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The Australian Association for Research in Education (AARE) welcomes the opportunity to provide a submission to the Making Queensland Safer Bill 2024.

AARE is the premier professional association for educational researchers in Australia. Established in 1970, the Association supports educational researchers from Australian universities, governments, schools, and private research agencies. The Association aims to support and strengthen research and scholarship in education; enhance understanding of educational processes, policy and practice; and improve quality and equity in education in Australia. The Association's overall mission is the development and promotion of high-quality educational research to enhance the public good.

As Australia's peak educational research body, AARE has numerous members who are experts in the effects of disciplinary measures on children and in how children learn to become productive members of Australian society. AARE makes this submission on behalf of members of the Association who are gravely concerned about the impact of the proposed Bill.

Below we provide feedback on the timing and, two of the amendments to the Making Queensland Safer Bill 2024 which amends the *Youth Justice Act 1992*. These are:

- introduce 'adult crime, adult time';
- remove the principle of detention as a last resort and that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community.

The amendment to the *Youth Justice Act 1992* is premature

AARE members have serious concerns regarding the timelines imposed by the Queensland Parliament on the Committee tasked with conducting an inquiry into the proposed Adult Crime – Adult Time Bill. The Queensland Parliament has not provided adequate time to conduct a full inquiry and this threatens to undermine the credibility of the Bill.

The introduction of the Bill in Queensland is also premature, given that findings from the Australian Senate's current Inquiry into Australia's youth justice and incarceration system are not yet available and cannot be taken into account. The youth justice and incarceration system has failed Australians. Failures which, according to the Children's Commissioner "continue to destroy and devastate the lives of young people, their families, and communities. We are

seeing these failures daily, particularly against First Nations and other children living with poverty and disadvantage, and complex needs such as disabilities, mental ill-health and trauma”. Australian children, young people and their families and communities deserve better.

We recommend that the Queensland Government does not introduce ‘adult crime, adult time’ to the *Youth Justice Act 1992*

AARE members strongly oppose the amendment to the *Youth Justice Act 1992* to include adult time for adult crimes. Education research provides evidence that punitive and exclusionary approaches should not be supported because of the immediate and longer term impact on children, with vulnerable and marginalised children disproportionately affected by zero tolerance policies. The research also indicates that effective early intervention supports positive pathways for young people at risk of offending. Association member Professor Andrew Hickey and colleagues’ (2024) Queensland Government funded research into young peoples’ pathways shows how setting the right conditions for young peoples’ success represents a more feasible way of circumventing youth crime and anti-social behaviour. As Professor Ross Homel (2024) identifies ‘expensive, punitive youth crime policies do not make the community safer’.

There is no indication in the materials provided by the Queensland Parliament to explain how the undue incarceration of vulnerable children will be addressed and mitigated. Vulnerability is not simply the result of family or social background or individual characteristics. It derives from a complex mix of factors, principal among which is the capacity of social policies and services to identify and support children throughout their development, precisely to ensure that they are *not* ‘vulnerable’.

The policies and services that are meant to mitigate negative trajectories and instead promote positive outcomes have weakened over the last two decades due to decisions by successive state and federal governments to, for example, cut mothers’ access to parenting payment when their youngest child turns six (Gillard Labor government), cut funding to youth services (Abbott Liberal/National government), changing education legislation to enhance school principals’ powers to suspend, increase the length of short suspensions, and remove the right to appeal (Newman LNP Queensland state government), suspend the Queensland Human Rights Act to make breach of bail a criminal offence for children and to allow children to be detained in watch houses (Palaszczuk ALP Queensland government).

These are just some examples of government decisions that have worked in combination to increase the vulnerability of children born into circumstances that were not of their choosing. The policy for which the Queensland LNP is directly responsible and which has played a role in the creation of a cohort of young people now described as “serious repeat offenders” is the 2014 change to the Education Act which removed protections for children and profoundly increased the use of school suspension (Carden, 2018).

Three successive studies investigating the impact of these changes to legislation made when the Queensland LNP was last in government have shown that children in all year groups were negatively affected but especially those in Prep and Year 7 (Graham, 2020). In 2015, the raw number of prep suspensions tripled, while the suspension rate for Year 7 doubled. Importantly, Graham identified a link between these increases and reforms to align Queensland with other education systems; e.g., reducing the school starting age to 4.5 years, and moving Year 7 to the secondary phase of schooling. This link demonstrates the interaction between government decisions and child outcomes.

A subsequent study investigated the overrepresentation of Indigenous students in Queensland school suspensions finding that Indigenous students are grossly overrepresented (Graham, Killingly, Laurens et al., 2023). Again however, this research detected anomalies that point to the disproportionate impact of government policy and services. Examining suspensions over a period of six years from 2013 (the year prior to the LNP changes to legislation) to 2019, this research found that suspension of Indigenous children increased faster than for non-Indigenous children, primarily due to steep rises in short suspensions which, since the 2014 changes to legislation were up to 10 days in length. Indigenous students were most overrepresented in suspensions for disengaged and disruptive behaviours, a category which includes suspension for truancy. Suspension simply increases the time that children spend away from school, the government institution with the most power to positively impact children’s development.

Forty years of research investigating the effects of exclusionary school discipline has identified a link between out-of-school suspension, increased anti-social behaviour, contact with police, and entry into the criminal justice system. This phenomenon is described as the “school-to-prison-pipeline”. Instead of schools being armed to provide the prevention and intervention programs that these children need, Queensland schools have instead been

granted the power to exclude the children that they cannot support. The long-term impact for society of this derogation by government is now becoming clear as the 10 to 17-year-olds for whom the new LNP government is now proposing “adult time” are those whose time at school has been affected by the 2014 changes to the Education Act.

The so-called “400” serious repeat offenders responsible for much of the crime that is the focus of these new laws share the same risk profile as the children who are most overrepresented in Queensland school suspensions. We do not doubt that they are in fact the same children. Common to both is at least one of three attributes: disability, Indigenous, living in care. The third study into the use of exclusionary discipline in Queensland schools has found that children’s risk of being suspended increases with each attribute, such that in 2019 an Indigenous child had 2.65 times the risk of being issued a short suspension, but an Indigenous child *with a disability* had 5.02 times the risk, and an Indigenous child *with a disability living in out-of-home care* had 7.79 times the risk (Graham, Killingly, Alexander et al., 2023).

The ratios are even worse for long suspension (11-20 days). For example, in 2019, Indigenous students had 3.13 times the risk of being issued a long suspension, but Indigenous students *with a disability* had 6.13 times the risk, and Indigenous students *with a disability living in out-of-home care* had 12.34 times the risk. Out-of-school suspension is known to increase the risk of police contact because it exposes already vulnerable children to older deviant peers, it potentially reduces adult supervision and exposure to positive role-models, it damages children’s connectedness to school and teachers, and increases gaps in academic knowledge making it even more difficult for these children to engage and succeed at school.

New research funded by the Queensland Government Education Horizon scheme is investigating the educational experiences, histories, skills and gaps of school-aged children now in contact with Youth Justice for breaking and entering with the purpose of motor vehicle theft. Responses to these young people should begin early and the aim of this research is to identify common cognitive and non-cognitive factors to inform early intervention through Tier 1 universal social-emotional learning for all students in Prep to Year 8, with targeted and intensive supports using a Multi-Tiered Systems of Support framework. Schools, however, cannot do this work alone; they must be better supported by improvements in maternal pre and post-natal health care, quality early childhood education and care, child protection that actually protects, and

improvements in the availability of housing for families fleeing domestic violence. These are all the responsibility of government.

The Government knows that children with complex needs and disabilities are a vulnerable demographic as known by its own Department of Education. The Government knows that children of Aboriginal and/or Torres Strait Islander background form a vulnerable demographic in relation to incarceration because its own Department of Education knows this. The Government knows that children in poverty and out of home care are a vulnerable demographic because its own Department of Education knows this.

According to the Australian Institute of Health and Welfare, the Queensland Government is responsible for the support of “vulnerable children who have been, or are at risk of being, abused, neglected or otherwise harmed, or whose parents are unable to provide adequate care or protection”. In implementing ‘Adult crime Adult time’ the Queensland Government is abnegating its responsibility to children who may find themselves in the justice system, many of whom will be dealing with the effects of living in vulnerable circumstances.

We recommend that the Queensland Government does not remove the principle of detention as a last resort and that a non-custodial order is better than detention in promoting a child’s ability to reintegrate into the community

The current age of detention breaches the United Nation Convention on the Rights of the Child. Australia ratified this Convention in 1990. The state must consider more creative, non-invasive, inclusive and proactive options available to achieve the safety of the Queensland community by considering what action can best respect the totality of the child’s human rights.

Further, this amendment will remove a protection that has been legislated to reduce Aboriginal deaths in custody. The *Royal Commission into Aboriginal Deaths in Custody (1991)* recommended that states “legislate to introduce the principle that imprisonment should be utilized only as a sanction of last resort. [7:104]”.



AARE members oppose the use of detention as a disciplinary measure for any child, and view the proposed amendment as a zero tolerance policy. Association member Professor Anna Sullivan and colleagues Johnson and Lucas (2016) explain that zero tolerance policies have had devastating effects on marginalised groups. For example, in the US, the 2001 'No Child Left Behind' federal legislation included a zero-tolerance policy that required the expulsion of students for up to one year if they commit certain violent or drug-related offenses. All states adopted this legislation and expanded it to develop very comprehensive zero tolerance policies for schools, resulting in lost schooling for children and young people who are already at risk of school disengagement.

AARE members recognise that the problem of young people committing crimes is a cross-sectoral failing of the Departments of Health, Community and Education and the problem should not be laid at the feet of the Justice system (Goldsworthy, 2024). Funding should be directed to cross-sectoral programs such as that proposed by the Child Protection Commission of Inquiry in 2012. We know that the younger the child enters the criminal justice system the more likely they will reoffend, so there must be cross-sectoral programs in place to ensure they do not offend in the first place. Association members Professors Andrew Hickey and Stewart Riddle and their colleagues (2024) have found that educational programs that provide opportunities for young people will keep them out of the justice system. Further health programs which divert children from the criminal justice system have proven to lower rates of recidivism (Hemel, 2024).

To conclude, we urge the State Government to consider the full and adequate funding of more humane solutions and programs that provide options and possibilities for children and young people to aspire to futures worth aspiring to. The proposed changes will compound problems in the youth justice system, cementing inequalities in Australian society for generations to come.

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References

Carden, C. (2018). Strengthening discipline in state schools: Constructions of discipline in a public policy moment. *Discourse: Studies in the Cultural Politics of Education*, 39(3), 448-460.

Graham, L. J. (2020). Questioning the impacts of legislative change on the use of exclusionary discipline in the context of broader system reforms: A Queensland case-study. *International Journal of Inclusive Education*, 24(14), 1473-1493.

Graham, L., McCarthy, T., Killingly, C., Tancredi, H., & Poed, S. (2020). Inquiry into suspension, exclusion and expulsion processes in South Australian Government schools.

Graham, L. J., Killingly, C., Laurens, K. R., & Sweller, N. (2023). Overrepresentation of Indigenous students in school suspension, exclusion, and enrolment cancellation in Queensland: is there a case for systemic inclusive school reform?. *The Australian Educational Researcher*, 50(2), 167-201.

Graham, L. J., Killingly, C., Alexander, M., & Wiggans, S. (2024). Suspensions in QLD state schools, 2016–2020: Overrepresentation, intersectionality and disproportionate risk. *The Australian Educational Researcher*, 51(4), 1527-1558.

Goldsworthy, T (2024) Why we should not rush to raise the age of criminal responsibility in Australia. Bond University. <https://bond.edu.au/news/why-we-should-not-rush-to-raise-age-of-criminal-responsibility-australia>

Hickey, A., Riddle, S., McKee, A., Skye, D., Wallis, R., & Pocock, C. (2024). Youth Community Futures: Enhancing Opportunities for Young People in Regional Queensland. Queensland Government Department of Environment and Science.

Homel, R. (2024). Early intervention is the key to keeping kids out of the criminal justice system. Griffith University. <https://www.realwell.org.au/wp-content/uploads/2024/05/Keeping-children-out-of-prison-Homel.pdf>

Sullivan, A., Johnson, B., & Lucas, B. (Eds.). (2016). *Challenging dominant views on student behaviour at school: Answering back*. Springer. <http://www.springer.com/gp/book/9789811006265#>.

Further references on the effects of youth incarceration

Overincarceration of Indigenous young people and links to colonialism: White, R. (2015). Indigenous Young People and Hyperincarceration in Australia. *Youth Justice*, 15(3), 256-270. <https://doi.org/10.1177/1473225414562293>

Incarceration of Indigenous youth: Holland, L., Smirnov, A., Hickman, A., Toombs, M., & Reid, N. (2022). Examining incarceration rates of Aboriginal and Torres Strait Islander children. *The Lancet Child & Adolescent Health*, 6(9), 599-600.

Cycles of incarceration, NSW study: Indig, D., Frewen, A., & Moore, E. (2016). Predictors and correlates of re-incarceration among Australian young people in custody. *Australian & New Zealand Journal of Criminology*, 49(1), 73-89. <https://doi.org/10.1177/0004865814550534>

Suggestions for decarceration through a public health lens: Gordon, F., Klose, H., & Lyttle Storrod, M. (2021). Youth (in)justice and the COVID-19 pandemic: rethinking incarceration through a public health lens. *Current Issues in Criminal Justice*, 33(1), 27–46. <https://doi.org/10.1080/10345329.2020.1859966>

Raising the age in Australia: Crofts, T. (2015). A Brighter Tomorrow: Raise the Age of Criminal Responsibility. *Current Issues in Criminal Justice*, 27(1), 123–131. <https://doi.org/10.1080/10345329.2015.12036035>

Age of criminal responsibility and youth incarceration debate, international perspectives: Matthews, S., Schiraldi, V., & Chester, L. (2018). Youth Justice in Europe: Experience of Germany, the Netherlands, and Croatia in Providing Developmentally Appropriate Responses to Emerging Adults in the Criminal Justice System. *Justice Evaluation Journal*, 1(1), 59–81. <https://doi.org/10.1080/24751979.2018.1478443>