

STRENGTHENING COMMUNITY SAFETY BILL 2023

Submission No: 14
Submitted by: Australian Lawyers
Publication: Alliance

Attachments:

Submitter Comments:

Strengthening Community Safety Bill 2023

Submission to the
Economics and Governance Committee

23 February 2023

Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the recently introduced *Strengthening Community Safety Bill 2023* ('the Bill') and associated amendments to the *Bail Act 1980*, the Queensland Criminal Code, the *Youth Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*.
2. The ALA wishes to note of the unacceptably short turnaround time with which stakeholders have been given an opportunity to address a deeply complex issue surrounding the proposed amendments and associated impact on Queensland society, and in particular on the futures of vulnerable children and young people.
3. The Australian Lawyers Alliance (ALA) strongly opposes the proposed objectives of the *Strengthening Community Safety Bill 2023* and proposed amendments associated with the Bill, including amendments to the *Bail Act 1980*, the Queensland Criminal Code, the *Youth Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*. Its provisions are an express violation of agreed international human rights norms and instruments, indicating that the Government is not serious about ensuring it complies with its own *Human Rights Act 2020*.
4. The Bill will not reduce youth crime. There is ample empirical data to suggest that placing youth in prison leads to abuse in detention – physical and mental. Therefore, the ALA is very disturbed by the following objectives:
5. Given the time constraints, the ALA will address a select number of proposals under the Bill and we would welcome the opportunity to expand on these at any upcoming hearing:

Provide that it is an offence for children to breach a condition of their bail undertaking and;

Remove the requirement that police consider alternatives to arrest if they reasonably suspect a child on bail for a prescribed indictable offence or certain domestic violence offences has contravened or is contravening a bail condition:

6. The ALA is strongly opposed to both these proposals. The ALA notes that a presumption in favour of depriving children of their liberty, without reference to their individual circumstances is contrary to Australia's obligations under international human rights

conventions, which emphasise that depriving children of their liberty must be reserved as a 'last resort', and 'limited to exceptional cases'.²

7. The ALA further notes that creating additional offences around bail increases the risk of detention and represents a serious incursion into the right of children to protection in their best interests, given that the use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration into society.³
8. The ALA is also concerned that creating an additional offence for breach of bail conditions thus increases the likelihood of incarceration, will be a major contributing factor in causing children to become further entrenched in the criminal justice system. Several studies confirm that when children are drawn into the criminal justice system at a young age, there is a significantly higher likelihood of subsequent reoffending, and a lower likelihood of that child completing her/his education or securing employment.⁴
9. The ALA strongly submits that the rationale for the proposed Bill is flawed from the outset on the basis that creating more offences leads to more interaction with the criminal justice system, and consequently, more offending.

² Human Rights Committee, General comment No 35: Article 9 (Liberty and security of the person), 112th sess, UN Doc CCPR/C/GC/35 (16 December 2014) 12 [38]; Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37(b); Committee on the Rights of the Child, General comment No 24 (2019) on children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) 14 [86]-[88]; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA Res 40/33 (adopted 29 November 1985) ('the Beijing Rules') r 13; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA Res 45/113 (adopted 14 December 1990) ('the Havana Rules') rr 2, 17. 31 *Certain Children v Minister for Families and Children* [No 2] (2017) 52 VR 441, 522 [262](c), quoting UN Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice, 44th sess, UN Doc No CRC/C/GC/10 (25 April 2007) 5 [11].

³ *Certain Children v Minister for Families and Children* [No 2] (2017) 52 VR 441, 522 [262](c), quoting UN Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice, 44th sess, UN Doc No CRC/C/GC/10 (25 April 2007) 5 [11].

⁴ Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision, 2014–15*, Juvenile justice series no. 20, June 2017; Australian Institute of Health and Welfare, *Young People Aged 10–14 in the Youth Justice System, 2011–2012*, July 2013. 9 <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-annual-summary-statsdetention.pdf>

Extend and expand the trial of electronic monitoring as a condition of bail for a further two years and to include eligible 15-year-olds:

10. This proposal will permit a court to impose on a grant of bail, a condition that the child must wear a tracking device when released on bail. The ALA strongly opposes this proposal, including reducing the age to 15-year-olds. The ALA notes recent comments from the Queensland Human Rights Commissioner that electronic monitoring devices are not appropriate for young people charged with offences and released on bail.⁵
11. The ALA is concerned that requiring some young people on bail to wear electronic monitoring devices creates a significant level of stigma for that young person making it difficult for her/him to attend school, find employment, or secure safe accommodation. Such a young person will need significant family support for the desired effect of electronic monitoring to be achieved. For many young people in this cohort such family support will not be available. This is particularly the case for Aboriginal and Torres Strait Islander young people who make up a disproportionate number of young people under child protection orders, for whom the parent is the state.
12. The ALA is further concerned that the requirement for some young people on bail to wear electronic monitoring devices will inflame the already present concerns of the growing vigilante responses to youth crime. The devices may make it easier for this group to identify the children on bail making them more vulnerable when in public. A UK systematic review of the effectiveness of the electronic monitoring of offenders in several countries found that electronic monitoring works best with just one category of offenders: sex offenders; but when extended to broader “high-risk” offenders of all ages, there was no significant positive effect compared to non-monitoring.⁶

⁵ <https://www.abc.net.au/news/2022-11-17/qld-gps-monitoring-devices-youth-justice-review-report/101661620>

⁶ Jyoti Belur, Amy Thornton, Lisa Thomson, Matthew Manning, Aiden Sidebottom, Katie Bowers. 2017. *What Works Crime Reduction Systematic review Series – No 13 A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders*. UCL Department of Security and Crime Series, University of London. 2017, available online at https://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/Electronic_monitoring_SR.pdf

13. The ALA submits that there is very little benefit in incurring the substantial cost of introducing electronic monitoring of young people on bail, given the evidence that there is no significant positive effect in terms of crime reduction, and the substantial risk that young people required to wear such a device are being set up to fail, resulting in increased incarceration for this vulnerable cohort.

Provide that a child’s bail history must be taken into account during sentencing and;

Create the ability of a sentencing court to declare that a child offender is a serious repeat offender in certain circumstances to enable considerations such as community safety to be paramount:

14. The ALA submits that the proposed Bill will disproportionately affect Aboriginal and Torres Strait Islander young people, noting that they are disproportionately represented in the total number of young people in detention in Queensland.⁷ Currently, Queensland has more children behind bars than anywhere else in Australia, 63% of who are Aboriginal and Torres Strait Islander young people.⁸
15. According to statistics from the Queensland Youth Justice annual survey, over 70 per cent of young people in detention in Queensland are Aboriginal or Torres Strait Islander.⁹ An Aboriginal/Torres Strait Islander young person was 32 times more likely to be in detention than a non-Aboriginal/Torres Strait Islander young person.¹⁰

⁷ <https://www.theguardian.com/australia-news/2021/feb/10/queensland-crackdown-on-youth-unlikely-to-work-and-will-target-indigenous-kids-experts>

⁸ <https://www.theguardian.com/australia-news/2023/feb/21/queensland-to-override-states-human-rights-act-in-bid-to-make-breach-of-bail-an-offence-for-children>

⁹ Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision*, 2014–15, Juvenile justice series no. 20, June 2017; Australian Institute of Health and Welfare, *Young People Aged 10–14 in the Youth Justice System, 2011–2012*, July 2013.

⁹ <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-annual-summary-statsdetention.pdf>.

¹⁰ Australian Institute of Health and Welfare. 2018. *Youth Justice in Queensland 2017-18*, available online at: <[6](https://www.aihw.gov.au/getmedia/29525c16-7dbd-458f-8458-6baf491305ad/Factsheet-YJ_2017-18_Qld.pdf.aspx#:~:text=88%25%20were%20supervised%20in%20the,rest%20were%20serving%20a%20sentence.>></p></div><div data-bbox=)

16. This data would suggest that that the proposals in the Bill (and associated amendments to the *Bail Act 1980*, the Queensland Criminal Code, the *Youth Justice Act 1992* and the *Police Powers and Responsibilities Act 2000*) will disproportionately affect Aboriginal and Torres Strait Islander young people, further increasing their incarceration.
17. As noted above, the Bill seeks to introduce a presumption against bail when a young person is charged with a prescribed indictable offence and that offence was alleged to have been committed while the child was released into the custody of a parent. This will particularly disadvantage Aboriginal and Torres Strait Islander young people who make up a disproportionate number of young people under child protection orders, for whom the parent is the state.

Conclusion

18. The Australian Lawyers Alliance (ALA) is available to provide further assistance to the Committee on the issues raised in this submission.
19. In light of the complexity of the issues involved, the ALA would support an urgent stakeholder forum where the issue is more broadly discussed with community groups, QPS etc. The ALA is of the view that youth crime rates and associated social issues would be better informed by a broader stakeholder consultation in order to fully and effectively address the socio-economic, health, housing and other relevant factors which play into perpetuation of crime in our society.
20. The ALA urges the government to consider diversion of a juvenile away from the criminal justice system and evidence-based strategies as effective means for addressing offending behaviour and consistently rising crime rates.

Yours sincerely,



Sarah Grace

President, Queensland Branch Committee

Australian Lawyers Alliance