

Youth Justice (Electronic Monitoring) Amendment Bill 2025

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to the Education, Arts and Communities Committee in relation to the Youth Justice (Electronic Monitoring) Amendment Bill 2025.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of “*giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way*” and is required to give this “*legal assistance at a reasonable cost to the community and on an equitable basis throughout the State*”. Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ’s services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ’s lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

This submission is provided in consultation with LAQ’s Youth Legal Aid team and Regional Services. These teams have significant experience in the provision of legal advice and representation services to children within the criminal justice system.

Submission

Amendments to eligibility criteria

LAQ is concerned about the impact of the expansion of the electronic monitoring device (‘EMD’) condition on particularly vulnerable children, without some of the existing safeguards for imposing that condition being explicitly retained. Children within the youth justice system are often disadvantaged and vulnerable. Over 53% have experienced or been impacted by domestic and family violence, 44% have a mental health and/or behavioural disorder (diagnosed or suspected) and 44% have a disability (diagnosed or suspected).¹

LAQ notes the removal of the current eligibility criteria provides greater discretion to a court when considering an EMD condition and is likely to result in EMD conditions being more widely utilised. However, the amendments proposed may result in disparate application across the state, particularly having regard to the statistics in the EMD evaluation report that note 84% of EMD conditions made during the trial period, were made in urban south-east Queensland.² This poses difficulties in extrapolating the results of the EMD evaluation to the broader child offender population.

The Explanatory Notes seek to justify the impact of an EMD condition on a child’s privacy by pointing to high bail completion, reduced re-offending, lower victimisation and reduced time in custody.³ However, the data in the EMD evaluation is limited to a small cohort, of mostly serious

¹ *Youth Justice Pocket Stats 2023-2024*, Department of Youth Justice.

² Nous Group, *Evaluation of the Electronic Monitoring Trial: Final Report* (9 October 2025), page 22.

³ Explanatory Notes, Youth Justice (Electronic Monitoring) Amendment Bill 2025, page 3.

repeat offenders over 16 years of age, based in south-east Queensland.⁴ LAQ is concerned that there is insufficient information to support the supposition that the same or similar results could be expected to occur with a 12-year-old in far north or rural Queensland.

The EMD evaluation report notes that children with poor mental health, and First Nations children, required more support to succeed, had lower completion rates, and smaller reductions in offending.⁵ Currently the geographical areas a child can have an EMD are concentrated in main metropolitan centres along the Queensland coast. Expansion into rural areas may mean it will apply to more First Nations children, and without sufficient resourcing, including wraparound supports, is likely to result in adverse consequences for those children.

LAQ is concerned about the removal of the requirements set out in section 52AA (1)(f)(i) - (iii) *Youth Justice Act 1992* (Qld). The EMD condition, and its associated operational requirements, are complicated. Removing the requirement to assess the child's capacity to understand the EMD condition and any condition under section 52AA (2) is concerning, not just in light of the removal of the age requirement. Children can now be charged with breach of bail condition, rendering them liable for further offences. The EMD evaluation noted:

Some stakeholders expressed concern that EMDs could expose young people to additional charges such as breach of bail. However, in the context of the thousands of alerts generated over the course of the trial, this outcome was rare: 59 EMD episodes recorded a breach of bail, of which only 22 resulted in bail revocation. This suggests that discretion was often applied.⁶

However, in the experience of LAQ's practitioners, children have been charged with breach of bail offences for failing to charge their EMD continuously for 2-hours per day.

LAQ considers the current requirements set out in section 52AA (1)(f)(i) - (iii) are particularly necessary in light of the removal of the age requirement, where an EMD condition will potentially apply to children as young as 10 years old.

Impact on privacy and human rights

Wearing the EMD has the effect of identifying to the public, and to the child's community, that the child is subject to the *Youth Justice Act* (Qld). The EMD alone does not identify the nature of the offences with which they are charged. Since the EMD condition was introduced, amendments have been made with respect to media reporting on youth justice matters. Although the media cannot publish the child's name or identifying information, a child wearing an EMD in a small community may be readily identifiable by the combination of wearing the device and contemporaneous reporting. This is more pronounced if an EMD condition were to apply to a child of primary school or mandatory schooling age. Considering the shift in public sentiment towards youthful offenders, LAQ is concerned that it would be more difficult for a young child wearing an EMD to integrate in their communities - they could be ostracised, labelled and it may jeopardise the safety of them and their family.⁷

⁴ 84% of EMD conditions were made in southeast Queensland, being 117 of 139; Nous Group, *Evaluation of the Electronic Monitoring Trial: Final Report* (9 October 2025), page 66.

⁵ Nous Group, *Evaluation of the Electronic Monitoring Trial: Final Report* (9 October 2025), page 10.

⁶ Nous Group, *Evaluation of the Electronic Monitoring Trial: Final Report* (9 October 2025), page 7.

⁷ As outlined in the Statement of Compatibility, *Youth Justice (Electronic Monitoring) Amendment Bill 2025*, page 5-6.

While it is said it will be a matter for the court to consider the human rights and impacts of an EMD condition on an individual child's privacy,⁸ there is no proposed regulation for this to be included in a suitability assessment. The ability of a defence solicitor to advocate with respect to human rights and privacy may often be at odds with a child's instructions given that, in the experience of LAQ's practitioners, their instructions may be to offer compliance with any conditions that support their application for bail.

Practical difficulties

LAQ's practitioners advise there are often delays with the provision of a suitability assessment, as its preparation frequently requires exchanges between a number of resources from various departments. Currently, a court will adjourn, typically for 2 to 3 days, for the EMD assessment to occur. From a practical perspective, LAQ is concerned that increased EMD assessments may negatively impact on the timeliness of a suitability assessment, without ensuring adequate resourcing,⁹ and would infringe on Youth Justice Principles 8(a), 8(c) and 9.¹⁰ LAQ is aware of at least one matter where a bail application was delayed by a week to receive a suitability assessment report due to communication issues between officers of Child Safety and Youth Justice.

Further, more EMD assessments will invariably increase the number of part-heard bail applications. This will have an associated impact on court resources and duty lawyer services which will need to be accounted for.

Further review

LAQ supports provisions for further review of the expanded EMD provisions to ensure that the expansion is properly resourced, sustainable, and does not result in significant unintended consequences. That these changes are being made permanent, without opportunity to further evaluate its effectiveness for younger children, and children who are not 'serious repeat offenders', without the retention of the explicit considerations in section 52AA (1)(f)(i) - (iii), is concerning.

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⁸ Statement of Compatibility, Youth Justice (Electronic Monitoring) Amendment Bill 2025.

⁹ Noting that key administrative issues were raised in the evaluation, which included difficulties in arranging material to satisfy suitability assessment criteria in short timeframes, in addition to the high administrative burden of the program: Nous Group, *Evaluation of the Electronic Monitoring Trial: Final Report* (9 October 2025), page 36.

¹⁰ Schedule 1 Charter of Youth Justice Principles, *Youth Justice Act 1992* (Qld).