



Queensland Aboriginal and Torres Strait Islander
Child Protection Peak Limited

Youth Justice : Position Paper

January 2022

Position Paper: Youth Justice

The issue

The escalating rates of our children and young people's over-representation in Queensland's youth justice system are a source of ongoing trauma for our communities and must be addressed through urgent and profound intervention.

In 2020-2021, according to data from the Australian Institute of Health and Welfare our children made up approximately 8 percent of those aged 10–17 in the general population but 64 percent of those of the same age under youth justice supervision on average day during the year. This rate is an increase on 2015-2016, where Aboriginal and Torres Strait Islander children made up 57 percent of those on some kind of supervision order. Aboriginal and Torres Strait Islander over-representation was higher in detention (21 times the non-Indigenous rate). Our children represented 64 percent of all children living in detention on an average day in 2020-2021.

Nationally, research suggests the rate of over-representation in the youth justice system for Aboriginal and Torres Strait Islander children increases with the severity of the intervention. In its 2020-2021 Annual Report, the Queensland Children's Court found that Aboriginal and Torres Strait Islander young people were ten times as likely as other young people to have had a charge finalised in a Queensland Court: an increase on the 2018–19 rate (nine times as likely).

Trauma related issues, such as family dislocation, disability, racism, homelessness, and mental health issues, are the primary drivers for Aboriginal and Torres Strait Islander children and young people's over-representation in the youth justice system. There are many ways in which Aboriginal and Torres Strait Islander children and young people are impacted by trauma, including the transmission of intergenerational trauma, directly experiencing trauma and by witnessing trauma. There is a broad consensus in neurobiological research that trauma can affect children's neurological, psychological and physical development. Trauma impacts on brain development, particularly in the early years where the foundations for emotional regulation are established.

The incidence of neurobiological impairment in recidivist youth offenders has been consistently acknowledged in recent systemic inquiries, including The Royal Commission into the Protection and Detention of Children in the Northern Territory and the Parliamentary Inquiry into Youth Justice Centers in Victoria. Yet the data reveals that for the most part, our children continue to receive a justice response, instead of a trauma response. Furthermore, national research suggests contact with, and particularly incarceration in the criminal justice system further contributes to a range of trauma-based challenges, such as mental health issues and social isolation which often lead our children to have contact with the criminal justice system in the first place.

The evidence

QATSICPP's position papers are informed by evidence from a wide range of sources. For further detail on the evidence that informs our position on youth justice, please read our Youth Justice Evidence Review.

Our concerns

QATSICPP is concerned that the escalating rates of over-representation are evidence that Queensland's youth justice system is not responding effectively to Aboriginal and Torres Strait Islander children and young people but is instead criminalising commonly associated behavioural responses to trauma and creating further distress in our communities as a result. Too often measures announced to address youth justice are reactive to public opinion, lack evidence and pay little regard for the rights of Aboriginal and Torres Strait Islander people generally and children specifically.

We are particularly concerned that:

- Aboriginal and Torres Strait Islander people experience profound levels of intergenerational trauma. The forced removal of children from their families, culture and dislocation from country is recognised as a significant driver of intergenerational distress. Yet, we still don't have a sufficiently resourced service system that is both culturally safe and accessible for Aboriginal and Torres Strait Islander people to get the support they need to heal and break the cycle of trauma. At present there is little to no trauma informed practice having been systemically implemented within youth justice services.
- Aboriginal and Torres Strait Islander children currently involved with the youth justice system have been offered limited early support. This has often resulted from a failure of available services to engage them or meet their multiple needs including mental health, cognitive difficulties, and socio-economic disadvantage, including homelessness— resulting in limited early prevention work occurring and young people instead having their needs and behavior addressed by the youth justice system. Often our children and young people come into contact with the Youth Justice system after the child protection system has failed to meet the needs of them and their families.
- Despite Aboriginal and Torres Strait Islander children and young people making up the majority of those in the youth justice system, there appears to be only a patchwork of attempts at community led initiatives and frameworks across the youth justice system that uphold the right to self-determination and/or ensure that critical decisions about how the system is run are culturally accountable.
- Neither legislation nor youth justice policy establishes a role for Aboriginal and Torres Strait Islander community-controlled organisations in the delivery of youth justice services, despite research suggesting these organisations can deliver services to this cohort more effectively. Currently in Queensland the funding available to community-controlled organisations to meet the needs of Aboriginal and Torres Strait Islander children and young people is dwarfed by the resources available to the Department of Children, Youth Justice and Multicultural Affairs.
- Multiple government inquiries and systemic reviews at a state and federal level have recommended a more culturally aware and holistic response to youth offending but many of these recommendations have not been implemented.

- A range of promising initiatives for Aboriginal and Torres Strait Islander children and young people continue to be trialed but rarely implemented in a sustainable long-term way. This has resulted in, limited to no systemic evaluation occurring. This short-term approach to funding has meant that sustained capability continues to be a challenge for community-controlled services and the youth support sector more broadly.
- This is compounded by the Standardised Program Evaluation Protocol (SPEP) framework, used by the Department of Children, Youth Justice and Multicultural Affairs to develop new programs and improve existing programs and services, lacking a prominent focus on the cultural context and the role of culture as a protective factor for children and young people.

Our solutions

We want our communities to be safe. QATSICPP is one of many Aboriginal and Torres Strait Islander representative groups (inclusive of our legal, health and education counterparts) that are ready and willing to co-create transformational change that empowers us to address the complex issues facing our families that impact on our wellbeing and the safety of the broader community.

We have been heartened by the Queensland Government's commitment to reducing the over-representation of our children in youth justice and have been working closely with the Department of Children, Youth Justice and Multicultural Affairs to address these issues in groundbreaking new work introducing family led decision making trials across Queensland. These trials have highlighted some of the deeply entrenched cultural issues in the statutory Youth Justice system that need to be addressed to enable effective partnering with community. There needs to be a greater focus on healing and preventing further trauma, not the introduction of punitive measures that risk further disconnection, grief and loss as the primary way to reduce over-representation of young people in the youth justice system.

Multiple reform agendas have highlighted the need for:

- the importance of focusing on healing rather than punitive responses in a response to children and young people's trauma-based behaviors
- greater investment in placed based, community led responses
- efforts to address over-representation to be designed, developed and led by Aboriginal and Torres Strait Islander people, in keeping with the principle of self-determination
- a focus on cultural connection as a strong protective factor that can assist with children and young people's healing and help them to avoid youth offending trajectories.
- The National Agreement on Closing the Gap outlines a target to reduce the rate of Aboriginal and Torres Strait Islander (10-17) in detention by 30 percent by 2031. To reach this target in Queensland will require a range of multi-systemic reforms.

Recommendations

Multiple reports and research in the youth justice field has outlined the need for a holistic approach to create the key building blocks for change.

Whilst we must acknowledge parenting as a key risk factor in youth offending, Aboriginal and Torres Strait Islander people have over 60,000 years of experience in raising good, safe and strong children. Approaches to address parenting need to be both targeted and draw on the strengths of ancient cultural child rearing practices.

Based on a comprehensive review of the evidence, QATSICPP recommends the following:

1. A significant long-term increase in investment in Aboriginal and Torres Strait Islander Community Controlled (ABTSICC) youth services to ensure the needs of young people are met prior to them entering the youth justice system, and where young people may have experienced detention, to ensure they able to transition out of detention back into the community successfully.

We fear that without a scale up of resourcing for ABTSICC to respond to youth justice issues, the partnership commitment to redressing structures, relationships and outcomes identified in the Atkinson Report to address over-representation is challenged and the shared accountability between the Queensland Government and the state's Aboriginal and Torres Strait Islander community would diminish significantly.
2. The Queensland government should work with Aboriginal and Torres Strait Islander community-controlled organisations to develop an intensive case management approach to addressing recidivist youth that includes approaches for primary school aged children. Aboriginal and Torres Strait Islander community-controlled organisations should then be resourced to deliver this program.
3. The current Youth Justice Family Led Decision Making program continue to be developed and resourced as an initiative which is supported by considerable evidence in terms of its focus on community led initiatives which support self-determination.
4. The Aboriginal and Torres Strait Islander Child Placement Principle be enshrined in Youth Justice legislation and policies, recognising the importance of partnership, participation and connections to family, community, and culture in upholding and asserting the principle of self-determination that is a central to fulfilling the commitment of the Our Way Strategy.
5. Following the lead of recent reforms in child protection, the Queensland Government should undertake a process to delegate to Aboriginal and Torres Strait Islander community controlled organisations relevant and appropriate functions currently carried out by the Department of Children, Youth Justice and Multicultural Affairs under the Youth Justice Act.
6. A review be conducted of current youth justice diversionary and early intervention programs currently being offered to identify gaps terms of culturally appropriate, trauma informed and healing aware programs across Queensland.

The voices of Aboriginal children and young people, community members and elders should be included in this review. This review should also address the disparity between the resourcing for Aboriginal and Torres Strait Islander community led initiatives and the level of

funding provided for non-Indigenous programs, given the high proportion of First Nations children and young people in contact with the youth justice system.

7. Change the minimum age of criminal responsibility (MACR) in Queensland to 14 years of age, recognising evidence about child brain development, the tremendously damaging impacts of having contact with the youth justice system, the ineffectiveness of detention on reducing recidivism and the disproportionate impact a low MACR has on Aboriginal and Torres Strait Islander children and young people.
8. A focus on the improvements that need to be made to service systems in the areas of disability, child protection, mental health and youth housing to ensure they better meet the needs of Aboriginal and Torres Strait Islander children and young people including support to create trauma and healing informed service models. Joint departmental taskforces and community coalitions may be needed to ensure better collaboration on this issue.
9. A commitment from the Queensland government that no child or young person shall be exited from any kind of youth justice order without resourced short and long term plans for how their needs will be met to assist with further justice system involvement, this includes intensive and culturally appropriate support around such areas as housing, disability, mental health and substance abuse.
10. A focus on upgrading the care that is provided to Aboriginal and Torres Strait Islander children and young people who are incarcerated including a strong focus on trauma, comprehensive assessments of health and education needs, and a plan for their future. Any detention environments should, at a bare minimum, meet minimum standards of care and not cause further harm and traumatisation to children.
11. A greater emphasis on the cultural relevance of strategic drivers in the youth justice system, including programmatic frameworks and workforce development strategies. Within this, the establishment of a new Aboriginal and Torres Strait Islander justice agreements for Queensland should be considered.
12. Implementation of community led justice reinvestment approaches across Queensland enabling place based responses to the multiple factors that have led to youth contact with police and enable early intervention response to intergenerational trauma to break this cycle. These need to be long term commitments and recognise change occurs over time.
13. A culturally appropriate evaluation framework, shaped by input from Aboriginal and Torres Strait Islander people and including baseline data be applied to existing programs and the introduction of any new program or intervention in the youth justice space. The evaluation framework should allow for continual quality improvement, be focused on ongoing measurement of long-term program outcomes and recognise the central role culture and healing play in reducing the over-representation of Aboriginal and Torres Strait Islander children in the youth and adult justice systems.



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