

Australia's Youth Justice & Incarceration System

**PeakCare's Submission to the Legal
and Constitutional Affairs
References Committee**

10 October 2024

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INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide this submission to the Legal and Constitutional Affairs References Committee about Australia's youth justice and incarceration system. Due to the intersection between the child protection system and youth justice system, with common drivers resulting in over-use of both tertiary systems, youth justice is an issue of importance to PeakCare's members.

In the past 12 months, PeakCare has provided the following submissions on matters relating to children involved in the criminal justice system in Queensland:¹

- Submission to Legal Affairs and Safety Committee in response to the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023
- Submissions to Youth Justice Reform Select Committee November 2023 and January 2024
- Submission in response to the Discussion Paper for A Safer Queensland: Youth Justice Strategy
- Submission to the Department of Youth Justice Draft Youth Justice Strategy June 2024
- Response to the report from the disbanded Youth Justice Reform Select Committee 2024
- Response to the Better Justice Together Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031
- Response to Broadening the focus: Queensland's strategy to strengthen responses to people who use domestic and family violence 2024-28
- Submission to the Community Safety and Legal Affairs Committee Queensland Community Safety Bill 2024
- Submission to the State Development and Regional Industries Committee Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023
- Response to the Office of the Public Guardian Independent Inspectorate's Cleveland Youth Detention Centre Inspection Report 2024 IDS CYDC Inspection report 2024 - Focus on separation.

PeakCare has spoken directly to children in Queensland's youth detention centres about the recommendations in this and other submissions. With their permission to use quotes and stories throughout this submission, we believe children's voices are critical to guiding any changes to Australia's youth justice and incarceration system.

ABOUT PEAKCARE

PeakCare is a not-for-profit peak body for child and family services in Queensland, providing an independent voice representing and promoting matters of interest to the non-government sector. Across Queensland, PeakCare has almost 100 members including small, medium and large, local, state-wide and national non-government organisations which provide prevention and early intervention, generic, targeted, and intensive family support to children, young people, families, and communities.

¹ [PeakCare Submissions - PeakCare](#)

Member organisations also provide child protection services, foster care, kinship care and residential care for children and young people who are at risk of entry to, or who are in the statutory child protection system and youth justice systems.

A large network of associate members and supporters also subscribe to PeakCare. This includes individuals with an interest in child protection, youth justice and related services, and who are supportive of PeakCare's policy platform around the rights and entitlements of children, young people and their families to safety, wellbeing and equitable access to life opportunities.

PEAKCARE'S SUBMISSION

The outcomes and impacts of youth incarceration in jurisdictions across Australia

In Queensland, youth detention centres remain primarily custodial, and rehabilitation services are often under-resourced and ineffective in addressing the root causes of criminal behaviour. There is significantly disproportionate imprisonment of First Nations children, and issues surrounding compliance with human rights obligations. PeakCare supports a national focus on this key issue and welcomes the opportunity to be part of the systemic changes needed.

Youth incarceration across Australia has long-term negative effects on children, their families and the community. Research shows incarceration disrupts the development of cognitive, social, and emotional skills in children, limiting their future opportunities.² Children in detention are at increased risk of reoffending, leading to entrenched criminal behaviour that often perpetuates cycles of disadvantage. We also know there are significant health and psychological consequences, such as higher rates of mental health issues, substance abuse, and self-harm among incarcerated children.

Queensland faces some of the toughest youth detention conditions in Australia. Despite declining youth crime rates, detention rates continue to rise. In 2021–22, around 470 children, some as young as 10, were held in adult watchhouses for up to 14 days. On 8 October 2024, 29 young people were in watchhouses across Queensland with the longest period being 12 continuous days.³ These conditions are unsuitable for children, and there is overwhelming evidence that detention increases the likelihood of reoffending. In Queensland, more than 90 per cent of children released from detention reoffend within 12 months.⁴

Children in detention often have disabilities or suffer from mental health issues. In Queensland in 2022, it is estimated that 12 per cent of children in detention had foetal alcohol spectrum disorder, while 37 per cent had a cognitive, intellectual, or physical disability.⁵ Many children in detention have undiagnosed disabilities, and inadequate support services upon release contribute to high reoffending rates.

Remand rates are a significant issue, with 88 per cent of children in Queensland's detention centres in 2022-23 unsentenced.⁶ Multiple reviews of youth detention in Australia have shown the ways in which youth detention centres entrench children further into disadvantage, especially for those on remand

² [Locking up kids has serious mental health impacts and contributes to further reoffending \(uwa.edu.au\)](https://uwa.edu.au)

³ [Watch-house data | QPS \(police.qld.gov.au\)](https://police.qld.gov.au)

⁴ Queensland Parliament (2022). Question on Notice No. 1270.

<https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/1270-2022.pdf>

⁵ Queensland Family & Child Commission :: Queensland Child Rights Report 2023 :: Spotlight: Youth Justice in Queensland (qfcc.qld.gov.au)

⁶ Childrens Court of Queensland Annual Report 2022-23 <https://documents.parliament.qld.gov.au/tp/2023/5723T2106-255C.pdf>

(waiting to be sentenced).⁷ Children on remand are likely to be exposed to the detrimental effects of detention but are not there long enough to gain any substantial therapeutic or rehabilitative benefit. Being on remand leaves children in legal limbo, unable to plan for reintegration into their communities.

“Being on remand stops us getting jobs. I have a good employer lined up but I don’t know when I’m getting out and I don’t know how long he’ll wait.”

– child in a youth detention centre (2024)

The long-term recommendations from PeakCare throughout our submissions to government and parliamentary committees include transitioning to smaller, community-based custodial settings, flipping the statistics between sentenced and unsentenced children in detention, and improving access to rehabilitative services while incarcerated and following release. We also suggest adding a focus on reintegration leaves of absence while in custody.

PeakCare has also called for the trial of international evidence-based therapeutic youth detention models such as the Diagrama Model in Spain, co-delivered with community-controlled organisations and tailored to the Australian context.⁸ We cannot continue with the current custodial model of youth detention and expect a different outcome.

The over-incarceration of First Nations children

In Queensland, the detention system is at breaking point, with detention centres overflowing and children as young as 10 years old being held in adult watchhouses for extended periods of time. Aboriginal and Torres Strait Islander children are significantly over-represented, making up between 65 and 72 per cent of children in detention on any given day, despite comprising only five per cent of the 10-17 year old population. These children are 23 times more likely to be detained than their non-Indigenous peers.⁹ This disproportionate representation is caused by intergenerational trauma, socio-economic disadvantage, systemic racism, and over-policing of First Nations communities. Policies such as breach of bail laws disproportionately affect First Nations children, compounding existing inequalities.

The over-incarceration of First Nations children not only breaches human rights, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), but also undermines efforts toward reconciliation and closing of the gap in health, education, and employment outcomes.

Immediate reform is needed to address the systemic discrimination entrenched in the justice system and to adopt culturally appropriate, community-led diversionary programs that keep First Nations children out of detention.

⁷ [Youth justice in Australia: Themes from recent inquiries \(aic.gov.au\)](https://aic.gov.au)

⁸ [PeakCare Election Commitments 2024 V1.0](#)

⁹ [Changing the sentence | Queensland Family and Child Commission \(qfcc.qld.gov.au\)](https://qfcc.qld.gov.au)

“They didn’t offer cultural programs when I was in primary school. That started in high school. Cultural programs are good, they’re different than regular programs because they understand you more. They know how you’re feeling.”

– child in a youth detention centre (2024)

Cultural disconnection contributes to the over-representation of Aboriginal and/or Torres Strait Islander children in detention. Experts stress the importance of cultural knowledge as a protective factor, which can build resilience and reduce recidivism. First Nations-led programs led by Elders and community-controlled organisations are seen as key to addressing these issues, given their ability to gain trust within communities and deliver culturally relevant services.

However, geographic isolation of detention centres from some First Nations communities presents a further barrier to maintaining cultural ties.

“I’m just starting to learn about my culture. I got taken by child safety so young my dad didn’t get a chance to teach me anything about our culture. Last week we started mapping out my kin, it’s good.”

– child in a youth detention centre (2024)

Efforts to reform youth justice are ongoing, with a focus on reducing remand rates, improving court processing times, and promoting community-based detention models. However, systemic and long-term change is needed.

PeakCare advocates for a focus on crime prevention through equity and wellbeing, working in partnership with health, housing, education and employment agencies, the non-government sector, and community members to address the drivers of over-representation of First Nations children in the justice system.

The degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention

In 2023, the Queensland parliament voted to override its own human rights law in order to enable children to continue to be detained in police watch houses and adult detention facilities. There have been significant concerns about the treatment of children in these facilities in Queensland, especially regarding violations of international human rights standards. Some key issues include the use of solitary

confinement, which is classified as cruel, inhuman, or degrading under international law, and documented instances of restraints and force.

With substantial workforce issues resulting in the minimum ratio of staff required in Queensland to allow children out of their individual locked cells, solitary confinement remains a prominent issue, raising concerns about compliance with human rights laws.¹⁰

Queensland's use of police watchhouses, which are unsuitable for extended periods of detention, exacerbates the problem. In 2021–22, children were held in these environments for between one and two weeks almost 150 times, often in solitary confinement with limited access to natural light, fresh air, and activities.¹¹ These environments are not designed for rehabilitation, which contradicts the United Nations Convention on the Rights of the Child (UNCRC) guidelines that emphasise the need for child-appropriate facilities and rehabilitation-focused detention.

“The watchhouse, that’s one place I don’t want to be again. Locked up in an underground basement. They don’t do a good job cleaning it I asked if they would let us boys do the cleaning, we’d do a better job, but they said no. I don’t want to be sleeping in filth. People yelling while I’m trying to sleep, adults being admitted and they’re under the influence. If I could change watchhouses I’d make them cleaner and just more respectful. Like, why do we get a boot in our face if we don’t wake up at 6 o’clock? What are we getting up for?”

– child in a youth detention centre (2024)

“I spent 18 days in a watchhouse. Just in a cell with a bed. The food is disgusting and not enough, breakfast was two Weetbix or cold bread.”

– child in a youth detention centre (2024)

One of the main challenges, due to staffing shortages, is the frequent use of solitary confinement, particularly at Cleveland Youth Detention Centre in Townsville.¹² The facility has faced criticism for locking children in their rooms for extended periods, which can have severe negative effects on children – particularly those with mental health conditions, cognitive impairments, and trauma histories.

PeakCare advocates for more flexible staffing ratios and the recruitment and retention of Aboriginal and Torres Strait Islander staff, who are crucial in building meaningful relationships with children in detention. We emphasise the importance of legislative protections to cap the time children spend in watchhouses and isolation, while also stressing the need for rehabilitation and therapeutic interventions. We have raised concerns that increasing penalties for youth offences, as proposed in the 2024 Queensland Community Safety Bill, will lead to overcrowding and further human rights violations.

¹⁰ [Preventing torture and other cruel, inhuman or degrading treatment of children in detention in Australia - Anita Mackay, 2023 \(sagepub.com\)](#)

¹¹ [Microsoft Word - NPM Network Joint Statement - Queensland law change and youth justice - FINAL \(ombudsman.gov.au\)](#)

¹² [Cleveland Youth Detention Centre inspection report: Focus on separation due to staff shortages - Queensland Ombudsman](#)

“On a good day in here, the boys are all good and there are no codes, we get out to school or programs because the staff turn up, I get to go outside or do cooking. When there’s no staff we have no programs, we sit in our room all day and watch TV or movies. Just come out for one phone call. Last week I had three days in a row like that.”

– child in a youth detention centre (2024)

Queensland also overrode its human rights obligations in March 2023 when parliament passed amendments to create an offence for children who breach bail conditions, require a sentencing court to consider a child’s bail history, and enable a child to be declared a serious repeat offender.

The Commonwealth’s international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

Australia has ratified several key international agreements that require it to uphold specific standards in its treatment of children in the justice system. These include the UNCRC and UNDRIP, the International Covenant on Civil and Political Rights, and the Convention Against Torture. Under these conventions, Australia is obligated to ensure the protection of children from harm, safeguard their right to a fair trial, and provide alternatives to detention whenever possible.

Australia’s international obligations require the government to ensure that any detention of children is used as a last resort, for the shortest time necessary, and in conditions that respect the inherent dignity of the child. However, Australia’s practice of holding children in detention for extended periods, and the condition of watchhouses in which children are held, often contravenes these obligations.

PeakCare supports the implementation of reforms that would bring Australia’s youth justice practices in line with international standards.

Outside of youth detention centres, PeakCare has raised the following other concerns about the limitation on children’s rights in the past 12 months.

Media Access to Children's Court Proceedings

PeakCare opposes the recent legislative changes allowing media access to children’s court proceedings, emphasising the long-term harm this could cause. Public exposure through media can violate several human rights, including the Right to Privacy, Right to Dignity, and Protection from Harm. The potential for media to portray children without providing the full context of their traumatic backgrounds can lead to stigmatisation and damage their chances of rehabilitation. Additionally, social media exposure may provoke vigilante actions, further endangering effected families. This is especially relevant in light of recent discussions about criminalising young people posting about criminal activities on social media for notoriety.

Expansion of Electronic Monitoring

Queensland has trialled the use of Electronic Monitoring and in 2024 expanded the trial. PeakCare raised concerns about expanding the use of Electronic Monitoring for children. Research shows that Electronic Monitoring is ineffective and costly, with no evidence supporting its role in preventing crime or reducing reoffending.¹³ We believe electronic monitoring breaches human rights, particularly the Right to Privacy and Freedom of Movement, as noted by the Queensland Human Rights Commission.¹⁴

Additionally, Electronic Monitoring is stigmatising, disproportionately affects First Nations people and low-income families, and may criminalise children who have not been convicted, violating the presumption of innocence.¹⁵ PeakCare has suggested an evaluation be completed for the current trial before expanding the program.

We asked children in youth detention centres about electronic monitoring, and their views varied on this issue.

“I’d get an ankle monitor if I got out [of youth detention] faster.”

– child in a youth detention centre (2024)

“No way, they’re embarrassing. Little kids and families can see them in public. They’re for men. Even if it’s a stealing charge they’d be stereotyping us, like we’re violent or something.”

– child in a youth detention centre (2024)

“I think ankle monitors should be for people who want them.”

– child in a youth detention centre (2024)

Handheld Scanners and Knife Crime

Similar to the expansion of Electronic Monitoring, Queensland trialled the use of handheld scanners in public places to search for knives without grounds for suspicion and expanded this trial in 2024 to include a broader range of locations. PeakCare recommended a thorough evaluation of handheld scanner trials aimed at reducing knife crime before any expansion, including data on the demographics of individuals searched, ensuring that interventions do not disproportionately target children based on race or cultural identification. We have also recommended research into why young people are carrying knives and early intervention programs.

While acknowledging the severity of knife crime, PeakCare highlighted that there is no evidence that ‘stop and search’ powers reduce knife crime, and a key finding of the Griffith University Report stated in relation to the trial that; ‘there is no evidence as yet of any deterrent effect given that there has been an

¹³ https://www.parliament.vic.gov.au/490c8f/contentassets/bd97f76daf7a4a8dbf8ffa6bc9e2999d/attachment-documents/155_attach3_foundation-for-alcohol-research-and-education-fare_redacted.pdf

¹⁴ [048.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/048.pdf)

¹⁵ https://www.parliament.vic.gov.au/490c8f/contentassets/bd97f76daf7a4a8dbf8ffa6bc9e2999d/attachment-documents/155_attach3_foundation-for-alcohol-research-and-education-fare_redacted.pdf

increase in detections at one site, and no change at the other'.¹⁶ We expressed concern about the limitation on human rights, such as Equality Before the Law and Freedom of Movement, without clear evidence of effectiveness.

The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

Australia lacks enforceable national minimum standards for youth justice, leading to significant discrepancies between states and territories in how children are treated within the justice system. Some jurisdictions have moved toward rehabilitative models focused on diversion and restorative justice, while others continue to employ punitive approaches which fail to prioritise the best interests of the child.

Enforceable national minimum standards are necessary to ensure all children, regardless of where they live, are afforded the same basic protections. These standards should be grounded in Australia's international obligations and should cover key areas such as the prohibition of solitary confinement, access to education and healthcare, and the use of detention as a measure of last resort. National standards would also ensure First Nations children are provided with culturally safe services that address the root causes of their over-incarceration.

PeakCare supports increasing in the minimum age of criminal responsibility to at least 14 years in line with international standards and the overwhelming position of contemporary and evidence-based child development research.

Any other matters

PeakCare supports a national focus on the issue of human rights violations within the youth justice system and reform of youth detention models in Australia, as well as a set of national minimum standards for youth justice. In addition, we believe there should be investment in preventative measures across the broader service system to reduce the pressure on the tertiary youth justice system.

Invest in prevention as the key to sustainable crime reduction

The drivers of youth crime are well known and intersect with the drivers of entry into the child protection system. These include early experiences of domestic and family violence, homelessness, parental mental illness and substance abuse. The earlier these drivers can be identified, and support provided to children and their families, the less reliance Queensland will have on tertiary youth justice responses.

PeakCare advocates that crime prevention is the most effective way to improve community safety, focusing on early intervention and supporting families and children. Preventive measures, such as investing in services for children during their first 2,000 days of life (including prenatal support), are essential to reducing future criminal behaviour and promoting healthier communities.

¹⁶ [5722T1863-952D.pdf \(parliament.qld.gov.au\)](#)

*“I’ve been in child safety most of my life. Been in and out of here since I was 11.
This time I’ve been in nine months.”*
– child in a youth detention centre (2024)

Parts of the world such as Scotland, where investment and efforts have been focused on prevention and early intervention, have experienced long-term significant crime reduction over the past 20 years.¹⁷

Support children in the justice system as victims of crime

Most children in the criminal justice system are victims themselves, and half of the victims of youth crime are other children.¹⁸ Research highlights the deep connection between childhood maltreatment and later involvement in the justice system. For instance, over half of children in the youth justice system have been affected by domestic violence. To truly address this, we need to intervene earlier to address the causality of crime.

*“We’re victims too. I’m a victim of being shown drug use when I was little.
I’m a victim of growing up with violence.”*
– child in a youth detention centre (2024)

“I had a school friend come over and she asked, ‘why is your dad bashing your mum?’ I told her, ‘They’re just fighting’. It was normal for me, but she hadn’t seen that before.”
– child in a youth detention centre (2024)

Support schools to re-engage justice-involved children in education

Disengagement from education is a significant precursor to youth involvement in crime. According to the 2022 Youth Justice Census, 45 per cent of children in detention had completely disengaged from education, training, or employment before their detention.¹⁹ PeakCare highlights the importance of providing schools and teachers with adequate resources to identify and support students with learning difficulties and behavioural issues early on. PeakCare has called for a review of suspension and absenteeism policies to ensure schools remain inclusive and responsive to the needs of at-risk children.

¹⁷ [Crime prevention - gov.scot \(www.gov.scot\)](http://www.gov.scot)

¹⁸ [Childrens Court of Queensland Annual Report 2022-23 https://documents.parliament.qld.gov.au/tp/2023/5723T2106-255C.pdf](https://documents.parliament.qld.gov.au/tp/2023/5723T2106-255C.pdf)

¹⁹ [Queensland Family & Child Commission :: Queensland Child Rights Report 2023 :: Spotlight: Youth Justice in Queensland \(qfcc.qld.gov.au\)](http://qfcc.qld.gov.au)

Reduce reoffending through community reintegration

Effective reintegration after custody is crucial to preventing reoffending. Poor transition planning, particularly for housing and support services, often leads to children returning to criminal behaviour. Research shows that a lack of stable housing significantly increases the risk of reincarceration.²⁰

“Some kids say being in here isn’t a punishment. At home they don’t have their own room, there’s rubbish everywhere and people coming in and out. A lot of them are homeless. Some of them offend to come in, just for food and shelter.”

- staff member in a youth detention centre (2024)

PeakCare, the Queensland Family and Child Commission and Queensland Auditor-General have called for a minimum 12-month transition plan for children leaving detention, focusing on education, employment, and health support.

Children in detention centres have told us what they need when released from youth detention, including mentors, role models, employment and community support systems:

“I needed someone to call, like a mentor, when I got out last time.”

“We need good role models. They should pay for more role models and less juvis [youth detention centres].”

*“I want to buy stuff with my own money.
If I get a job, I would feel so proud of myself.”*

“Next time I get out I am ready to try a job. I want to think about what I want to do when I get out and make a plan.”

*“I’ve been doing a horticulture certificate, I want to get a job when I get out.
Anything outdoors.”*

- children in a youth detention centre (2024)

These insights reflect the potential for positive change when children are provided with the right support and opportunities.

²⁰ [Queensland Family & Child Commission :: Queensland Child Rights Report 2023 :: Spotlight: Youth Justice in Queensland \(qfcc.qld.gov.au\)](https://qfcc.qld.gov.au)

CONCLUSION

Australia's youth justice and incarceration system is in urgent need of reform to address the negative outcomes of youth incarceration, the over-representation of First Nations children, and the ongoing violations of children's human rights in detention. National minimum standards must be introduced to ensure consistent, humane treatment of children across all jurisdictions, and reforms must be aligned with Australia's international obligations to protect the rights of children and prevent their unnecessary incarceration.

To effectively address youth crime, PeakCare stresses the need for prevention, early intervention, better support for families, and comprehensive reintegration programs. Crime prevention efforts should focus on addressing the root causes of criminal behaviour, such as childhood trauma and educational disengagement. Ensuring that children have access to role models, employment, and pro-social activities will contribute to reducing recidivism and building stronger, safer communities.

Further, article 12 of the Convention on the Rights of the Child ensures that children have the right to express their opinions on issues that affect them, and that those opinions should be considered when adults are making decisions that affect them. PeakCare urges decision makers to pay particular attention to the quotes throughout this submission from children that have been incarcerated in Queensland and make decisions that give them the best chance at rehabilitation and achieving their full potential.

Thank you for the opportunity to provide input into this important inquiry. We hope the resulting changes to the system will have positive impacts on children, young people, families and communities.

Yours sincerely,



Mr Tom Allsop
Chief Executive Officer
PeakCare Queensland Incorporated