

Strengthening Community Safety Bill 2023

Statement of Compatibility

FOR

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Strengthening Community Safety Bill 2023 (the Bill).

In my opinion, notwithstanding that amendments to certain provisions proposed by the Bill are not compatible with human rights and that the Bill proposes to enact provisions under section 43(1) of the HR Act in respect of those provisions of the Bill, the amendments to the Bill to be moved during consideration in detail are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The Bill was introduced on 21 February 2023. In addition to implementing the legislative measures announced on 29 December 2022, the Bill also seeks to respond to the small cohort of serious repeat young offenders who engage in persistent and serious offending with amendments to the *Bail Act 1980*, *Criminal Code 1899* (the Code), *Youth Justice Act 1992* (YJ Act) and *Police Powers and Responsibilities Act 2000*.

The amendments to be moved during consideration in detail correct drafting oversights to ensure the Bill achieves its intent. The amendments to be moved during consideration in detail of the Bill address four matters. Apart from the amendment to clause 28 of the Bill which establishes a right of review, the amendments proposed to the Bill are technical in nature. The inclusion of a right of review in the clause 28 of the Bill is necessary to correct an inadvertent omission which was identified in the Queensland Law Society's submission to the Economics and Governance Committee made during their inquiry into the Bill.

Firstly, a reference to an incorrect section number in clause 10 (Insertion of new pt 9, ch 107) of the Bill is to be corrected. This amendment will ensure that new section 758 (Proceedings

for charge for offence against former s 408A(1B)) of the Code properly refers to section “8” of the Bill, replacing the reference to section “3”. This amendment will ensure that new section 758 operates as intended to permit prosecutions under section 408A(1B) of the Code to be commenced or to continue where the offence was alleged to have been committed prior to the commencement.

Secondly, amendments to clause 23 (Amendment of s 240 (General options available on breach of order)) and clause 25 (Amendment of s 242 (General options available to court before which child found guilty of an indictable offence)) of the Bill will replace a reference to section 246A(2) which appears in clause 23(2) and clause 25(2) of the Bill. Where “section 246A(2)” appears in those subclauses, it is to be replaced with “section 246A(3)”. This amendment ensures that a breach of a conditional release order to which new section 246A of the YJ Act applies is subject to the existing framework established in the YJ Act for dealing with breaches of community-based orders.

Thirdly, new clause 25A (Amendment of s 243 (Court may resentence child originally sentenced by lower court)) is to be inserted into the Bill. This amendment to the Bill will update section 243(2)(b) and (4)(b) of the YJ Act to replace references to ‘section 246(1)’ with renumbered ‘section 246(2)’ and insert references to section 246A(2). As with the amendments to clauses 23 and 25 of the Bill, this amendment will ensure that a breach of a conditional release order to which section 243 of the YJ Act applies is dealt with consistently under the existing framework established by the YJ Act.

Finally, an amendment to clause 28 (Insertion of new s 246A) of the Bill confirms that the determination of whether *special circumstances* exist for the purpose of proposed new section 246A(2) of the YJ Act is a *sentence order* for the purposes of sentence reviews conducted by Childrens Court judges under the YJ Act.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights under the HR Act that are relevant to the amendments to be moved during consideration in detail are those identified in the Statement of Compatibility tabled alongside the Bill, namely:

- The right of every child, without discrimination, to protections that is needed by the child, and is in the child’s best interests, because of being a child (section 26(2));
- The right to liberty (section 29(1)); and
- The right not to be subject to retrospective increases in penalties in section 35(2).

While the amendments to the Bill to be moved during consideration in detail do not themselves limit these rights, they operate alongside the amendments in the Bill. The purpose of the amendments in the Bill, which were identified as engaging with these human rights, will not change as a result of the amendments to the Bill to be moved during consideration in detail.

Additionally, the amendments to be moved during consideration in detail of the Bill do not materially alter the intended operation of the amendments contained in the Bill. Where clause

28 of the Bill is sought to be amended, that particular amendment enhances human rights by establishing a right of review inadvertently omitted from the Bill. Notwithstanding this, the amendment does not mitigate the incompatibility of clause 28 of the Bill.

The Statement of Compatibility and Statement of Exceptional Circumstances tabled with the Bill and Explanatory Notes otherwise address the human rights implications of the Bill in respect of the matters to be addressed by the amendments to be moved during consideration in detail of the Bill.

Conclusion

In my opinion, the amendments to the Bill which are to be moved during consideration in detail are compatible with human rights under the HR Act.

MARK RYAN MP
Minister for Police and Corrective Services and
Minister for Fire and Emergency Services

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