

Making Queensland Safer Bill 2024

Statement of Compatibility

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Deb Frecklington MP, Attorney-General and Minister for Justice and Minister for Integrity, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Making Queensland Safer Bill 2024.

In my opinion the amendments to the Bill to be moved during consideration in detail are compatible with the human rights protected by the *Human Rights Act 2019* (HR Act) for the reasons outlined in this statement.

Overview of the amendments

The policy objectives of amendments to be moved during consideration in detail (ACiDs) of the Making Queensland Safer Bill 2024 are to:

- in relation to ‘adult, crime, adult time:’
 - clarify that, mirroring the position with respect to adults, a Childrens Court magistrate cannot impose a period of detention greater than three years when sentencing a child for a prescribed offence under the ‘adult crime, adult time’ provision (new section 175A of the *Youth Justice Act 1992* (Youth Justice Act));
 - provide that where a court is making an order for a child to serve a period of detention for a prescribed offence under section 175A, the court must (rather than may) set a release date at any point during the period of the detention, subject to any requirement to serve a minimum sentence;
 - provide that if a court dealing with an application to vary or a contravention of a community service order that was made under section 175A(9) discharges the order and resentsences the child, the court need not make another community service order;
- in relation to the contents and admissibility of childhood criminal histories:
 - clarify that the definition of the criminal history of a child includes all decisions, findings and orders made, and actions taken (including where no further action is taken), under specific provisions of the Youth Justice Act dealing with

- variations of a community based order and contraventions of a community based order and supervised release order;
- amend section 150 of the Youth Justice Act to ensure that in sentencing a child the court can have regard to the child's traffic history;
- clarify the transitional approaches to the admissibility of childhood findings of guilt against an adult for particular purposes under section 148B, the amendments to sections 150 and 150A, and the definition of criminal history of a child under section 6;
- in relation to the 'opt-out' eligible persons register:
 - correct a minor and technical error to ensure the amendments to the definitions of 'applicant' and 'nominee' commence by proclamation.

Human Rights Issues

In my opinion, the ACiDs are compatible with human rights because they either do not limit human rights, or limit human rights only to the extent that is justified within the meaning of sections 8 and 13 of the HR Act.

Jurisdiction of a Childrens Court Magistrate

Consistent with a magistrate's jurisdiction with respect to adult offenders, Amendment 1 provides that a Childrens Court magistrate sentencing a child to an offence prescribed under the 'adult crime, adult time' provision (section 175A) in the Youth Justice Act can impose a period of detention of up to three years.

This amendment does not limit any human rights.

Amendments 2 and 3 and part of Amendment 5 make consequential amendments to ensure that:

- a Childrens Court judge can exercise powers under section 175A where a child has been committed for sentence under section 186;
- the three year jurisdictional limit for Childrens Court magistrates cannot be exceeded by imposing cumulative detention orders on the same day or in the same proceedings; and
- a Childrens Court magistrate can deal with contraventions of supervised release orders imposed under section 175A where the unexpired part of the child's sentence is three years or less.

These amendments are consequential to Amendment 1 and also do not limit human rights.

Requirement to set a release date when sentencing under 'adult crime, adult time'

Amendment 4 amends section 227(3A) (renumbered section 227(4)) of the Youth Justice Act to provide that if a court orders a child to serve a period of detention under section 175A, the court must order the child be released from detention after serving the proportion of the period of detention that the court considers appropriate, subject to any applicable requirement to serve a minimum period of detention.

The amendment provides greater procedural clarity and does not limit human rights.

Contraventions and variations of mandatory community service orders

Part of Amendment 5 amends section 249 of the Youth Justice Act to provide that when a court is dealing with an application to vary, or a contravention of, a mandatory community service order imposed under section 175A(9), if the court is resentencing the child, the court need not make another community service order.

This provides the court with a greater discretion with respect to resentencing an offender subject to a mandatory community service order. It will not impact the ability of the court to impose an appropriate order, including the making of a detention order, when resentencing the child. Accordingly, it does not limit human rights.

Commencement of amended definitions

Minor and technical ACiDs (Amendments 6, 7 and 12) to the Bill correct technical errors relating to the commencement of amended definitions. These amendments do not limit human rights.

Definition of a child's criminal history, admissibility of a child's traffic history and transitional approach to admissibility of previous convictions for particular purposes

Amendments 8 and 9 clarify the definition of 'criminal history'. Part of Amendment 11 clarifies the transitional approach to what matters which occurred prior to commencement appear on a child's criminal history.

Amendment 10 ensures that a court sentencing a child for an offence may consider the child's traffic history where it is relevant. Part of Amendment 11 also clarifies the transitional approach to the admissibility of a child's criminal traffic history.

Part of Amendment 11 also has the effect, when read with the Bill, of correcting a technical error and clarifying the transitional approach to the admissibility of childhood findings of guilt against an adult for particular purposes under section 148B to provide that it only applies to proceedings in relation to an offence of dangerous operation of a vehicle that is committed after commencement.

These amendments are necessary to ensure the original intent of the Bill is able to be achieved, that is, to enable a court sentencing children and adults to have a more complete picture of the offender and be better placed to frame more appropriate sentences. To that end, the justification analysis provided in the Statement of Compatibility tabled with the Bill which relates to the contents and admissibility of a child's criminal history (pages 7-10) remains relevant, as these amendments simply clarify what information is to be included (consistent with the original intent) and ensure that a court sentencing a child for an offence may consider the child's traffic history where it is relevant. In so far as this may result in extra information being before the court, in those circumstances that may deepen the limits on the human rights identified in the

Statement of Compatibility, however the conclusion formed that the amendments are compatible with human rights remains applicable to these provisions.

Conclusion

In my opinion, the amendments to the Making Queensland Safer Bill 2024 which are to be moved during consideration in detail are compatible with the human rights protected by the *Human Rights Act 2019*.

Deb Frecklington MP

Attorney-General and Minister for Justice and
Minister for Integrity

© The State of Queensland 2024