



Human  
Rights  
Law  
Centre.

**Submission to the Youth Justice Reform Select Committee, Queensland Parliament**  
January 2024

### **About us**

Change the Record is Australia's only national First Nations-led justice coalition. We are a coalition of legal, health, human rights and First Nations community-controlled organisations. Change the Record has two key objectives - to end the mass incarceration of First Nations peoples and the disproportionate rates of family violence experienced by Aboriginal and Torres Strait Islander women and children.

The Human Rights Law Centre is a foundational 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.

Youth justice reform and raising the minimum age of criminal responsibility to at least 14 years of age without exception is a key focus of our work.

### **Our submission**

The Queensland youth justice system is dangerous, cruel, racist, expensive and criminogenic. It is in a state of perpetual, deepening crisis, where prolonged staff shortages and overcrowding means incarcerated children are deprived of any rehabilitative support or education, adequate food, natural light, adequate sleep, hygiene and normal social interaction. Outdated, punitive 'tough on crime' policy is subjecting children to systemic human rights violations in police and

prison cells and exposing children to cycles of institutional violence.

The evidence is clear that we should be working towards a future where there are no children locked away in youth prisons, yet the Queensland Government continues to incarcerate children at staggeringly high rates. Due to the structural racism and ableism of the colonial criminal legal system, First Nations children and children with disabilities are disproportionately harmed by contact with police and youth prisons.

### ***Ending racism in policing***

Racism within the Queensland Police Service (**QPS**) is institutional, resulting in racial profiling and increased surveillance of First Nations children. It is well-established that First Nations people are overpoliced as the accused and systematically dismissed and invalidated as victim/survivors, including children.<sup>1</sup>

Inquiries finding significant, endemic racial and gender bias within QPS have not been met with adequate responses by QPS or the Queensland Government.<sup>2</sup> In [one recent incident](#), a group of First Nations children who were assaulted and falsely imprisoned by white vigilantes were treated as criminals by QPS. Police have been accused of bias, providing false information and failing to properly take statements from the children.

QPS' institutional racism, failure to contend with its colonial history, adversarial attitude towards young people and lack of accountability makes the police force an inappropriate first responder to children in crisis, particularly First Nations children. There is a clear and urgent need for the development of an alternative workforce of first responders to children in crisis, trained in youth work and de-escalation strategies, separate from QPS.

The data collected by such services should be managed according to principles of Indigenous

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<sup>1</sup> See, for example, Change the Record and Human Rights Law Centre, 2017, '[Over-represented and overlooked](#)'; Institute for Collaborative Race Research, 2022, [Submission to Expert report commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence](#); Queensland Indigenous Family Violence Service, 2022, [Submission to the Senate Inquiry into Missing and Murdered First Nations Women and Girls \(Submission 3\)](#); O'Brien, G., 2021, '[Racial Profiling, Surveillance and Over-Policing: The Over-Incarceration of Young First Nations Males in Australia](#)', *Social Sciences* 10, no. 2: 68.

<sup>2</sup> See in particular, the report of the Commission of Inquiry into Queensland Police Service responses to domestic and family violence, 2022, [A Call for Change](#).

data sovereignty, with firewalls around the data they collect to ensure it cannot be shared with and used by police to target or surveil children.

There is also a demonstrated and long overdue need for members of QPS to be held to account for their actions and discriminatory policing by ending the practice of police investigating police and enacting independent oversight of police complaints.

### ***Raising the age***

Ending Queensland's youth justice crisis starts with raising the minimum age of criminal responsibility to at least 14 years old, without exception, in line with medical evidence and the recommendation of the United Nations Committee on the Rights of the Child, Committee Against Torture and Subcommittee on Prevention of Torture.<sup>3</sup> Children deserve to be safe and supported at home, in their communities and at school with their peers, not deprived of their liberty in degrading and dangerous conditions.

### ***Getting children out of police watch houses***

Children as young as 10 continue to be warehoused in police watch houses - institutions designed to detain adults for short periods of time - in cruel and inhuman conditions, sometimes for weeks at a time. This is so glaringly contrary to human rights law that the Government has [overridden](#) the operation of its own Human Rights Act to continue detaining children in them.

Just this month in Queensland, a psychologist treating children in the Cairns police watch house [sent a cry for help](#) regarding the 'horrendous' and 'inhumane' conditions in police watch houses. 14 children were detained in extended police custody in that lockup, including one who had been detained in the watch house cells for 18 days. This all in circumstances where police themselves admit that they '[cannot meet](#)' basic needs to care for children detained in the watch house. Some of the most vulnerable children, including those with intellectual disabilities or mental illness, have been detained in the 'padded cells' at the Cairns police watch house, which

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<sup>3</sup> Committee on the Rights of the Child, [General Comment No. 23](#), Children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019); Committee against Torture, [Concluding observations on the sixth periodic report of Australia](#), UN Doc CAT/C/AUS/CO/6 (5 December 2022); Subcommittee on Prevention of Torture, [Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party](#) (20 December 2023).

has been [exposed](#) as having walls like concrete, and a floor that “slopes down to a grate at the front that... collects ‘urine, blood, whatever, that goes slowly towards the drain’”.

### ***Removing breach of bail as an offence and reverse onus bail provisions***

Most incarcerated children in Queensland are locked away in pre-trial detention, under a bail regime with conditions that violate international human rights standards.<sup>4</sup> The Government’s draconian decision to criminalise breach of bail for children required the suspension of the state’s own Human Rights Act, with the Police Minister admitting the laws are ‘[incompatible with human rights](#)’ and ‘inconsistent with international standards about the best interests of the child.’

Further, Queensland’s reverse onus bail provisions flip the usual process for granting bail on its head in a number of cases; instead of children being afforded a presumption in favour of bail, the reverse onus provisions mandate a presumption that children, in certain circumstances, will not be granted bail unless they satisfy the court otherwise. There is no evidence that reverse onus bail laws reduce youth crime, but there is an abundance of evidence that presumptions against bail mean more children behind bars for behaviour that a court has not even found them guilty of. We are seeing this crisis play out now in police watch houses.

### ***Ending mistreatment in youth prisons***

The systemic use of abusive prison practices like solitary confinement (euphemistically called ‘isolation’ or ‘segregation’) and the routine strip searching of children in prison and police watch houses has been raised as a matter of grave concern by local, national and international human rights advocates and investigators, including the United Nations committees mandated with observing compliance with the UN’s anti-torture protocol, the Optional Protocol to the Convention Against Torture (OPCAT).<sup>5</sup>

20 January 2024 marked one year since the Queensland Government missed the deadline to

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<sup>4</sup> See Committee on the Rights of the Child, [Convention on the Rights of the Child](#), art.s 9.1, 37(b); United Nations [Standard Minimum Rules for the Administration of Juvenile Justice](#) rules 17.1(b),17.1(c), 17.1(d).

<sup>5</sup> Change the Record, Human Rights Law Centre and NATSILS, 2022, ‘[Ending Human Rights Abuses Behind Bars](#)’; Committee against Torture, [Concluding observations on the sixth periodic report of Australia](#), UN Doc CAT/C/AUS/CO/6 (5 December 2022); Subcommittee on Prevention of Torture, [Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party](#) (20 December 2023); Australian Human Rights Commission, 2023, Submission to the United Nations Committee Against Torture Follow Up Procedures to Australia’s Sixth Periodic Review.

meet Australia's obligations as a signatory to OPCAT. Aimed at preventing torture behind bars, OPCAT requires the designation of independent oversight and monitoring bodies to carry out inspections of all places of detention, including in youth prisons. Queensland is yet to establish such a body, depriving the public of transparency about the conditions faced by children in custody and depriving incarcerated children of the protection and accountability that rigorous, independent oversight can provide.

### ***The way forward***

Ending the harm caused by Queensland's youth justice regime would be a significant undertaking requiring political will and moral clarity. It requires a principled, child-centered, trauma-informed and strengths-based approach to policy making and service delivery that is responsive to place and culture, embeds First Nations self-determination and supports and upholds human rights. Transfer of resources and decision-making power over the care and support of First Nations children to First Nations communities and organisations is required to give effect to self-determination.

This is not the Queensland Government's current approach to youth justice, and nor is it the proposed approach of the Opposition. This inquiry is happening in the midst of (or perhaps because of) a prolonged election campaign in which the Government and Opposition have engaged in a race to the bottom on 'law and order' rhetoric and politics. The Terms of Reference of this inquiry are a product of this, presenting an inappropriate and false binary between victims of crime and criminalised children. The vast majority of children exposed to the criminal legal system have themselves been the victims of interpersonal and structural violence. Further, the evidence is clear that cycling children in and out of harmful prisons does not improve 'community safety', but rather undermines it.

We are not optimistic that the outcome of this inquiry will be a bipartisan commitment to substantive youth justice reform and justice reinvestment to improve the lives and futures of criminalised children in Queensland.

Despite this, we know a fairer, safer future is possible if governments listen to and follow the lead of First Nations communities and ACCOs, who are best-placed to make decisions about the care and support of our children and should be fully empowered and resourced to do so.

First Nations communities, Elders, ACCOs and scholars have provided all the information and guidance a responsible and conscientious government should need to make lasting, positive change to the operation of youth justice in Queensland. Knowledge about the best ways forward is not lacking - the political will to implement them is.

### ***Recommendations***

We urge the Select Committee to recommend that the Queensland Government:

1. Remove all children from police watch houses and adult prisons.
2. Raise the age of criminal responsibility to at least 14 years old without exception.
3. Raise the minimum age of detention to at least 16 years old.
4. Remove all reverse onus bail provisions that apply to children, create a presumption in favour of bail, remove breach of bail as an offence, and ensure that bail conditions take account of social and cultural factors and can be reasonably met by First Nations peoples.
5. Legislate detention as a measure of last resort between the minimum age of detention and the age of 18.
6. Legislate a ban on cruel and degrading prison practices, including the use of solitary confinement and strip searching of children in youth prisons.
7. Fully implement OPCAT and establish an independent, stand-alone, appropriately resourced National Preventive Mechanism to provide oversight of all places where children are deprived of their liberty.
8. Properly resource an effective and independent police oversight body.
9. Invest in ACCOs to provide early intervention, prevention, healing and crisis support services to First Nations children and their families - the planning, design and

implementation of prevention, early intervention and diversionary responses should be self-determined and community-led, and service funding should be long-term and reliable.

10. Led by First Nations communities and ACCOs, codesign a workforce strategy to create an alternative workforce of first responders to children in crisis to provide pathways to safety, conflict resolution and harm minimisation separate from the police force, with data managed and owned according to principles of Indigenous data sovereignty.
11. Ensure that exclusion from school is used as a matter of last resort and that all appropriate supports are provided to enable First Nations children and children with disability to succeed at school.
12. Increase investment in public housing and First Nations community-controlled housing, as well as crisis and transitional accommodation services for children and their families.