

Speech delivered to Youth Advocacy Centre Annual General Meeting

25 November 2020

By Scott McDougall
Queensland Human Rights Commissioner

I would like to acknowledge the traditional owners of the country we are meeting on, the Turrbal and Yuggera people, and pay my respects to their elders, past present and emerging.

I'd also like to congratulate the Management Committee on their re-election and acknowledge the work of the YAC's board and staff who, for so many years, have tirelessly advocated for the human rights of children and young people in Queensland's youth justice system.

I doubt I need to remind anyone attending a YAC AGM about the nature and scale of the continuing injustice wrought upon Queensland's First Nations that is manifested in statistics that we seem to become more inured to every time they are brought to our attention.

It appears to me that as a protective coping mechanism, we have developed an ability to simply allow these statistics to wash over us. So rather than run through the most recent outrageous stats demonstrating Indigenous over-representation in juvenile detention, out of home care, and across the indices of social and economic disadvantage, I will instead share the story of my first visit to a youth detention centre.

The Cleveland Youth Detention Centre in Townsville, like many of Queensland's closed environments – secure mental health wards, prisons etc – is a facility which more Queenslanders ought to know about.

In my career, I have been confronted with many distressing moments where I have borne witness to the manifestation of the injustice experienced by Aboriginal people. I've watched elderly Native Title claimants cry from feelings of guilt and shame in rejecting their grandparents' attempts to pass on valuable cultural knowledge when they were children. I've been to countless funerals, and sat through the criminal trials and the inquests. However, I don't think I have ever seen such a singularly powerful expression of the continuing impact of colonisation on First Nation communities than the material displayed on a wall within the Cleveland's detention centre's administration building.

On this wall were polaroid photos of each of the 90 young people in the Centre, marked with their name, age and place of origin. Standing in front of 87 Aboriginal and Torres Strait Islander faces – yes, all but 3 were Indigenous - many of them in

their early teens, is not something that I will easily forget. To me, their faces depicted the torment of their powerlessness (to borrow the expression from the Statement of the Heart). Their eyes showed fear, confusion and despair.

The wall was certainly front and centre in my mind when, during the election campaign, the Leader of the Opposition took 'deep' offence at the suggestion that her proposed curfew trial in Townsville and Cairns was racially discriminatory. She said:

"I find it offensive that people think that this is a racism issue. This is a juvenile crime issue and it doesn't go across race."¹

I'd like to think Mrs Frecklington might have taken less offence if she had an opportunity to stand in front of the wall and be confronted by the faces of the children who would be most likely to have been arrested for breaching her curfew.

The failure of the Townsville electorate to embrace the curfew policy at the 2017 and 2020 state elections has been suggested by some as demonstrating the community's rejection of populist, "tough on crime" law and order policies. Whether or not that is the case is best determined by social and political scientists.

I for one believe that our community understands that these are complex issues and that sensationalist, slogan-driven policies are not the answer. On the other hand, it would be wrong to assume that youth offending is only a concern of tabloid editors. In my meetings with Indigenous mayors, there have often been frustrations expressed about the apparent ineffectiveness of laws responding to youth offending. "Released with a handshake and a lollipop" is how one mayor has put it. Other comments reflected a concern that responses perceived to be 'soft on crime' may not always be in the child's best interests, failed to address a child's underlying needs, or failed to address the needs of victims in their communities.

Like UN High Commissioner for Human Rights, Michelle Bachelet, I regard myself as a 'realistic optimist'. It is important that we remain hopeful and committed to improving the lives of our young people and their families and there are many positive things happening in youth justice in Queensland. But, to be frank, there is much more required of our political leaders than they have so far been able to deliver.

In July, the Prime Minister announced the 2031 targets for the Closing the Gap Refresh which included new targets negotiated by the Coalition of Peaks representing Indigenous organisations across the country. The 16 new measures include a modest reduction of 15% for youth detention, and a more ambitious reduction of 45% in children living in out of home care.

However, it is one thing to set targets, ambitious or otherwise; it is quite another to actually make the changes required to achieve them. In launching the Close the Gap

¹ <https://www.sbs.com.au/news/queensland-opposition-leader-deb-frecklington-denies-youth-curfew-is-racist>

refresh, the Commonwealth Government failed to allocate any additional funding toward achieving the targets.

This situation reminds me of the signing of the Aboriginal Justice Agreement by Premier Peter Beattie in Musgrave Park in 2000, immediately prior to the Sydney Olympics. That agreement committed to halving the rate of Indigenous incarceration by 2010 – yet with no real plans on how to actually achieve the target, it is hardly surprising that by 2010 incarceration levels had gone up considerably instead of heading down.

It is important that the lessons learned from previous attempts are heeded by the Queensland Government as it prepares its plan for implementing the Closing the Gap Agreement. In recent years work has been done within Queensland Treasury and the Queensland Productivity Commission modelling the savings to taxpayers generated by reducing rates of recidivism and imprisonment. Hopefully this work will inform the Queensland Government's plan.

Whatever is in the plan, it will now have to deal with the almost inevitable impact on the criminalisation of children that will result from the Premier's recent decision to recruit an additional 2025 police officers by 2025. The resulting likelihood of an increase in police patrols underlines the importance of introducing some form of incentivisation for police to pro-actively divert children from the criminal justice system.

For the plan to be successful, I think there are some other factors that will be important.

Firstly, we need to listen to those most affected, and that is children and First Nations people. We can do that by ensuring that the rights of children and cultural rights, which are now protected in law in Queensland, are central to decision making. To support a 'child rights approach' these rights must be asserted at every available opportunity, and organisations such as ATSILS, Sisters Inside, YAC and Indigenous controlled organisations and advisory bodies such as the Queensland First Children and Families Board, have critical and ongoing roles, and must be routinely consulted to ensure those voices are heard.

We must all keep working towards a human rights culture in youth justice, and in my mind, when the use of watch houses as detention overflow facilities is no longer even put on the table for consideration, I think we will be a long way towards achieving that culture. We are not there yet, but the Human Rights Act can help us advocate to get there.

Secondly, we must take the politics out of youth justice. During the early response to the pandemic, the QHRC, Bar Association of Queensland and Queensland Law Society jointly wrote to the Premier and Opposition Leader seeking a bipartisan approach to addressing the risk of COVID-19 in Queensland's prison system. We unfortunately didn't achieve this result, however I believe that with a new 4 year term and a new Opposition Leader, there may be some willingness to declare a moratorium on the politicisation of youth offending. In a perfect world the Premier,

Leader of the Opposition and Robbie Katter would visit “the wall” at the Cleveland YDC and jointly announce a tri-partisan commitment to addressing youth wellbeing.

Thirdly, the Queensland Government must reflect on the importance and complexity of supporting youth wellbeing by making long term investments across a wide range of portfolios. To find a clear demonstration of the intersectionality of issues you only need to look at the evidence emerging from the Disability Royal Commission showing the role of disability in influencing decisions about a child’s removal from family, and how out of home care can in turn act as a gateway into the criminal justice system.

In preparing the next budget, the Treasurer would do well to take on board the YAC Orange Paper #2 which outlines a 10 point plan for investment in housing, communities, health including mental health, education and so on.

Finally, the Queensland Government should commit to raising the age of criminal responsibility. However, in doing so it must ensure that, once again, it learns the lesson from the decision to remove 17 year olds from adult prisons. It must therefore have alternative services in place to respond to the complex needs of children aged between 10 and 14, and this will be expensive. If these services are not in place, the resulting vacuum of options is likely to lead to police pursuing other means of achieving community safety, such as accommodating children in authorised mental health services.

To end on a positive note, let me conclude by again congratulating the Board and staff of Youth Advocacy Centre. I have long been a fan of YAC’s model of day to day court and client casework informing its systemic advocacy. YAC’s credibility is built upon the years of dedicated experience and expertise of its staff and board, which is reflected in the quality of its work. As the Human Rights Act is still in its infancy it is important that community legal centres and the broader profession take up the language of human rights advocacy. YAC did this for years in advocating that the treatment of 17 year olds as adults breached the State’s obligations under the Convention of the Rights of the Child, and I have every confidence that YAC will continue to be leader in human rights for many years to come.

Thank you.