauma and discrimination is that children and young people may carry knives as a self-defence tool. It is therefore imperative that in the implementation of this section of the Bill (and the associated increase in maximum penalties for knife possession) that both the Queensland Police Service and the Queensland Children's Court use their discretion regarding the circumstances and context for individual offences to ensure responses are effective and commensurate.

We urge the Queensland Police Service to utilise cautions and other diversionary approaches when detecting minor offences (e.g. drug possession) through the use of wanding, to avoid unnecessarily entrenchment of increased numbers of young people in the youth justice system.

4.Transfer of detainees over the age of 18 years to adult custody

As an organisation deeply committed to the rights of Aboriginal and Torres Strait Islander the proposed changes to transfer of all 18-year-old young people automatically to adult prisons is very concerning.

The current proposal in the Bil for a mandatory transfer of all detainees within one month after turning 18 (unless the chief executive decides otherwise) indicates an intent that all 18-year-olds will be transferred to adult custody with only limited regard for individual suitability or risk determined by detention centre administrators.

This raises issues for us on two levels, firstly for young people who have not been sentenced this appears to remove their presumption of innocence in matters before a court, and secondly does not appear to fully give consideration of an individual's vulnerability to an adult prison environment.

It is known that a considerable proportion of young people in Queensland's youth detention centres are diagnosed or are highly suspected of impairments of cognition, communication, social function, and mental health.[vi] Many of these young people have not received appropriate assessment or treatment for these issues. This will lead many young people to be highly vulnerable in adult systems that have little ability to respond effectively to the needs of young people's developing brains, and where treating professionals are less likely to have access to provide appropriate care and support.

The change to this policy will also mean that for children and their families to challenge the mandated transfer to adult prion due to issues of vulnerability they will need to be able to coordinate legal advice and have a good understanding of the policy changes. Many young people already find communicating with their legal representatives challenging and are not aware of their rights to appeal.

Given these factors it is deeply concerning that Youth Justice is seeking to enforce presumptions of transfer, predicated narrowly on biological age. We believe a reasonable compromise on the proposed changes would be:

1. Make young people 'eligible' for transfer upon attaining the age of 18 years (rather than mandatory). Assessment and planning could still occur at any time prior.

2. Youth Justice must prepare a detailed assessment of the young person's suitability for transfer for consideration of the Director General which should include (but not necessarily be limited to) the following:

    - The child's views on the transfer.
    - The views of child's parents, carers and or guardians.
    - The views of child's legal representative/s.
    - Detailed context of known and suspected disabilities, impairments, mental health, or functional and physical conditions; and the impact of the transfer upon the child and the continuity of assessment or treatment.
    - The practical and geographical impact of a transfer upon the child's family in communicating with and visiting the child. Further, the same impacts should be considered in relation to maintaining custody and community-based support services.
    - The nature of the offence/s and administrative practicalities of the young person's Childrens Court matters (including bail merit).
    - The young person's recent behavioural records in the detention facility including challenges or opportunities regarding unit specific mixes.

5.Domestic and Family Violence Protection Act amendments

The Bill seeks to amend definitions in the *Domestic and Family Violence Protection Act 2012* to remove parent-minor child relationships from domestic and family violence responses, allowing them to be dealt with under child harm or youth justice provisions.

Criminalising child-parent violence unnecessarily risks further entrenching First Nations people in our justice systems. The level of distress experienced in many families is a result of numerous issues. QATSICPP have consistently called for additional resourcing to support families to address violence earlier and more effectively. Our calls include a doubling of funding to Aboriginal and Torres Strait Islander Family Wellbeing services, and increased specialised Domestic and Family Violence positions to enable our communities to support children and young people and their families live safely together.

Services and programs that seek to educate and upskill youth in emotional regulation, personal problem solving and relationship management in intimate or domestic settings are rare. QATSICPP's research in DFV (2022) highlighted how few culturally appropriate services were available for young people who have experienced DFV in childhood to support them overcome the impacts of violence in their lives – especially young men.

Current levels of funding are grossly inadequate to support the level of need. It would be much more cost effective and create better outcomes for young people and their families if we had system responses that were proactive, rather than legally reactive.

6.Amendments to YJ Act to remove any doubt that participation in a program or engagement in a service by a detainee while remanded in custody cannot be used in evidence in any civil, criminal or administrative proceedings relating to the offence for which the child has been remanded in custody

QATSICP supports this amendment as it removes a barrier for children and young people to participate in programs whilst in detention, which is fundamental to healing and preventing recidivism.

7.Clarification of the bail decision-making process re: EMD- to reflect the policy intent that the consideration of risks associated with granting bail, and any conditions that may mitigate those risks, should occur in the one process, prior to a decision to release the child.

QATSICPP agrees with the intent of the proposals in the Bill relating to bail as these are likely to enable earlier provision of support through court directions (such as bail conditions to participate in healing programs).

However, we propose that this section of the Bill be amended so that it only apples to indictable offences, as there is a short-term risk that this change will increase the numbers of Aboriginal and Torres Strait Islander children being detained in Queensland's watch houses if the net is cast too wide in imposing unnecessary conditions on children and young people which they may not be able to meet.

QATSICPP remains concerned that children will be held in remand for increasingly unreasonable periods while awaiting Police, Youth Justice and associated stakeholders to make arrangements to support bail conditions such as obtaining a suitable placement, telephones for the young person to use an EMD, or for the EMD itself. The Queensland

Government should safeguard and prioritise the rights of children by asking Courts and the necessary stakeholders to prepare arrangements further in advance for Magistrates to make such orders with immediacy.

Further, we suggest amended wording that the time permitted under adjournment to make arrangements for bail be reasonable, and that the child not be disadvantaged by delays that are the responsibility of the Childrens Courts and their stakeholders.

8.Enabling temporary transfers from watchhouses to youth detention centres to facilitate participation in programs and physical exercise at youth detention centres

QATSICPP supports the intent of this proposal to reduce the amount of time children are spending in watch houses designed for detaining adults. However, we have a range of concerns about the proposal's practical application:

- QATSICPP understands that significant numbers of children are being detained in adult watch houses around Queensland primarily because our juvenile detention centres are at capacity. This would suggest that these centres do not have the capacity (in terms of space or staffing) to supervise and care for increased numbers of children.
- The proposal presumes Queensland's detention centres are running activities consistently, but there is considerable evidence to suggest that because of staff shortages these activities are not occurring consistently.[vii]
- Most of the adult watch houses where children are detained across Queensland are not close to youth detention centres. QATSICPP is eager to see a comparable strategy for these children.

The Queensland Government has a human rights obligation to do much more than what is outlined in this proposal to address the ongoing detention children in adult watch houses. A police watch house is a traumatic setting and not a suitable place to detain children and young people. The significant harm that detaining children and young persons in watch houses causes is well documented.[viii]

QATSICPP is calling for the Queensland Government to fully accept and action recommendations from the QFCC's 2023 report *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*. Further to these recommendations, we call for:

- Decision makers to work with First Nations leaders to immediately 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.
- The Queensland government to immediately conduct a systemic review of all children on remand and that the Bail Merit application and review system be conducted in partnership with First Nations people, to determine alternative approaches to their custody which would also ensure community safety and ensure children's rights are upheld.

9.Regulating the use of cameras and smart phones in youth detention centres

We hold significant concerns in relation to the proposal to allow smartphones and cameras by staff to be used in Youth Detention centres. Given personal devices can be easily concealed and operated covertly, there needs to be incredibly tight safeguards to ensure children's rights to safety and privacy.

As Body warn cameras are already permitted in Youth Detention Centres in Queensland, it is assumed at least the same procedural safeguards will be applied to mobile phone or other device footage which may identify young people.

We recommend additional safeguards and significant sanctions for staff or external persons, whether approved or not by the Chief Executive (or delegates of) who share recordings without requisite approval to ensure the privacy of children and young people and families is maintained as required under human rights legislation and federal law.

10.Enabling the recording of detainee phone calls

The proposal to record detainee phone calls is concerning to us and we hold serious concerns about the implications on children's right to privacy and meaningful family connection this proposal would have if enacted.

Article 16 of the United Nations Convention on the Rights of the Child states – "*No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, nor to unlawful attacks on his or her honour and reputation... the child has the right to the protection of the law against such interference or attacks*."[x]

Whilst we appreciate that the behaviour of some young people's use of phone calls to interact or direct crimes may have caused concern to detention staff, we would not support legislation that imposes on the rights of all young people that could be better managed by having effective behaviour management strategies in place. This includes having an articulated and published Detention Operating model.

The Child Death Review Board (CDRB) recently called for this to be undertaken as a key recommendation in their 2024 report after their review of the deaths of young people in contact with Youth Justice, including those who had been held in solitary confinement for some time. [xi]

QATSICPP supports the CDRB's observation that the development and roll out of such a model would give detention staff more clarity around how to manage risk whilst ensure young people are being connected to culture, family and community whilst in detention.

QATSICPP warns against hasty introduction of such arbitrary power without rigorous safeguards to prevent its inappropriate or unnecessary use. A wide range of evidence suggest connection with family and other support networks is critical to rehabilitation, particular for Aboriginal and Torres Strait Islander children and youth.[xii]

11.Youth Justice Act - New entry to Schedule 1 Chater of Principles (Disability)

QATSICPP is supportive of a reference to disability services in the Youth Justice Act Charter of Principles to reinforce that a child's disability needs must be met while they are in detention, particularly given 27% of young people diagnosed or suspected of disability within Queensland detention centres.[xiii] It should also be clarified that meeting the child's disability needs should

be a priority of the highest order and not subject to unnecessary debate regarding jurisdictional-financial responsibilities.

For example, a child's disability services should be delivered by services or individuals already familiar to the child (where they already exist and can be practically accessed in custody). Failing that, ongoing consultation of familiar treating health professionals for a child should be mandatory practice.

Such practice is critical to the maintenance of support and treatment quality for young people in custody and central to the success of a young person's transition to their community.

QATSICPP has concerns that confusion between state and federal governments makes it common practice to introduce new clinicians to young people upon their entry to state custodial environments. Finally, this principle should recognise that the quality and intensity of disability support should not be compromised by custodial infrastructure, security protocols or procedures.

12. Youth Justice Act -Amendment to Schedule 1 Chater of Principles (18)

QATSICPP remains deeply concerned about the escalating rates of Aboriginal and Torres Strait Islander children and young people (particularly of children aged between 10 and 13) in detention. As widely acknowledged Queensland's detention centres are already at capacity, leading to the dangerous practice of children being held in adult watch houses in harmful environments for extended periods of time, or for long periods of solitary confinement in youth detention.

More consideration should be given to the unintended consequences of wording. If one were to read the closing words, referring to lengths necessary to 'meet the purpose of detention' and interpreted that purpose to mean, "*as long it takes to sufficiently guarantee community safety*", young people may be left vulnerable to indefinite remand and without clear means to prove they are no longer pose a threat to community. More appropriate wording might be "*and held for no longer than would be reasonably imposed by a Court, were a sentence of detention ordered for the alleged offence or offences."*

Conclusion

QATSICPP supports legislative efforts focused on creating safer communities, reducing youth offending and delivering justice and services to victims of crime.

Given the over-representation of Aboriginal and Torres Strait Islander children and young people in contact with youth justice, including in detention, First Nations organisations and peaks must be at the heart of designing and implementing new solutions.

Our communities want the responsibility to support their children and young people on pathways to ensure they thrive. They have proven that whenever they have been given the opportunity to innovate, they have delivered timely and practical solutions to support young people in reducing contact with justice systems. What is required is a greater investment in these solutions and opportunities to build on this work and take it to scale.

End Notes

[i] https://www.legislation.qld.gov.au/view/html/inforce/current/act-1886-017

[ii] https://www.abc.net.au/news/2023-11-24/ankle-bracelets-failing-to-stop-recidivism-in-queensland/103141052; https://desbt.qld.gov.au/__data/assets/pdf_file/0026/17459/electronic-monitoring-trial-evaluation.pdf

[iii] https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/20231113%20QPS%20Briefing_%20YCSC_%20Inquiry%20into%20Youth%20Justice%20reforms.pdf; https://desbt.qld.gov.au/youth-justice/evaluations/electronic-monitoring-trial; https://www.qfcc.qld.gov.au/sites/default/files/2023-12/FINAL%20-%20Watchhouse%20Review%20-%20Who%27s%20Responsible%20-%20November%202023.pdf

[iv] https://www.sciencedirect.com/science/article/abs/pii/S004723522030026X?via%3Dihub

[v] https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-

[vi] https://www.abc.net.au/news/2023-11-24/ankle-bracelets-failing-to-stop-recidivism-in-queensland/103141052

[vii] https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000056.pdf

[viii] https://lens.monash.edu/@politics-society/2022/05/26/1384641/are-australians-socially-inclusive-5-things-we-learned-after-surveying-11000-people-for-half-a-decade-kun-zhao-research-fellow-behaviourworks-australia-monash-sustainable-development-institute-monash-university#:~:text=Half%20of%20Aboriginal%20and%20Torres,names%20or%20receiving%20poor%20service; https://www.qgso.qld.gov.au/statistics/theme/crime-justice/crime-justice-statistics/recorded-crime#current-release-crime-report-qld

[ix] https://coe.qatsicpp.com.au/you-cant-pour-from-an-empty-cup-strengthening-our-service-and-systems-responses-for-aboriginal-and-torres-strait-islander-children-and-young-people-who-experience-domestic-and-family-violenc/

[x] https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[xi] https://documents.parliament.qld.gov.au/tp/2024/5724T347-DB90.pdf

[xii] https://www.aic.gov.au/sites/default/files/2020-05/Indigenous-Youth-Justice-Programs-Evaluation.pdf

[xiii] YJ Census Summary Statewide (desbt.qld.gov.au)