

12 November 2024

Our ref: [MC-LP]

The Hon Laura Gerber MP  
Minister for Youth Justice and Victim Support,  
Minister for Corrective Services  
1 William Street  
Brisbane QLD 4000

[REDACTED]

Dear Minister

**Legal profession issues**

On behalf of the Queensland Law Society (QLS), I again extend my congratulations to you on your appointment as Minister for Youth Justice and Victim Support and Minister for Corrective Services.

I take this opportunity to offer the assistance of the legal profession and in particular, QLS legal policy committees, where your responsibilities involve legislative and policy reform. Members of our Childrens Law, First Nations Legal Policy and Human Rights and Public Law Committees have substantial expertise in their respective areas, which might be helpful to progressing the policy objectives of the government.

As indicated in my letter of 1 November 2024, I would welcome the opportunity to meet with you at your earliest convenience to discuss these issues further.

**Making Queensland Safer Laws**

We note the Government's intention to amend the *Youth Justice Act 1992* (Qld), particularly with regard to:

- (a) sentencing youth offenders in the same way as adults for certain criminal offences;
- (b) removing the principle of detention as a last resort; and
- (c) allowing courts to consider a youth offender's full criminal history when sentencing.

We also note the Government's intention to open the Childrens Court, establish a public child sex offender registry and Regional Reset Camps.

We welcome the government's election commitments focussed on keeping children on the right track by getting them back into education or work and providing mentoring, life skills and community connection. However, QLS maintains its longstanding principled opposition to these proposed legislative measures as a means of addressing the causes of youth offending.

QLS supports protection of young people from the full force of the criminal law due to their inherent vulnerabilities and the differences between adult and child cognitive development.

When considering systems reform, the youth justice system cannot be viewed in isolation. A child's access to education, housing and healthcare cannot be siloed from their right to be free from domestic and family violence, their safety within the child protection system and the impact of intergenerational trauma. It is a young person's interaction with all these complex systems, and the failure of these systems to meet the needs of a child, that drive of youth crime across the country.

In our response to the Community Safety Bill 2024, we outlined in further detail why children need to be treated differently to adults in the criminal justice system.<sup>1</sup>

We strongly support the recommendations in the Australian Human Rights Commission report [Help way earlier! How Australia can transform child justice to improve safety and wellbeing](#)<sup>2</sup> and a national, child rights-based, evidence-driven approach to reform child justice and related systems. This type of transformational, systems reform demands leadership from all levels of government. Our communities will be best served when the health, education, child protection systems are resourced to meet the physical, social and emotional needs of our children and young people.

### **“Adult crime, adult time” policy**

The Society's long standing position is that sentencing should have, at its core, a system of judicial discretion exercised within the bound of precedent. This is the most appropriate means by which justice can be attained on a case by case basis.

Evidence shows that most young people 'grow out' of offending, noting research found 'the relationship between age and crime is nonetheless, "one of the most accepted tenets of criminology"'.<sup>3</sup>

We urge the government to recognise the significant body of empirical literature that supports this position. However, if the government proceeds with these reforms, great care must be taken to ensure the policy as implemented does not fall prey to overly simplistic notions of sentencing in relation to certain criminal offences. The subjective atrocity of the killing of another person is already taken into account in the broad sentencing discretion that attaches to the offences of murder and manslaughter.

We urge the Government to reconsider the proposed application of youth justice sentencing reforms to the criminal offences of unlawful wounding, home and business break-ins, robbery and stealing cars and dangerous operation of vehicles.

Amendments which seek to ensure that community views are taken into account to the exclusion of other factors in the sentencing process have the potential to cause individual injustice. Sentencing young people must necessarily involve the consideration of the wide range

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<sup>1</sup> QLS submissions in response to the Strengthening Community Safety Bill 2021 <https://www.qls.com.au/Submissions/2024/Queensland-Community-Safety-Bill-2024> and question on notice - <https://www.qls.com.au/Submissions/2024/Queensland-Community-Safety-Bill-2024-QLS-Response>

<sup>2</sup> <https://humanrights.gov.au/our-work/childrens-rights/publications/help-way-earlier>

<sup>3</sup> Australian Institute of Criminology, 2011 "What make juvenile offenders difference from adult offenders?" Trends and Issues in Crime and Criminal Justice No. 40, found at: [\[https://www.aic.gov.au/publications/tandi/tandi409\]](https://www.aic.gov.au/publications/tandi/tandi409)

of factors already identified in the *Youth Justice Act 1992* (Qld) and the *Penalties and Sentences Act 1992* (Qld).

### **Removing detention as a last resort**

QLS strongly opposes the removal of the principle of detention as a last resort. We urge the Government to include a sunset provision of two years if this reform is progressed.

### **Access to full youth criminal history when sentencing**

We understand that the government intends to introduce reforms that will enable Judges and Magistrates to have regard to a youth offender's full criminal rap sheet, including police cautions, restorative justice agreements and breaches of supervised release orders.

While we acknowledge that addressing juvenile offending is a challenge for any government, QLS does not support the proposed change to allow a youth offender's full criminal history to be considered for the sole purpose of imposing a harsher penalty.

QLS urges the government to reconsider this proposed amendment and, instead, to consult further with experts and practitioners with expertise in the field of juvenile justice in the development of evidence-based policies and strategies, in order to intervene early and prevent young people offending in the first place, or prevent them from continuing to offend.

### **Review of new laws**

It is critical that following the implementation of the proposed reforms, the various legislative initiatives are reviewed and their effectiveness evaluated to assess their impact on youth offending recidivism rates and whether the reforms are achieving the intended objectives.

An evaluation could also assess what programs and elements were successful and what elements fell short as a means of providing valuable insights into their effectiveness in stopping the cycle of youth crime. We recommend that, when passing the legislation, the government also set indicia for measuring the success of the Making Queensland Safer reforms, developed in consultation with experts and covering both qualitative and quantitative data.

We also call on the government to refrain from exercising its override power under section 43 of the *Human Rights Act 2019* (Qld) when seeking to progress these reforms.

We offer QLS's assistance in any way that may be useful as the government works towards shaping these legislative reforms.

### **Other priority matters of the legal profession**

QLS and its members support the following options as means of addressing recidivist youth offending:

- raising the age of criminal responsibility
- adequate legal aid funding for young people's matters

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- greater availability within the Childrens Court for Magistrates and Judges to hear matters
- adequate resourcing and funding of early intervention strategies including highlighting the importance of police cautioning, youth justice conferencing, drug diversion.

We urge the Government to review existing legislation to examine how it could be used more effectively.

We would welcome the opportunity to meet with you at your convenience to discuss these complex issues further. Please do not hesitate to contact our Director of Advocacy and Legal Policy, [REDACTED] [REDACTED] [REDACTED] [REDACTED] to arrange a convenient time.

