

STRENGTHENING COMMUNITY SAFETY BILL 2023

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**to
Economics and Governance Committee
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About Queensland Advocacy for Inclusion

Queensland Advocacy for Inclusion (**QAI**) (formerly Queensland Advocacy Incorporated) is an independent, community-based advocacy organisation and community legal service that provides individual and systems advocacy for people with disability. Our purpose is to advocate for the protection and advancement of the fundamental needs, rights and lives of people with disability in Queensland. QAI's Management Committee is comprised of a majority of persons with disability, whose wisdom and lived experience is our foundation and guide.

QAI has been engaged in systems advocacy for over thirty years, advocating for change through campaigns directed at attitudinal, law and policy reform. QAI has also supported the development of a range of advocacy initiatives in this state. For over a decade, QAI has provided highly in-demand individual advocacy services. These services are currently provided through our four advocacy practices: the Human Rights Advocacy Practice (which provides legal advocacy in the areas of guardianship and administration, disability discrimination and human rights law and disability advocacy support with the Disability Royal Commission and the justice interface); the Mental Health Advocacy Practice (which supports people receiving involuntary treatment for mental illness); the NDIS Advocacy Practice (which provides support for people challenging decisions of the National Disability Insurance Agency and decision support to access the NDIS); and the Disability Advocacy Practice (which operates the Pathways information and referral line, and provides disability advocacy support with Education and other systems that impact young people with disability).

From 1 January 2022, we have been funded by the Queensland Government to establish and coordinate the Queensland Independent Disability Advocacy Network (QIDAN), which includes operating the Disability Advocacy Pathways Hotline, a centralised phone support providing information and referral for all people with disability in Queensland. We have also been funded to provide advocacy for young people with disability as part of the QIDAN network, which we provide in addition to our disability education advocacy for Queensland students with disability. Our individual advocacy experience informs our understanding and prioritisation of systemic advocacy issues.

Our Work with Youth

Our dedicated Young Peoples Program advocates for people with disability aged from birth to 18 years on a wide range of issues, including education, NDIS, youth justice, health, and child protection. At the heart of all our work is the protection and advancement of fundamental human rights of young people with disability. Our individual advocacy experiences inform our understanding and prioritisation of systemic advocacy issues. In our work, we see evidence of the human rights challenges to this especially vulnerable subset of the population.

The objects of QAI's constitution are:

- To advocate for the protection and advancement of the needs, rights and lives of people with disability in Queensland;
- To protect and advance human rights including the Convention on the Rights of Persons with Disabilities (CRPD);
- To be accountable to the most disadvantaged people with disability in Queensland; and
- To advance the health, social and public wellbeing of disadvantaged people with disability.

Introduction

QAI is deeply concerned about the changes proposed by the Queensland Government to youth justice laws that are, by the government's own concession, 'incompatible with human rights'. We are disappointed to see the Human Rights Act manifestly overridden with exceptionally minimal stakeholder consultation. We call on the Queensland Government to extend the consultation period to allow stakeholders the proper engagement that this consequential issue warrants. We do not believe it is appropriate that human rights be limited with so little opportunity for public scrutiny and stakeholder involvement.

Overriding human rights obligations will only exacerbate the human rights crisis developing in Queensland's youth justice system. From the experience of QAI, young people with disabilities are highly represented in the Queensland criminal justice system. We have been informed that the majority of young people in detention have disability. We are extremely concerned that the proposed changes will further discriminate against and disadvantage young people with disability by delivering detention and punishment where support and education are needed.

The consultation period is grossly inadequate for stakeholders to comment exhaustively on the proposed amendments. In this submission, we have capacity to only address points that we consider most relevant to young people with disability. We note that the criminalisation of breaches of bail conditions will effectively discriminate against young people with disabilities, already one of Queensland's most vulnerable and disadvantaged cohorts. The decision to supersede the Human Rights Act shows a worrying disregard for international standards of human rights. This marks the first time since Queensland gained human rights protections that the Act has been intentionally overridden, and it is sad to see the bar lowered in this way. We recommend a longer and more rigorous consultation period take place before the human rights of children are undermined, so that the 'alternative measures' called for in international law can be developed.

Changes to the Bail Act

QAI strongly opposes clause 5 of the Bill which seeks to omit sub-section 29 (2)(a) of the Bail Act.

Section 29 of the Bail Act provides that an adult defendant must not break any condition of the undertaking on which the defendant was granted bail. It is an offence punishable by a maximum of 2 years imprisonment. Currently, sub-section 29 (2)(a) of the Bail Act prevents this criminal offence from applying to child defendants. Clause 5 of the Community Safety Bill seeks to revoke this exemption.

Criminalising children's breaches of bail conditions is a perilous, discriminatory endeavour that is not in the public interest given that there is no evidence that it will result in a reduction of crime or harm to the community. Criminalised young people have far less independence than their adult counterparts. This is relevant because young people who are subject to bail conditions that include residence, reporting or attendance at various appointments may not have the ways or means to independently action these conditions. This is especially the case for young people with disabilities who face additional barriers to living independent lives. Children are often heavily reliant upon family support for transport to enable them to comply with bail conditions. As we know, many criminalised young people do not have appropriate levels of family support. This means that in many cases, a young person's non-attendance at a court-ordered appointment will be through no fault of their own.

This lack of independence in being able to access transport is compounded by housing insecurity often experienced by young people that have been subject to the youth justice system.¹ A young person with disability experiencing housing insecurity or lacking accessible housing will often find it extremely difficult to comply with any bail condition stipulating they reside at a particular fixed address.² Such a requirement can also increase a young person's exposure to harm. With many children who are subject to bail conditions being forced to live on the streets in the absence of a safe and accessible home environment, criminalising breaches of a child's bail conditions could result in a children with disability being forced to stay in an inaccessible or unsafe home environment.

In addition to the problems associated with having to be reliant on others to facilitate compliance with bail conditions, children with disability often have far more limited capacity to manage their responsibilities. A child's neurological development is less advanced than an adult. When compared to adults, children have a diminished ability to recall specific information such as the location, time and date of an appointment.³ These neurological factors, combined with under-developed maturity levels, can result in a child not fully grasping the ramifications stemming from not complying with a court-imposed requirement.

The struggle to remember important information is especially problematic for children that have a neurodevelopmental disorder.⁴ Criminalising the non-attendance of appointments will be particularly discriminatory for children with disabilities, a group that is already at an increased risk of exposure to the youth system. It is a widely acknowledged fact that people with disability have higher rates of contact with the youth justice system than people without disability and are significantly overrepresented in the youth custody population.⁵

A recent longitude study conducted by the New South Wales Bureau of Crime Statistics found that 'Despite accounting for only 3.5% of the population, young people with disability comprised 7.7% of all young people who had at least one police caution, youth justice conference or court appearance before the age of 18 and 17.4% of those with at least one youth detention episode.'

QAI warns that the overrepresentation of children with disabilities in the youth justice system will inevitably expand under the proposed changes to law, heaping greater pressure on one of our society's most marginalised and at-risk groups.

The perils faced by young people with disabilities in detention is immeasurable. Disruption to medical care and treatment, inadequate or non-existent educational supports, loss of family connections and the exposure to physical violence⁶ are all real ramifications faced by children with disabilities while in detention. These risk factors are drastically escalated when a young person with disability is held in a watch house with adults that have committed serious crimes. It's extremely concerning that government figures, including Queensland's Police Commissioner Katarina Carroll, concede that

¹ Almquist, Lars and Sarah Cusworth Walker, 'Reciprocal Associations Between Housing Instability and Youth Criminal Legal Involvement: a Scoping Review' (2022) 10(1) Health & justice 15

² Wong, Bailey, Diana T Kenny, 'Bail Me Out: NSW Young Offenders and Bail' (2009) Youth Justice Coalition,

³ Murnikov, Valeri and Kristjan Kask, 'Recall Accuracy in Children: Age Vs. Conceptual Thinking' (2021) 12 Frontiers in psychology 686904

⁴ Kerns, Kimberly A et al, 'Attention and Working Memory Training: A Feasibility Study in Children with Neurodevelopmental Disorders' (2017) 6(2) Applied neuropsychology. Child 120

⁵ Stewart Boiteux and Suzanne Poynton, 'Offending by young people with disability: A NSW linkage study,' (2023) New South Wales Bureau of Crime Statistics

⁶ Youth Violence: Detention Unrest: Violence in the Nations Juvenile Detention Centers Breaks Out Almost Weekly (ABC1 Perth, 2016)

there will be an increase in the holding of children in watch houses as the proposed changes to law will place even greater pressure on an already buckling youth justice system.

Overriding the Human Rights Act

The proposed youth justice bail reforms are ‘incompatible with human rights’ and ‘inconsistent with international standards about the best interests of the child’. The principles of the Human Rights Act must be upheld.

QAI does not agree with the proposed provisions that are incompatible with the HRA. The proposed provisions will inevitably result in more children being held in pre-trial detention, despite the United Nations stipulating that such a practice should only be used as a measure of last resort and limited to exceptional circumstances. We note that the UN insists ‘all efforts shall be made to apply alternative measures.’

An override declaration can be included in an Act in exceptional circumstances. Political pressure does not equate to an exceptional crisis situation. QAI strongly opposes the Government’s assertion that the current situation regarding criminalised young people could be considered an ‘exceptional crisis situation.’ Recent incidents have tragically resulted in fatalities, have understandably caused community concern and received widespread media attention. However, the Queensland Government has identified only ‘a small cohort of serious repeat young offenders’ as the key group of concern. Ross Homel AO, an emeritus professor in Criminology and Criminal Justice at Griffith University, has stated that: ‘The most recently available crime data suggests there has been a steady decline in the size of the youth offender population across Australia, including Queensland, for the past 15-20 years.’⁷

Although Professor Homel has acknowledged that community concern is not misplaced as a minority of about one in 10 criminalised young people are committing more, and more serious, violent offences, he has also highlighted that detention, including the detention of young people in remand, produces higher rates of rearrest and reincarceration than community-based alternatives.⁸

Criminalisation and incarceration simply does not work to solve this problem. We call on the government to get smarter, not tougher and adopt a more appropriate way to address the needs of this small cohort by providing intensive and appropriate services.

The overriding of the Human Rights Act under these circumstances by the same government that established the Act sets a dangerously low bar for the dilution of human rights in this state.

QAI further considers that if the Government is insistent on implementing the proposed changes and overriding the Human Rights Act, that the override declaration should not be in place for the maximum period of 5 years. It is open to the Government to include a shorter period than five (5)

⁷ Professor Ross Homel AO, ‘Why locking up youth offenders fails to reduce crime – and what we should be doing instead,’ The Guardian Australia (online Tuesday 24 February 2023), <https://www.theguardian.com/commentisfree/2023/feb/21/why-locking-up-youth-offenders-fails-to-reduce-and-what-we-should-be-doing-instead>

⁸ Ibid

years for the override to apply. The period of application of the override should be reduced to a maximum of six months.

Conclusion

QAI strongly opposes this proposed change and strenuously warns of the danger to children with disability and to community safety more broadly.

We are available to provide further information or clarification of any of the matters raised in this submission upon request.