

Queensland Community Safety Bill 2024

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Queensland Community Safety Bill 2024

Submission to Community Safety and Legal Affairs
Committee

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About the Commission

1. The Queensland Human Rights Commission (**the Commission**) is an independent statutory body with functions under the *Anti-Discrimination Act 1991* (Qld) (**Anti-Discrimination Act**) and the *Human Rights Act 2019* (Qld) (**Human Rights Act**) including dealing with complaints of discrimination and contraventions of the Human Rights Act, and promoting an understanding, acceptance, and public discussion of human rights in Queensland.

Introduction

2. This is a submission to the Community Safety and Legal Affairs Committee to inform their consideration of the Queensland Community Safety Bill 2024 (**the Bill**).
3. The Bill is extensive and amends 14 Acts. This submission does not attempt to address all human rights issues raised by the Bill, but focuses on key provisions that limit human rights, or where amendments are necessary.

Positive changes

4. The Bill includes positive changes to Queensland legislation that promote human rights, including:
 - allowing the temporary transfer of children held in watch houses to youth detention centres during the day to participate in age-appropriate programs and physical exercise (subject to comments at [51])
 - recognising the importance of disability support in the Youth Justice Principles
 - encouraging participation of young people in rehabilitative programs by ensuring their involvement cannot be used as evidence against them
 - ensuring victims can disclose information about their experiences for counselling or treatment.

Key concerns

5. Many provisions in the Bill are aimed at tougher approaches to detect and address crime in the community with the goal of enhancing public safety and security. The government has a duty to protect people from preventable harm, to promote the right to security and the right to life.

6. However, tougher penalties and expanded police powers do not necessarily improve public safety and security. Some amendments proposed in the Bill are not supported by a clear evidence-base.
7. The cumulative effect of the changes is likely to increase criminalisation, particularly of children and young people, and increase numbers of children held in detention and in adult watch houses. It is also likely to have a disproportionate impact on Aboriginal and Torres Strait Islander children, given their overrepresentation in the child protection and youth justice systems. In the long term, this will undermine community safety.

Expansion of wandering powers

8. The Bill further expands police powers to conduct hand-held scanning searches (wandering) without a warrant to additional locations: retail premises, sporting and entertainment venues, licensed premises, and additional public transport locations and vehicles.
9. The stated purpose of these expanded powers is to capture other public places that have high pedestrian density and risk of offences occurring, with the goal of increasing public safety and reducing the risk of knife-related offences in those areas.¹

Previous submissions

10. The Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022 (Qld) (**Jack's Law Bill**) expanded powers to allow a trial of wandering without a warrant to continue until 30 April 2025, and extend the areas in which these operations may occur to all public transport stations, including vehicles.
11. In its previous submission² to the Community Support and Services Committee in relation to Jack's Law Bill, the Commission raised concerns about human rights implications of wandering without a warrant, and highlighted findings and recommendations from the Griffith Criminology Institute in its independent review of the initial trial (**Griffith Review**).³
12. In the Jack's Law Bill submission, the Commission noted that the power for a police officer to stop a person without warrant or reasonable suspicion and require the person to submit to a hand-held scanner is a significant limitation on several human rights,⁴ as well as being contrary to the common law protection that a person may only be searched where there is a reasonable suspicion. The

¹ Explanatory Notes, Queensland Community Safety Bill 2024 (Qld), 17.

² Queensland Human Rights Commission, Submission No 06 to Community Support and Services Committee, Queensland Parliament, *Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022* (13 January 2023).

³ Janet Ransley et al, Griffith Criminology Institute, *Review of the Queensland Police Service Wandering Trial* (Report, August 2022).

⁴ Freedom of movement, right to privacy, and property rights.

Commission acknowledged that the limitations on rights were partly mitigated by the quick and non-invasive nature of the search and the Bill's requirement that wandering operations only occur in locations where at least one previous knife or other violent offence had been committed in the previous six months.

13. However, the Commission expressed reservations about whether these limitations could be reasonably justified as the Griffith Review found insufficient evidence of a deterrent effect. The Commission also expressed concerns that adding public transport to the places where searching may be conducted risks marginalising at-risk groups who rely on public transport to obtain essential services, attend work, and access health care.
14. Because of these concerns, the Commission recommended that the government should commission a second independent review 12 months after the implementation of the Bill to assess the extent to which the trial has achieved a significant reduction in crimes involving weapons, and whether adding public transport has had a disproportionate impact on certain groups.

Consideration of current Bill

15. Knife crime represents a significant community concern, with the rights of victims, especially the right to life, being a paramount consideration for the government. Community safety and the preservation of lives is a critical and legitimate aim to be achieved and may justify the proportionate limitation of human rights of individuals.
16. While recognising that various safeguards remain in the existing legislation and in the Bill to limit the situations in which a wandering operation can be authorised, the Commission is concerned about the expansion of powers prior to a further review being conducted.
17. The Commission questions whether there is enough evidence to show that expanding the use of searches without warrant will improve community safety and limit the loss of life. Further, increasing the number of searches and the situations in which they occur could have other unintended consequences.
18. The goal of wandering is to detect metal weapons. On the information available publicly the Commission understands the current detection rate for weapons is around 1%.⁵ It appears that wandering often leads to other kinds of charges — drugs, breach of bail, and other offences.⁶

⁵ Queensland Police Service, 'Police seize 500 weapons in first year of Jack's Law', *myPolice Brisbane West* (Web Page, 4 April 2024) <<https://mypolice.qld.gov.au/brisbanewest/2024/04/04/police-seize-500-weapons-in-first-year-of-jacks-law/>>. The Queensland Police source stated that 508 weapons were seized from 51,000 searches.

⁶ *Ibid.* While 508 weapons were detected, 1,369 people were apprehended on 2,469 charges. The breakdown of the charges by offence was not provided in the source other than to state 'in relation to weapon, drug, bail and other offences'.

19. Human rights may only be limited when reasonable and proportionate, which may include consideration of whether there is a relationship between the limitation on rights and the legitimate purpose to be achieved,⁷ in this case, the enhancement of community safety.
20. The Commission considers that further evidence should be provided by the government to show that there is a rational connection between removing weapons from people in public spaces and an actual reduction in knife crime. Unlike guns, knives are present in every home in Australia and can be easily replaced by the person after a weapon has been seized. Further, as noted in the Commission's previous submission, the Griffith Review was unable to identify a deterrent effect from wandering resulting in fewer people carrying weapons.⁸
21. The data available to the Griffith Review was limited because of the difficulty in extrapolating from 12 months of data, the trial period overlapping with COVID-19 (which meant reduced crowd sizes), and limitations on recording some information on the police database.⁹
22. Sufficient data may now have been collected over more than two years to be able to evaluate whether wandering without a warrant (i) has a deterrent effect, and (ii) leads to a reduction in knife crime. If these effects cannot be demonstrated, then the limitation on rights cannot be adequately justified.
23. The government should explain how its approach to wandering works congruently with the shift away from punitive approaches to minor drug offences and the expansion of the Police Drug Diversion Program, recently legislated through the Police Powers and Other Legislation Amendment Bill 2023 (Qld) (**Police Powers Bill 2023**). The Commission approved of these legislative changes that recognise that people who possess drugs for personal use should be afforded the opportunity to cease behaviour and rehabilitate prior to having formal contact with the criminal justice system through the courts.¹⁰
24. One outcome of wandering powers that can be extrapolated from the police data is heightened drug detection, potentially conflicting with the intent of the Police Powers Bill 2023. It is crucial to gather and analyse further data on the number of individuals discovered with small amounts of drugs during wandering searches and assess the extent to which these individuals were diverted (or not) from involvement in the criminal justice system. This information should be included in an independent review process.

⁷ *Human Rights Act 2019* (Qld) s 13.

⁸ Janet Ransley et al, Griffith Criminology Institute, *Review of the Queensland Police Service Wandering Trial* (Report, August 2022) iv, 81.

⁹ *Ibid*, iii.

¹⁰ Queensland Human Rights Commission, Submission No 5 to Legal Affairs and Safety Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2023* (10 March 2023).

25. A further concern is that wandering without a warrant will disproportionately be conducted on people from cultural minorities, which may unjustifiably limit the right to equality and non-discrimination. Any search process that provides broad police discretion and no requirement for reasonable suspicion may inadvertently lead to decisions to search based on inappropriate stereotyping and cultural assumptions.¹¹
26. The Commission reiterates its concerns recently raised with the Community Support and Services Committee regarding the Police Powers and Responsibilities and Other Legislation Amendment Bill 2024 (Qld). The removal of same-sex safeguards at the same time as expansion of the powers to conduct wandering searches without a warrant may disproportionately affect women and gender diverse people.¹²
27. Overall, the Commission urges that a second independent review occur prior to the proposed expansion of powers.

Recommendation:

Do not extend the wandering trial until such time as a second independent evaluation of the program be concluded. Amend the Bill to omit Part 2 Div 3 Subdiv 1.

Access to Childrens Court proceedings

28. The Bill proposes amendments to section 20 of the *Childrens Court Act 1992* (Qld), expanding who may be present at a criminal proceeding heard by a magistrate that relates to a child.
29. Currently under section 20, victims or their representatives may attend proceedings, but must be excluded if the court holds the opinion that their presence would be prejudicial to the interests of the child. Media professionals and others who the court considers have a proper interest in the case can only attend by order of the court.
30. The Bill would:
 - remove the existing requirement to exclude victims and their representatives from Childrens Court proceedings if it would be prejudicial to the interests of the child;

¹¹ Janet Ransley, Nadine Connell et al, Griffith Criminology Institute, *Report - Review of the Queensland Police Service Wandering Trial*, August 2022, 72–73.

¹² Queensland Human Rights Commission, Submission 05 to Community Support and Services Committee, Queensland Parliament, *Police Powers and Responsibilities and Other Legislation Amendment Bill 2024*, 12 April 2024 [44]-[49]. The Commission raised concerns that removing the requirement for women to search women reduces the level of current protections and may lead to more situations where male officers search women.

- reverse the existing presumption, so that accredited media and people the court considers have a proper interest in the case are allowed to attend proceedings unless excluded by an order of the court; and
 - provide the court with the power to exclude victims' representatives, interested persons and accredited media (a) to prevent prejudice to the proper administration of justice; or (b) for the safety of any person, including the child.
31. Children's rights to protection and a fair trial, the rights of victims of crime to information about proceedings, and public confidence in the justice system are all relevant to these proposed amendments.
 32. The right of children to protection and special safeguards and care because of their 'particular vulnerability' by virtue of their physical and mental immaturity is acknowledged in Queensland legislation and international human rights treaties binding Australia.¹³ The *United Nations Convention on the Rights of the Child* requires children charged with an offence to be:

treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.¹⁴
 33. Upholding these rights includes ensuring that children's privacy is respected at all stages of court proceedings.¹⁵ The United Nations Committee on the Rights of the Child has stated that child justice hearings should be conducted behind closed doors and exceptions should be very limited and clearly stated in the law. Verdicts and/or sentences announced publicly should not reveal the child's identity and court files and records of children should be kept strictly confidential and generally closed to third parties. Case law reports should be anonymous and there should be lifelong protection from publication regarding crimes committed by children, due to risks of stigmatisation and the negative impact this will have on the child's life, reintegration, and assumption of a constructive role in society.¹⁶
 34. At the same time, victims of crime are protected by the rights to privacy and to freedom of expression, which includes the right to receive information relating to them.¹⁷ Victims' attendance at hearings can have a positive role in building the

¹³ *Human Rights Act 2019* (Qld) s 26(2); Explanatory Notes, Human Rights Bill 2018 (Qld) 22; *United Nations Convention on the Rights of the Child* preamble.

¹⁴ *Convention on the Rights of the Child*, UN Doc A/RES/44/25 (20 November 1989, entered into force generally on 2 September 1990) Art 40(1).

¹⁵ *Ibid* Art 40(2)(vii).

¹⁶ Committee on the Rights of the Child, *General Comment No. 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [66]-[71].

¹⁷ *Human Rights Act 2019* (Qld) ss 21(2), 25.

victim's understanding and confidence in the youth justice system and assist children to better understand the impact of their actions on others.

35. In addition, former Queensland Police Commissioner Bob Atkinson's seminal report on youth justice reform highlighted the critical importance of maintaining public confidence in the youth justice system. Accurate media reporting can go some way to mitigate high levels of concern about crime and improve public confidence in evidence-based strategies and place-based initiatives addressing it.¹⁸
36. In court proceedings, the rights and interests of children, victims of crime, and the general public are mutually reinforcing and overlapping, and each should be accommodated to the maximum extent possible as circumstances permit.
37. There are good reasons to allow access to Childrens Court proceedings for victims, their representatives, and others in appropriate circumstances. However, amendments should be made to the Bill to better promote the rights and interests of all involved in the proceeding.

Attendance from another room

38. A child's ability to understand and meaningfully participate in court proceedings can be significantly impaired by the courtroom environment. This can include the presence of large numbers of people (most of whom are unknown to them) in the courtroom, or the presence of particular individuals, which could include a victim or relative of a deceased victim.¹⁹ These impacts may be mitigated or avoided by making provision for the court to order in appropriate cases that any or all of victims, representatives, interested parties and/or media attend other than by physical presence in the courtroom — for example, from a separate room in the courthouse with secure live stream of the proceedings.²⁰ In some cases such arrangements will better protect a child's rights to a fair trial and to effectively participate in proceedings, while still upholding the rights and interests of others to access the proceedings.

Criteria for exclusion orders

39. The Bill provides the court with the power to exclude victims' representatives, interested persons, and accredited media (but not victims of families of deceased victims) (a) to prevent prejudice to the proper administration of justice; or (b) for the safety of any person, including the child.
40. The Bill goes on to list factors to be considered in making such an order, including any special vulnerabilities of the child and the Youth Justice Principles.

¹⁸ Bob Atkinson, *Report on Youth Justice* (Version 2, 8 June 2018), 28-29.

¹⁹ See, for example, European Union Agency for Fundamental Rights, *Child-Friendly Justice: Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States* (Report, 2017) 27–8.

²⁰ And appropriate measures in place to ensure no unauthorised video or audio recording of proceedings.

However, these are only relevant insofar as they inform the assessment of whether the criteria in (a) or (b) have been met. This may not provide the court with a sufficient degree of discretion to exclude people from the hearing where this is necessary and proportionate to protect the best interests of the child and the prospects of their reintegration into society.

41. This issue could be addressed by either amending the new section 20(2)(a) so that it reflects the open justice principle in section 31 of the Human Rights Act (media and others may be excluded 'in the public interest or in the interests of justice') or by including an additional criterion referencing the child's best interests.

Safeguards on reporting

42. To ensure the proposed approach is compatible with the right to a fair hearing and the rights of the child, appropriate restrictions and safeguards must be in place on reporting of any proceedings involving children. In this regard, the Commission supports the Bill's approach to limiting media access to Childrens Court hearings to 'accredited media' only, as defined in the Bill. This could be further strengthened by requiring media to undertake specialised training on reporting Childrens Court matters to achieve accreditation.
43. If access to the Childrens Court is to be expanded in the way proposed by the Bill, people who attend a proceeding must have a clear understanding of the reporting restrictions, restrictions on identification, and penalties under other existing laws. The Commission strongly supports the court being provided sufficient resources to ensure victims, relatives of deceased victims, and victims' representatives attending hearings understand the content and purpose of these restrictions.
44. People or units responsible for enforcing restrictions on reporting must be appropriately supported and resourced to take immediate action should a media outlet or other attendee fail to observe the law.

Recommendations

- Include a specific provision in clause 112 of the Bill allowing the court to order attendance by particular individuals, or categories of individuals, other than by physical presence in the courtroom.
- Include an additional, alternative criteria in the new section 20(2) to exclude representatives, interested persons, or accredited media as follows:
‘or, (c) to prevent prejudice to the best interests of the child or their prospects of reintegration to the community’.

Alternatively, replace proposed section 20(2)(a) with ‘in the public interest or the interests of justice’, mirroring section 31 of the Human Rights Act.

- Provide the court with appropriate resources to ensure that victims, relatives of deceased victims, victims’ representatives, interested persons and accredited media attending Childrens Court hearings understand the content and purpose of reporting restrictions, including through the publication of detailed guidelines.

Increased penalty for knife possession

45. The Bill amends section 51 of the *Weapons Act 1990* (Qld) (**Weapons Act**) to increase the maximum penalty for an existing offence that prohibits a person from physically possessing a knife in a public place or school without reasonable excuse.
46. An opportunity has been missed to clarify the law in relation to Sikh persons attending at schools wearing a kirpan, whether that be as students or broader members of the school community such as parents.
47. While section 51(4) of the *Weapons Act* states that it is a reasonable excuse to carry a kirpan in all public places other than schools, section 51(5) currently states that it is not a reasonable excuse to physically possess a knife in a school for genuine religious purposes.
48. The Commission brings to the Committee’s notice the recent case of *Athwal v State of Queensland* [2023] QCA 156. In that matter, the Queensland Court of Appeal declared that section 51(5) is inconsistent with section 10 of the *Racial Discrimination Act 1975* (Cth) and is therefore invalid under the *Commonwealth Constitution*.

49. The outcome of this case makes the legal position clear that a Sikh person does not commit a criminal offence against section 51 of the Weapons Act by having physical possession of a kirpan at a school for religious reasons.²¹
50. Despite the law being settled by the Queensland Court of Appeal decision in *Athwal*, the legislative provision remains the same. The Commission recommends repeal of section 51(5) of the Weapons Act. The consequence of retaining it is that it may create unnecessary confusion about the state of the law in Queensland on this issue, and if a Sikh person was now charged under this law, the consequences are more extreme because of increased penalties.

Recommendation

Amend the Bill to repeal section 51(5) of the *Weapons Act 1990* (Qld).

Temporary transfer of children from watch houses

51. The Commission strongly opposes detaining children in police watch houses for longer than 24 hours. However, if the practice is to continue, the Commission supports reforms that allow children held in watch houses to be taken to youth detention centres during the day to participate in age-appropriate programs and physical exercise.²²
52. To facilitate use of this provision wherever possible, administrative processes should be streamlined. In addition, the Bill should specifically require collection and publication of data on its use, to enable public scrutiny of the extent to which this provision is used to mitigate the harmful effects of detaining children in watch houses.

Recommendations

- The Commissioner of Police and Chief Executive should develop framework agreements and streamlined processes to facilitate transfers of children from watch houses to access services in youth detention centres under the new section 56A of the Youth Justice Act.
- Amend draft section 56A to require collection and reporting of data on the use of new section 56A, disaggregated by watch house, number of total transfers, unique number of children transferred, age of children transferred, and length of stay in the watch house at first use of transfer.

²¹ *Athwal v State of Queensland* [2023] QCA 156 [122].

²² Queensland Community Safety Bill 2024 (Qld) cl 120 (Insertion of new s 56A into the *Youth Justice Act 1992* (Qld)).

Endangering police officer or damaging an emergency vehicle when driving

53. The Bill creates several new driving offences and circumstances of aggravation accompanied by serious penalties to recognise the importance of protecting emergency workers in the course of their duties. The aim of the changes is to address violent behaviours targeted at emergency workers.²³ 'Emergency workers' is defined by the Bill to include police, ambulance and fire services workers.
54. While recognising the seriousness of actions targeting emergency workers, the Commission considers that further justification should be provided in relation to the proposed Criminal Code offences of 'Damaging emergency vehicle when operating motor vehicle' and 'Endangering police officer when driving motor vehicle'.²⁴ The offences both contain a maximum penalty of 14 years imprisonment.
55. Emergency workers have the right to safety in their workplace. The justification for these new offences is to send a message that conduct like ramming an emergency vehicle is serious and has an adverse impact on service delivery,²⁵ and ensuring that the 'occupational vulnerability of police officers is adequately acknowledged at law'.²⁶
56. Both offences involve a crime being committed where a person:
- Intentionally causes damage, injury or endangerment to safety; or
 - Knows, or ought to reasonably know, that their actions endanger safety, cause injury or could cause damage.
57. The new offences require a person to know (or ought to reasonably know) that it was an emergency vehicle or an on-duty police officer who was placed at risk.
58. The Statement of Compatibility refers to the Bill promoting an officer's right to life, privacy, and liberty and security of the person in situations where officers face deliberate harm or attempts to harm them. The examples provided in the Statement of Compatibility are focussed on situations where a person deliberately or intentionally takes an action such as swerving towards a person on foot or deliberately driving into a police officer.²⁷

²³ Explanatory Notes, Queensland Community Safety Bill 2024 (Qld) 25.

²⁴ Queensland Community Safety Bill 2024 (Qld) cl 14 (Insertion of new sections 328C and 328D into the Criminal Code).

²⁵ Statement of Compatibility, Queensland Community Safety Bill 2024 (Qld), 51.

²⁶ Explanatory Notes, Queensland Community Safety Bill 2024 (Qld) 26.

²⁷ Explanatory Notes, Queensland Community Safety Bill 2024 (Qld) 7, 50.

59. However, the Commission considers that inadequate justification has been provided as to why the provisions extend to situations where a person has *unintentionally* placed an officer in danger or caused damage.
60. Section 328D captures situations where individuals drive dangerously or recklessly in the general vicinity of police officers. This could draw in accidental but reckless behaviours that are otherwise less serious offences but are made serious criminal offences when occurring near a police officer. Section 328D does not require there to have been any damage or injury.
61. There are already existing offences that would appear to cover the conduct prohibited by section 328C and section 328D:
- Dangerous operation of a vehicle²⁸
 - Careless driving of motor vehicles²⁹
 - Wilful damage³⁰
62. In cases where dangerous driving has caused grievous bodily harm or death, a person may be charged with dangerous operation of a motor vehicle causing death (Criminal Code section 328A(4) – current maximum penalty is 10 to 14 years imprisonment),³¹ or careless driving causing grievous bodily harm or death.³² A person could also be charged with manslaughter or murder where dangerous driving has caused the death of another person (Criminal Code sections 300, 302, 303) depending on the circumstances.
63. As these situations are already covered by existing laws, the Commission assumes the purpose of the additional offence in sections 328C and 328D is to cover situations that do not result in death or serious injury. If this is the case, the maximum penalty of 14 years for these two offences is disproportionate when compared with other similar offences already prohibited in Queensland.
64. The proposed amendments in the Bill mean that the same maximum penalty of 14 years' imprisonment would apply to:
- dangerous driving resulting in the death of a non-police officer (in section 328A)

²⁸ *Criminal Code Act 1899* (Qld) s 328A. Current maximum penalty is 3 years imprisonment.

²⁹ *Transport Operations (Road Use Management) Act 1995* (Qld) s 83. Maximum penalty is 6 months imprisonment.

³⁰ *Criminal Code Act 1899* (Qld) s 469. Maximum penalty is 5 years, or 7 years for aggravated offence.

³¹ The Bill amends the Criminal Code in section 328A to increase the maximum penalty for dangerous operation of a motor vehicle causing death or grievous bodily harm from 10 to 14 years. Where aggravating circumstances are present, the Bill increases the maximum penalty from 14 to 20 years.

³² Maximum penalty is 1 year imprisonment or 2 years if unlicensed.

- cases of endangering a police officer under section 328D, even if the actions were unintentional and the officer remained unharmed; and
- where an emergency vehicle is damaged, even if unintentional and where no emergency workers were in or near the vehicle at the time (under section 328C).

Recommendation

- Confine the new offence in Criminal Code section 328D to situations where a person has deliberately harmed or attempted to harm a police officer (section 328D(1)(i)). If reckless endangerment is maintained (section 328D(1)(ii)), it should have a lower maximum penalty more commensurate with other like offences.
- Reduce the maximum penalty in section 328C of 14 years to have a lower maximum penalty more commensurate with other like offences.

Transfers of 18-year-olds to adult prisons

65. The Bill sets out a new process for decision-making on the transfer of young people to adult prisons after they turn 18.³³ While the Commission does not support an automatic presumption of prompt transfer for the reasons discussed below, the Commission welcomes that the process at least requires consideration of each young person's circumstances by the chief executive, and allows for a delay in transfer up to the age of 18 years and six months where special circumstances justify the person's continued detention in the youth detention centre.³⁴
66. The Commission also welcomes the safeguards that have been retained in the Bill concerning notices of decision, arranging consultation with a lawyer, providing for review and reasons by the chief executive, review of the chief executive's decision by the Childrens Court, and automatic stay of transfer while review processes are ongoing.
67. These aspects of the Bill are crucial to ensure that transfer of young people from youth detention centres to adult prisons is not automatic once a young person turns 18. In its *General Comment No 24 on Children's Rights in the Child Justice System*, the United Nations Committee on the Rights of the Child stated that the principle that adults and children should be detained in separate facilities:

³³ Queensland Community Safety Bill 2024 (Qld) cl 126 (Amended Part 8, Division 2A inserted into the *Youth Justice Act 1992* (Qld)).

³⁴ We note that the Statement of Compatibility refers to mandatory transfer unless there are 'exceptional circumstances' (at 78 and 80) but this does not reflect what is in the Bill or the Explanatory Note (at 37).

... does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility.³⁵

68. This has also recently been emphasised by the United Nations Special Rapporteur on Torture in her report on *Current issues and good practices in prison management* (2024). She noted that '[s]pecial consideration needs to be given to children approaching the end of childhood', and that decisions about if and when to move children to adult prisons should involve

a needs and risk assessment that takes into account all relevant factors, including the rights and needs of the other children in the youth facility, the suitability of prison in view of any underlying conditions, and the avoidance of disruption to any continuing education or vocational training.³⁶

69. According to the Special Rapporteur, this 'recognizes that the needs and vulnerabilities of children do not change when they reach the age of majority' and 'helps minimize disruption to supportive relationships that young people have formed with youth justice services'.³⁷
70. In this context, the rights of 18-year-olds as well as the rights and best interests of children detained in the youth detention facility must be considered. The extent to which both can be protected by the individual remaining in the youth detention centre after turning 18 may be highly dynamic, depending on circumstances in the particular facility and across the state at the time.
71. The list of matters that the chief executive may have regard to in deciding whether there are 'special circumstances' to justify delaying transfer are generally appropriate.³⁸ However, an additional element that should be considered is whether a young person is on remand or convicted and sentenced. The fact that a young person is on remand should justify delaying transfer given the presumption of innocence and the possibility of charges being withdrawn.
72. The Commission is concerned that the Bill restates an overriding principle that, without exception, a young person 18 years and six months or older is not to be detained at a youth detention centre. It is possible to envisage circumstances where this could lead to significant injustice and be contrary to the public interest

³⁵ United Nations Committee on the Rights of the Child, *General Comment No. 24 on children's rights in the child justice system*, UN Doc CRC/C/GC/24 (18 September 2019) [93]. See also [35] ('children who turn 18 before completing a ... custodial measure be permitted to complete the ... measure or sentence, and not be sent to centres for adults').

³⁶ United Nations Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, *Current issues and good practices in prison management*, UN Doc A/HRC/55/52 (20 February 2024) [82].

³⁷ *Ibid.*

³⁸ As set out in Queensland Community Safety Bill 2024 (Qld) cl 126 (Replacement of *Youth Justice Act 1992* (Qld) s 276C(4)).

(for example, requiring the transfer to an adult prison of a vulnerable young person actively engaged in rehabilitative activities in the youth detention centre who will be eligible for supervised release at the age of 18 years and seven months). To address such situations the Bill should include an exception to the principle where there are 'exceptional circumstances'.

73. The Commission notes that a major justification for transferring 18-year-olds to adult prisons is to promote the best interests of other children, particularly young children, detained in youth detention centres or awaiting places in youth detention centres. This may be particularly pressing where children are detained in watch houses while awaiting space in youth detention centres. At the same time, adult prisons are also overcrowded, and this has an impact on the human rights of 18-year-olds transferred there, including the right to humane conditions of detention, and their risk of further criminalisation.
74. Rather than streamlining the transfer of vulnerable young people to overcrowded prisons, the rights of children and young people, and the interests of victims and the community, are better served by:
- raising the minimum age of detention of any child to 16 years of age (as committed to by the Tasmanian Government³⁹) and raising the age of criminal responsibility to 14 years of age;
 - repealing provisions contributing to increasing numbers of detained children; and
 - increasing investment in alternatives to detention combined with intensive support for children in contact with the criminal justice system.

Recommendation

Amend the Bill to:

- include in the factors set out in section 276C(4) whether the detainee is on remand or sentenced following conviction; and
- allow for the continued detention of a young person older than 18 years and six months in a youth detention centre in 'exceptional circumstances'.

Photographing detainees and detention centres

75. The Bill would make it a crime to photograph or attempt to photograph a detainee in a youth detention centre or part of a youth detention centre, subject to two years imprisonment.⁴⁰
76. While a general prohibition on photography in youth detention centres is consistent with current departmental policy, introducing a criminal penalty is a

³⁹ Roger Jaensch, Minister for Education, Children and Youth (Tas), 'Clear pathway to reform Tasmania's youth justice system' (Media release, 6 December 2023).

⁴⁰ Queensland Community Safety Bill 2024 (Qld) cl 127 (Insertion of s 279B(1) into the *Youth Justice Act 1992* (Qld)).

significant change with the potential to unreasonably limit human rights. Although it may promote the right to privacy of individual children, the amendment has the potential to limit the ability of children and others to provide evidence of ill-treatment and other practices that are not compatible with their right to humane conditions of detention.

77. Protection of the right to privacy of individual detainees and protection of the safety and good order of the detention centre can be achieved in less restrictive ways through the enforcement of existing policies, including workplace policies.
78. The Commission recommends against the introduction of this provision. However, if it is to be introduced, further exceptions are required to avoid incompatibility with the Human Rights Act.

Appropriate exceptions

79. The Bill appropriately contains an exception that allows photographs to be taken by a detainee's lawyer, a child advocacy officer, a community visitor, law enforcement officers, the United Nations Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Human Rights Commissioner, the Inspector of Detention Services, the Ombudsman, the Public Guardian, or with written approval of the chief executive.⁴¹

Queensland Human Rights Commissioner

80. The reference in the exceptions to the 'the Human Rights Commissioner under the *Anti-Discrimination Act 1991*' is unnecessarily confusing. The other independent statutory agencies listed in section 279B(2) are not stated with reference to the Acts establishing their office e.g. the Ombudsman, the Public Guardian.
81. While the position of Commissioner is established under section 234 of the *Anti-Discrimination Act 1991* (Qld), the Commissioner also has functions under the Human Rights Act, including to deal with human rights enquiries and complaints from children and to review public entities' policies and practices. By mentioning only the Anti-Discrimination Act the impression may be created that the exception is limited to the Commissioner's functions under the Anti-Discrimination Act. This would not be consistent with the Commissioner's role under the Human Rights Act, or effective protection of the rights of detained children. Consistent with how other statutory positions are referred to in the exception, the reference to the *Anti-Discrimination Act 1991* (Qld) in section 279B(2)(f) should be removed.

Health professionals and whistleblowers

82. Photographs of detainees or of parts of a youth detention centre may also provide evidence of acts or practices that are not compatible with human rights,

⁴¹Queensland Community Safety Bill 2024 (Qld) cl 127 (Insertion of s 279B(2) into the *Youth Justice Act 1992* (Qld)).

including the right to be free from torture and cruel, inhuman or degrading treatment or punishment ('other ill-treatment'), and the right to humane conditions of detention. In closed environments such as detention centres the law should not criminalise taking photographs for this purpose.

83. To effectively protect the right to be free from torture and other ill-treatment the Bill must include an exception to allow health professionals examining or treating a child detained in a youth detention centre, whether on reception to the youth detention centre or otherwise, to confidentially document any injuries observed by photographic means.⁴²
84. In addition, the Bill should provide specific protection for whistleblowers who take photographs to document concerns about treatment or practices that may amount to torture or other ill-treatment, or to record inhumane conditions of detention, subject to appropriate protections relating to disclosure and publication to protect the privacy of individual children.

Recommendations

- Remove clause 129, inserting section 279B into the *Youth Justice Act 1992* (Qld), from the Bill.
- If section 279B is retained:
 - amend section 279B(2)(f) to replace 'the Human Rights Commissioner under the *Anti-Discrimination Act 1991*' with the 'Queensland Human Rights Commissioner';
 - include an additional exception in section 279B(2) for health professionals examining or treating a detainee; and
 - include an additional specific exception in the Bill to protect whistleblowers.

Recording detainee calls

Prescribing by regulation the ability to record certain calls

85. The Bill amends section 263A of the *Youth Justice Act 1992* (Qld) to permit the recording of telephone calls when done for a purpose prescribed by regulation. As the proposed circumstances in which calls will be recorded are not yet clear, it is difficult for the Commission to comment on whether the proposal will be compatible with human rights.
86. The Commission has reservations about recording calls of children in detention unless there are compelling reasons to justify it. If there is strong evidence, for

⁴² See, for example, United Nations Office of the High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Professional Training Series No 8 / Rev 2, 2022) 1-25 '(Relevant International Legal Norms and Standards)'.

instance, that children are frequently using the phone service to breach domestic violence orders or intimidate witnesses,⁴³ these may be legitimate reasons to limit rights. This should be balanced with the fact that recording interferes with the privacy of children's phone calls and may limit the right to family (since calls will include those with parents and siblings) and be contrary to the child's best interests. The child's best interests should make allowance for the relative immaturity and lack of discretion that children are likely to exhibit in their communications compared with adult prisoners.

87. Any subsequent changes to the *Youth Justice Regulation 2016* will need to be accompanied by a Human Rights Certificate explaining how the proposed approach to recording calls is compatible with human rights. This process results in significantly reduced parliamentary scrutiny of regulations compared with primary legislation. Key stakeholders must therefore be consulted regarding amendments to the Youth Justice Regulation.

Calls with the Commission

88. The Commission supports a change to make it clearer that calls between a child in a detention centre and the Queensland Human Rights Commission should not be recorded. The Commission has previously recommended that a similar change be made under the *Corrective Services Act 2006* (Qld) section 52E, to ensure that calls by adults are not monitored or recorded, but this has not been implemented to date.⁴⁴
89. However, as discussed above at [80]–[81], the proposed wording of 'the Human Rights Commissioner under the *Anti-Discrimination Act 1991*' is unnecessarily confusing and may be interpreted too restrictively. Any reference should be to the Queensland Human Rights Commissioner without qualification by reference to a particular Act.

Recommendations

- Amend the Bill to replace the reference in section 263A(3)(i) to 'the Human Rights Commissioner under the *Anti-Discrimination Act 1991*' with the 'Queensland Human Rights Commissioner'.
- For consistency across statutes, add the Queensland Human Rights Commissioner to a list of oversight bodies listed under section 52E of the *Corrective Services Act 2006* (Qld) to enable prisoners to freely contact the Commission without their communications being subject to recording or monitoring.

⁴³ Explanatory Notes, Queensland Community Safety Bill 2024 (Qld) 14.

⁴⁴ Queensland Human Rights Commission, Submission No 06 to Community Safety and Legal Affairs Committee, Queensland Parliament, *Corrective Services (Promoting Safety) and Other Legislation Amendment Bill 2024* (29 February 2024) 7.

Recommendations (cont)

- Key stakeholders including the Queensland Human Rights Commission should be engaged in the development of subsequent amendments to the Youth Justice Regulation to prescribe the situations in which calls can be recorded.

Detention as a last resort

90. The Bill amends the Youth Justice Principles that currently state that detention of children in custody is the last resort option.⁴⁵ The proposed amendment seeks to rephrase this principle to state that a child should be detained in custody only when necessary, particularly to ensure community safety, when non-custodial measures would not suffice. The amended wording includes clarification that detention should not exceed the time required to achieve its purpose.
91. Detention as a last resort acknowledges that in certain cases, such as when offenders pose a threat to public safety or have committed serious crimes, detention may be necessary. However, it does not imply that there are no effective alternatives for addressing youth offending. Many countries have implemented diversion and prevention programs aimed at reducing recriminalisation.
92. The Commission maintains that the principle of detention as a last resort is central to Queensland's youth justice legislation. It must remain in place to uphold obligations under the *United Nations Convention on the Rights of the Child* and to prevent children from becoming entrenched in the criminal justice system, thereby undermining community safety in the long term.
93. While outside of the scope of this Bill, the Commission reiterates its previous public comments that urgent action is needed to address the prolonged detention of children in adult watch houses, along with the implementation of well-resourced, evidence-based early intervention programs, to ensure both immediate and long-term community safety.
94. Thank you for the opportunity to provide a submission. The Commission would be pleased to provide any further information the Committee may require.

⁴⁵ *Youth Justice Act 1992* (Qld) sch 1 ('Charter of youth justice principles') principle 18.