

Submission to Youth Justice Reform Select Committee on the Inquiry to examine ongoing reforms to the youth justice system and support for victims of crime

“No one will give me a job because I have history with the police. All these services want me to go out and find a job but how can I when they always say no and I don’t know where to go to get that fixed.”
(Young person, QLD) (CREATE Foundation, 2023)

“... organisations need to go out to the young people and find out what it is that would actually keep them out of trouble.” (Young person, QLD) (CREATE Foundation, 2022)

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About CREATE Foundation

CREATE Foundation is the national consumer peak body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care, up to the age of 25. Our vision is that all children and young people with a care experience reach their full potential. Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people with a statutory care experience and developing policy and research to advocate for a better care system.

Introduction

CREATE Foundation welcomes the opportunity to provide feedback to the Youth Justice Reform Select Committee (the Select Committee) on the *Inquiry to examine ongoing reforms to the youth justice system and support for victims of crime*. CREATE supports continued efforts by the Queensland Government to reform the youth justice system and we welcomed funding commitments made through the 2023-24 Budget to address the roots causes of engaging in offending behaviours and the comprehensive independent evaluation of the Government's youth justice response (Queensland Government, 2023b).

Broader legislative change and reform however is needed to ensure that such reform efforts are grounded by and reoriented towards therapeutic support for children who may engage in offending behaviours. Fundamentally the current approach to youth justice, which criminalises children as young as 10 years of age in Queensland is not working. CREATE shares concerns raised by our sector partners including QCOSS, that incarcerating children is not keeping our communities or children themselves safe.

Children who come into contact with the youth justice system have often experienced trauma, including being victim/survivors of domestic and family violence. There are high rates of disability and neurological conditions among children in the justice system. Many children in the justice system are from communities characterised by poverty and entrenched disadvantage (See Queensland Government, 2023c; McArthur, Suomi & Kendal, 2021). Detention has a devastating impact on children's and young people's health, development, mental health, and wellbeing (Human Rights Law Centre, 2023), and evidence shows that the earlier a child has contact with the criminal justice system, the more likely it is they will have long term involvement in crime (AIHW, 2022).

Queensland detains more children each day than any other state and has the worst recidivism rate in Australia (Productivity Commission, 2023b). The statistics paint an alarming picture:

- On an average night, there are 306 children and young people in detention (Australian Institute of Health and Welfare [AIHW], 2023). 214 (or 70%) of the children and young people in detention identified as Aboriginal or Torres Strait Islander (AIHW, 2023). A further 1204 children and young people being supervised in the community (Queensland Government, 2023b).

- 28% of children and young people in youth justice custody in 2022 had an active child protection order (Queensland Government, 2023a; Queensland Government, 2023c).
- 35% of children and young people in youth justice custody in 2022 had a mental health¹ and/or behavioural disorder² (Queensland Government, 2023c).
- 39% of children and young people in youth justice custody in 2022 were living in unstable and/or unsuitable accommodation (Queensland Government, 2023c).
- 45% of children and young people in youth justice custody in 2022 has disengaged from education, training, or employment (Queensland Government, 2023c).
- 95% of young people that go to Cleveland Detention Centre allegedly reoffend within the year of their release (Queensland Government, 2022).

The data points to a broader problem of unmet needs that intersect with and influence decisions to engage in behaviours that are considered criminal. Further, if viewed through an intersectional lens i.e., considering the criminalisation of young people in care (especially residential care), the impact of racism and overrepresentation of Aboriginal and Torres Strait Islander young people in youth justice, poverty, impact of contact with the police; it is evident that the system is not child focussed.

Young people with an out-of-home care experience are far more likely to have contact with the justice system than young people without a care experience. More than half (53%) of the young people under youth justice supervision during 2020–21 had an interaction with the child protection system in the preceding 5-year period and 21% had been in out-of-home care in the last 5 years (AIHW, 2022).

For children with a care experience who come into contact with the youth justice system in Queensland, they are being failed by two broken systems – a child protection system that clearly has not provided the care and support it should, and then a youth justice system that punishes young children and fails to meet their human rights, causing more damage. CREATE was deeply concerned by the Queensland Government’s decision in August 2023 by to pass legislative amendments that override its own *Human Rights Act 2019*. This amendment now means that children as young as 10 years can be detained in police watch houses and for adult prisons to be used as youth detention centres. This represented an active choice by the Government to circumvent its human rights obligations, and sets a disturbing precedent that is incongruent to the very nature of the Act.

CREATE regards this as a human rights issue. In 2019, in their Concluding observations on the combined fifth and sixth periodic reports of Australia, the Committee on the Rights of the Child raised serious concerns in relation to the full realisation of the 54 interdependent and indivisible rights of the child specifically highlighting the lack of progress made to raise the age of criminal responsibility (United Nations Committee on the Rights of the Child, 2019). Comments were also made in relation to the appalling conditions that children are exposed to while in detention with urgent calls to bring practices in line with the [Convention on the Right of the Child, 1989](#).

Raising the age of criminal responsibility and detention is a critical first step in safeguarding the rights, wellbeing, and development of young children and avoiding the stigma of criminalisation. Critically, this reform must be implemented in conjunction with increased investment in programs focused on prevention, diversion, therapeutic intervention, and rehabilitation.

CREATE recommends:

- The Select Committee recommend that the Queensland Government raise the age of criminal responsibility to 14 years without exceptions as a matter of urgency.

¹ Mental health disorders include anxiety, depression, post-traumatic stress disorder, personality disorder, psychosis, bipolar disorder, eating disorder or obsessive-compulsive disorder


² Behavioural disorders include conduct disorder, opposition defiance and attachment disorder

- The Select Committee recommend that the Queensland Government concurrently raise the minimum age of criminal detention to 16 years, in line with expert opinion and research on the criminogenic outcomes of early contact with the justice system. This would also align with international guidance provided by the United Nation’s Committee on the Rights of the Child, which recommended that children under the age of 16 “should not legally be deprived of their liberty.” (United Nations, 2019, para. 89). This commitment should be accompanied by a comprehensive review and expansion of funding for specialist programs aimed at intervening with young people who are already involved in the criminal justice system. This review should consider programs aimed at young people engaging in recurring violent behaviour, and those that support children and young people who are displaying harmful sexual behaviours.
- The Select Committee urge the Queensland Government to immediately cease the use of adult watch houses to detain children. Where detention is considered to be necessary for children over the age of 16, it must occur in a fit-for-purpose youth detention centre, specifically designed to cater to the needs of children and young people. Such centres should adopt a rehabilitative approach that is evidenced-based and provides targeted, trauma-informed, and culturally safe therapeutic support to address patterns of contact with the youth justice system, especially for children and young people with a care experience.
- The Select Committee provide a recommendation that the Queensland Government overturn legislative amendments passed that override the *Human Rights Act 2019* to allow children as young as 10 to be detained in police watch houses and for adult prisons to be used as youth detention centres.
- The Select Committee include an immediate call to action that urges the Queensland Government to make urgent improvements to the treatment of young people in youth justice systems. This should include enhancing trauma-informed training for youth justice workers and police officers. A trauma-informed model includes explaining judicial processes and terminology in a developmentally appropriate manner, clearly articulating what is expected of the young person, and ensuring that justice system authorities are trained to correctly identify and respond to trauma-influenced behaviours and young people’s ‘trauma-triggers’.
- The Select Committee should as part of this Inquiry incorporate the views and be directly informed by the experiences of young people with a care experience and young people who are in contact with the justice system. Meaningful engagement should occur outside of and beyond the hearing process. The Select Committee should also urge the Queensland Government to adopt a similar approach to genuinely engaging with young people a care experience and young people who are in contact with the justice system as ‘experts by experience’ in the development of any resulting action plan or youth justice strategy.

Early intervention and therapeutic supports

Legislative reforms and providing support at the pointed end of the youth justice system should be complemented by a comprehensive suite of early intervention supports that aims to divert and prevent longer-term entrenchment in this system. This will help to ensure that such efforts do more than just delay children’s entry into the system.

While the Queensland Government’s Youth Justice Strategy 2019-2023 – [‘Working Together Changing the Story’](#) documents the effectiveness of addressing factors that lead to engaging in offending behaviours and protective factors; it is clear from the data noted above there has been a systemic failure to provide support, boost protective factors or address risk. Further given that the evidence indicates that children and young people who enter youth justice systems often present with co-occurring vulnerabilities, there is a need in the first instance to strengthen supports to address these vulnerabilities (Australian Institute of Criminology, 2020).



Genuine commitment to early intervention diversionary supports, through both investment and resourcing, is likely to also result in avoided costs for the Queensland Government. For example, engagement in education is a known protective factor (The Youth Endowment Fund, 2020; Development Services Group Inc, 2015); and analysis suggests that *“every dollar spent on flexible learning options for young people generates \$25 in socioeconomic returns and saves \$32,000 in youth justice and welfare costs”* (Atkinson, 2018, p. 2).


CREATE recommends:

- The Select Committee recommend that the Queensland Government commit to developing a comprehensive Youth Justice Early Intervention Strategy. The new strategy must consider the following:
 - An assessment of the support gaps, drivers and protective factors for children and young people at risk of contact with the youth justice system. This should also be complemented by increased resourcing for existing services that seek to support children, young people and families to access family support, educational support, health (including mental health) and housing support.
 - Redirection of resourcing and investments to evidence-based diversion programs that intervene earlier with intensive supports to steer children and young people away from the youth justice system.
 - A comprehensive review of instances where police cautions and/or referrals to support services were not used with children and young people with the view to increase transparency around the use of these diversionary measures. The review should also seek to better understand referral pathways to support services and any barriers to their use including lack of capacity.
 - Genuine and meaningful consultation with children and young people that upholds their right to participate in system and policy setting decisions that affect them. Consultation processes with children and young people should be inclusive of the voices of diverse groups, including children and young people with a care experience and Aboriginal and Torres Strait children and young people given their overrepresentation in the youth justice system.
- The Select Committee also consider the findings from the final report of the National Children’s Commissioner’s review of opportunities for youth justice reform (grounded in evidence-based models that protect and uphold children’s human rights). As noted, in the Commissioner’s submission to this consultation process the report is due to be released in the first half of 2024 and should align with the terms of this Inquiry (see Australian Human Rights Commission, 2023).

Dismantling cycles of criminalisation for young people in residential care

Young people placed in out-of-home care are more likely to have contact with the justice system due to the criminalisation of behaviours that may otherwise be considered acceptable or negligible in a home environment. Young people in a family home may damage property or threaten harm whilst in elevated states, but parents typically manage this behaviour. In the out-of-home environment, residential care staff or foster carers are more likely to prematurely engage the police to manage the young person’s behaviour, particularly when incidents are frequent (though not necessarily serious) and the young person does not respond to other forms of managing this behaviour, such as threat of being ‘grounded’ (Shaw, 2017).

At one of CREATE’s Youth Advisory Group (YAG) sessions in 2023, young people with residential care experience highlighted the ways in which the residential care setting in particular can at times create situations in which children and young people engage in offending behaviours. For example, young people have recounted their stories about being left on their own for long periods of time and that this has resulted in them joining groups of friends on the streets and getting involved in crimes. Young people felt that nothing was being done to address these issues, allowing the cycles to



continue. They also provided practical suggestions, including that residential care settings should be places where children and young people were offered positive role models. However, this was tempered by a strong concern that nothing will change and that young people would turn 18 and continue to engage and cycle through harmful and/or offending behaviours after leaving care.


CREATE is also concerned about the considerable stigma that children and young people with a residential care experience face. One young person told us:

“I feel like as soon as they found out I’m a resi [residential care] kid I’m seen as a danger or a threat”
(Young person, QLD) (CREATE Foundation, 2023)

From young people’s comments it is clear that the residential care model is not optimal, and that it is not able to support their needs. Fundamentally, contact with such models has an ongoing impact on their lives with the stigma permeating well-past their time in care. CREATE’s position is that residential care is not a model that fully meets the relational and developmental needs of children, especially younger children. In this context, CREATE’s view, as outlined in our [submission to the Queensland Review of Residential Care](#), is that the Queensland Government should transition away from the use of this model of out-of-home care.

CREATE recommends:

- The Select Committee recommend the Queensland Government commit to a clear plan to transition away from the use of residential care over the next 10 years. Alternative home-based care arrangements such as professionalised foster care and home-based Intensive Therapeutic Support should be established to replace the need for residential care for young people that require more intensive support for particular behaviours.
- As an interim solution, given that strategies to transition away from the use of residential care may take some time, and to interrupt cycles of criminalisation for young people in residential care (and noting the findings of the [Review of Residential Care](#)); the Select Committee recommend:
 - A review of the effectiveness of the Queensland Government’s [‘Joint agency protocol to reduce preventable police call-outs to residential care services’](#). The review should consider the extent to which practices have been understood and embedded and their effectiveness in dismantling cycles of criminalisation for young people in residential care.
 - Expanding therapeutic models of support to all residential care homes across Queensland, to act as a preventative measure of youth justice contact. Residential care could be seen as an opportunity to provide specialist evidenced-based, trauma-informed services to particularly vulnerable young people, e.g., the [Sanctuary](#) and [CARE](#) models. A recent review (McLean, 2018) of such therapeutic approaches encouraged the extension of these services that were tailored to individual needs, involved relationship-based support and provided for connection to family and culture to facilitate healing.
 - Reducing the number of young people placed in each residential home to better ensure appropriate placement matching, adequate staffing support, and to create more home-like and less institutional environment.
 - Increasing funding for additional residential care workers to ensure workers have the capacity to provide the level of support and care that individual children and young people need.
 - To address stigma in the first instance development and roll out of a training package for residential care workers focused on stigma and long-term impacts including ongoing contact with the justice system. To complement this, piloting a project on “dual involvement” in residential care and youth justice with the view to interrupt cycles of criminalisation for children and young people in residential care, similar to



the South Australian Dual Involved (SADI) project (see Office of the Guardian for Children and Young People, 2022; McFarlane, 2018).

Resourcing self-determined approaches

The Queensland Government must hasten efforts in Closing the Gap in outcomes for Aboriginal and Torres Strait Islander children and young people. The recent Productivity Commission Report (2023a) indicates that there has been no change for Queensland in relation to Target 11^{3;4}. Lack of any change or progress suggests that without considerable effort (reforms, investment and target actions) Queensland will not be able to reduce the rate of Aboriginal and Torres Strait Islander young people in detention by 2031. This is even more concerning when coupled with findings against Target 12^{4;5}; which indicates increasing over-representation rates of Aboriginal and Torres Strait Islander children in the Queensland out-of-home care system (Productivity Commission, 2023a; SNAICC, 2023).

In the spirit of self-determination and to accelerate progress towards achieving critical Close the Gap Targets, CREATE Foundation urges the Queensland Government to resource self-determined approaches to youth justice. CREATE sees this as a critical to dismantling practices that have resulted in the overrepresentation of Aboriginal and Torres Strait Islander children and young people in Queensland's youth justice system. As such, we support the call to action made by our sector partners QATSICPP for the Queensland Government to work with Aboriginal and Torres Strait Islander Elders, Community and Aboriginal Community Controlled Organisations (ACCOs) to develop culturally safe and appropriate mechanisms to reduce the Aboriginal and Torres Strait Islander children in contact with the youth justice system (see QATSICPP, 2023).

CREATE recommends:

- The Select Committee urge the Queensland Government to extend the hand of genuine partnership to the Aboriginal Community Controlled Sector and answer calls made by QATSICPP to co-design a generational plan to reduce the over-representation of Aboriginal and Torres Strait Islander children in contact with the youth justice system (see QATSICPP, 2023).
- The Select Committee recommend the establishment and appointment of a Commissioner for Aboriginal and Torres Strait Islander children and young people to drive reforms that reduce the over-representation of Aboriginal and Torres Strait Islander children and young people in both child protection and youth justice and to hold the Government to account. Further, establishment of this role would also help to address the unacceptably high levels of multiple and intersecting forms disadvantage and discrimination experienced by Aboriginal and Torres Strait Islander children and young people in Queensland including over-representation in the care system.
- The Select Committee support calls made by QATSICPP and the Aboriginal Community Controlled Sector and urge the Queensland Government to utilise the existing ACCO service structure. This should include increasing investment allocated to these services with a view to increase the capacity of Aboriginal Community Controlled Sector across multiple areas to address the drivers for Aboriginal and Torres Strait Islander children and young people's overrepresentation in Queensland's youth justice system (see QATSICPP, 2023).

³ By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people 10-17 years in detention by at least 30 per cent.

⁴ Assessments measure progress towards each target since the baseline year, based on the latest available data.

⁵ By 2031, reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children (0-17 years old) in out-of-home care by 45 per cent.



Conclusion

Thank you again for the opportunity to provide feedback to the Youth Justice Reform Select Committee on the *Inquiry to examine ongoing reforms to the youth justice system and support for victims of crime*. CREATE urges the Select Committee to recommend that the Queensland Government should immediately raise the age of criminal responsibility to 14 years, without exceptions and raise the minimum age of criminal detention to 16 years. Improved diversion programs and therapeutic interventions must be rolled out concurrently to ensure that these legislative reforms do more than delay children's entry into the system. Meaningful engagement should occur with young people a care experience and young people who are in contact with the justice system as 'experts by experience' including as part of this Inquiry and in the development of any resulting action plan or youth justice strategy.

Should you have any questions or require additional information, please contact Sarah Chew, National Advocacy and Influencing Manager, CREATE Foundation. E: advocacy@create.org.au

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