

How are human rights relevant to youth justice and the criminal justice system in Queensland?

Human rights are relevant to every aspect of the criminal justice system, including ensuring that our communities are safe.

Starting point – we all agree that purpose of criminal justice system is promote community safety.

However, tougher laws, harsher sentences and locking people up is a blunt, expensive and ultimately ineffective way to combat crime.

What should we be doing instead? Promote respect for human rights across all aspects of criminal justice system – 3 components –

1. Addressing why young people come into contact with the criminal justice system in the first place

- because not enjoying human rights on an equal basis: prison demography = multiple characteristics of severe disadvantage
- as a community, we are failing these individuals – answer is not to punish but rather to address underlying social and economic determinants of why young people commit crime in the first place, ie to promote realisation of economic, social (and cultural) rights
- nothing in the Qld Govt's Discussion Paper about rights to education, housing, health, employment, making communities stronger

2. Point of contact with the criminal justice system

- area that receives most attention from politicians – and the media – but unfortunately policies are generally ill-conceived, ignore the evidence and often result in arbitrary, unreasonable, discriminatory – and unnecessary – interactions with criminal justice system
- 4 areas where human rights are important:

(a) Impacts of particular laws

- particular laws, such as move-on powers, public order offences, etc criminalise certain behaviour and impact disproportionately on marginalised communities, eg homeless, Aboriginal and Torres Strait Islander peoples
- laws should be reviewed to ensure they are reasonable and appropriate and don't impact disproportionately on certain communities

(b) Sentencing

- currently emphasis is almost predominantly on punishment, but in order to 'break the cycle of crime' should equally be on diversion, rehabilitation
- substantial evidence that harsher prison sentences do not have a deterrence effect – imprisonment for 5 or 25 years makes no difference; instead, need to address causes of crime
- extreme concern with proposal in Discussion Paper to remove principle of detention as last resort – fundamental principle of international law

(c) Policing practices

- Policing practices, such as profiling, often exacerbate the disproportionate impact on marginalised, disadvantaged communities, esp Aboriginal and Torres Strait Islander peoples, homeless, young people

(d) Access to justice

- adequate funding for legal services, including Aboriginal and Torres Strait Islander legal services and interpreter services important to ensure that the justice system operates in a fair, just and effective criminal justice system

So, respect for human rights is essential to avoid contact with the criminal justice system in the first place – prevention is much better because once young people are in the system, much more difficult to break the cycle.

3. Prison context

- “lock em up and throw away the key” attitude ignores the fact that just about every prisoner will be released back into the community at some stage
- 39% of prisoners reoffend within 2 years; 55% been in prison before – once people are in the system the focus must therefore be on rehabilitation and reintegration, not punishment

(a) harsh prison conditions not in anyone’s interest

- harsh prison conditions = increased likelihood of reoffending, and likely to be more violent
- as a community, we therefore have a vested interest in treating people humanely in detention

(b) detention of 17 year olds in adult facilities in Queensland

- clear breach of ICCPR and CRC, and does nothing to prevent crime or promote rehabilitation

(c) access to adequate health care

- access to health care in detention is currently manifestly inadequate and becomes a huge public health issue when prisoners are released back into the community – especially the case with mental health care; with their being both a causal and consequential link between imprisonment and mental health issues

Discrimination in the Criminal Justice System

- When talking about human rights issues, also important to recognise and address the systemic discrimination in the criminal justice system, particularly against Aboriginal and Torres Strait Islander peoples, women, young people and people with disability (eg mental health, Acquired Brain Injury)

General Observations on the Queensland Government’s Discussion Paper

1. No evidence provided to support any of the proposals – any limitations on human rights must be demonstrably justified by clear, cogent evidence to support the limitations – this has not been done by the Queensland Government. This is especially the case given that crime rates are actually decreasing in Queensland – hence, there is a genuine question about the need for these proposals.

2. From a children's rights perspective, the "best interests of the child" principle is not mentioned once in the Discussion Paper. The UN Committee on the Rights of the Child in its Concluding Observations on Australia in 2012 expressed concern for the lack of understanding of and regard to this fundamental principle in Australian law, policy and practice.
3. In addition, young people are not identified as a key stakeholder in the Discussion Paper. This is inconsistent with another fundamental principle of the UN Convention on the Rights of the Child regarding the participation of young people in the design and implementation of measures which directly affect them.
4. References to "young people" in the Discussion Paper are only ever made in the context of young offenders. The Paper thereby focuses only on the 'end point' of the criminal justice system and not on addressing the underlying causes of crime. It therefore entirely misses the mark and is highly unlikely to achieve the Government's intended purpose of lowering crime rates, reducing the cycle of crime and promoting community safety.
5. Finally, the Queensland Government is investing its resources in the wrong areas. For example, in Texas and Kansas in the US where a 'justice reinvestment' approach has been adopted, prisons are now being closed and crime rates are significantly reducing because resources are being invested in the 'front end' to address the underlying causes of crimes.

Returning to the notion of "community safety", the current system is broken and a drastic overhaul is needed. It is in all of our interests as a community to ensure respect for and the promotion of human rights to reduce crime and ensure community safety.