Strengthening Community Safety Bill 2023

Joint Departmental Brief on the Strengthening Community Safety Bill 2023 to the Economics and Governance Committee

Departments

1. Queensland Police Service;

2. Department of Children, Youth Justice and Multicultural Affairs; and

3. Department of Justice and Attorney-General.

Objectives of the Bill

4. On 21 February 2023, the Minister for Police and Corrective Services and Minister for Fire and Emergency Services introduced the Strengthening Community Safety Bill 2023 (the Bill) into the Queensland Parliament. The Bill was referred to the Economics and Governance Committee (the Committee) for consideration.

5. On 29 December 2022, the Queensland Government announced ten new measures aimed at protecting community safety. The objective of the Bill is to give effect to the announced legislative reforms and strengthen youth justice laws.

6. To achieve this purpose, the Bill amends the following legislation:
   - *Bail Act 1980* (Qld) (the Bail Act);
   - *Criminal Code Act 1899* (Qld) (the Criminal Code);
   - *Youth Justice Act 1992* (Qld) (the Youth Justice Act); and
   - *Police Powers and Responsibilities Act 2000* (Qld) (the PPR Act).

Background

7. On 29 December 2022, the Government announced a 10 point plan to strengthen the response to serious offending, particularly by young offenders, after two young people were charged with serious offences following the incident in North Lakes.

8. Overall numbers of young offenders are declining and the majority of young people who have contact with the youth justice system do not reoffend after first contact.[1] However, the events of December 2022 amplified community concerns about the strength and adequacy of responses to a cohort of serious repeat young offenders.

9. The Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) data indicates the average daily number of young people identified as “Serious Repeat Offenders” by an index based on severity, recency and frequency of offending, was 378 in 2021-22, a substantial increase from 312 in 2020-21. The data also indicates 17 per cent of offenders are “Serious Repeat Offenders” and they were responsible for 48 per cent of youth crime in 2021-22.

[1] The Queensland Government Statistician's Office reports that in 2020-21, police proceeded against 46,175 offenders aged 10-17 years in Queensland, a decrease of 11.0 per cent from 51,865 in 2019-20.

10. Actions announced on 29 December 2022 included legislative reforms to require courts to take into account previous bail history when sentencing young people, and to increase penalties for young people and adult offenders for the unlawful use of a motor vehicle, or for posting by offenders about vehicle crimes on social media.

11. Since the announcement, the government has further included legislative reforms to strengthen the bail and sentencing frameworks applying to young offenders, as well as community programs focusing on prevention and early intervention.

Amendments in the Bill

Unlawful Use of Motor Vehicles – *Criminal Code 1899* (Qld)

12. Recent data identifies that unlawful use of a motor vehicle (UUMV) offences represent a greater proportion of youth crime than in previous years. In terms of recorded crime[2], UUMV became the fourth most prevalent offence by child offenders in 2020-21 (behind other theft, unlawful entry, drug offences), recording the largest increase in the proportion of all child offenders, up 4.7 percentage points from 6.4 per cent to 11.1 per cent.

13. Further to this, more recent Queensland Police Service data indicates for the period 1 July 2021 to 31 March 2022, juvenile offenders were responsible for over half of all recorded UUMV offences in Queensland.

14. Offending involving UUMV is often accompanied by dangerous, risk-taking behaviour that places both the offender and the community at risk of harm. There is also an increasing trend where offenders post images and recordings of their offending online and on social media platforms, particularly in relation to motor vehicle offences. By publishing images and recordings of their criminal acts, these offenders encourage others, particularly young people, to engage in similar criminal behaviour involving vehicles.

Increase to maximum penalty for offence of unlawfully using or possessing a motor vehicle, aircraft or vessel

15. The Bill increases the maximum penalty for the simpliciter offence of UUMV in section 408A(1) of the Criminal Code, from 7 to 10 years imprisonment.

16. The Criminal Code provides for a circumstance of aggravation for an UUMV offence where the offender uses or intends to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence (section 408A(1A)). As a result of the increased penalty for the simpliciter offence, the Bill also increases the maximum penalty for this offence from 10 to 12 years imprisonment.

17. The Criminal Code provides a further existing circumstance of aggravation for an UUMV offence where the offender wilfully destroys, damages, removes or otherwise interferes with a vehicle's mechanism or other part or equipment (or intends to do one of those things) (section 408A(1B)). Because the Bill introduces a new and broader circumstance of aggravation relating to property damage (discussed below at paragraph 20) which subsumes the type of criminal conduct covered by the existing circumstance of aggravation, the Bill omits this existing circumstance of aggravation.

[2] The Crime report, Queensland, 2020–21 provides an overview of the volume and nature of crime in Queensland, as reported (by victims, witnesses or other persons) to, or detected by, the Queensland Police Service (QPS) (reported offences).

New Circumstances of Aggravation

18. Consistent with the 29 December 2022 announcement, the Bill provides new additional circumstances of aggravation for the offence of UUMV.

19. The Bill will create a circumstance of aggravation, punishable by a maximum of 12 years imprisonment, where the offender publishes material on a social media platform or online social network to advertise their involvement in the offence or the act or omission constituting the offence.

20. The Bill will also create circumstances of aggravation, punishable by a maximum penalty of 14 years imprisonment, where:

    - The offence is committed at night;
    - The offender:
        - uses or threatens to use actual violence;
        - pretends to be armed with a dangerous or offensive weapon, instrument, or noxious substance;
        - is in company with one or more persons; or
        - damages, threatens or attempts to damage any property.

Reverse onus removed

21. Section 408A(1C) of the Criminal Code currently contains a defence to a charge of UUMV where the owner has given consent to the defendant to use the vehicle. The existing provision places the legal and evidential burden of proof on the defendant.

22. The Bill amends the operation of this provision to ensure its compatibility with human rights by requiring the defendant to discharge an evidential burden of proof. This reformulated defence is to apply to charges which are laid both before and after the commencement.

23. This amendment protects and promotes the right to be presumed innocent in section 32(1) of the *Human Rights Act 2019* (Qld) (HR Act) and is compatible with that right.

Disposition and Jurisdiction

24. The amendments in the Bill to UUMV under the Criminal Code will apply to both adults and children.

25. For adult defendants, the Bill proposes to mirror the disposition of other offences in the Code which carry the same circumstances of aggravation (for example, Unlawful entry of a motor vehicle under section 427). Where the circumstance of aggravation alleged involves violence or that the defendant was armed or pretends to be armed, or involves property damage exceeding $30,000 and the defendant does not plead guilty, those charges must proceed on indictment. The District Court will have jurisdiction to deal with those matters. The remaining circumstances of aggravation will be dealt with, generally, in the Magistrates Court subject to section 552D of the Criminal Code. A consideration

under that section includes whether that court can adequately punish a defendant noting that it may impose imprisonment of up to three years.

26. For child defendants charged with UUMV with a circumstance of aggravation of violence or threatened violence, the matter must be heard by a Childrens Court judge, thereby enabling a court to consider a maximum period of detention of seven years.

27. Approximately one third of all sentencing proceedings conducted by Childrens Court magistrates involve at least one UUMV offence. Requiring a judge to hear all UUMV offences, or all circumstances of aggravation, would place an unreasonable burden on the Childrens Court of Queensland, slowing down the disposition of offences, and thereby increasing the remand rates for young people. Requiring a judge to hear only offences involving violence, or threats of violence or being or pretending to be armed reflects the significant seriousness of these offences compared with the other circumstances of aggravation.

Bail and Custody of Children – *Bail Act 1980* and *Youth Justice Act 1992* (Qld)

28. The Bill seeks to respond to the small cohort of serious repeat young offenders who engage in persistent and serious offending by strengthening the youth justice bail framework.

Introduction of a Breach of Bail Condition Offence

29. Currently, section 29 (Offence to breach conditions of bail) of the Bail Act provides that a defendant must not break any condition of their bail undertaking.

30. Section 29(2)(a) provides that the offence does not apply to a child. The Bill removes section 29(2)(a). The result is that breaching a bail condition (such as a curfew or residential condition) is an offence for a child.

31. As indicated in the Minister's Statement of Compatibility, his amendment is not compatible with human rights under the HR Act and clause 5(3) of the Bill declares that the HR Act does not apply where the defendant is a child.

Extension and expansion of Electronic Monitoring Device Trial

32. A court may impose a condition of an Electronic Monitoring Device (EMD) on a young person being granted bail in certain circumstances, as part of a trial in specified locations, including Townsville, North Brisbane, Moreton, Logan and the Gold Coast. These circumstances include that the child is at least 16 years of age, the offence for which bail is granted is a prescribed indictable offence and the child has been found guilty of at least one indictable offence previously. The court also considers the child's suitability for an EMD condition based on their circumstances.

33. Section 52AA of the Youth Justice Act governs the use of EMDs as a bail condition and contains a sunset provision limiting the trial to two years from commencement. This will see the EMD trial expire on 30 April 2023.

34. A review of the EMD trial was conducted by the DCYJMA, with former Police Commissioner Bob Atkinson AO, APM providing an independent peer review. The

Electronic Monitoring Trial Report[3] outlines the findings of the review of the implementation, and effectiveness, of the EMD trial between May 2021 and September 2022.

35. The review found that while there are some benefits associated with electronic monitoring, its effectiveness in deterring offending behaviour cannot yet be confirmed, nor can any changes to offending be attributed to engagement with the trial. On the basis of the evaluation findings, and to provide an opportunity to establish a more robust evidence base in the context of very low uptake, the Bill extends the provisions at section 52AA for a further two years (30 April 2025) and expands the eligibility criteria to include young people aged 15 and over.

36. The Government also intends to extend the EMD trial sites to include Cairns, Toowoomba and Mount Isa. This will be implemented via amendments to the Youth Justice Regulation 2016, once the necessary supports and services have been established in these locations.

37. The Bill adds certain offences to the definition of 'prescribed indictable offence' for other purposes, but not for the purposes of the electronic monitoring provisions, in order to preserve the integrity of the trial. This is achieved by the existing definition of prescribed indictable offence being inserted into section 52AA for that section only, while the definition in schedule 4 is expanded for other purposes.

38. The explanatory notes in the Bill outline on page 49 that the extension and expansion of the operation of section 52AA of the Youth Justice Act will have the same impact on rights and liberties as first assessed when section 52AA was introduced in 2021.

Police Arrest for Contraventions of Bail Conditions

39. The Bill will amend sections 59A(1)-(2) of the Youth Justice Act to remove the requirement for a police officer to consider alternatives to arrest for contraventions, or likely contraventions, of bail conditions, where the child is on bail for a prescribed indictable offence, or where a child is on bail for an offence against sections 177 (contravention of domestic violence order) and 178 (contravention of police protection notice) of the *Domestic and Family Violence Protection Act 2012*.

40. The Bill inserts a new section 59AA in the Youth Justice Act to specify that notwithstanding there being no requirement for a police officer to consider alternatives to arrest in the above circumstances, a police officer will retain the discretion to take an alternative course of action having regard to the matters under section 59A(4) (i.e. the seriousness of the breach and whether the child has a reasonable excuse for the breach).

41. As a result of this amendment, a consequential amendment to the PPR Act is required.

Overview of Transfer of 18 Year Olds to Adult Custody

42. The Bill amends the Youth Justice Act to enable the transfer of certain 18-year-olds in youth detention centres to adult correctional facilitates.

[3] https://www.cyjma.qld.gov.au/about-us/performance-evaluations/electronic-monitoring-trial-evaluation.

43. The Bill amends section 276B of the Youth Justice Act to provide that sentenced persons aged 18 years or older are liable to transfer if they have a remaining period of detention of two months, instead of the current six months. The Bill will also provide that the initial application for the delay of a transfer will be made to the chief executive, instead of the Childrens Court. The chief executive making this decision at first instance will be more efficient than requiring an application to the Childrens Court.

44. The Bill includes provisions to ensure procedural fairness, including an opportunity for the young person to obtain legal representation and comment on the proposed transfer date. The chief executive's decision will also be reviewable by the Childrens Court.

45. The Youth Justice Act does not currently contain provisions for the transfer of remanded young people into adult custody.

46. The Bill provides that a person over 18 who enters custody on remand for a child offence goes to an adult facility, unless the remanding court orders otherwise, using the same decision framework as described above for sentenced 18-year-olds.

47. The Bill also inserts new provisions to enable the transfer of detention centre remandees over 18 to adult correctional facilities.

48. The chief executive may notify a remandee who has at least two months until their next court date, or no next scheduled court date, that the chief executive is considering a transfer and that the remandee may make a submission. The chief executive must then ensure the detainee has an opportunity for a consultation with a lawyer

49. The Bill also provides that a remandee over the age of 18 may request a transfer.

50. In making the decision to transfer, in line with the transfer of sentenced 18-year-olds, the chief executive must consider any vulnerability of the applicant, and any intervention, rehabilitation or similar activities being undertaken by the applicant and the availability of those activities if transferred.

51. The chief executive's decision will be reviewable by the Childrens Court. The Bill ensures procedural fairness by providing an opportunity for the young person to obtain legal representation and comment on the proposed transfer.

52. The Statement of Compatibility tabled with the Bill on introduction on Tuesday 21 February 2023 did not include the full assessment of the compatibility of clauses 30 to 36 – Transfer of 18-year-olds to adult correctional centres with human rights.

53. The omission was inadvertent and the following details those parts that were not included in the Statement of Compatibility.

54. Clause 30 of the Bill amends section 276B of the Youth Justice Act so that a person will be liable to be transferred to a corrective services facility if they turn 18 years while serving a period of detention, and they are liable to serve a remaining period of 2 months or more. Presently, to be eligible for transfer the person must be liable to serve a remaining period of 6 months or more after turning 18 years.

55. Clause 33 inserts section 276DA, which will allow a detainee given a transfer direction to apply to the chief executive for a temporary delay of the detainee's transfer to the corrective services facility. If the chief executive grants the application the chief executive

must decide a new day for the prison transfer direction to take place, being no more than 6 months after the day the applicant turns 18 years.

56. Clause 33 also inserts section 276DB, which gives a detainee a right to apply to the Childrens Court for review if the chief executive refuses the application for a temporary delay. The Childrens Court may affirm the day the prison transfer direction takes effect, or decide a new day for the prison transfer direction to take effect, again being no more than 6 months after the day the detainee turns 18 years.

57. All persons deprived of liberty must be 'treated with humanity and with respect for the inherent dignity of the human person' (section 30(1)). A child is a person under 18 years. Convicted children 'must be treated in a way that is appropriate for the child's age' (section 33(3) of the HR Act). 'Appropriate' treatment for convicted children in detention is likely to include segregation from adult prisoners.

58. The amendments made by clause 30 promote the right of children in detention to be segregated from adults, by enabling the transfer of those who have turned 18 to adult correctional facilities for the remainder of their sentence (where the remainder is 2 months or more).

59. However, the amendments also permit some delay in the process of transferring those who turn 18 years to correctional services facilities, for up to 6 months. This recognises that there may be good reasons (for example, relating to the young person's vulnerabilities) for delaying their transfer to a correctional services facility. It is also consistent with article 37(c) of the Convention on the Rights of the Child, which recognises an exception to the requirement of segregation where 'it is considered in the child's best interest not to do so'. This flexibility represents an appropriate balancing of the rights of children and the rights of young adults. The Minister for Police and Corrective Services, Minister for Fire and Emergency Services is satisfied that clause 30 is compatible with human rights.

60. Clause 36 inserts a new Part 8, division 2A, subdivision 3, which deals with children held on remand. It inserts section 276H, which will permit the chief executive to give a written notice to a person who turns 17 years and 10 months while remanded in custody, and who will not attend court in relation to the charge for 2 months or more. The notice will inform the person that the chief executive is considering transferring the person to a corrective services facility. The person will have an opportunity to make submissions about the transfer. If the chief executive has given the person such a notice, the chief executive will be able to decide to transfer the person to a corrective services facility on or after the day they turn 18 years (section 276I).

61. New section 276J gives the person a right to apply to the Childrens Court for review of a decision of the chief executive to transfer them to a corrective services facility. The Childrens Court may affirm the transfer day, or decide a new transfer day.

62. Section 33(1) of the HR Act provides that children detained on remand 'must be segregated from all detained adults'.

63. Clause 36 has the consequence that the Youth Justice Act aligns more closely with, and therefore promotes, the right in section 33(1) of the HR Act of children held on remand to be segregated from detained adults. The amendments still allow for some flexibility in appropriate cases, which is consistent with article 37(c) of the Convention on the Rights

of the Child, which recognises an exception to the requirement of segregation where 'it is considered in the child's best interest not to do so'. Accordingly, clause 36 does not limit, but rather promotes, the right in section 33(1).

Sentencing Children – *Youth Justice Act 1992* (Qld)

64. The Bill seeks to respond to the small cohort of serious repeat young offenders who engage in persistent and serious offending by strengthening the youth justice sentencing framework.

Update to Sentencing Principles to Include Bail Compliance

65. The Bill inserts a clarifying provision into the Youth Justice Act confirming that a court is to take into account any bail history information put before it in sentencing. This could include information about compliance or non-compliance with bail conditions, or reoffending or abstaining from offending while on bail. This will enhance community confidence in the sentencing process.

Creation of a Serious Repeat Offender Declaration

66. The Bill inserts a new sentencing scheme into the Youth Justice Act for serious repeat youth offenders.

67. The scheme contained in the Bill and the term 'serious repeat offender' in this context has no connection to the "Serious Repeat Offender" Index that is referred to in paragraph 9 and 12 of this brief.

68. The scheme will allow the prosecution to apply to a court sentencing a child for a prescribed indictable offence to be declared a 'serious repeat offender'.

69. A declaration may be made by a sentencing court where the child has been previously sentenced to at least one detention order for a prescribed indictable offence. Under the Youth Justice Act, a detention order includes a conditional release order. The definition of prescribed indictable offence to be relied on is the definition in the dictionary in Schedule 4 of the Youth Justice Act.

70. The test to be applied by a sentencing court in considering whether to make a declaration is whether the court is satisfied that there is a high probability that the child would commit a further prescribed indictable offence. This test is adopted from a similar sentencing regime in Western Australia for children who repeatedly commit 'serious offences' (section 124 of the *Young Offenders Act 1994* (WA).

71. The Bill will also require the court to order, receive and consider a pre-sentence report prepared under the Youth Justice Act and have regard to:

- the child's previous offending history and bail history;
- any efforts at rehabilitation by the child including rehabilitation carried out under a court order; and
- any other matter the court considers relevant.

72. Where a declaration is made, the court will be required when determining an appropriate sentence to give primary regard to:

    - the need to protect members of the community;
    - the nature or extent of violence used or threatened to be used in the commission of the offence;
    - any disregard by the child for the interest of public safety;
    - the impact of the offence on public safety; and
    - the child's criminal and bail history.

73. After considering these specific matters, a court will consider existing matters set out in section 150 (Sentencing principles) of the Youth Justice Act. In these circumstances, the court must still have regard to the special considerations in s150(2) of the Youth Justice Act and other sentencing factors in s150(1), but these are not to be the primary considerations.

74. The provisions require the court to state in its sentencing remarks for the child reasons for the making the declaration. Existing avenues for sentence reviews and appeals are to apply to the making of a declaration.

75. The declaration will continue to operate for any further sentences for prescribed indictable offences for a period of 12 months. If the child was sentenced to detention, the declaration will continue to have effect for 12 months from the day the child was released into the community.

76. If a declaration has been made by a court (the original court) and the offender is to be sentenced for a further prescribed indictable offence committed within the 12-month period, a court of like or lower jurisdiction to the original court must apply the primary sentencing principles set out in section 150 of the Youth Justice Act.

77. As indicated in the Minister's Statement of Compatibility, the Government acknowledges that new sections 150A and 150B of the Youth Justice Act are incompatible with human rights. The Bill contains a provision which overrides the operation of the HR Act in relation to these provisions.

Strengthening Conditional Release Orders

78. The Bill amends the conditional release order (CRO) provisions in the Youth Justice Act to increase the maximum duration of the program period for the orders from three to six months.

79. The Bill also provides that where a court is dealing with a breach of a CRO imposed on a child for a prescribed indictable offence, the court will be required to order that the child serve the suspended period of detention unless special circumstances exist.

80. As indicated in the Minister's Statement of Compatibility, this amendment is not compatible with the HR Act and the Bill will enact a provision which overrides the application of that Act in relation to this provision.

Expansion of the Definition of Prescribed Indictable Offence

81. Amendments to the Youth Justice Act in 2021 introduced a limited presumption against bail ('show cause') for children charged with a prescribed indictable offence while on bail for an indictable offence. In these circumstances, the court or police officer must refuse to release the child from custody unless the child shows cause why their release is justified.

82. The current definition of prescribed indictable offences includes offences, which could attract a life sentence or maximum imprisonment of 14 years if committed by an adult, for example, grievous bodily harm, robbery, and burglary. It also includes specified offences such as assault occasioning bodily harm, wounding, and certain UUMV offences.

83. The commencement of these measures on 30 April 2021 had a significant and immediate impact on the number of young people remanded in custody. The average number of children in custody the following month rose by over 30, to be 70 higher than the same month the previous year. By September 2021, they were up by another 20, 101 more than the same month the previous year.

84. The Bill inserts a new definition of prescribed indictable offence at Schedule 4 of the Youth Justice Act. The new definition retains the existing prescribed indictable offences and adds additional offences to provide that the presumption against bail applies to being a passenger in a vehicle the subject of an unlawful use offence (this is achieved by omitting the current requirement that it be alleged that the child was the driver), and to the offence of entering premises with intent to commit an indictable offence.
85. The new 14 year circumstances of aggravation for unlawful use of a motor vehicle will also be prescribed indictable offences, because of the 14 year penalty. The definition will also apply to new provisions introduced in the Bill including the Serious Repeat Offender Declaration Scheme (page 8 refers to Serious Repeat Offender Declaration)

Community Programs – Multi-Agency Collaborative Panels

Creation of a Legislative Framework for Multi-Agency Collaborative Panels

86. Multi-agency collaborative panels (MACPs) work with high risk young people to address underlying factors contributing to offending behaviour. The Bill ensures the continuation of multi-agency collaborative panels which provide intensive case management and holistic support for young persons identified as high risk or requiring a collaborative response through a multi-agency and multi-disciplinary approach.

87. MACPs currently function in 18 locations, with a specific emphasis on addressing the needs of serious repeat young offenders, by coordinating access to services and support such as mental health, drug and alcohol programs; school engagement support; cultural connections; connecting with doctors and allied health providers.

88. Information is shared between members under an arrangement established under part 9, division 2A of the Youth Justice Act, which has appropriate regard to the child's right to privacy.[4]
89. The Bill establishes MACPs in legislation in a way similar to the establishment of the SCAN (suspected child abuse and neglect) system under the Child Protection Act 1999. The Bill legislates the MACP system's purpose, membership (including the participation of non-core members as appropriate), and the responsibilities of core members. The

[4] The arrangement is available at https://www.cyjma.qld.gov.au/youth-justice/reform/youth-justice-taskforce/memorandum-understanding-arrangement.

current information sharing arrangement under part 9, division 2A of the Youth Justice Act will continue. The intent of this legislation is to ensure the MACPs continue to operate as intended.

Fundamental Legislative Principles

90. The Committee is referred to pages 8 to 13 of the Explanatory Notes to the Bill which identifies and justifies potential breaches of fundamental legislative principles.

Compatibility with the *Human Rights Act 2019* (Qld)

91. The Committee is referred to the Statement of Compatibility for the Bill, , which includes a detailed analysis of the Bill's interaction with human rights, including analyses of amendments which are not compatible with human rights. The Committee should also refer to the Statement of Exceptional Circumstances which was tabled in accordance with section 44 of the HR Act.

Consultation

92. The Committee is referred to page 13 of the Explanatory Notes to the Bill.