

## STRENGTHENING COMMUNITY SAFETY BILL 2023

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**Submitted by:** Aged and Disability Advocacy  
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24 February 2023

Committee Secretary  
Economics and Governance Committee  
Parliament House  
George Street QLD 4000

By email: [EGC@parliament.qld.gov.au](mailto:EGC@parliament.qld.gov.au)

Dear Committee

### **Strengthening Community Safety Bill 2023**

We write to express our strong opposition to the Strengthening Community Safety Bill 2023 (the **Bill**) in its current form.

Aged and Disability Advocacy Australia (**ADA**) is deeply concerned about fundamental aspects of the Bill, and the way in which it has been introduced without an adequate consultation timeframe to allow for appropriate community feedback and scrutiny.

#### **About ADA Australia**

ADA is a not for profit, independent, community-based advocacy and education service with more than 30 years' experience in informing, supporting, representing and advocating in the interests of older people, and persons with disability in Queensland.

ADA also provides legal advocacy through ADA Law, a community legal centre and a division of ADA. ADA Law provides specialized legal advice to older people and people with disability, including those living with cognitive impairments or questioned capacity, on issues associated with human rights, elder abuse, and health and disability legal issues related to decision-making.

ADA advocates and legal practitioners work with identified First Peoples advocates through the Aboriginal and Torres Strait Islander Disability Network Queensland (**ATSIDNQ**), a network established to support mob with disability and provide individual advocacy services for Aboriginal and Torres Strait Islander people with disability.

#### **Timeframe for response**

The Bill was introduced on 21 February 2023, with responding submissions due by midday, 24 February 2023.

This is a grossly insufficient period of time for the community to consider and provide feedback in response to any proposed legislative change.

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ADA Australia acknowledges the Traditional Custodians of this land and pays respect to Elders, past and present.

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It is particularly worrying when considering the context of this Bill, which seeks to introduce measures that are incompatible with human rights. The incompatibility of the proposed measures is recognised in the Statement of Compatibility and in the Explanatory Notes, though neither provide a justification that is demonstrably commensurate to the objectives of the Bill.

In fact, the Statement of Compatibility explicitly recognises this overreach. The Statement refers to the Bill's intention to *'respond to serious repeat offenders'*.<sup>1</sup> It continues, stating that the measures in the Bill are to *"respond to the **small cohort** of serious repeat young offenders...."*<sup>2</sup> (our emphasis).

This is essentially repeated in the Statement about Exceptional Circumstances, which is intended to provide justification for the excision of human rights. Instead, that statement reinforces the extraordinary overreach of the proposal to void application of the *Human Rights Act 2019* (the **Human Rights Act**), stating, *"There is an acute problem presented by a small cohort of serious repeat offenders who engage in persistent and high-risk offending"*.

The Statement of Compatibility acknowledges several examples in which provisions of the Bill are incompatible with human rights:

- Overriding the Human Rights Act;
- Measures that are in conflict with best practice and international standards, including conventions and rules that Australia has ratified, such as those relating to the detention of children;
- Measures that are acknowledged to have negatively impact the success of diversionary programs, and instead increase the rate of persons into the criminal justice system and rates of recidivism;
- Acknowledgement that the measures proposed will significantly impact on Aboriginal and Torres Strait Islander peoples.

These acknowledgements underscore the inappropriate and insufficient time period which has been provided for consultation and feedback on the Bill.

We note with support the Government's introduction of the Path to Treaty Bill 2023. That bill has been referred to the Community Support and Services Committee for consideration, with the stated purpose and objectives of the proposed legislation including:

*"a Truth-telling and Healing Inquiry to inquire into, and report on, the effects of colonisation on Aboriginal and Torres Strait Islander peoples."*

*"To reframe and strengthen the relationship between Queensland's First Nations and the wider community. The Path to Treaty recognises the process of colonisation has marginalised and disempowered Aboriginal and Torres Strait Islander peoples."*

It is difficult to reconcile the content of these two pieces of proposed legislation, and particularly, their introduction in such a close timeframe. Not only will the consequences of the proposals set out in the Bill conflict with those intended by the Path to Treaty, but the introduction in this manner, without sufficient evidence basis and proper consultation, discredits the Government's stated intentions about reaching treaty with Aboriginal and Torres Strait Islander Peoples and, in the Premier's words, the *"dignity that is long since owed."*<sup>3</sup>

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<sup>1</sup> Statement of Compatibility to the Strengthening Community Safety bill 2023, page 2, <<chrome-extension://efaidnbnmnnibpcajpcglclefindmkaj/https://documents.parliament.qld.gov.au/tp/2023/5723T166-F46A.pdf>>.

<sup>2</sup> Ibid, page 3.

<sup>3</sup> Ministerial Statements, Hon. A Palaszczuk, *Introduction of the Path to Treaty Bill 2023*, Parliament House (22 February 2023).

Any argument that attempts to distinguish the two bills as separate issues will not withstand inquiry. This is recognised by the targets of Closing the Gap, which acknowledges the role that colonisation has had on the current social and economic issues and inequality experienced by Aboriginal and Torres Strait Islander Peoples.

In particular, the Closing the Gap National Agreement (to which Queensland is a party) includes the following targets:

- Adults are not overrepresented in the criminal justice system (target 9)
- Young people are not overrepresented in the criminal justice system (target 10)
- Children are not overrepresented in the child protection system (target 11)
- People enjoy high levels of social and emotional wellbeing (target 14).

This Bill will have a direct and detrimental impact on the government's success in progressing these targets.

The message that the measures proposed by the Bill, particularly those relating to bail breaches and sentencing will be ineffective has consistently, and urgently, been provided to the Government by peak bodies and leading community service organisations, the Human Rights Commission, and academics.

#### *Fundamental Legislative Principles and the Legislative Standards Act 1992*

The *Legislative Standards Act 1992* (the **Standards Act**) defines the fundamental legislative principles (the **Principles**) as *the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.*

The process set out in the Standards Act requires the government to include assessment of any legislative proposals against the Principles, with appropriate scrutiny, transparency and consultation. The limited justifications regarding the incompatibility of proposed measures in the Bill that are offered in the Explanatory Notes and the Statement of Compatibility, alongside the inadequate consultation timeframe, demonstrate clearly that proper regard has not been had to the obligations of the Standards Act, or the Principles that it sets out.

The result is that the Bill and its process of introduction are a departure from the Principles, and one that has not been properly explained or justified.

Further, several aspects of the Bill may directly conflict with the Principles, including:

- That the powers set out in the Bill are sufficiently defined and subject to appropriate review. Though we note that the decision to transfer of a child to a corrective services facility will, upon application by the affected child, be reviewable by the Children's Court (clause 276J), the Bill does not include provision for timely review of other critical sections, including those that introduce new criminal offences
- Consistency with principles of natural justice, which relevantly requires that there must be sufficient evidence to support a decision
- Has sufficient regard to Aboriginal tradition and island custom

#### *Seeking to exclude the Human Rights Act 2019*

In addition to those concerns raised above with respect to the proposal to void application of the *Human Rights Act* in relation to aspects of the Bill, ADA is deeply concerned that the reliance upon the limited justification for doing so will have other, unintended consequences. This includes the risk

of setting a precedent for excision of human rights, for adoption in other bills and by future governments.

#### *Judicial discretion*

ADA strongly disagrees with provisions in the Bill which infringe upon the discretion of the judiciary to make an appropriate decision having regard to the full context of the offender, the victim, and the circumstances of alleged offending.

An independent judiciary is a key safeguard to the rule of law. We are concerned with several aspects of the Bill which seek to impose requirements on the judiciary that will impact on this independence, and that may result in outcomes which are in conflict with the principles of sentencing – including that imprisonment is ordered only when no other punishment is appropriate.

#### *Proposal to increase maximum penalties*

The Statement of Compatibility acknowledges that the proposal to increase custodial penalties is in conflict with the protection of rights pursuant to the *Convention of the Rights of the Child*, an instrument ratified by Australia in 1990.

The Statement appears to attempt to justify the increasing of maximum penalties with the statement, *“The purpose of increasing the maximum penalties for section 408A(1) and (1A) of the Code is to more appropriately reflect the seriousness of these offences and send a message to offenders and the community that this conduct is viewed seriously and is not acceptable.”*

The suggestion that longer sentences deter criminal activity has been consistently refuted. A significant body of evidence, of which the Government is undoubtedly aware, is that in fact in many cases longer prison sentences not only do not deter crime but *in fact may have the opposite effect*.

Significant numbers of the key stakeholders including peak legal bodies, the community legal sector, social services organisations and academics have been seeking to engage with the government in recent weeks, and urging the government to adopt an evidence-based response to the issues, including the *‘small cohort of repeat offenders’* to which the Bill refers.

These organisations have continuously called for consultation on the introduction and resourcing of rehabilitative, restoration-based approaches that are demonstrated to reduce re-offending.

It is deeply disappointing that the government has declined to apply an evidence-based approach to these issues.

#### *Impact on persons with disability*

ADA holds serious concerns about the impact of the proposed measures in the Bill for persons with disability.

People with disability are already significantly overrepresented in the prison population, with at least 50% of persons serving custodial sentences identified as having a disability.<sup>4</sup>

In responding to previous parliamentary inquiries, ADA has raised concerns about the institutional response to persons with ‘invisible disabilities’, including acquired brain injury, cognitive and

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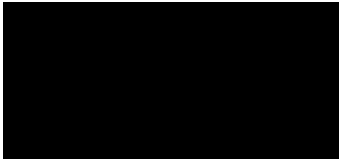
<sup>4</sup> Human Rights Watch Report, *I Needed Help, Instead I was Punished: Abuse and Neglect of Prisoners with Disabilities in Australia*, (6 February 2018), < <https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>>.

intellectual disability, and psychosocial disability. Expressions of these disabilities are often misunderstood by responding agencies, including police. This increases the likelihood that a person with disability will be diverted into the criminal justice system. This Bill further increases the likelihood that the same person with disability will experience extended periods in custody.

This will undoubtedly have adverse implications for the person, who is likely to be separated from any support or rehabilitative services, and other protective factors. For persons with mental illness and other medical needs, sudden detention may restrict their access to prescribed medications. For persons who are subject to an order that is under review by the Mental Health Review Tribunal, not being provided with prescribed medications whilst in custody will negatively affect their ability to comply with the order. ADA legal advocates regularly assist persons, including minors, who are the subject of these orders and who report not being provided with their prescribed medication whilst in the watchhouse.

Thank you for the opportunity to comment. ADA would be pleased to further assist the Committee with its inquiry. Should you wish to discuss this submission, please do not hesitate to contact Vanessa Krulin, Solicitor and Senior Policy and Research Officer on [REDACTED]

Yours faithfully



**Kathy Chandler**  
A/Chief Executive Officer