STRENGTHENING COMMUNITY SAFETY BILL 2023

Submission No: 72

Submitted by: Community Legal Centres

Publication: Queensland

Attachments:

Submitter Comments:

Community Legal Centres Queensland

Community Legal Centres Queensland Inc.
PO Box 12102, George St, Brisbane QLD 4003
Tel 07 3392 0092 ABN 71 907 449 543
admin@communitylegalqld.org.au
www.communitylegalqld.org.au

24 February 2023

Committee Secretary
Economics and Governance Committee
By email only: EGC@parliament.qld.gov.au

Dear Committee Secretary,

***Community Legal Centres Queensland Submission – Strengthening Community Safety Bill 2023* (Qld) ('the Bill')**

About our organisation and sector

Community Legal Centres Queensland ('CLCQ') is the peak body representing 32 funded and unfunded community legal centres ('CLCs') across Queensland. Our vision is for a fair and just Queensland. Our mission is to be a voice for the sector, to lead and support CLCs to deliver quality and accessible services to vulnerable and disadvantaged people, and bring about change.

CLCs are independently operated, not-for-profit, community-based organisations that provide free legal advice to disadvantaged and vulnerable Queenslanders, including young people as a priority client group under the National Legal Assistance Partnership Agreement (NLAP), to which the Queensland Government is a signatory.

Lack of time for consultation

Thank you for the opportunity to provide feedback on the Bill.

Given the short timeframe, our ability to properly consider and respond to the Bill is limited, and therefore our submission responds at a high level only to aspects of the proposed amendments. We anticipate that our member centres who work on the frontline with young people will provide more detailed and targeted submissions.

The enactment of laws about children and youth justice are too important to be made in haste. The causes of youth crime are complex and require responses that are well researched, evidence based and allow for consultation from a wide variety of stakeholders. We highly recommend consultation with our member CLCs as the experts not only in this area of law, but also experts in the social impacts of targeted interventions on young people.

CLCQ and our member CLCs do not support the Bill for the following reasons:

Community Legal Centres Queensland

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

The target group for this law reform proposal include some of the most vulnerable children and young people in Queensland, who are caught up in the youth justice and child protection systems in Queensland.

Research consistently shows that children and young people in the youth justice and child protection systems experience profound social disadvantage including extreme poverty, histories of familial offending, exposure to domestic and family violence (including as victims), unstable accommodation or homelessness, alcohol and substance misuse and disrupted education. Many are 'cross-over kids' who enter the youth justice system after first having contact with the child protection system. A disproportionate number are Aboriginal and/or Torres Strait Islander children. Young offenders are also disproportionately the victims of serious offences.

The youth justice system is rarely rehabilitative and can set marginalised young people on a path of further disenfranchisement and disadvantage, compounded by disconnection from education systems, family networks, and positive peer connections.

We call on the Queensland Government to invest funds to address the underlying causes of youth crime, rather than implementing reactive 'law and order' and 'tough on crime' measures that will only serve to compound disadvantage for these children and their families, and as a result, our community.

Closing the gap targets

This Bill is also inconsistent with Targets 7 and 11 of the Australian *National Agreement on Closing the Gap*. First Nations young people are disproportionately represented in detention in Queensland. Over-representation of First Nations peoples has consistently been found to be associated with over-policing, systemic racism, and compounding systemic inequalities for First Nations peoples and communities.

Imposing tougher laws against young people, particularly given the recent findings regarding systemic racism within the Queensland Police Service, will do little to improve the rates and associated risks of imprisoning Aboriginal and/or Torres Strait Islander young people.

The Bill is not compatible with the *Human Rights Act 2019* (Qld)

This Bill creates significant and unjustified limitations on the human rights of young Queenslanders, which are not based on evidence. Any limitation on human rights requires a rational connection to be made between the law or action causing the limitation and a legitimate purpose. Statistics show that crime has been decreasing and the number of individuals in the youth justice system has decreased.

There is insufficient evidence that the changes proposed in the Bill, including increased penalties and circumstances of aggravation, providing an offence for breach of bail conditions, removing the requirement that police consider alternatives to arrest, extending and expanding the electronic monitoring trial, declaring children to be 'serious and repeat offenders', and more, will make the community safer (the purpose of the proposed Bill).

Minister Mark Ryan's 30-page Statement of Compatibility document concedes that the Bill is not compatible with the *Human Rights Act 2019* (Qld).

In addition, the Bill is not compatible with a number of key international conventions such as the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules), *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, and the *Convention on the Rights of the Child*.

Rather than limiting the rights of children across Queensland with this Bill, it is suggested that local initiatives and justice reinvestment should be applied and targeted to the particular geographical areas of concern. Expressly removing the human rights of children can never be an acceptable solution. Children cannot vote and have a limited ability to protect and exercise their rights. There are no exceptional circumstances that warrant an override declaration under s 44 of the *Human Rights Act 2019* (Qld).

Increasing maximum penalties

Children do not read legislation to ascertain the penalties for offences. Children tend to act impulsively and opportunistically. Increasing penalties does not reduce offending by children and deterrence has limited utility for young offenders. Childrens' brains are still immature and thus the ability for consequential thinking (ie the ability to consider a likely outcome of a course of action) is not present or still evolving. There is already sufficient scope for sentencing outcomes to reflect the objective criminality involved in this type of offending.

Breach of bail

There is no evidence that having a breach of bail offence makes the community any safer. Breach of bail offences further criminalises and punishes children for a failure to follow conditions that do not otherwise constitute a criminal offence.

Children are not always in control of their circumstances. Children have brains that are still developing particularly in areas of executive functioning that can make compliance difficult. Sometimes complex, onerous, contradictory and lengthy bail conditions are in place for long periods of time. Children often have a greater number of specific bail conditions including curfews, to reside at a certain place, go to counselling, attend particular programs etc.

Curfew conditions are challenging when children do not have stable housing or live in more than one location. Instability with housing, domestic and family violence in the home and a variety of other factors can make it difficult (if not impossible) for a child to comply.

If a child commits a further offence then that further offence can be dealt with. It is already an aggravating factor to be taken into account at sentencing that a child was on bail at the time of an offence. Having a breach of bail offence will increase the number of children held in custody. It fails to address any of the causes of crime. It particularly effects children who are the most vulnerable and do not have supportive and safe family circumstances to assist them in complying with bail.

Sentencing: Bail history and serious repeat offenders

Taking into account a bail history at sentencing and having an offence of breaching bail creates a double jeopardy situation where the child is being punished more than once for the same act. Additionally, there is no definition of 'bail history' in the Bill.

The sentencing principles listed in s 150 of the *Youth Justice Act 1992* (Qld) should continue to apply equally to all offenders. Mitigating factors should not be given a reduced weight in the balance of the sentencing discretion. Under this Bill, children will be subjected to a sentencing regime that is more severe than that applied to adults.

It is of concern that the declaration of a child as a serious repeat offender is stigmatising. We know that children in their adolescent years are forming their concepts of self and that shaming offenders does not work for this reason. We do not want children to think of themselves in this way, as it is a self-fulfilling prophecy and is criminogenic for those children.

Electronic monitoring

Electronic monitoring has only been used for a small number of children. Many children do not have the infrastructure and supports for this to be an option for them. It does not address the real causes of crime and further data to assess the usefulness of this option.

Offenders being transferred to adult jails

Offenders who commit offences as a child should be remanded in custody in a youth detention centre. More should be done to reduce the delays in criminal proceedings so that proceedings are finalised either prior to the child turning 18 years or as soon as possible thereafter.

The timeframes for notice of impending transfers to adult jails are too short. In regards to the chief executive facilitating a consultation with a lawyer, it is unclear if there is additional funding for these lawyers or what services are available for this purpose.

It is not practicable for a lawyer to be given a time frame of 5 days to make an application to the chief executive to request a stay or to apply for a Childrens Court review. Of particular concern is should a child refuse to consult with a lawyer the 5 day period runs from the date of the refusal. There appears to be no acceptance of the child having a valid reason for a refusal, for example, if the child is ill. Detainees who suffer from intellectual impairments, mental health problems or other issues may refuse to see the lawyer without an understanding of the importance of doing so.

Furthermore, if the lawyer is not the same lawyer who represented the child during the criminal proceedings, the lawyer will need to obtain information and documents about the offences and the sentencing proceedings. The timeframes involved are not sufficient for that to occur. A lawyer cannot give proper advice without having those details at a minimum.

Locking children up is not the solution

The real urgency is the current situation, where the detention centres are full and large numbers of children are currently detained in watchhouses across Queensland. This Bill will only add to this crisis and more children will be held in custody for longer periods of time. Unless this situation is addressed, the community will not be safer over the longer term. Keeping children in watchhouses is a problem for the child, the police and ultimately for the community, and the financial cost of detention is very high. The community is better served by money being spend on interventions that actually work and provide long-term benefits.

An evidence-based approach to address youth offending

We draw your attention to examples of services and/or supports that work as outlined in Youth Advocacy Centre Inc's (YAC) Orange Paper #2: *A ten-point evidence-based plan for investment to address youth offending*, available online: http://yac.net.au/wp-content/uploads/2022/10/YAC-Orange-Paper-2.pdf. This paper provides a wealth of evidence and statistics which underpin YAC's recommendations, as well as 'myth busters' to help educate policy makers and the community.

This paper outlines a plan for investment to keep children out of, or prevent them coming back into, the youth justice system, addressing both the issue of effective and responsible use of taxpayer dollars and enhancing community safety, using an evidence-based approach. The ten-point plan will ensure a positive outcome for both young people and for the community:

1. Support families early, but also throughout adolescence
2. Address housing and homelessness issues for families, children and young people
3. Keep children and young people engaged in education: in particular, look for alternatives to suspension and exclusion
4. Increase provision of mental health services for children and young people with moderate to high mental health needs

Community Legal Centres Queensland

5. Increase provision of detox and rehab facilities for children and young people
6. Enable access to mentors
7. Enable access to youth appropriate activities and space
8. Support local communities to develop responses to address local issues which are putting their young people at risk of breaking the law
9. Provide an intensive, individualised therapeutic response for those in detention
10. Give priority support to those most vulnerable: Aboriginal and/or Torres Strait Islander children and young people and children in the care of the State.

Youth justice is a complex field that requires integrated, sustained, well-funded, community-based services such as CLCs providing appropriate services, that is evidence-based, balanced and provides consistent, long-term policy and practice for the benefit of the young people concerned and the community overall.

The Bill does nothing to address the root causes of youth crime in Queensland. We call upon the Queensland Government to genuinely engage and consult with experts in the field, including CLCs and First Nations communities and community-controlled organisations, to protect the rights of children, victims of crime and the broader community, and to immediately address the inhumane treatment of children who are currently being detained for weeks on end in Queensland watch houses.

We ask that the Economics and Governance Committee reject this Bill.

Yours faithfully

[redacted]

Rosslyn Monro
Director
[redacted]