

STRENGTHENING COMMUNITY SAFETY BILL 2023

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

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

Dear Economics and Governance Committee,

Strengthening Community Safety Bill 2023 ('the Bill')

Thank you for the opportunity to provide feedback on the Bill. Our submission responds to aspects of the proposed Bill and amendments to the Criminal Code 1899 (Qld), *Bail Act 1980* (Qld), *Youth Justice Act 1992* (Qld), and *Police Powers and Responsibilities Act 2000* (Qld).

YFS legal is a community legal centre in Logan, providing advice and representing children and young people in the criminal justice system. YFS Legal delivers the Children's Court Duty Lawyer service in alternate weeks with Youth Legal Aid at the Beenleigh Children's Court.

YFS acknowledges the importance of protecting the community, and the right of all people in Queensland to feel safe. For reasons identified below, it is our position that the proposed Bill will fail in its aim to keep Queenslanders safe, by increasing crime and causing harm to members of our community.

Unfortunately, due to the inadequate consultation period given, we are unable to consider each amendment in detail. We are disappointed in the very short time frame given for consultation given the significant implication for Queenslanders, particularly the most vulnerable in our community.

Breach of Human Rights

The Statement of Compatibility concludes clauses 5, 21 and 28 of the Strengthening Community Safety Bill 2023 are not compatible with the human rights protected by the *Human Rights Act 2019* (Qld) ("HRA"). The Bill is not compatible with several sections of the HRA. In particular, the proposed amendments repeatedly breach s26(2) of the HRA which provides that 'every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.' It is our position that the Bill is not compatible with sections 15, 17, 19, 21, 22, 28, 29, 30, 32, 33, 36 of the HRA. Further, that there is insufficient evidence to support the "exceptional circumstances" and the subsequent gross violation of the human rights of young people in Queensland.

YFS notes the following key points outlined in the Statement of Compatibility of the Bill:

- Introducing a breach of bail offence for juveniles *'is to ensure that young people comply with bail conditions. That is an important and legitimate purpose. However, because it appears that less restrictive options are available to achieve the same purpose, the proposal limits human rights in a way which is not justified. Less restrictive alternatives may include, for example, providing additional bail support to young people.'* (page 3)
- Increasing the maximum penalty to unlawful use of a motor will be *'increasing the risk that young people convicted of these offences will be detained in custody for longer.'* (page 3)
- Creating an aggravating offence for publishing material on social media to advertise unlawful use of a motor vehicle or the offender's involvement in the offence *'have the effect of increasing the time some people spend in custody.'* (page 6)
- An aggravated offence for unlawful use of a motor vehicle at night, use or threat of violence, pretending to be armed, in company or damage to property is likely to *'increase the time that some people convicted of the relevant offence will be deprived of their liberty.'* (page 8)
- Courts to be required to consider a child's history on bail when determining an appropriate sentence *'may increase the risk that young offenders will be in custody for longer.'* (page 18)
- Serious repeat offender declarations are *'not justified because a less restrictive option would be to allow courts to apply the existing sentencing principles.'* (page 21)
- Extending program period for conditional release orders will increase *'the risk that children will be incarcerated.'* (page 22)
- Requirement to serve suspended periods of detention for conditional release orders limits the right not to be subject to retrospective increases in penalties in section 35(2) of the HRA. (page 23)
- Expanding the categories of prescribed indictable offences is *'a general rule in favour of detention.'* (page 27)
- The extension of electronic monitoring devices as a condition of bail for offenders aged 15, 16 and 17 years old in certain circumstances will:
 - *'interfere with the right to privacy' in section 25(a) of the HRA 110*
 - *limit 'the right to education in section 36(1) of the HR Act. There is at least one example of child subject to an electronic monitoring condition of bail who refused an education enrolment due to concerns about bullying and stigmatisation'.* 12
 - *'allow the court to interfere with kinship ties limits the right of Aboriginal and Torres Strait Islander peoples 'to enjoy, maintain, control, protect and develop their kinship ties' in section 28(2)(c) of the HR Act.'* 11

The Queensland Government itself has made findings in the Youth Justice Strategy for 2019-2023 that prevention programs are most effective in addressing youth offending and are the most cost effective.¹ It is our submission that the Bill does not provide an exceptional case to override the HRA, breaching the human rights of young people.

Disproportionate impact on Aboriginal and Torres Strait Islander young people

The Statement of Compatibility acknowledges that the new aggravated offence in section 408A, 408A(1B), and 408(1C) will have a greater impact on Aboriginal and Torres Strait Islander people. Despite acknowledging that “increasing the maximum penalty for these offences may mean that more Aboriginal and Torres Strait Islander offenders are incarcerated for longer periods of time”, Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services, justifies this position noting “satisfied the amendments do not directly or indirectly discriminate on the basis of race” and does not limit the rights to equality and non-discrimination.²

It is our position that the proposed amendment - Extension of electronic monitoring devices as a condition of bail for offenders aged 15, 16, and 17 years old in certain circumstances, interferes with kinship ties, breaching section 28(2)(c) of the HRA. Despite the acknowledgement in the Statement of Compatibility of the right of Aboriginal and Torres Strait Islander people to maintain kinship ties, the proposed discriminatory amendment allows and justifies the Court to interfere with kinship ties, limiting this human right.

At a time when the Queensland Government is making significant progress towards a historic Treaty and taking steps to right historic wrongs with the Aboriginal and Torres Strait Islander peoples of Queensland, we are again faced with a government justifying discriminatory legislation which will have a significant impact on our Aboriginal and Torres Strait Islander peoples, and further contribute to the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system.

The *most* vulnerable children in Queensland are targets of this law reform

Research consistently shows that young people in the criminal justice system experience profound social disadvantage including extreme poverty, histories of familial offending, exposure to family violence, unstable accommodation or homelessness, alcohol and substance misuse, and disrupted education. This is consistent with YFS Legal’s experience when dealing with young people. Further, a disproportionate number are Aboriginal and Torres Strait Islander young people.³ These are the most vulnerable of all Queensland children caught up in the juvenile justice system.

It is our submission that the Youth Justice system does require reform, however reform should be focused on trauma-informed practice in the form of community investment and commitment to

¹ Queensland Government, ‘Working Together Changing the Story: Youth Justice Strategy 2019-2023’ (2019), 8.

² Compatibility Statement, page 3 -4

³ Darren Coyne, ‘Outcry over locked up kids: Children as young as 10 are in watch houses and ‘being cruelly abused,’ (2017); AIHW, ‘Youth Justice in Australia 2015-16, Bulletin No. 133, (2016).

resources that support young people on bail, and early intervention activities to young people exposed to the youth justice system.⁴

Punitive measures are ineffective

The likely effect and impact of the passing of the Bill is that more children and young people will be held on remand serving an indefinite amount of time as well as increased periods of detention served as sentences. As an organisation that works directly with young people in the criminal justice system, it is our position that increased penalties and limiting the grant of bail to children will not protect the community in the long term. Research has shown that if a young person is exposed to other young people who commit offences, recidivism is increased, and as is well-known there is a complete lack of evidence that detention is an effective deterrence tool.⁵

It is our repeated experience, that young persons, including those with intellectual disabilities and neurological impairments, are remanded in custody and are quite often, in the watchhouse for several weeks. It is likely with the implementation of the proposed amendments many vulnerable young people will be remanded for much longer periods in watchhouses.

Youth offending is clearly distinguished from adult offending; children's brains are developing, which gives cause to a different sentencing approach.⁶ Rather than supporting young people's brain development, punitive measures often 'traumatise them, increase the vulnerability and likelihood of reoffending.'⁷ Further, detention of young people causes detrimental effects on mental health and given a large proportion of young people in detention have pre-existing mental health disorders, their mental health often declines increasing the likelihood of offending and reducing community protection.⁸

⁴ Andrew Day, Catia Malvaso, Luke Butcher, Joanne O'Connor and Katherine McLachlan, 'Co-producing trauma-informed youth justice in Australia?' *Safer Communities* (19 January 2023).

⁵ Amélie Petitclerc, Uberto Gatti, Frank Vitaro, and Richard E. Tremblay, 'Effects of juvenile court exposure on crime in young adulthood' (2013) 54(3) *The Journal of Child Psychology and Psychiatry* 291; Australian Institute of Health and Welfare, 'Young people returning to sentenced youth justice supervision 2015-16,' (2017), Juvenile Justice Series no. 21; Thomas Bernard, 'The Cycle of Juvenile Justice' (2010) 2nd ed. Oxford University Press, 3-4; Mirko Bagaric and Theo Alexander, 'The capacity of criminal sanctions to shape the behavior of offenders: Specific deterrence doesn't work, rehabilitation might and the implications for sentencing' (2012) 36(3) *Criminal Law Journal* 159, 163; Ian Lambie and Isabel Randel, 'The impact of incarceration on juvenile offenders' (2013), 33 *Clinical Psychology Review* 448, 448; Andrew Trotter and Harry Hobbs, 'A historical perspective on juvenile justice reform in Queensland,' (2014) 38 *Crim LJ* 77; ABS, *An Analysis of Repeat Imprisonment Trends in Australia Using Prisoner Census Data from 1994 to 2007* (2010), [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/26D48B9A4BE29D48CA25778C001F67D3/\\$File/1351055031_aug%202010.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/26D48B9A4BE29D48CA25778C001F67D3/$File/1351055031_aug%202010.pdf); Brown D, "The Limited Benefit of Prison in Controlling Crime" (2010) 22 *Current Issues in Criminal Justice* 137 at 140-142; Larkin McReynolds, Craig Schwalbe and Gail Wasserman, 'The contribution of psychiatric disorder to juvenile recidivism' (2010), 37(2) *Criminal Justice and Behaviour* 205, 212.

⁶ R Arthur, 'Rethinking the criminal responsibility of young people in England and Wales, (2012), 20(1) *European Journal of Crime Criminal Law and Criminal Justice* 13, 13-29; E Farmer, 'The age of criminal responsibility: Developmental science and human rights perspectives,' (2011), 6(2) *Journal of Children's Services* 86, 86-90.

⁷ Julie Edwards, 'A Just System? Punitive Youth Justice Systems Increase the Risk of Crime,' (2017), 42(2) *Children Australia* 233, 233.

⁸ Elizabeth S. Barnert, MD, MPH, MS; Laura S. Abrams, PhD, MSW; Rebecca Dudovitz, MD, MSHS; Tumaini R. Coker, MD, MBA; Eraka Bath, MD; Lello Tesema, MD, MSHS; Bergen B. Nelson, MD, MS; Christopher Biely, MS; Paul J. Chung, MD, MS, 'What Is the Relationship Between Incarceration of Children and Adult Health

Need for adequate support programs

As outlined above, prevention programs are the most effective resource to reduce youth offending. YFS is an organisation that delivers a number of programs assisting children, young people and their families.

- YFS Youthlink works with young people disengaged from school or in the criminal justice system, working with individuals and their families to achieve goals.
- YFS Shift works with children and young people to achieve goals relating to drug and alcohol use.
- YFS Resolve provides early intervention youth case management and diversion programs. Resolve aims to divert young people from pathways that lead to crime and help them get back on track.

Through these programs we have seen great success for young people who have been provided with consistent support.

Additionally, bail-support programs are important tools which promote the reintegration of the young person into community and protect the safety of communities. They assist in limiting a young person's exposure to being remanded which undoubtedly reduces the risk of further offending. The Australian Institute of Criminology (AIC) has highlighted a lack of bail-support programs beyond metropolitan areas and a need for additional support for young people with complex needs.⁹ These assist with addressing drug and alcohol abuse; stabilising accommodation; sparking employment, training and education opportunities; and building relationships.¹⁰ Bail-support programs are most successful when they require voluntary participation, provide 'support and intervention rather than supervision and monitoring,' use a holistic approach to respond to individual needs rather than a standardised approach, are 'coordinated and interdepartmental' providing avenues to different services and are 'adaptable and responsive to local conditions.'¹¹

Outcomes?' (2019) 19(2) *Academic Paediatrics*, 342. 342-345; Devon Indig, Claudia Vecchiato, Leigh Haysom, Rodney Beilby, Julie Carter, Una Champion, Claire Gaskin, Eric Heller, Shalin Kumar, Natalie Maome, Peter Muir, Paul van den Dolder and Gilbert Whitton, '2009 NSW Young people in custody health survey,' *Justice Health and Juvenile Justice Report*, (2011); Rohan Borschmann, Emilia Janca, Annie Carter, Melissa Willoughby, Nathan Hughes, Kathryn Snow, Emily Stockings, Nicole T M Hill, Jane Hocking, Alexander Love, George C Patton, Susan M Sawyer, Seena Fazel, Cheneal Puljević, Jo Robinson, Stuart A Kinner, 'The health of adolescents in detention: a global scoping review' (2020), 5(2) *The Lancet Public Health*, 114; Brinkley-Rubinstein L. Incarceration as a catalyst for worsening health. 2013 1(3) *Health Justice*; Lauren Brinkley-Rubinstein, Scott A Allen, Josiah D Rich, 'Incarceration and the health of detained children,' (2020), 5(2) *The Lancet Public Health*, 76-77, [https://doi.org/10.1016/S2468-2667\(19\)30250-6](https://doi.org/10.1016/S2468-2667(19)30250-6).

⁹ Mathew Willis, Australian Institute of Criminology, 'Bail support: A review of the literature,' (2017) *AIC Reports, Research Report Series iv*, 32; Kelly Richards and Lauren Renshaw, Australian Institute of Criminology, 'Bail and remand for young people in Australia: A national research project,' *Research and Public Policy Series* no. 125 (2013), 99.

¹⁰ Mathew Willis, Australian Institute of Criminology, 'Bail support: A review of the literature,' (2017) *AIC Reports, Research Report Series iv*, 34.

¹¹ Indigenous Justice Clearinghouse, 'Bail support in Australia,' *Research Brief* (2008), 1; Mathew Willis, Australian Institute of Criminology, 'Bail support: A review of the literature,' (2017) *AIC Reports, Research Report Series iv*, 26-29.

Reform to support young people in our community

In conclusion, youth justice is a complex field that requires evidence-based integrated, sustained, and well-funded community-based services to address youth crime. YFS Legal submits that the Bill and associated legislative amendments do not address complex causes of youth crime in Queensland.

We ask that the Committee rejects the Bill.

Yours faithfully

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