## STRENGTHENING COMMUNITY SAFETY BILL 2023

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Queensland Law Society

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Office of the President

24 February 2023

Our ref: [ChLC]

Committee Secretary
Economics and Governance Committee
Parliament House
George Street
Brisbane Qld 4000

**By email**: EGC@parliament.qld.gov.au

Dear Committee Secretary

**Strengthening Community Safety Bill 2023**

Thank you for the opportunity to provide feedback on the Strengthening Community Safety Bill 2023 (the Bill).

While grateful for the opportunity to comment on the Bill, we raise significant concerns with the unacceptably short timeframe for submissions. This is exceptionally concerning considering the magnitude of the legislative reform and the impact it will have on children and young people. A call for submissions on the Bill was issued on Tuesday, 21 February 2023. Submissions were due 12pm, Friday, 24 February 2023, providing a mere 60 hours for stakeholders to respond. The inadequacy of the truncated deadline is compounded by the lack of targeted consultation or the provision of a consultation draft of the Bill to stakeholders prior to the Bill's introduction.

The reforms proposed in the Bill are significant and will have wide-ranging implications for Queenslanders, in both the short-term and long-term. It is in all our best interests to ensure proposed laws work as effectively and efficiently as possible and have no unintended consequences. This requires meaningful and robust consultation with stakeholders. Short consultations will not yield the best legislation for the people of Queensland.

In the response to QLS Queensland State Election 2020 Call to Parties Statement from Steven Miles, Deputy Premier of Queensland, the Palaszczuk Labor Government stated,

> The Palaszczuk Labor Government is committed to evidence-based policy-making. A re-elected Palaszczuk Labor Government will continue to make laws and policy decisions that are based in evidence and in the best interests of Queensland. Consultation has been a hallmark of the Palaszczuk Government over the past two terms of Government and will continue to be under a re-elected Palaszczuk Government.

We are disappointed that this has not occurred.

In light of the short timeframes, and with the assistance of available expert volunteer committee members, we have prepared a response focusing on some key issues. There are likely a wide range of other issues which we have not had the time nor opportunity to consider in detail. If we have not commented on other aspects of the Bill, it should not be taken as assent or support.

This response has been compiled by the QLS Children's Law Committee, Criminal Law Committee, Human Rights and Public Law Committee, Access to Justice and Pro Bono Law Committee, whose members have substantial expertise in youth justice and adult criminal justice matters.

## 1. Community safety is important

QLS acknowledges that youth justice has a broad impact on our community and we recognise the grief of victims and their families. When one of our community members is impacted, the ripple effects are felt in our suburbs and cities. We acknowledge the concerns held by community members and those who have been impacted by youth crime in Queensland and support the right of all Queenslanders to be and feel safe in their community. We also understand community expectation for steps to be taken to address youth crime. We as the Queensland Law Society, with over 150 years of legal experience call for measures that will actually work to keep Queenslanders safe. It is our firm view that this Bill will not keep Queenslanders safe. It will cause more crime, more community harm and not achieve the intended outcome of community safety.

The Society considers that the safety and security of all Queenslanders should be front of mind when considering any policy and legislative reform. In order to address safety concerns and better facilitate understanding of the issues relating to youth crime, the community must have ready access to accurate and reliable information and data. It is the role of the Queensland legal profession to assist the public and the media in its understanding of legal processes (such as bail and sentencing) as they apply to children and young people and the Society takes this role very seriously.

## 2. Labor's published policy on youth justice

Queensland Law Society is disappointed by the adoption of many aspects of the Bill by Government contrary to long-standing policy positions and assurances given to the QLS in the Labor Party response to QLS Call to Parties election statements.

In 2020, Deputy Premier Stephen Miles responded to the QLS Call to Parties document for the 2020 Queensland Election saying:

> "Repeat offenders must be held accountable, but they must also be given the opportunity to turn their lives around – that's why we deliver programs like restorative justice conferencing and T2S.
>
> We know these programs are having an impact because we are seeing more young people getting back into education and training.
>
> Youth justice bail laws have been recently reviewed and amended.
>
> ***The Palaszczuk Government has no intention of implementing so-called 'breach of bail' laws***. [emphasis added] The new offence of committing an offence whilst on bail

> failed to address most bail breaches, such as failure to report. Only 185 young people were ever charged with this offence – a small proportion of offenders, and while it was touted as strategy to reduce reoffending, 90% of offenders convicted of this offence reoffended within 12 months.
>
> There are no silver bullets to address youth crime, and it requires a range of responses to both keep the community safe and divert young people from criminal behaviour. We believe we have the balance right."[1]

In 2017, the then Deputy Premier, Jackie Trad MP, responded to the QLS Call to Parties document for the 2017 Queensland Election saying:

> "The Queensland Government has implemented strategies and initiatives for youth justice that are evidence-based and provide a positive balance between holding young people accountable for their behaviour while addressing the underlying causes of their offending. This approach is achieving results.
>
> In 2016, the Queensland Government repealed the former LNP Government's punitive amendments to the *Youth Justice Act 1992* and replaced them with evidence based legislation aimed at addressing the underlying causes of youth offending. Under these amendments, Restorative Justice Conferencing was reintroduced and expanded to give both police and courts the ability to refer young people to a conference and hold them accountable, bring them face to face with their victims and take steps to make amends.
>
> Youth Justice's Transition to Success (T2S) program, a vocational training and therapeutic service program, has been rolled out to 12 locations across Queensland. T25 works with young people to re-engage them with education and training and provides them with skills and qualifications they need to enter the workforce. T2S has been highly successful at reducing the rate of re-offending, providing graduates with certificate qualifications in fields such as construction, horticulture, business and hospitality, and transitioning its graduates into school, further training and employment. T2S has also seen a nonreoffending rate of 69 per cent of graduates, compared with a 65 per cent reoffending rate for graduates of the failed boot camp program.
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> Another initiative, the Intensive Case Management program, for high risk recidivist young people piloted in Caboolture has been replicated in Townsville, as part of the comprehensive Townsville Community Youth Response. This has underpinned a significant reduction in the number of young people offending in Townsville over the last two years. Further, the number of property offences in the Townsville area has decreased by 17 per cent in the past year including a decrease in thefts and related offences in Townsville.
>
> ... A Labor Government will continue to implement youth justice reforms to ensure that our youth justice policy is aligned with evidence about what works to reduce offending."

QLS would welcome detail of the evidence base for the measures in the Bill that demonstrate that these measures will work to reduce offending and improve community safety beyond the short term. We are conscious that measures such as those provided in the Bill have been characterised by this Government as 'punitive' and 'touted as strategy to reduce reoffending'.

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[1] 'Call to Parties: Palaszczuk Labor Government response', *Queensland Law Society* (Web Page, 20 October 2020) <https://www.qlsproctor.com.au/2020/10/call-to-parties-palaszczuk-labor-government-response/>.

## 3. The first express override of the *Human Rights Act 2019* (Qld)

The proposed legislation seeks to expressly exclude the protections of the *Human Rights Act 2019* (Qld). As stated in the QLS Policy Statement on Human Rights, QLS is committed to the protection and promotion of human rights and the rule of law.[2] This is the first time that the Queensland Government has sought to override the protections in the *Human Rights Act 2019* (Qld), noting that this must only occur in exceptional situations such as war, a state of emergency or an exceptional crisis situation constituting a threat to public safety, health or order.[3] In the midst of the recent global pandemic and natural disasters, there have been no circumstances which have been thought valid to justify an override declaration of the *Human Rights Act* 2019 (Qld). As stated by the Human Rights Commissioner, the Government's express exclusion of the Human Rights Act is deeply concerning. The *Human Rights Act 2019* (Qld) requires that the government provide justifications for any limitations on human rights by demonstrating how new legislation will achieve its purpose.[4]

Presently, the Government has provided an unacceptably simplistic and brief justification of the legislation's incompatibility with the *Human Rights Act 2019* (Qld). Further to this incompatibility, the Bill violates the UN Convention on the Rights of the Child. This removal of the human rights of children does not serve its purpose in upholding the rights of victims of crime.[5]

QLS supports the dialogue model of human rights whereby the three arms of government take human rights into account when performing their functions.[6] In Victoria, an equivalent override power is contained in section 31 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter), has been invoked on three occasions.[7] The use of the override power pre-emptively silences the judiciary which undermines this dialogue model and undermines the transparency and accountability of public decision-making in the name of parliamentary sovereignty[8]. Relevantly, on each occasion that the Victorian power has been invoked the standard of 'exceptional circumstances' has not been met.[9] Like Queensland, Victoria also navigated the exceptional circumstances of the pandemic without resorting to overriding the Charter. This has led to calls for a repeal of section 31 of the Charter, removing the override power on the basis that its use is yet to meet the requisite standard.[10] The present circumstances in Queensland, similarly do not meet this standard.

## 4. Children and young people are part of the Queensland community

QLS has been a long-standing advocate for reform in the youth justice and child protection systems. Our advocacy is mindful of the need to protect children in the youth justice process and to protect the community from harm. Children occupy a very vulnerable space in our society.

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[2] QLS Policy Statement on Human Rights <https://www.qls.com.au/Content-Collections/Policy-Positions/QLS-Policy-Statement-on-Human-Rights>.
[3] *Human Rights Act 2019* (Qld) s 43(4).
[4] Queensland Human Rights Commissioner's Statement <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0020/42509/2023.02.21-Media-statement-Rush-to-pass-youth-justice-laws.pdf>.
[5] Ibid.
[6] QLS Policy Statement on Human Rights <https://www.qls.com.au/Content-Collections/Policy-Positions/QLS-Policy-Statement-on-Human-Rights>.
[7] Julie Debeljak, 'Of Parole and Public Emergencies: Why the Victorian Charter override provision should be repealed' (2022) *UNSW Law Journal* 45(2).
[8] Ibid.
[9] Ibid.
[10] Ibid.

In recognition of their age and vulnerability, QLS has advocated for children and young people in our legal system through systems advocacy and our policy position paper on children and young people's issues.

We have serious concerns regarding the Bill, including the potentially disproportionate impact on 'at risk' young people. Young people and children who come into repeated contact with the criminal justice system are extremely vulnerable: they tend to have high rates of trauma, abuse and neglect, poorer health and are more likely to have a history of alcohol and drug use and dependence.[11]

There is a strong correlation between out-of home care, youth detention and adult incarceration.[12] A majority of children in the youth justice system are known to the Department of Child Safety, that is, subject to notifications or are under orders. These "cross-over kids" are pipelined from the child protection system to the youth justice system where they have the opportunity to become a part of the cohort of recidivist offenders in the youth justice system. The recently released Report on Youth Justice Services states that in Queensland, 56.8% of young people (aged 10 – 16 years at the time of release from sentenced supervision) released in 2019-2020 returned within 12 months.[13] From youth justice they are pipelined into the adult criminal justice system where they become entrenched.

## 5. The Bill will disproportionately impact Aboriginal and Torres Strait Islander children young people

In our view, it is simply unacceptable to continue to pass legislation that will have an indirect discriminatory impact on Aboriginal and Torres Strait Islander children and young people. The statutory overriding of the *Human Rights Act 2019* (Qld) undermines international obligations including rights to self-determination and for First Nations Peoples to be consulted on decisions, which affect them.

*a) Overrepresentation of First Nations children and young people in youth detention*

First, the Society is very concerned about the disproportionate impact that the amendments will have on Aboriginal and Torres Strait Islander children and young people. Any amendment to the bail laws will have a disproportionate effect on Aboriginal and Torres Strait Island children and young people who are already overrepresented in the youth justice system.[14] Aboriginal and Torres Strait Islander children comprise up to 70% of young people in youth detention in Queensland[15] with an even larger proportion of those children subjected to solitary confinement whilst in custody.[16] In addition, the amendment to the bail laws will not allow sufficient time for First Nations young people to reintegrate back into the community or reform themselves in a culturally appropriate timeframe. It will increase their disadvantage, shorten their life span and fail to close the gap.

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[11] Law Council of Australia, *The Justice Project: Children and Young People* (Final Report, August 2018).
[12] Law Council of Australia, *The Justice Project: Prisoners and Detainees* (Final Report, August 2018) 18.
[13] Productivity Commission, *Report on Government Services: Youth Justice Services* (Report, 24 January 2023)
[14] Childrens Court of Queensland, Annual Report 2019-2020.
[15] Department of Children, Youth Justice and Multicultural Affairs, *Youth Justice annual summary statistics: 2015-16 to 2019-20* (online at 23 February 2023).
[16] https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/774-2022.pdf.

According to the Australian Institute of Health and Welfare's Youth detention population in Australia 2020 report, among young people aged 10-17, about 52% of those in detention in the June quarter 2020 were Indigenous.[17] When compared to non-Indigenous Australians, young Indigenous Australians aged 10-17 were 17 times more likely than young non-Indigenous Australians to be in detention in the June quarter 2020. For unsentenced detention, young Indigenous Australians were 17 times more likely to be detained than non-Indigenous Australians, and for sentenced detention the rate was 19 times higher for young Indigenous Australians.[18] Addressing offending by this vulnerable cohort requires significant and sustained early intervention services to address the pervasive social and economic causes of offending and divert high-risk young people from the criminal justice system.

The Queensland Government's Working Together, Changing the Sentence report recognises that prevention, early intervention, increased support services and restorative justice reduce youth offending and reoffending, while detention increases the risk of children and young people reoffending.[19] The Bill's measures are punitive and likely to increase the number of children in detention. This ultimately fails to address the underlying drivers of youth crime, and is consequently unlikely to provide an effective and enduring solution.

This is exacerbated by the lack of progress on the Closing the Gap justice targets. Earlier this month the Federal Minister for Indigenous Australians tabled the 2023 Commonwealth Closing the Gap Implementation Plan.[20] Outcome 11 seeks to reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30%. As identified in the implementation plan, this necessarily requires a focus by States on directing resources and responses to crime to supporting prevention and early intervention. The youth justice measures in this Bill are entirely at odds with this objective and will result in more First Nations children in custody and disconnection from family and culture.

The Special Rapporteur on the Rights of Indigenous Peoples published a report following her 2017 visit to Australia. In her report, she observed:

> *74. Aboriginal and Torres Strait Islander children are 24 times more likely to be detained than non-indigenous children. The Special Rapporteur found the routine detention of young indigenous children the most distressing aspect of her visit. In Cleveland Youth Detention Centre, she met several children as young as 12 years old. Many of the children had already been detained several times at the same facility and more or less gone straight from out-of-home care into detention. The majority of the detained children are on remand.*
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> ...
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> *76. Several sources, including judges, informed the Special Rapporteur that, in the majority of instances, the initial offences committed by children were minor and non-violent. In such cases, it is wholly inappropriate to detain children in punitive, rather than rehabilitative, conditions. Aboriginal and Torres Strait Islander children are essentially being punished for being poor and, in most cases, prison will only perpetuate the cycle of violence, intergenerational trauma, poverty and crime. The Special Rapporteur was*

[17] Australian Institute of Health and Welfare, *Youth detention population in Australia 2020* (Report, 26 February 2021) 10–12.
[18] Ibid.
[19] Queensland Government, *Working Together, Changing the Sentence, Youth Justice Strategy 2019-2023* (Report, December 2018).
[20] National Indigenous Australians Agency, *2023 Commonwealth Closing the Gap Implementation Plan* (13 February 2023).

*alarmed that several of the young children she spoke to detention did not see any future prospects for themselves.*

*b) First Nations children in the child protection system*

Second, QLS draws attention to the over-representation of Aboriginal and Torres Strait Islander children and young people in the child protection system. In Queensland, Aboriginal and Torres Strait Islander children are 8.5 times as likely to be placed in out-of-home care compared with non-Indigenous children. The reasons for this are complex and connected to legacies of colonisation, including the ongoing impacts of intergenerational trauma and discrimination.

The link between out-of-home care, youth justice, and adult incarceration has been well established.[21] To reduce the transition of children from child protection to youth justice, there needs to be a sustained focus on increasing access to evidence-based early intervention services that are designed to address the underlying needs of children in the child protection system (including potentially trauma, disability and psychological and health needs), in concert with measures designed to increase the capacity of carers.

We commend the government's commitment to transition decision making power to Indigenous controlled agencies in child protection as a commitment to work in partnership with Aboriginal and Torres Strait Islander Peoples' in relation to their children and young people. This policy does not seem to align with this commitment.

Many of the children and young people who will be impacted by the measures under the Bill will be those who have been impacted by the child protection system, for which the State is responsible. These policies cannot be viewed in isolation.

*c) Listening to the voices of Aboriginal and Torres Strait Islander young people*

It is our strong submission that first and foremost there be in-depth and culturally appropriate, respectful consultation with Aboriginal and Torres Strait Islander Peoples' in relation to the concerns which are purported to underpin the Bill. The importance of this consultation cannot be understated.

In September 2022 the Queensland Family & Child Commission released its report 'Yarning for Change' which observed 'the rights and aspirations of First Nations children and young people with a lived experience of the youth justice system are largely rendered invisible in the discourse, in the policy and practice of 'justice'.

We urge the government to listen to the experiences of these interactions both within the child protection and youth justice systems and to refrain from continuing to perpetuate previous legislative and policy failures.

## 6. The Bill will disproportionately impact children with a disability and children from culturally and linguistically diverse backgrounds

These legislative reforms will have a disproportionate impact on youth with disability, given their over-representation in the youth justice system.

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[21] Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report, December 2017) 486–492.

The Queensland Government Statistician's Office has reported that of the young people included in a Youth Justice census, 15.8% were assessed with or suspected of having at least one disability, 38.3% were assessed with or suspected of having at least one mental health disorder and 34.6% had been diagnosed or were suspected to have at least one behavioural disorder.[22]

This Bill may also have a disproportionate impact on youth from culturally and linguistically diverse backgrounds, given their over-representation in the youth justice system. There is a lack of clarity in relation to data and trends for youth from culturally and linguistically diverse backgrounds and refugee backgrounds within the youth justice system. However, we are aware anecdotally that there is significant over-representation. The Queensland African Communities Council has provided evidence to the Community Support and Services Committee of the over-representation of African youth in the criminal justice system and that the trend is increasing significantly.[23]

## 7. Queensland Law Society recommendations

The Society continues to propose the following:

a. Programs such as mental health, drug offending and traffic issues to address anti-social behaviour.
b. Tight supervision and guidance to divert young people away from offending behaviour.
c. Review into youth detention centres in Queensland.
d. A commitment to engage experts to investigate community-led justice reinvestment programs, restorative justice practices and domestic and international jurisdictions that have been successful in long-term, sustainable solutions that reduce the rates of recidivist offenders and children entering the youth justice system, for example – Maranguka Community Hub (New South Wales), Groote Eylandt (Northern Territory), Hawaii, United Kingdom, Scotland.
e. Increased Legal Aid Queensland, Aboriginal and Torres Strait Islander Legal Service and legal assistance sector funding for children and young people and their families responding to child protection investigations.
f. Allow for intermediaries, such as speech and language therapists and speech pathologists, to be provided to children in the youth justice system. There are a number of benefits flowing from such an initiative including better outcomes during the legal process and longer term.
g. Strong accommodation options so that when a child's released on bail they are secure and not living on the streets.
h. Review of the effectiveness of the Joint Agency Protocol to reduce preventable police call-outs to residential care services with a view to reducing the criminalisation of children in care.
i. Review the unimplemented recommendations of the Queensland Child Protection Commission of Inquiry and the barriers to implementation.
j. Implement a transparent and accessible complaints mechanism in the child protection system.

## 8. Clause 5 – Amendment of s 29 (Offence to breach conditions of bail)

[22] Queensland Treasury, Youth offending – Research brief (April 2021).
[23] Queensland African Communities Council, Submission No 3 to Community Support and Services Committee, *Inquiry into the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021* (22 October 2021).

Section 29 of the *Bail Act 1980* (Qld) creates the offence to breach conditions of bail for adults. This provision currently states that, "a defendant must not break any condition of the undertaking on which the defendant was granted bail requiring the defendant's appearance before a court."[24] It is an offence punishable by a maximum of 40 penalty units or 2 years imprisonment.[25] Currently, children are expressly excluded from this offence.

*a) QLS strongly opposes breach of bail as an offence for children*

Clause 4 proposes an amendment to remove section 29(2)(a) of the *Bail Act 1980* (Qld) and allow children to be criminalised for breaching a condition or undertaking of their bail. QLS strongly opposes clause 4.

Research suggests that detaining young people on remand is the most significant factor that results in recidivism.[26] We consider a breach of bail offence will lead to a substantial increase in:

- recidivist offending;
- financial cost of remand; and
- social and financial costs of victimisation.

*b) Palaszczuk Labor Government response to QLS Queensland State Election 2020 Call to Parties Statement from Steven Miles, Deputy Premier of Queensland*

**Palaszczuk Labor Government response to QLS Queensland State Election 2020 Call to Parties Statement from Steven Miles, Deputy Premier of Queensland**

*The **Palaszczuk Government has no intention of implementing so-called 'breach of bail' laws**. The new offence of committing an offence whilst on bail failed to address most bail breaches, such as failure to report. Only 185 young people were ever charged with this offence – a small proportion of offenders, and while it was touted as strategy to reduce reoffending, 90% of offenders convicted of this offence reoffended within 12 months.*

*There are no silver bullets to address youth crime, and it requires a range of responses to both keep the community safe and divert young people from criminal behaviour. We believe we have the balance right.*

*The Palaszczuk Labor Government is committed to evidence-based policy-making. A re-elected Palaszczuk Labor Government will continue to make laws and policy decisions that are based in evidence and in the best interests of Queensland. Consultation has been a hallmark of the Palaszczuk Government over the past two terms of Government and will continue to be under a re-elected Palaszczuk Government.*

*c) Innovative bail conditions*

QLS considers that the proposed breach of bail offence would restrict the ability of the Magistrate or Children's Court Judge to make innovative bail conditions to mitigate the risk of reoffending.

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[24] *Bail Act 1980* (Qld) s 29(1).
[25] Ibid.
[26] Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006) 4.

Bail conditions that are tailored to a child's circumstances, such as a condition requiring a child to take up a work placement, would require the child to consider their interests and a career path while also making a contribution to society. Similarly, a condition could require a child to engage with local sporting groups or community courses. Comparable to other diversionary programs, these requirements introduce structure and responsibility while maintaining a community focus.

As outlined below, we submit that non-compliance with such an order should not constitute a breach of bail, given failure to comply would not otherwise amount to a criminal act and should not be addressed through criminal sanctions. QLS is therefore concerned that judicial decision-makers may become reluctant to craft such innovative bail conditions if the breach of the condition amounted to a criminal offence.

*d) Criminalisation of non-criminal behaviour*

Bail conditions imposed on young people can often include conditions such as maintaining a curfew, following the directions of a parent or guardian, banning children from certain locations and the requirement for the child to be in the company of a parent or guardian. Currently breach of these conditions, though otherwise an example of non-criminal behaviour, empowers the police to arrest the child, take them before a court and request to have their bail revoked. A judicial officer considering all information about the circumstance of the breach then determines if bail should continue, be adjusted or be revoked. Failure to comply with these types of bail conditions by children may stem from a lack of understanding, or a lack of adequate transportation or family support, rather than an intention to commit a criminal offence.

We consider that the police and courts are currently empowered to adequately address this noncompliance with bail conditions without criminalising non-criminal behaviour.

Similarly, we note that conditions can in some instances be particularly onerous. Onerous bail conditions may be impractical and set the child up to fail. We consider that bail conditions should reflect the situation of the young person, and be proportionate to the severity of the alleged offence. For example, a 24 hour curfew may aggravate existing problems in the home environment and disrupt the child's education.[27] Criminalising breaches of such conditions may further exacerbate such negative impacts on the child's circumstances.

*e) Bail for children is different to bail for adults*

QLS is concerned with the differentiation between adult and children's bail conditions. Adults are currently afforded an exception for therapeutic programs under section 11(9) and 11AB of the *Bail Act 1980* (Qld). This will not apply to children, which means we will have all children who are on a Conditional Bail Program liable to breach of a bail condition.

Conditional Bail Programs are often in place for several months.

Conditional Bail Programs are available if the court considers, *"that a young person poses an unacceptable risk of breaching bail without more intensive support whilst in the community."*[28]

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[27] Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (Report No 84, 30 September 1997) [18.159].
[28] Queensland Courts, *Youth Justice Benchbook* (November 2020) 363.

The Youth Justice Benchbook states that a Conditional Bail Program "should not replace a young person's usual entitlement to bail. Except in instances of more serious charges and/or the presence of a significant criminal history, it should generally only be considered where the young person had already been afforded prior opportunities on bail with less onerous conditions and that the young person is likely to be remanded into detention otherwise."[29]

This means any child who is required to participate in drug rehabilitation or substance use counselling or any therapeutic intervention will be liable to breach of bail which is in direct contradiction to the youth justice principles. [30] It is essential that the therapeutic intent of children's bail be preserved but clause 4 seeks to diminish the effectiveness of such reforms.

Children's bail is far more complex than adult bail. This is because children do not have autonomy and control over the issues affecting their lives. Issues concerning unstable/unsafe housing and separated parents are well beyond the control of a child but these factors do affect a child's ability to comply with bail conditions and undertaking.

*f) Impact on the Magistrates Court*

QLS is concerned about the lack of resource allocation for legal assistance services and courts and registries to contend with the increased demand that will ensue from these reforms. This is a relevant consideration given the current number of youth justice matters before the courts. Enacting a breach of bail offence will further increase the volume of work of these courts and place further burden on an already overburdened youth justice system.

**Recommendation:** Remove clause 4 and maintain the current wording of section 29 of the *Bail Act 1980* which would mean that breach of bail as offence would not apply to children.

## 9. Clause 8 – Amendment of s 408A (Unlawful use or possession of motor vehicles, aircraft or vessels)

The Explanatory Notes to the Bill state:[31]

> Clause 8 of the Bill increases the maximum penalties for unlawful use or possession of motor vehicles, aircraft or vessels simpliciter and where the offender uses or threatens to use the motor vehicle, aircraft or vessel for the purpose of facilitating the commission of an indictable offence.

Clause 8 of the Bill also creates new circumstances of aggravation for the offence of unlawful use or possession of motor vehicles, aircraft or vessels where:

- the offending is committed in the night;
- the offender uses or threatens to use actual violence, is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance, is in company with 1 or more persons, and damages, or threatens or attempts to damage, any property;
- the offender publishes material on a social media platform or an online social network to advertise their involvement in the offence or the offending.

[29] Queensland Courts, *Youth Justice Benchbook* (November 2020) 363.
[30] *Youth Justice Act 1992* (Qld) sch 1 (Charter of youth justice principles).
[31] Explanatory Notes, Strengthening Community Safety Bill 2023 (Qld) 8.

QLS does not support this provision.

The increase of maximum penalties for certain vehicle offences is unable to have any significant effect on court outcomes. Where offenders steal and use a vehicle, they are usually charged with either enter dwelling and commit indictable offence or enter premises and commit indictable offence for the entry of the place where the vehicle was located – both offences carrying a maximum penalty of 14 years imprisonment. Increasing the maximum penalty relating to the *use* of the vehicle is unlikely to have any effect on the sentence imposed in these matters.

For offenders who are not involved in the stealing of a vehicle, but are passengers or drivers of the vehicle after the fact, the courts are required to consider the criminality of the offending and sentence proportionately according to the particular facts of the offending and the offender's history and circumstances.

A person who is charged with use of a vehicle but was not involved in the stealing of the vehicle will usually be seen to have significantly lesser culpability than those involved in the theft. The increase of the maximum penalty for these offenders will have a negligible effect on the sentencing proceedings in these matters.

In respect of the addition of new circumstances of aggravation in the offence of unlawful use of a motor vehicle, the vast majority of unlawful use offences occur with passengers in a vehicle (that is, involve more than one person). The majority occur at night. The addition of circumstances of aggravation under subsections 408A(1C)(a) and (b)(iii) will therefore categorise almost all unlawful use offences as aggravated offending, with the maximum penalty set at 14 years imprisonment.

In circumstances where a car is stolen from its rightful owner, and the offender is armed or uses or threatens violence, it should be expected that the offender would be charged with robbery. The proposed amendment largely duplicates an offence that is already described in the Criminal Code.

With respect to the circumstance of aggravation proposed as the new subsection 408A(1B) (relating to publishing evidence of offending), in practice, many children access each other's social media accounts, or use their social media accounts without security, often resulting in the publication of images and videos by one child to another's account. This will undoubtedly result in aggravated charges being brought against the incorrect person on a regular basis.

Increased penalties do not deter criminal activity. Research shows that punishment and imprisonment are ineffective deterrents, and are in fact criminogenic. This is evident at the domestic level, with the Queensland Productivity Commission report into imprisonment and recidivism finding that recidivism rates in Queensland are increasing.[32] Deterrence theory relies upon an individual committing a crime to engage in a rational calculation, using cost-benefit of whether the punishment outweighs the benefits. However, this is often not the case as many crimes are fuelled by anger, rage, depression, drug or alcohol use.

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[32] Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, 2019) 48.

This is compounded in the case of children by the fact that their relative immaturity makes them more impulsive and prone to engaging in sensation-seeking experiences than adults.[33] Current research indicates that the human brain does not reach developmental maturity until a person reaches their mid-20s.[34] with the last two parts of the brain to reach maturity being those responsible for decision-making, impulse control, and emotional processing and control.[35] Time in custody also can increase the likelihood of recidivism by enabling children to learn better criminal strategies and skills from other offenders and expand anti-social peer networks.[36]

In light of this, it is difficult to comprehend how the proposed increased penalties will serve to deter crime and promote community safety.

Clause 8 also creates new circumstances of aggravation. Where the offender publishes material advertising the offending on social media, the offender is liable to imprisonment for 12 years. If the true intent of this provision is to prevent the dissemination of advertising material in the first place, opposed to merely punishing young people, it would be more prudent to direct efforts towards the social media platforms themselves. These social media posts are often an evidentiary tool for the police, and this provision presumably does not cover SMS text messages and emails.

Where the offence is committed in the night, the offender is liable to imprisonment for 12 years. If the offender uses or threatens to use actual violence, is or pretends to be armed with a dangerous or offensive weapon, instrument or noxious substance, or is in company with 1 or more persons, or damages, or threatens or attempts to damage any property, the offender is liable to imprisonment for 14 years. As mentioned above, the severity of punishment does not serve to deter crime, particularly in the context of young people. Where there is damage beyond $30,000 and the child is pleading not guilty, it must be resolved on indictment in the Childrens Court of Queensland or District Court. This will cause delays and result in children being detained for lengthier periods of time, which has a criminogenic effect.

Moreover, it is important to note that these punishments are more severe than those attached to assaults occasioning bodily harm.[37] This cannot be said to be proportional to the wrong committed, nor a true reflection of community values. It is not reflective of community values to regard the stealing of a car and uploading of the activity to social media as more severe than physical harming another human being.

In addition, QLS is concerned that this provision does not differentiate between driver and passenger in terms of culpability. This provision does not consider the way in which children may become passengers in a stolen vehicle. For example, a young child who is a passenger in a vehicle only via encouragement by an older child, such as a sibling, may initially be unaware at the time of entry that the vehicle is stolen, yet be equally as culpable.

**Recommendation:** remove clause 8 and consider the implementation of strategies that are appropriately adapted to addressing the issue of youth crime.

[33] Queensland Treasury, Youth offending – Research brief (April 2021) 8.
[34] Ibid 7.
[35] Ibid.
[36] Queensland Treasury, Youth offending – Research brief (April 2021) 8.
[37] *Criminal Code Act 1899* (Qld) sch 1 s 339.

## 10. Clause 14 - Amendment of s 52AA (Court may impose monitoring device condition)

Clause 14(1) seeks to extend the use of monitoring devices to children as young as 15 years. The Society opposes this extension. At 15 years, children are still subject to mandatory school attendance. To apply such a measure to a school going child is inappropriate and unjustifiable.

The awaited evaluation of the Electronic Monitoring program, which appears to have been completed in November was released at the same time as this bill (see comments on consultation above). QLS raised concerns at the time of the introduction of this program and believes it is inappropriate to consider expanding program without providing appropriate time frame for community consultation of the evaluation. Without time to effectively consider the evaluation report the QLS observes the report was concerned about the ability to effectively evaluate the program. It is undesirable to expand the cohort effected by the program to younger vulnerable children without a complete and thorough assessment of its utility for an older age bracket.

Clause 14(2) seeks to extend the electronic monitoring trial for a further two years. The Queensland Law Society does not support the governments proposed plan to extend the trial of electronic monitoring of young people for a further two years. We note that matters of internet access and stable housing will impact electronic monitoring and are yet not relevant considerations in this proposal. In our view, the resources that would be spent on the extension of electronic monitoring would be better directed at measures that will actually enhance community safety.

## 11. Clause 15 - Amendment of s 59A (Police officers must consider alternatives to arrest for contraventions of bail conditions)

Clause 15 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.

The Explanatory Notes to the Bill state: [38]

> Police powers to arrest for contravention of bail conditions The *Police Powers and Responsibilities Act 2000* includes a power for police to arrest without warrant a person, including a child, who the police officer reasonably suspects has breached or is about to breach a condition of bail. Section 59A of the *Youth Justice Act 1992* provides guidance to police officers in the application of that provision requiring a consideration of alternatives prior to arrest. This is to ensure that, for example, a minor breach of a curfew with no evidence of reoffending could be dealt with by way of a warning rather than arrest.
>
> The Bill will also dispense with the mandatory requirement to consider alternatives for a child who is on bail for a prescribed indictable offence, or for an offence of contravention of domestic violence order or contravention of police protection notice under the *Domestic and Family Violence Prevention Act 2012*. Police still retain the discretion to consider alternatives in those circumstances.

QLS opposes clause 15.

[38] Explanatory Notes, Strengthening Community Safety Bill 2023 (Qld) 2.

Section 59A is a very important tool that requires police to exercise discretion and flexibility to respond appropriately and proportionately to the circumstances they perceive. It allows police to make decisions and reduce negative interactions between children and the criminal justice system where appropriate. The addition of section 59AA does allow police to consider alternatives to arrest, but by making this an additional and optional step, it is likely to be overlooked and not acted on.

First, we are concerned that this will result in an increase of number of children being arrested under section 367 of the PPRA without consideration of the appropriateness/necessity of that arrest. This will increase the number of children spending at least one night in a watch house before being brought before the court for a breach of bail offence. The issues in relation to the inappropriateness of children being detained in the watchhouse for any length of time are well documented.

Secondly, this will increase the number of charges before the court overall.

Thirdly, police officers are reliant on their own system to monitor children's bail. The conditions that are in the Queensland Police Service system do not always reflect current bail conditions for the child and the concern is that this may result in more children being charged in error and could lead to unlawful detainment of children.

It is noted the current provision does not prevent the arrest of a child for breach of bail it simply requires consideration of particular factors in determining if it is necessary. The Society views that these considerations would be the requirement of any civilised society before making a decision to detain a child.

## 12. Clause 18 – Amendment of s 136 (Offender remanded in custody for child offence)

A young person may be held in detention for many months after committing an offence as a child (or being alleged to have done so), while the police prepare a brief of evidence, legal processes such as case conferencing and committal procedures occur, and the prosecuting authorities prepare and present an indictment. This process regularly sees young people who are charged well before they are an adult remain in detention until after their eighteenth birthday.

The experience of adult custody is markedly different from youth detention. It is not appropriate that some young people should be exposed to adult custody environments as a result of delays, when they are held only in relation to offences alleged to have been committed as a child. It is evident that young detainees who are transferred into the adult correctional centres will be highly vulnerable to abuse and being preyed upon by older and more sophisticated prisoners. Further, the transfer of child detainees directly into adult correctional centres would strongly cement the pathway to adult offending in those individuals.

Young people in this position will be necessarily exposed to a new population of adult offenders and become familiar with an escalated level of offending that they may be likely mirror in the future.

## 13. Clause 20 - Amendment of s 150 (Sentencing principles)

The Explanatory Notes to the Bill state that sentencing courts must consider a child's bail history:

> The Bill inserts a clarifying provision in the *Youth Justice Act 1992* 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.[39]
>
> No other Australian jurisdiction refers specifically to bail history being a consideration upon sentencing in their legislation. In other jurisdictions, the court when sentencing can consider any other relevant factor or offending history, which may include bail history.[40]

QLS strongly opposes clause 20.

First, the term bail history is undefined in the legislation. The Explanatory Notes provide no guidance and do not set any limit as to what a sentencing court must now take into account when considering a child's "bail history". This does not accord with the fundamental legislative principles in section 4(3) of the *Legislative Standards Act 1992* (Qld) that mandates that legislation is unambiguous and drafted in a sufficiently clear and precise way.[41] It is unclear whether the term bail history will capture:

- the bail history for the current matter before the sentencing court or the young person's entire bail history for all previous offences;
- mere allegations made about non-compliance which did not result in the child being charged with a breach of bail offence (under the proposed amendments to section 29 of the *Bail Act 1980* in clause 5).

The inclusion of all previous bail history or mere assertions of non-compliance would be too broad to include in the definition of bail history. This broad definition may result in disclosure of offences that should be inadmissible on sentence e.g. offences that have been dismissed. In our view, the inclusion of these matters in a consideration of a child's baily history may open the floodgates for disputed facts to arise on peripheral issues during sentence proceedings, which would be an undesirable situation.

Furthermore, it is unclear youth justice officers may feel be compelled to provide information concerning a child's bail history even when not sought by the court. This may impact the perception of the impartial status of Youth Justice in the court proceedings. and negatively impact the ongoing therapeutic relationship between the child and the youth justice service .

Secondly, this provision will further criminalise non-compliance with bail beyond just a breach of bail condition which is the proposed by clause 5 of the Bill. This could potentially result in children being liable to increased penalties for non-compliance of bail condition in circumstances where they have not been charged with breach of bail condition.

Thirdly, the proposal may see harsher penalties imposed on children than imposed on adults.

**Recommendation:** remove clause 20 or clearly define the term bail history in a clear, precise, narrow and unambiguous way.

## 14. Clause 21 - Insertion of new ss 150A and 150B

[39] Explanatory Notes, Strengthening Community Safety Bill 2023 (Qld) 5.
[40] Ibid 15.
[41] *Legislative Standards Act 1992* (Qld) s 4(3).

*a) QLS strongly opposes declaring a child offender as a serious repeat offender*

The Bill proposes new provisions that enables a sentencing court to declare that a child offender is a serious repeat offender in certain circumstances. The enshrining of this form of declaration in legislation concerning children is unsettling and subverts the fundamental principles underpinning the *Youth Justice Act 1992* (Qld).

According to the Bill, only the prosecution can make an application to the court seeking a child be declared a serious repeat offender. The matters and circumstances the Court must have regard to when determining an application for a declaration of a child as a serious repeat offender are outlined in clause 21, section 150A (2) (a) – (d) of the Bill. The government has characterised these elements as aggravating circumstances. The application of these circumstances when determining an application of this kind is in direct conflict with the principle that children should be detained in custody only as a last resort.

Accordingly, QLS considers the proposed aggravating circumstances are ill considered and objectionable for the reasons outlined below.

First, the drafting of s150A (2)(a) – (d), in particular, the use of "and" in the list of aggravating circumstances removes any discretion of the court to balance all relevant factors including socio-economic factors, disability, trauma, cultural displacement, social disadvantage. The proposed subsection (2)(d) requires the court to determine whether there is a probability that the child will in future commit a prescribed indictable offence. Following the making of such an order, subsection (3) causes the sentencing principles set out in section 150 of the Act to be subsumed by other primary considerations, including the need to protect the community. These clauses, read together, require the court to determine what a child is likely to do in future and punish them on that basis. It is a flagrant deviation from the rule of law and the principle that punishment should be condign for the offending committed. It represents a significant breach of human rights and the overarching principles of our criminal justice system.

Second, another significant consequence of the s 150A (2) provisions is that they, in effect, criminalise potential future behaviour, namely a further prescribed indictable offence.

Third, a serious repeat offender declaration pursuant to s150A (2) is taken to be a sentence imposed on conviction.

Fourth, the aggravating circumstances a court must have regard to are contingent on the production of documents (albeit by unspecified parties) including records of detention orders, pre-sentence reports, offending history, bail history, records of any efforts of rehabilitation carried out under a court order and any other matter the court considers relevant. In the absence of any practice notes as to the process for notice of the application, preparation of a pre-sentence report and disclosure including timeframes for production, this section will further entrench current procedural inefficiencies and further delay the time within which children's matters are resolved.

Fifth, the Bill does not provide any temporal boundaries for when a child may be subject to a detention order. Furthermore, it is not clear at what point in a child's matter the prosecution may apply to the court for a serious repeat offender declaration. The pre-sentence writer should be alerted to the application the time the pre-sentence report is ordered to ensure the appropriate material is contained in the report that may assist the court in its determination. The section should require the application to be made at that time.

Sixth, the drafting of s150A(1)(2)(a) – (d), in particular, the use of "and" in the list of aggravating circumstances has the practical consequences of additional and complicated procedural steps, further delay in the resolution of children's matters requiring court involvement and increase the child's contact with the court and in turn the number of children in detention facilities.

Seventh, new section 150A (2)(c)(i) causes a court to have regard to "the child's previous offending history and bail history". Neither "offending history" nor "bail history" are defined in Schedule 4 or the Bill. The absence of any qualification as to the parameters of the "bail history" referred to, has both practical and procedural implications, including:

(a) whether the "bail history" must include all previous occasions the offender has applied for bail, applied and been granted bail, the associated conditions of any bail granted including what services and support was offered as part of any previous bail conditions;

(b) what form some or all of the matters referred to in (a) should be provided to the court;

(c) who provides the "bail history" to the court having regard to the current drafting of section 150A (2) which states "on application by the prosecution";

(d) how does the court determine an application brought by the prosecution seeking a declaration a child to be a serious repeat offender if the "bail history" is not included in support of the prosecution's application and the potential for the court to be constrained by this ambiguity;

(e) in circumstances where the prosecution seeks to rely on "bail history", in its undefined and unstated form, the Bill is silent in terms of the associated disclosure obligations and timeframes;

(f) the inclusion of both "offending history and bail history" in the proposed drafting could be viewed as duplicitous and encroaching on double jeopardy principles.

*b) Reliance on serious repeat offender declarations when sentencing children*

QLS strongly opposes clause 21.

No explanation has been offered as to the evidence relied upon in support of the 12 month period. It is gravely concerning that section s 43(1) of the *Human Rights Act 2019* (Qld) has been enacted by the government to override children's human rights without any prior consultation or explanation.

In circumstances where each of the matters in (a) to (c) in clause 21 are satisfied, the court must then have primary regard to the matters mentioned in section 150A (3) (a) to (e). The matters referred to above are repeated and relied upon in objection to this section.

## 15. Clause 27 – Amendment of Section 246 (Court's power on breach of conditional release order (CRO))

*a) Failure to account for issues affecting a child's ability to comply with conditional release orders*

Clause 27 seeks to extend the program period for the order from three to six months.

No evidence has been offered in support of this amendment or its anticipated efficacy. The multi-factorial issues relevant to understanding and addressing a child's ability to maintain consistent compliance with CRO conditions has been the subject of extensive consultation and review as part of previous reviews of this legislation without an identified need to amend the length of these orders.

Previous studies have demonstrated that children on conditional bail programs (similar conditions to a CRO) can only maintain consistent compliance for approximately six weeks.

We share our members' concerns that larger numbers of children will be exposed to revocation and periods of actual detention as a direct result of extended duration of time a child must maintain compliance with little efficacy from the extended period. In turn, the effect of this amendment, as is the case with the Bill in general, will result in more children in custody. Consideration of lengthening this type of order should only be considered after extensive consultation including with professionals in the areas of criminology and child development,

Moreover, increasing the duration of time that a child must comply with the conditions attached to CROs will attract significant cost and resourcing requirements. This expenditure is better placed funding researched and collaborative restorative and rehabilitative initiatives.

The effect of the amendments proposed in clause 27 include that any child on a CRO for a prescribed indictable offence and who received a CRO prior to the Bill coming into force, will be at risk of having their CRO revoked should they breach it after the Bill comes into effect.

This would put a child, with a CRO (ordered prior to the commencement of the amendments in place) at a further disadvantage because it is not contemplated how a child with a CRO in place prior to the commencement of the amendments would be notified of the change and the Bill fails to acknowledge the time and resources involved in any notification process and explanation of the new potential consequences if they breached their pre-Bill CRO.

### 16. Clause 28 – Insertion of new section 246A (246A Court's power on breach of conditional release order – order made for prescribed indictable offence)

*a) Detention of children is not the answer*

There has been a wealth of empirical research performed and data driven analyses conducted by subject matter experts concluding that rehabilitation is the preferred approach to addressing youth offending. It is unacceptable that the Bill has not had any regard to this evidence and seeks to return to detaining children as the primary form of deterrence.

The introduction of this Bill, which is not supported by any empirical evidence lacks insight and dilutes the importance of the principles that underpin the *Youth Justice Act 1992* (Qld). The effect of enacting legislation in the form of the Bill will increase the number of children coming into contact with the courts and, in turn, the number of children detained in custody.

QLS considers the provisions in clause 28 of the Bill are inconsistent with fundamental legal principles, and importantly, youth justice principles. The matters addressed above are repeated and relied upon in this regard.

Furthermore, QLS strongly opposes the stipulation in clause 28 that the court must revoke a conditional release order and order the child to serve the sentence of detention for which the conditional release order was made, unless the court considers there are special circumstances. This approach is counterproductive and should not be accepted for the following reasons.

(a) The words "must revoke" in 246A(1) undermines judicial discretion and general sentencing principles including those set out in the Youth Justice Act 1992.

(b) Section 246A in clause 28 stipulates that a Court must activate the term of detention unless there are special circumstances.

(c) The words "special circumstances" are not defined. Clause 28 is silent on the manner in which the issue of "special circumstances" is brought to the Court's attention. Given the extent of the potential consequences associated with a Court determining whether or not there are 'special circumstances' the absence of any clear pathway for this to occur is demonstrable of the lack of consultation with key stakeholders.

(d) The likely delay that may be caused in the need to properly evidence the special circumstance. If the order has expired this may deprive the young person of the benefit of the order and the protections it may provide to the community.

*b) QLS opposes the revocation of conditional release orders subject to the determination of special circumstances*

QLS opposes clause 28.

First, we are concerned that the test applied by the court in determining whether or not to permit a further opportunity is unclear.

Second, if the court considers there are special circumstances, it is open to the court to re-activate conditions of a previous, and expired, conditional release order.

Third, the court's determination as to whether there are special circumstances is not considered a sentence order and is therefore not reviewable by the sentence review provisions set out in s 118 of the *Youth Justice Act 1992* (Qld).

Clause 28 does not acknowledge the reasons for non-compliance by children of conditional release orders including that in most cases they are out of the child's control. Furthermore, the lack of resources and support services available to children on a conditional release order further increases the risk of children breaching those orders which will in turn increase the number of children before the courts and being detained. This goes against the sentencing principles that underlie the operation of the *Youth Justice Act 1992* (Qld).

The amendment is silent on the approach a court is to take on order that pertains to offences covered by both 246 and 246A.

QLS is concerned with the drafting inconsistencies in the definition of prescribed indictable offence, namely the section specific definition to be inserted into section 52A and the definition to be included in the dictionary. Furthermore, prescribed indictable offence, as defined in the dictionary, now includes section 421(1). This is inconsistent with the definition proposed to be inserted in section 52AA(11) which only applies to bail in respect of electronic monitoring devices. These inconsistencies will inevitably result in an increase in the number of children 1)

being held in demand for offences which may have a high level of criminal culpability and 2) placed in a 'show cause' position.

Finally, the Youth Justice Reforms Review Final Report (Atkinson Report), conducted and prepared by Mr Bob Atkinson AO APM and delivered to the government in March 2022, included a review of serious repeat youth offenders. The Atkinson Report identified the need for more diversionary programs for high-risk young people to avoid early escalation into custody.[42]

### 17. Clause 36 Insertion of new pt 8, div 2A, sdiv 3 - Transfer of persons remanded in detention

QLS strongly opposes this provision.

First, it constitutes a breach of the youth justice principles of the *Youth Justice Act 1992*.

Second, the timeframes contemplated by clause 36 are unrealistic. These timeframes do not accord with the practical difficulties lawyers face in gaining access to their clients in youth detention centres and the accessibility to legal assistance for children and young people.

Third, this will increase the number of matters being brought before the court, which will impact court resourcing.

Fourth, this will contribute to the perception that police officers will delay charging young people until they are 18 so they can be placed in adult correctional facilities.

QLS is particularly concerned that proposed section 276H(3) permits the Chief Executive to issue a transfer notice than less three months after a judicial determination that a transfer is not appropriate if in "the opinion of the chief executive" there has been a "significant change in the circumstances of the person". This discretionary power significantly undermines judicial authority.

The Society is concerned about the absence of modelling of the implication of these amendments. The provisions will necessitate access to legal advice and representation. The Society is unaware of additional resources that will be provided to LAQ, ATSILS and community legal services to meet this additional need and possibly to the court and crown law to resource the hearings of these matters. There is currently no automatic right to legal aid for children subject to these proceedings.

**Recommendation**: remove clause 36 and ensure that 17 year olds continue to be detained in youth detention centres.

### 18. Clause 37 - Multi-agency collaborative panels

Clause 37 of the Bill establishes the multi-agency collaborative panel system. The stated purpose of the, "multi-agency collaborative panel system is to coordinate the provision of services, including assessments and referrals, to meet the needs of particular children charged with offences or at risk of being charged with offences."[43]

The Explanatory Notes to the Bill state:

[42] *Youth Justice Reforms Review* (Final Report, March 2022) 69
[43] *Youth Justice Act 1992* (Qld) proposed s 282J

> Multi-agency collaborative panels (MACPs) MACPs have existed since 2021, and have proved effective in bringing together relevant agencies and non-government service providers to ensure timely and coordinated assessments of the needs of serious repeat offenders, and respond to those needs. The Bill establishes MACPs in legislation in a way similar to the establishment of the SCAN system under the *Child Protection Act 1999*.[44]

QLS is concerned that the multi-agency collaborative panel system is being permanently established without proper consultation. Whist we are not opposed to the system, we would like further time and detail as to nature and extent of the information sharing provisions. The Society is acutely aware that concerns regarding information sharing is a barrier to effective engagement with service delivery by vulnerable people particularly indigenous communities as legacy of colonisation and the stolen generation.

**Recommendation**: further consultation on the multi-agency collaborative panel system is required.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone [redacted].

Yours faithfully

[redacted]

Chloé Kopilović
**President**

[44] Explanatory Notes, Strengthening Community Safety Bill 2023 (Qld) 7