STRENGTHENING COMMUNITY SAFETY BILL 2023

Submission No: 44

Submitted by: PeakCare Queensland

Publication: Inc.

Attachments:

Submitter Comments:

PeakCare Queensland Inc.

Submission to the

Economics and Governance Committee

Strengthening Community Safety Bill 2023

24 February 2023

CONTENTS

INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the *Queensland Parliament's Economics and Governance Committee's* call for submissions in response to the *Strengthening Community Safety Bill 2023.*

We note however that our capacity to adequately consider the *Bill* and formulate an informed response has been severely curtailed by the short time frame provided to lodge submissions. This includes limitations placed on PeakCare's capacity to consult with our Members as a means of informing our submission.

While appreciative of the Government's interest in delivering decisive and timely leadership in relation to youth crime, PeakCare's view is that the extremely short time has been disrespectful to:

- organisations such as PeakCare that wish to make a constructive contribution to the debates concerning youth justice policy including this *Bill*
- the many government and non-government agency administrators and managers, youth justice practitioners, para-professional staff and volunteers who on a daily basis provide dedicated and skilled service in working with young people who are engaged with or at risk of engagement with the youth justice system, whose views should also be considered
- those who have been the victims of youth crime who are entitled to the knowledge that the best possible evidence-based policy responses are in place to minimise the likelihood of either them or others being impacted by crime in the future, and
- young people, both those who have been engaged with the youth justice system and all others, whose lives may potentially be impacted by the proclamation and enactment of this legislation.

ABOUT PEAKCARE

PeakCare is a not-for-profit peak body for child and family services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has approximately 50 member organisations which include small, medium and large, local, state-wide and national non-government organisations which provide prevention and early intervention, generic, targeted, and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster care, kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of registered supporters also subscribe to PeakCare. Supporters include individuals with an interest in child protection and related services, and who are supportive of PeakCare's policy platform around the rights and entitlements of children, young people and their families to safety, wellbeing and equitable access to life opportunities.

ABOUT PEAKCARE'S SUBMISSION

Given the overlap of children and young people at risk of entry to, or in the youth justice system, with those engaged with the child protection system, PeakCare has a strong interest in youth justice reform including appropriate, proportionate, effective, timely, and holistic responses and interventions for children, young people and their families which also keep communities safe. With a longstanding history in advocating for better understanding and management of the complex intersection between the child protection and youth justice systems, PeakCare's motivation in lodging this submission reflects the following:

- the need to address both the welfare and justice needs of children and young people who have been or who are in contact with the child protection system and the youth justice system, particularly those who are subject to dual (interim or finalised) orders
- ensuring local access to prevention and early intervention services, responses and programs for children, young people and families to 'nip problems in the bud' or 'turn their lives around' – the right service at the right time from the right provider for the right amount of time
- children and young people's rights and entitlements (and that of their families) to understand and participate in administrative and judicial decision-making
- congruence in legislative frameworks and the administration of youth justice, child protection, and intersecting service systems (e.g., education and training, youth development, family support, housing and homelessness, legal services and legal aid, health, alcohol and substances misuse) directly or indirectly delivered across Queensland Government departments and their agents
- the impacts and opportunities presented by adopting specialist and other reforms to court processes and policing practices across Queensland
- developing specific strategies to address the disproportionate representation of Aboriginal and Torres Strait Islander young people in the youth justice system, and
- the importance of underpinning policy directions and reforms with research evidence, undertaking appropriate evaluation and acting on evaluation findings in a progressive and transparent manner.

Consistent with these areas of interest, PeakCare wishes to express its disappointment with the *Bill* which we suggest will detract from the Government's progressive work undertaken in the past to improve the youth justice system within Queensland. We consider that provisions contained within the *Bill* prioritise the offender status of children and young people and do not appropriately consider the fact that the children and young people who offend are first and foremost still children - children who are still developing physically, psychologically, socially, and emotionally and already have a relative powerlessness and lack of voice in our society. We consider, in alignment to the findings of the report into the evidence-base for the Child First Justice Initiative in the United Kingdom, the prioritisation of a child or young person's offender status in youth justice responses can lead to further criminalisation within and by the youth justice system, increased marginalisation by society, and further disengagement by the child or young person.

PeakCare strongly supports appropriate diversionary interventions and addressing the causes of offending by children and young people to take priority over punitive and inappropriate

punishments, and ensuring offending is considered only one part of a much more complex identity for these children and young people.

PeakCare appreciates that the *Bill* has, at least in part, arisen in response to the tragic deaths of a number of Queensland citizens. Their deaths, along with the death of Jennifer Board in Townsville, the innocent victim of alleged vigilantism, prompted immeasurable grief and an outpouring of public concern about youth crime widely reported on by the media. PeakCare also appreciates that the Government has attempted to confine and target the policy objectives of the *Bill* towards the small cohort of recidivist youth offenders who engage in persistent and serious offending. Little commentary is included within the Explanatory Notes about how these particular policy objectives fit within or are intended to support the Government's overarching approach to youth crime.

Nevertheless, PeakCare's concerns are that:

- some children and young people additional to those who constitute the targeted cohort will inevitably become 'swept up' in the heightened responses, thereby reducing benefits of other elements of the Government's youth justice strategy in diverting these children and young people from continuing on a trajectory into the adult criminal justice system, and
- assumptions have been made about the value of a number of the proposed provisions in deterring children and young people from committing further offences that are not sufficiently supported by research or an evidence-base.

PEAKCARE'S RESPONSE TO THE BILL

The following responds to the *Bill* and its and apparent intentions.

Policy objectives of the Bill and the reasons for them

As recorded within the Explanatory Notes, the reason stated for the *Bill* is "Community safety is a key priority of the Queensland Government".

Reference is made within the Explanatory Notes to the Queensland Government's announcement of ten new measures aimed at keeping the community safe that recently appeared under banner headlines of 'Tough Laws Made Even Tougher' within paid advertorials and media statements released by the Government.

The intention to "strengthen youth justice laws" as stated within the 10-point plan and which predominantly underpin this *Bill* overwhelmingly focus on increasing retribution as the means for achieving community safety. There is an absence of references made with the plan to strengthening laws intended to enhance successful approaches taken in preventing youth crime or diverting children and young people from unnecessary or unnecessarily prolonged engagement with a criminal justice system or that assist in their rehabilitation or reintegration into the community following their encounters with this system.

PeakCare is concerned that this represents a stark departure from the approaches to youth crime previously adopted by the Government in response to the 'Report on Youth Justice' by Bob Atkinson AO APM (2018). The Four Pillars model espoused by Mr Atkinson provided a framework for reconciling what is often regarded as competing agendas of a youth justice system – agendas that address the needs of children and young people who are engaged with or at risk of engagement with the criminal justice system versus agendas based on the need for community safety and the removal and punishment of those who threaten this safety.

The framework clearly conveyed a well-informed and evidence-based approach which recognised that effective early intervention and prevention strategies along with programs and services that promote rehabilitation and reintegration of children and young people into their communities are, in fact, essential components of a well-integrated youth justice system. Rather than being at odds with the goal of achieving community safety, the framework acknowledged their criticality in achieving long-term safety from crime.

The Government's 10-point plan states that "violent criminals including young people should receive harsher punishments and the community must be protected". This makes it very clear that the Government has largely abandoned notions of an integrated youth justice system that draws together and reconciles the system's agendas, at least in respect of the growing number of children and young people deemed to be "serious repeat young offenders". In an overall sense, the intentions of the Bill appear to be based on premises that:

- **The threat of harsher punishments will deter children and young people from offending**
  This is despite clear evidence that harsher punishments serve little or no deterrent value

- **The incarceration of more 'problematic' children and young people for lengthier periods of time will restore safety from crime within the communities in which they reside**
  This may be true for the period of their incarceration, but the evidence indicates that the incarceration of these children and young people will increase the likelihood of more serious and frequent offending following their release and their escalated progression into engagement with a criminal justice system as adults.

In light of the above therefore, it may be regarded as highly unlikely that the *Bill* will achieve its objectives of achieving community safety and much more likely that community safety will be further jeopardised.

Responding to serious offending relating to motor vehicles

PeakCare reiterates our concern that the proposed increases to the maximum penalties for the offence of unlawful use or possession of motor vehicles, aircraft or vessels (section 408A of the Criminal Code) are unlikely to provide a deterrent value.

PeakCare noted with interest the commentary provided within the Explanatory Notes about the impact of children or young people posting images and recordings of their offending behaviour online and on social media platforms. PeakCare agrees that this behaviour incites other children and young people to behave similarly. Of great concern to PeakCare are the reasons why some

children and young people are resorting to this behaviour in order to obtain acknowledgement from peers and some sense of their value and worth.

PeakCare is equally concerned about the use of social media outlets by vigilante groups and others to post 'hate messages' and issue threats of violence directed at children and young people. The Committee's attention is drawn to recent media articles that have reported on messages posted on social media encouraging local residents to break into a residential care service and hang the children who live there.

PeakCare's grave concern is that these messages are being directed not only to those children and young people who have had a known or suspected involvement in illegal activities. They have been extended to incorporate a vilification of other children and young people including, in particular, those who are already marginalised and experiencing discriminatory treatment during their engagement with other service systems. They include Aboriginal and/or Torres Strait Islander children, children with disabilities and children in care who are much more likely to experience school disciplinary absences than their peers as well as become over-represented within the youth justice system, with dis-engagement in education a well-established precursor to involvement in youth crime.

These 'hate messages' posted by vigilante groups and others similarly incite violence – both by adults who wish to 'take the law into their own hands' and by young people who, upon becoming aware of these messages, may wish to retaliate or who simply regard the messages as providing confirmation of their beliefs that they are hated by their community, are not wanted, are devoid of hope in relation to being able to lead a law-abiding life, and therefore may as well behave in the ways that are expected of them.

PeakCare is aware of a private member's bill by Mr Garth Hamilton MP, the Federal Member for Groom, that will seek to empower the eSafety Commissioner to issue social media platforms with take-down notices for images and videos depicting criminal activity. This could be applied to both images and videos posted by children or young people and materials posted by individuals and groups provoking vigilantism and actions that threaten the safety and wellbeing of children and young people. PeakCare views this option as a much more sensible, constructive and comprehensive response than the *Bill's* proposal to add a penalty to those that are to be incurred by a child or young person who steals a motor vehicle.

Strengthening our youth justice laws

PeakCare has noted that the Explanatory Notes indicate that the *Bill* seeks to respond to the small cohort of "serious repeat offenders" via amendments to be made to the *Bail Act 1980*, *Youth Justice Act 1992* and *Police Powers and Responsibilities Act 2000*. It is noteworthy that within the 'Working Together: Changing the Story' publication released by the State Government in 2019, it was stated that despite the significant reduction in the number of children and young people coming to police attention over the last decade, "too many children and young people are repeat offenders, with 10% of young offenders accounting for 44% of youth crime".

Recent commentary by the State Government indicates that this figure of 10% committing the majority of offences has rapidly increased to around 17% over the past few months. PeakCare is

curious about the factors that may have contributed to this change and has observed that there appears to have been no analysis undertaken or published by the State Government that may account for the change.

It may be observed that this change has occurred during a period when:

- the number of children and young people imprisoned in Queensland youth detention centres and watch houses has risen to the highest in the country
- 90% of the children and young people held in these facilities are on remand rather than sentence
- legislative amendments (i.e. the introduction of the presumption against bail in 2021) have increased the likelihood of bail being refused, and
- agitation by some sections of the community for harsher punishments has reached a fever pitch.

PeakCare is concerned that in the absence of proper investigation and analysis of the factors that have contributed to the change in the proportion of children and young people now deemed "serious repeat offenders", this *Bill* is likely to create a further increase in the numbers of children and young people who fall within this category.

Strengthening the youth justice bail framework

Breach of bail as an offence for children

PeakCare has noted the reasons stated by the Government in 2015 for the retrospective removal of the offence of breaching bail "given that it was widely criticised by the judiciary and relevant stakeholders as unnecessarily punitive and contrary to existing sentencing principles". It is acknowledged that Clause 5 of this *Bill* differs from the previous 'breach of bail offence' in that it seeks to remove the restriction that applies to section 29 of the *Bail Act* which prevents the offence from applying to child defendants in the ways in which it applies to adult defendants.

PeakCare remains concerned however that Clause 5 is nevertheless regarded as incompatible with the *Human Rights Act 2019* and to ensure that the policy objective is met, it will be necessary for this Clause to contain an override declaration which will provide that the *Human Rights Act* does not apply to section 29 of the *Bail Act* as it applies to children.

PeakCare continues to hold longstanding concerns that police and courts should not be able to detain a child or young person solely because they lack appropriate accommodation or have no apparent family support.

PeakCare notes that homelessness or the lack of appropriate (safe and supported) accommodation for some children and young people being considered for bail continues to be a very real issue which requires further coordinated work and greater resource investment by government. PeakCare contends it is 'not the job' of the youth justice system to address issues of concern such as a child or young person's homelessness or lack of safe accommodation within their family home or other living arrangement, nor is it the responsibility of the youth justice system to ensure that

children and young people are receiving appropriate support and assistance in relation to other aspects of their safety and well-being.

We consider this a misuse of the youth justice system that can inadvertently create a 'net-widening' effect where children and young people are inappropriately drawn into the youth justice system in order to have their needs met. There is however a clear responsibility on the youth justice system to operate collaboratively with other services systems (such as those with explicit responsibilities to address matters of concern in relation to child protection, health and mental health, education, disability support, housing etc.) to ensure when children or young people encounter the youth justice system, this triggers an appropriate level of engagement by these other service systems. Considering this, the youth justice system must not be administered in a manner that impedes or detracts from the support and services provided by these other systems.

PeakCare continues to hold concerns about onerous and unsustainable bail conditions which are often not specific to the individual circumstances of a child or young person's alleged offending, being imposed which can lead to a higher likelihood of them breaching bail conditions.

Electronic monitoring

PeakCare does not support Clause 14 of the *Bill* in allowing for an extension of the trial of electronic monitoring as a bail condition and the lowering of the minimum age for which electronic monitoring can be imposed as a condition of bail from 16 to 15 years of age.

PeakCare, has previously advocated for the exclusion of electronic monitoring devices being used for children and young people. Considering the characteristics and behaviours of children and young people during this stage of their development, and that significant numbers of children and young people in the justice system are themselves victims of trauma, abuse and/or neglect, and/or crimes, use of these devices is likely to:

- prompt many children and young people to impulsively attempt to 'fool', 'test out' and/or remove the device which may result in physical or psychological harm, and unnecessarily escalate their engagement in the youth justice system through incorrect perceptions being formed about their 'non-compliance'
- embarrass and humiliate children and young people with the visibility of the device further criminalising and estranging them from their communities, thereby countering efforts which should be in place to promote their positive connection or re-connection with their families, communities and culture, and
- elicit responses often borne out of youthful bravado which superficially (albeit erroneously) suggest children and young people are wearing the device as a 'badge of attainment' that earns the respect of peers, thereby further criminalising them and making their constructive engagement in pro-social behaviours, activities and networks more difficult.

PeakCare is curious about the reasons why, as suggested within the Explanatory Notes, it may be expected that a further trial period will result in a sample size that will reveal more useful information.

Police powers to arrest for contravention of bail conditions

PeakCare does not support the dispensation of the mandatory requirement for consideration to be given to alternatives for a child who is on bail. While acknowledging that Police will retain discretion to consider alternatives, this is regarded as providing too much leeway for inconsistent use of this discretion.

Multi-agency collaborative panels

PeakCare does not hold concerns in relation to the establishment of multi-agency collaborative panels in legislation in a way similar to the establishment of the SCAN system under the *Child Protection Act 1999*.

Compatibility with the *Human Rights Act 2019*

PeakCare is greatly alarmed by the number of provisions included in the *Bill* that have been declared as incompatible with the *Human Rights Act 2019*. This includes:

- Clause 5 that relates to removal of the restriction within section 29 of the *Bail Act* which prevents the offence of breaching conditions of bail from being applied to children whereby, to ensure that the policy objective is met, clause 5 contains an override declaration which provides that the *Human Rights Act* does not apply to section 29 of the *Bail Act* as it applies to children
- Clause 21 of the *Bill* that introduces new sections 150A and 150B of the *Youth Justice Act* that seek to provide a separate sentencing regime for serious repeat offenders whereby, to ensure that the policy objective is met, clause 21 contains an override declaration which provides that the *Human Rights Act* does not apply to new sections 150A and 150B of the *Youth Justice Act*, and
- Clause 28 of the Bill that seeks to strengthen the consequences for breaching a conditional release order made in relation to a prescribed indicatable offence whereby, to ensure that the policy objective is met, clause 28 contains an override declaration which provides that the *Human Rights Act* does not apply to new section 246A of the *Youth Justice Act.*

In PeakCare's view, it is the intentional disregard of the human rights of children and young people that constitutes the most concerning feature of the *Bill*.

Adherence to United Nations Conventions and Rules

Similar to our concerns about the disregard shown to the *Human Rights Act*, PeakCare is greatly alarmed by the willingness of the Government to breach a number of United Nations conventions and rules, taking into account that the *Bill* is likely to increase the number of children and young people being detained during a period when the Government knows that it does not currently, nor will it for a considerable length of time, possess the infrastructure necessary to meet the obligations held by Australia as a signatory to these conventions and rules, including:

- Rules for the Protection of Juveniles Deprived of their Liberty
- Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), and
- Convention on the Rights of the Child.

STOP YOUTH CRIME – GET SMARTER NOT TOUGHER

On 28th January 2023, an open letter to the Queensland Parliament – *'Stop Youth Crime – Get Smarter Not Tougher'* – was published as an advertorial by the Courier Mail. Over 40 organisations and an additional 20 individuals quickly submitted their logos and names to serve as signatories to the letter. A copy of the letter can be accessed vis this link - https://peakcare.org.au/wp-content/uploads/2023/01/final-copy-of-open-letter.pdf.

Following publication of the letter, PeakCare received many requests from people wishing to add their logos and/or names to the letter. In response to these requests, this webpage (https://peakcare.org.au/get-smarter-not-tougher) was created which displays the growing number of signatories to the letter and serves as an indication of the strength of opinion held by a diverse range of Queensland organisations and individuals including highly respected academics.

PeakCare fully appreciates that the recommended 'get smarter' strategies for stopping youth crime featured within the letter do not require legislative reforms and, as such, fall outside of the scope of matters that are being considered in relation to this *Bill*. It is nevertheless regarded as important that the *Bill* be considered within a context that takes account of the preference shown for a youth crime strategy that focuses on getting smarter rather than tougher. Disturbingly, the *Bill* appears to be centred solely on getting tougher.

CONCLUDING REMARKS

Most children and young people involved in the youth justice system have faced multiple layers of complex disadvantage in their young lives, in circumstances beyond their control. Many have had contact with child protection services, experience poverty and homelessness, have mental health problems, or experience cognitive difficulties. Most young people in the justice system are themselves victims of trauma, abuse and/or neglect, and children in contact with the youth justice system are often themselves the victims of crimes against them that are far more serious than any they have allegedly committed.

At a time when the Government is undertaking the laudable 'Path to Treaty', Aboriginal and Torres Strait Islander remain grossly over-represented in the youth justice system – youth detention centres especially.

Now more than ever, it is critical for the Queensland Government, with bi-partisan support, to develop a well-articulated and cohesive social policy framework that places children's rights and entitlements to safety, well-being and equitable access to life opportunities and the support of their families at the centre of all government-led decisions and activities. This is a framework which

should not be driven by piecemeal or reactive youth justice policies, but rather, these policies need to be located within and remain responsive to this overarching framework.

It is a framework that should be used to powerfully influence financial investment and decision-making across all areas of Government activity and used to hold all government agencies and the non-government sector to account. Without a bi-partisan supported overarching framework of this type, Queensland children, young people and families are at risk of becoming victims of fractured policy decisions that place greater importance on expediency and politics than on an evidence-based and values-driven vision for Queensland's greatest resource - our children.

Thank you for the opportunity to provide a submission on aspects of the *Strengthening Community Safety Bill 2023.*

Yours sincerely,

Lindsay Wegener
Executive Director
PeakCare Queensland Incorporated
(Pronouns: he/his)