

Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026

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National Commission for
Aboriginal and Torres Strait Islander
Children and Young People



Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026

Submission of the National Commission for Aboriginal and Torres Strait
Islander Children and Young People
7 September 2026



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National Commission for
Aboriginal and Torres Strait Islander
Children and Young People

Acknowledgement of Country

The National Commission for Aboriginal and Torres Strait Islander Children and Young People acknowledges the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them, their cultures and Elders past and present.



National Commission for
Aboriginal and Torres Strait Islander
Children and Young People

About the National Commission for Aboriginal and Torres Strait Islander Children and Young People

The National Commission for Aboriginal and Torres Strait Islander Children and Young People (National Commission) is a statutory agency that was established under the *National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026* (Cth) (National Commission Act). Under the National Commission Act, the National Commissioner for Aboriginal and Torres Strait Islander Children and Young People (National Commissioner) has a broad range of functions, including:

- promoting and enhancing coordination of efforts to identify solutions to systemic issues;
- advising the Commonwealth;
- conducting research and inquiries;
- providing and commissioning educational programs; and
- undertaking public advocacy.

The work of the National Commission is grounded in international agreements relating to human rights, including the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as protecting and promoting the cultural identity and development of Aboriginal and Torres Strait Islander children and young people through maintaining and building their connections to their family and community.

In performing these functions, the National Commission applies a child rights-based and First Nations rights-based approach, recognising Aboriginal and Torres Strait Islander children as individual rights-holders and as members of peoples with collective rights to culture, self-determination and participation in decisions affecting them.



1. Executive Summary

The Bill should be rejected. Alternatively, it must be substantially amended to remove:

- mandatory minimum detention for children
- the 'high degree of confidence' child bail test
- the weakening of diversion
- the exclusion of restorative justice
- the separate mandatory bail-status offence for children
- the *Human Rights Act 2019* (Qld) overrides
- the expanded use of watchhouses without enforceable child-specific safeguards.

The *Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026* (the Bill) will operate within a system already dominated by remand and profound racial inequity. In Queensland in 2024–25, 265 of the 298 children (88%) in custody on an average day were unsentenced.¹ Further, Aboriginal and Torres Strait Islander children comprised 71% of all children in custody in Queensland in 2024–25 and were 27 times more likely than non-Indigenous children to be held in detention.²

These impacts also raise substantive equality and non-discrimination concerns. Measures that are formally neutral may nevertheless be discriminatory in effect where their foreseeable operation compounds existing racial inequality. The Bill must therefore be assessed not only by reference to its stated purpose, but also by its likely differential impact on Aboriginal and Torres Strait Islander children. This is relevant to Australia's obligations under Article 2 of the UNCRC and International Convention on the Elimination of Racial Discrimination (ICERD).

In 2024–25, Queensland police held 6,815 children in watchhouses or police stations; more than 500 spent at least 5 days there and 59 spent more than 15 days.³ The Bill will make bail more difficult for affected children and is likely to increase remand and place further pressure on detention centres and watchhouses. Queensland Police Service data confirm that Aboriginal and Torres Strait Islander children already comprise most extended watchhouse detention events.⁴

¹ Department of Youth Justice and Victim Support 2025, *Youth Justice pocket states 12 months ending June 2025*, Queensland Government, viewed 3 September 2026, <<https://www.youthjustice.qld.gov.au/our-department/data>>.

² Australian Institute of Health and Welfare 2026, *Youth justice in Australia 2024–25*, Australian Government, viewed 3 September 2026, <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2024-25/contents/state-and-territory-overviews/queensland>>.

³ Children's Court of Queensland 2025, *Annual Report 2024–25*, Queensland Government, pp. 6, viewed 4 September 2026, <https://www.courts.qld.gov.au/data/assets/pdf_file/0010/891640/cc-ar-2024-2025.pdf>.

⁴ Queensland Family and Child Commission 2023, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, pp. 40, viewed 3 September 2026, <<https://www.qfcc.qld.gov.au/publication/whos-responsible-understanding-why-young-people-are-being-held-longer-in-queensland-watch-houses>>.



Although this is a Queensland Bill, its significance is national. It would establish a model combining mandatory child detention, a harder bail test, weaker diversion and human rights overrides that could be adopted elsewhere, compounding Aboriginal and Torres Strait Islander overrepresentation and undermining Closing the Gap Target 11.⁵

These concerns are consistent with the National Commission's earlier concerns about the Queensland Government's youth justice reforms. In our submission on the *Youth Justice (Circuit Breaker) Amendment Bill 2026* and corresponding open letter, we raised concerns about the risk of causing further harm and further entrenchment of Aboriginal and Torres Strait Islander children in the youth justice system, particularly in detention or detention-like settings.⁶ This Bill compounds those concerns.

Community safety and victims' rights are legitimate and important but should not be positioned against children's rights. Many Aboriginal and Torres Strait Islander children in the youth justice system are themselves victims of violence, abuse, neglect, exploitation and systemic service failure. Mandatory imprisonment will not prevent further harm more effectively than intensive supervision, culturally safe bail support, restorative justice and Aboriginal and Torres Strait Islander community-controlled responses.

1.1 Recommendations

Primary recommendation:

- The *Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026* to not be passed.

Alternative recommendations:

1. If the Bill is to proceed, the Queensland Parliament should make the following essential amendments:

- 1.1 Remove the application of clause 12 proposed section 29AA to children, or at minimum remove the mandatory penalty of one year's imprisonment and preserve full judicial discretion.

⁵ Productivity Commission 2026, *Socioeconomic outcome area 11: Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system*, Australian Government, viewed 3 September 2026, <<https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-justice/>>.

⁶ National Commission for Aboriginal and Torres Strait Islander Children and Young People 2026, *Submission to the Youth Justice (Circuit Breaker) Amendment Bill 2026*, viewed 4 September 2026, <<https://documents.parliament.qld.gov.au/com/JICSC-CD82/YJCBAB2026-060B/submissions/00000057.pdf>>; Hunter, S 2026, *Open letter to members of the Queensland Legislative Assembly Youth Justice (Circuit Breaker) Amendment Bill 2026*, viewed 4 September 2026, <<https://www.ncatsicyp.gov.au/news/national-commissioners-open-letter-legislative-assembly-youth-justice-amendment-bill-2026>>.



- 1.2** Remove children from the proposed 'high degree of confidence' bail test outlined in clause 28.
 - 1.3** Omit clauses 24, 31 and 32 amending sections 11, 59A and 59AA of the *Youth Justice Act 1992* (Qld) that remove the requirement to consider diversion and alternatives to arrest.
 - 1.4** Remove the proposed overrides and exclusions of the *Human Rights Act 2019* (Qld).
 - 1.5** Prohibit children's detention in police watchhouses, except for a strictly limited emergency transfer period with enforceable child-specific safeguards.
 - 1.6** Require mandatory notification to the Inspector of Detention Services when a child is held beyond the emergency transfer period, and that all watchhouses used to detain children be prescribed for periodic inspection under the *Inspector of Detention Services Act 2022* (Qld).
- 2.** If the Bill is to proceed, the following necessary protections should be included:
- 2.1** Require individualised consideration of the child's best interests, age, maturity, disability, circumstances, culture, kinship, community and Country, and available Aboriginal and Torres Strait Islander community-controlled supports in bail and sentencing, with a presumption in favour of culturally safe diversion and bail support.
 - 2.2** Guarantee immediate, independent, child-specialist and culturally safe legal assistance, accessible information, effective participation and effective remedies, including prompt review of any deprivation of liberty, supported by recurring specialist training for all professionals in child development, participation, disability, trauma, cultural safety, diversion and children's rights.
 - 2.3** Require coordinated support for Aboriginal and Torres Strait Islander children in contact with both the child protection and youth justice systems, including safe housing and a responsible agency accountable for bail compliance supports.
 - 2.4** Guarantee continuity of family and cultural connection, health care, medication, disability support and education for Aboriginal and Torres Strait Islander children during any deprivation of liberty.
 - 2.5** Adequately resource Aboriginal and Torres Strait Islander community-controlled prevention, diversion, bail, healing and reintegration responses.
 - 2.6** Require reasonable and procedural accommodations for children with disability at every stage of police, bail and court processes, including communication support and assessment of a child's capacity to understand and comply with bail conditions.



3. If the Bill is to proceed, the following implementation and accountability measures should be included:
- 3.1 Conduct and publish an independent child rights and racial equity impact assessment before enactment and again before commencement.
 - 3.2 Meaningfully involve Aboriginal and Torres Strait Islander children with experience of bail, remand and watchhouses, together with Aboriginal and Torres Strait Islander peoples through their representative institutions, in scrutiny, implementation and review.
 - 3.3 Make commencement conditional on statewide, adequately funded capacity in Aboriginal and Torres Strait Islander community-controlled and culturally safe bail support, accommodation, transport, legal assistance and reintegration services.
 - 3.4 Require independent evaluation and reporting disaggregated by Indigeneity, age, sex, disability, location and justice-system stage.
 - 3.5 Measure community and victim safety, diversion, remand, racial disparity, wellbeing, education and reintegration outcomes, not only arrests, detention or reoffending.
 - 3.6 Require a statutory review and sunset mechanism for measures that increase children's exposure to remand or detention.

The Bill is inconsistent with core principles of child justice. It restricts liberty before conviction, mandates imprisonment, weakens diversion and individualised decision-making, and removes human rights protections in circumstances where detention should be a measure of last resort and for the shortest appropriate period. These measures engage the rights to non-discrimination, best interests, participation, liberty, fair process, culture, rehabilitation and reintegration under the UNCRC, together with the collective rights of Aboriginal and Torres Strait Islander peoples under UNDRIP.

2. Disproportionate impact on Aboriginal and Torres Strait Islander children

2.1 Overrepresentation

Aboriginal and Torres Strait Islander children are already disproportionately represented in Queensland's youth justice system, including in police contact, charges, bail, remand, and sentenced detention. This means the proposed amendments outlined in the Bill will not affect all children equally, but instead further entrench overrepresentation of Aboriginal and Torres Strait Islander children in the youth justice system.



This disparity is central to the human rights assessment of the Bill. UNCRC Article 2 requires rights to be secured without discrimination, while ICERD requires attention to substantive equality and the discriminatory effects of apparently neutral laws and policies.⁷ Where new criminal justice measures foreseeably operate most heavily on an already grossly overrepresented racial group, their differential impact requires specific justification, prevention and monitoring.

In Queensland in 2024–25, Aboriginal and Torres Strait Islander children were 23 times more likely than non-Indigenous children to be under community-based supervision and 27 times more likely to be in detention.⁸ Further, despite making up 8.8% of 10 to 17-year-olds in Queensland, Aboriginal and Torres Strait Islander children comprised 71% of children in detention.⁹

This overrepresentation is not attributable to an absence of punitive law. Instead, it largely reflects the impacts of colonisation, dispossession, and systemic racism, including:

- the over-policing of Aboriginal and Torres Strait Islander people
- poverty, including educational and economic exclusion and housing instability
- intergenerational trauma
- unmet health and disability needs
- disproportionate child protection involvement
- limited culturally safe services, especially in regional and remote areas.¹⁰

Alongside these impacts, for children involved in both the child protection and youth justice systems, alleged offending and bail non-compliance may coincide with placement instability, homelessness, and the absence of a responsible adult able to support compliance. The remand and mandatory detention of these children should not be justified due to non-compliance created through State failures in care, housing or service provision.

The Disability Royal Commission found that people with cognitive disability may have difficulty understanding and complying with conditions imposed through the justice system, including bail.

⁷ United Nations 1965, *International Convention on the Elimination of All Forms of Racial Discrimination*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>>.

⁸ Australian Institute of Health and Welfare 2026, *Youth justice in Australia 2024-25*, Australian Government, viewed 3 September 2026, <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2024-25/contents/state-and-territory-overviews/queensland>>.

⁹ Australian Institute of Health and Welfare 2026, *Youth justice in Australia 2024-25*, Australian Government, viewed 3 September 2026, <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2024-25/contents/state-and-territory-overviews/queensland>>.

¹⁰ Cunneen, C & Tauri, J 2019, 'Annual review of criminology: Indigenous peoples, criminology and criminal justice', *The Annual Review of Criminology*, vol. 2, pp. 359-381, viewed 3 September 2026, <<https://doi.org/10.1146/annurev-criminol-011518-024630>>.



It found that people may need tailored, individualised support to understand the conditions.¹¹ In Queensland in 2025–26, 60% of children involved in the youth justice system had suspected or assessed disability.¹² These challenges are particularly acute for Aboriginal and Torres Strait Islander children with cognitive, hearing, communication, neurodevelopmental or psychosocial disability due to overrepresentation in the youth justice system and the compounding impact of ableism and racism.¹³ The Bill therefore risks treating disability and unmet support needs as deliberate non-compliance.

The Government also anticipates that the Bill will potentially increase the number of children in police watchhouses.¹⁴ Queensland Police Service data for between 2019 and 2023 showed that Aboriginal and Torres Strait Islander children comprised, on average, 71.7% of 3 to 7-day, 62.3% of 8 to 14-day and 53.3% of 15 plus-day watchhouse detention events.¹⁵ In a separate cohort of 30 children examined for extended stays, 93% were Aboriginal or Torres Strait Islander children.¹⁶ Given this existing overrepresentation, Aboriginal and Torres Strait Islander children are likely to bear a disproportionate share of that increase.

A watchhouse is an adult, police-controlled environment, not a facility designed for children. Children held in watchhouses may experience:

- separation from family, community and Country
- restricted access to Aboriginal or Torres Strait Islander legal and cultural support
- interrupted medication, health care and education, including limited disability services
- exposure to adults
- isolation, distress, and re-traumatisation.¹⁷

¹¹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2023, *Criminal justice and people with disability*, viewed 3 September 2026, <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>>.

¹² Department of Youth Justice and Victim Support 2026, *Youth Justice pocket states 12 months ending June 2026*, Queensland Government, viewed 3 September 2026, <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/37b58adf-048a-41e9-9ca1-7df4947dff90/yj-pocket-stats-2025-26.pdf?ETag=cdbc4164fb83ced02dd2b9706789199b>>.

¹³ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability 2023, *First Nations people with disability*, viewed 3 September 2026, <<https://disability.royalcommission.gov.au/publications/final-report-volume-9-first-nations-people-disability>>.

¹⁴ Queensland Parliament 2026, *Breach bail, go to jail and other legislation amendment bill 2026*, viewed 3 September 2026, <<https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=0&id=8607>>.

¹⁵ Queensland Family and Child Commission 2023, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, pp. 42, viewed 3 September 2026, <<https://www.qfcc.qld.gov.au/publication/whos-responsible-understanding-why-young-people-are-being-held-longer-in-queensland-watch-houses>>.

¹⁶ Queensland Family and Child Commission 2023, *Who's responsible: Understanding why young people are being held longer in Queensland watch houses*, pp. 40, viewed 3 September 2026, <<https://www.qfcc.qld.gov.au/publication/whos-responsible-understanding-why-young-people-are-being-held-longer-in-queensland-watch-houses>>.

¹⁷ Queensland Ombudsman 2024, *Cairns and Murgon watch-houses inspection report: Focus on detention of children*, viewed 3 September 2026, <<https://www.ombudsman.qld.gov.au/publications/detention-inspection-reports/cairns-and-murgon-watch-houses-inspection-report-2024>>.



The Bill will foreseeably result in more Aboriginal and Torres Strait Islander children being held in watchhouses, while reducing the human-rights accountability governing what happens to them there by overriding the *Human Rights Act 2019* (Qld). UNCRC Article 37(c) requires every child deprived of liberty to be treated with humanity and respect for their age-specific needs and, unless contrary to the child's best interests, to be separated from adults.¹⁸ Routine or prolonged detention in adult police facilities is difficult to reconcile with these requirements.

The holding of children in watchhouses should be prohibited except for strictly limited emergency transfer periods, which require child-specific safeguards including:

- immediate family and legal notification
- notification to the Inspector of Detention Services for watchhouse stays beyond the emergency transfer period
- cultural support
- separation from adults
- health, disability and safeguarding assessments
- recorded reasons for watchhouse custody
- prompt judicial review.

Children held in watchhouses in emergency circumstances must also be guaranteed uninterrupted medication, health care, disability and communication support, daily education, confidential legal contact, regular family contact, access to cultural authority and culturally safe support, including connection to Country wherever practicable. These must be enforceable minimum conditions and not dependent on the discretion of Queensland Police Service staff.

2.2 Compounding youth justice system involvement

Rather than interrupting youth justice system involvement for children, the Bill instead creates a compounding pathway. By weakening diversion, more children will face formal proceedings and be released on bail. This greater bail exposure then means more children will be exposed to the new breach of bail offence and risk facing mandatory detention. For children who have previously committed offences, the show cause measure will result in higher levels of bail refusal and more children being held on remand. Ultimately, more children will be held in watchhouses and youth detention centres on remand or mandatory sentences, both further entrenching children in the youth justice system and increasing pressure on a system already at capacity.

¹⁸ United Nations 1989, *Convention on the Rights of the Child*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.



This outcome is not simply a prediction. A 2022 Queensland Government evaluation of show cause provisions showed that these provisions resulted in more bail refusals and more children in detention.¹⁹ The number of children remanded in custody increased, as did the length of time spent on remand. The evaluation also showed that 66% of children required to show cause were Aboriginal and Torres Strait Islander.²⁰

This compounding effect is particularly significant under a child rights approach because the State is required to minimise children's contact with formal criminal justice processes wherever appropriate. UNCRC Article 40(3)(b) and General Comment No. 24 favour diversion and measures that deal with children without resorting to judicial proceedings.²¹ Legislative changes that predictably increase formal processing, remand and detention therefore require particularly compelling justification.

2.3 Government commitments

By foreseeably increasing remand and detention among an already grossly overrepresented cohort, the Bill moves Queensland further from its commitment to Closing the Gap Target 11: reducing the detention rate of Aboriginal and Torres Strait Islander young people aged 10–17 by at least 30% by 2031.²² It also cuts across the Queensland Government's commitment to *Safe and Supported: The National framework for protecting Australia's children 2021–2031* that Aboriginal and Torres Strait Islander children grow up safe and supported in family, community and culture, with Aboriginal and Torres Strait Islander leadership being involved in decisions affecting them.²³

¹⁹ Department of Children, Youth Justice and Multicultural Affairs 2022, *Youth Justice reforms review*, Queensland Government, pp. 55–16, viewed 3 September 2026, <<https://www.publications.qld.gov.au/dataset/strategies-and-reform-changes-to-the-youth-justice-act-1992/resource/1cb447d9-d6e7-4d60-8e29-059bcbb32347>>.

²⁰ Department of Children, Youth Justice and Multicultural Affairs 2022, *Youth Justice reforms review*, Queensland Government, pp 55–61, viewed 3 September 2026, <<https://www.publications.qld.gov.au/dataset/strategies-and-reform-changes-to-the-youth-justice-act-1992/resource/1cb447d9-d6e7-4d60-8e29-059bcbb32347>>.

²¹ United Nations 1989, *Convention on the Rights of the Child*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>; United Nations Committee on the Rights of the Child 2019, General comment no. 24 (2019) on children's rights in the child justice system, viewed 3 September 2026, <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>>.

²² Productivity Commission 2026, *Socioeconomic outcome area 11: Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system*, Australian Government, viewed 3 September 2026, <<https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-justice/>>.

²³ Department of Social Services 2021, *Safe and supported: The national framework for protecting Australia's children 2021–2031*, Australian Government, viewed 3 September 2026, <<https://www.dss.gov.au/system/files/documents/2024-10/dess5016-national-framework-protecting-childrenaccessible.pdf>>.



At the State level, mandatory detention and watchhouse exposure disrupt family and cultural connection and displace participation, recovery and reintegration with punishment, also undermining Queensland's commitment to *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037* that Aboriginal and Torres Strait Islander children grow up safe, loved and cared for in family, community and culture.²⁴

These commitments also reflect the broader principle of self-determination in UNDRIP. Articles 18 and 19 require Indigenous peoples to participate through their own representative institutions in decisions affecting their rights and require States to consult and cooperate in good faith with the objective of obtaining free, prior and informed consent before adopting legislative measures that may affect them.²⁵

Given the Bill's foreseeable and disproportionate impact on Aboriginal and Torres Strait Islander children, the adequacy of Aboriginal and Torres Strait Islander participation in its design and scrutiny is therefore itself a relevant rights consideration.

3. Preventing the unnecessary criminalisation of children

3.1 Police discretion

Clauses 24, 31 and 32 of the Bill increase unstructured police discretion. Given the existing disproportionate police contact experienced by Aboriginal and Torres Strait Islander children, these changes create a foreseeable risk that they will receive fewer cautions, face more formal charges and become more deeply involved in the youth justice system. The blanket exclusion of restorative justice for offences against the *Bail Act 1980* (Qld) also prevents individual assessment, and the Queensland Government recognises this as against the best interests of children.²⁶

²⁴ Department of Communities, Child Safety and Disability Services 2017, *Our way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037*, Queensland Government, viewed 3 September 2026, <<https://nla.gov.au/nla.obj-2742555151/view>>.

²⁵ United Nations 2007, *Declaration on the Rights of Indigenous Peoples*, viewed 4 September 2026, <<https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>>.

²⁶ Queensland Parliament 2026, *Breach bail, go to jail and other legislation amendment bill 2026*, viewed 3 September 2026, <<https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=0&id=8607>>.



3.2 Presumption of innocence

In criminal proceedings, the prosecution bears the burden of proof. This has been called 'a cardinal principle of our system of justice' in Australia and it is an integral component of the rule of law.²⁷ This principle is fundamental to the presumption of innocence and any interference with this presumption requires the strongest justification, including that it is proportionate or relates specifically to an issue within the knowledge of the accused. Pre-trial bail procedures engage the presumption of innocence in its broadest sense, meaning they should be conducted as far as possible as if the defendant were innocent.²⁸

Clause 28 does not reverse the prosecution's ultimate burden of proving the charged offence beyond reasonable doubt. It does, however, impose a reverse onus in relation to liberty. A child within the provision must satisfy the decision-maker to a 'high degree of confidence' that they will not commit a further significant offence before they may be released on bail. This assessment is made before guilt for the triggering charge has been established.

The provision therefore substantially increases the risk of pre-trial detention based on an allegation and an assessment of predicted future behaviour. For children, the critical question is whether such detention remains necessary, proportionate and consistent with UNCRC Article 37(b), which requires deprivation of liberty to be used only as a measure of last resort and for the shortest appropriate period.²⁹ For Aboriginal and Torres Strait Islander children, the potential consequences of this shift are particularly significant considering already existing overrepresentation in remand and detention.

The predictive nature of the test is also significant. It requires a child to satisfy a decision-maker about future behaviour rather than establishing a fact particularly within the child's knowledge. This burden is especially difficult for children experiencing disability, unstable accommodation, family disruption or limited access to bail support.

²⁷ *Sorby v The Commonwealth* (1983) 152 CLR 281, 294 (Gibbs CJ). See also, *Momcilovic v The Queen* (2011) 245 CLR 1, 47 [44] (French CJ). See also Heydon, above n 1, [7085]; Williams, above n 1, 871; Andrew Ashworth and Jeremy Horder, *Principles of Criminal Law* (Oxford University Press, 7th ed, 2013) 71; Australian Law Reform Commission 2015, 'Final Report: Traditional Rights and Freedoms—Encroachments by Commonwealth Laws', *ALRC Report*, vol. 129, pp.259, viewed 3 September 2026, <<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/>>.

²⁸ Australian Law Reform Commission 2015, 'Final Report: Traditional Rights and Freedoms—Encroachments by Commonwealth Laws', *ALRC Report*, vol. 129, pp.279, viewed 3 September 2026, <<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-report-129/>>.

²⁹ United Nations 1989, *Convention on the Rights of the Child*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.



This also engages the Convention on the Rights of Persons with Disabilities, including the rights of children with disability to equality and non-discrimination, access to justice and procedural accommodation.³⁰ A child should not be criminalised for inability to understand or comply with conditions where necessary disability and communication supports have not been provided.

3.3 Best interests and individualised decision making

UNCRC Article 3 requires the best interests of the child to be a primary consideration in all actions concerning children.³¹ In the child justice context, this requires decision-making that takes account of the individual child's age, maturity, circumstances, development, culture, disability and prospects for rehabilitation and reintegration.

Mandatory rules that determine whether a child is detained or imprisoned irrespective of those circumstances substantially constrain the capacity of courts to give the child's best interests the weight required by the Convention. This is particularly significant where less restrictive measures capable of protecting community safety are reasonably available.

3.4 Mandatory detention

Clauses 12 and 25 of the Bill impose a regime of mandatory sentencing by excluding restorative justice and imposing a mandatory minimum penalty of at least one year's imprisonment served wholly in a corrective services facility for offences against the *Bail Act 1980* (Qld).³² As a result, the court is unable to consider factors such as age, maturity, culpability, disability, trauma, culture, family, kinship, community, Country and rehabilitation, in determining whether a term of imprisonment should be imposed. This prevents a court from deciding whether detention is necessary and proportionate for the individual child.

³⁰ United Nations 2006, *Convention on the Rights of Persons with Disabilities*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>>.

³¹ United Nations 1989, *Convention on the Rights of the Child*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.

³² Clause 36 clarifies that for a child the term of imprisonment be served wholly in a detention centre.



The evidence is clear that mandatory sentencing increases incarceration, is costly, and it not an effective deterrent in reducing crime.³³ UNCRC General Comment No. 24 expressly rejects mandatory minimum sentences for children.³⁴ UNICEF Innocenti also warns that detention can deepen exclusion and impede reintegration, increasing rather than reducing offending and subsequent future justice system contact.³⁵ This is directly contrary to the objectives of the Bill.

Mandatory sentencing also restricts individualised judicial decision-making by preventing a judicial officer from determining whether imprisonment, and its duration, is appropriate to the circumstances of the particular child and offence. Judicial independence and discretion are a critical component of the rule of law, and are bedrocks of the Australian justice system, including in Queensland. The introduction of mandatory minimum sentences in the Bill therefore represents an undermining of these essential foundations.³⁶

3.5 Cumulative conviction and punishment

Clause 12, specifically the new section 29AA, means that a child may be punished and convicted for their substantive 'significant' offence (first offence), as well as the offence for committing this particular offence while on bail, unlawfully at large or failing to appear (second offence). It creates a separate offence arising from the commission of a significant offence while the child has the specified bail status. A child may therefore be convicted and sentenced for the underlying significant offence and incur an additional conviction carrying a mandatory custodial penalty because that offence occurred while the child was on bail, unlawfully at large or in the other circumstances specified by the provision. Proposed subsections 29AA(5)–(6) expressly displace relevant Criminal Code protections against cumulative punishment.

The concern is therefore not simply formal double jeopardy. It is the creation of **cumulative criminal liability and punishment arising from the same underlying offending conduct**, including a mandatory custodial consequence that cannot be adjusted to the individual circumstances of the child.

³³ Australian Law Reform Commission 2018, 'Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', vol. 133, viewed 3 September 2026; Law Council of Australia 2025, *Media Release: "Mandatory Minimum Sentencing"*, viewed 3 September 2026, <<https://lawcouncil.au/media/news/mandatory-minimum-sentencing>>.

³⁴ United Nations Committee on the Rights of the Child 2019, *General comment no. 24 (2019) on children's rights in the child justice system*, viewed 3 September 2026, <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>>.

³⁵ UNICEF Innocenti n.d., *Present imperfect podcast series*, viewed 3 September 2026, <<https://www.unicef.org/innocenti/present-imperfect>>.

³⁶ Law Council of Australia 2025, *Media Release: "Mandatory Minimum Sentencing"*, viewed 3 September 2026, <<https://lawcouncil.au/media/news/mandatory-minimum-sentencing>>.



This requires particularly strong justification under principles of proportionality, best interests and last-resort detention. The concern is compounded for Aboriginal and Torres Strait Islander children because their disproportionate exposure to bail and remand creates correspondingly greater exposure to the additional offence.

Although the Bill makes the offences formally distinct and does not expressly require consecutive sentences, the child would not have been convicted of the second offence, but for the first offence, which is the underlying offence. This effectively means that the child is being punished twice for the same conduct, and this will happen at the same time, as the second offence (the section 29AA offence) will be made out on conviction for the underlying first offence. The concern also remains that bail status can be and is already considered in sentencing. The Bill instead converts offending while on bail into a second conviction with a separate mandatory custodial penalty. Disproportionate exposure to bail creates greater exposure to that penalty for Aboriginal and Torres Strait Islander children.

3.6 Offence warning

Clause 12, specifically the new section 29AB – Offence warning – provides that the court or police officer must warn a child that committing particular offences while on bail or unlawfully at large is an offence and the minimum penalty for the offence is 1 year's imprisonment served wholly in a corrective services facility.³⁷ The court or police officer must have regard to principle 7 mentioned in schedule 1 of the *Youth Justice Act 1992* (Qld) when giving the warning to the child, i.e. that a child should have procedures and other matters explained to the child in a way the child understands. However, there are broad exemptions for failure to comply with this warning, including that it does not affect the child's liability for the offence and is not a ground of appeal against a conviction for the offence.

For a child, formal delivery of a warning is not equivalent to effective understanding. UNCRC articles 12, 37(d) and 40 require procedures that enable children to understand and participate effectively, supported by appropriate legal and other assistance. Where the legislation itself requires a warning about a mandatory custodial consequence, failure to ensure that the child actually understands that warning should attract an effective remedy.

The safeguard is substantially weakened if failure to provide an effective warning neither affects liability nor provides a basis for review or appeal.

³⁷ Clause 36 clarifies that for a child the term of imprisonment be served wholly in a detention centre.



3.7 Necessity, proportionality and least restrictive means

Community protection is a legitimate objective. In saying that, a legitimate objective does not establish that every measure adopted in its name is justified. Section 13 of the *Human Rights Act 2019* (Qld) outlines that the limitation of any human right requires a rational connection to the purpose of the limitation, consideration of less restrictive and reasonably available alternatives, and a balance between the objective and the harm of the limitation.³⁸

The Government has not published a comprehensive child rights or racial equity impact assessment identifying the Bill's specific effect on Aboriginal and Torres Strait Islander children, including those with disability, in out-of-home care, girls, younger children, and children in regional and remote communities.

A statement that acknowledges rights incompatibility is not a substitute for assessing the scale, distribution and preventability of harm. Parliament should not enact the Bill without an independent, publicly available child rights and racial equity impact assessment, informed by affected children and Aboriginal and Torres Strait Islander peoples.

For children, this analysis must also be informed by the more specific requirements of the UNCRC: best interests as a primary consideration, detention as a measure of last resort and for the shortest appropriate period, proportionality to both the child and the offence, and an emphasis on rehabilitation and reintegration.³⁹

Table 1: Reasonable, proportionate and necessary test

Measure	Applied conclusion
Mandatory detention	No evidence establishes that a mandatory term of imprisonment of a year is more effective than individualised and discretionary sentencing. It further removes the assessment of detention as a last resort.
Restrictive bail	Existing unacceptable risk powers supported by intensive bail services are less restrictive.
Weaker diversion	Removing a duty to consider diversion does not itself improve safety and increases inconsistent policing risks.
No restorative justice	Courts can capably assess suitability individually. A blanket removal of restorative justice for these offences is unnecessary.

³⁸ *Human Rights Act 2019* (Qld)

³⁹ United Nations 1989, *Convention on the Rights of the Child*, viewed 4 September 2026, <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>>.



Measure	Applied conclusion
Second bail-status offence	Bail status and offending while on bail can already have legal consequences in bail and sentencing decisions. The need for a separate offence carrying mandatory imprisonment has not been demonstrated.
Watchhouse overrides	Safe facility management does not require exclusion of human rights accountability. This in fact makes watchhouses even less safe for children.

The principal measures of the Bill are not shown to be necessary or the least restrictive means available. Their foreseeable burdens will fall disproportionately on Aboriginal and Torres Strait Islander children. The Government's override of the *Human Rights Act 2019* records a decision to proceed despite incompatibility; it does not demonstrate reasonableness, necessity or proportionality and does not remove Australia's international obligations to the UNCRC.

4. An alternative approach to youth justice

4.1 Child rights and victim rights are not opposing interests

Protecting the rights of children who offend or are alleged to have offended and protecting the rights of victims of crime should not be presented as competing objectives. A child rights approach to youth justice does not deny that accountability for children and community safety are important. Instead, Article 40 of the UNCRC outlines the requirement for youth justice responses to consider the age of the child and promote the reintegration of the child in society. Children are developmentally different from adults and therefore require a youth justice response that recognises their age, maturity and capacity for change, this includes detention being used only as a last resort.

The UNCRC therefore does not require a choice between accountability and children's rights. It requires accountability to be developmentally appropriate, proportionate, rights-respecting and directed towards rehabilitation and reintegration.



A child rights approach is already reflected in the Charter of Youth Justice Principles outlined in the *Youth Justice Act 1992* (Qld).⁴⁰ The charter recognises both that the community should be protected and that the youth justice system should uphold the rights, safety and wellbeing of children. It outlines the need to consider a child's age, maturity, culture and religious beliefs when making decisions about a child's treatment and deal with children in a way that will give them an opportunity to develop in responsible and socially acceptable ways and be reintegrated into community.⁴¹ The charter also recognises the importance of families and communities in rehabilitating and reintegrating children, particularly Aboriginal and Torres Strait Islander families.⁴²

Effective prevention of further offending is itself an important means of protecting the rights and safety of victims and the wider community.

4.2 Punitive responses do not create safer communities

The primary objective of the Bill is to make Queensland communities safer. In 2025–26, only 0.5 percent of Queensland children aged 10 to 17 had a proven offence finalised, and 41% of young people with a finalised court appearance never returned to the youth justice system.⁴³ The average daily serious repeat offender cohort also fell from 400 in 2024–25 to 341 in 2025–26. Over the past 10 years, bar a small increase in 2021–22 and 2022–23, the proportion of offenders under 18-years-old has significantly decreased from 22% in 2014–15 to 15% in 2024–25.⁴⁴ The Bill materials do not demonstrate that mandatory detention, reduced diversion or restricted judicial discretion will prevent serious offending or victimisation more effectively than current methods of individualised sentencing, intensive bail support or Aboriginal community-controlled responses.

More formal proceedings, remand and detention will instead consume police, court, legal, transport, watchhouse and detention resources. Without evidence to the contrary, this risks displacing resources away from intensive supervision of the children presenting the greatest risk and from the interventions most capable of preventing further harm.

⁴⁰ *Youth Justice Act 1992* (Qld)

⁴¹ *Youth Justice Act 1992* (Qld)

⁴² *Youth Justice Act 1992* (Qld)

⁴³ Department of Youth Justice and Victim Support 2026, *Youth Justice pocket states 12 months ending June 2026*, Queensland Government, viewed 3 September 2026, <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/37b58adf-048a-41e9-9ca1-7df4947dff90/yj-pocket-stats-2025-26.pdf?ETag=cdbc4164fb83ced02dd2b9706789199b>>.

⁴⁴ Queensland Government Statisticians Office 2025, *Crime report Queensland 2024-25*, Queensland Government, pp. 70–72, viewed 3 September 2026, <<https://www.qgso.qld.gov.au/issues/7856/crime-report-qld-2024-25.pdf>>; Australian Bureau of Statistics 2016, *Recorded crime: Offenders 2014-15*, viewed 3 September 2026, <<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0~2014-15~Main%20Features~Queensland~10006>>.



Deterring offending is also an objective of the Bill. **There is little evidence that detention is an effective means of deterring children from future offending, while Queensland's very high post-release reoffending rates demonstrate that detention is not producing effective rehabilitation for many children.**

A child rights-based prevention approach instead addresses the conditions associated with children's justice contact, including housing instability, exclusion from education, disability and unmet health needs, family support, child protection involvement and access to culturally safe services. The State should address these conditions rather than convert unmet need into additional criminal liability.

In Queensland in 2023, between 84 and 96% of children released from detention reoffended within 12 months.⁴⁵ The Queensland Audit Office's 2024 report on reducing serious youth crime found that children in detention are not receiving the rehabilitation or education they need to address offending behaviour.⁴⁶

Instead of punitive responses, youth justice responses for Aboriginal and Torres Strait Islander children should be grounded in the principle of self-determination. A practical commitment to self-determination would include recognised referrals to Aboriginal community-controlled organisations, funded bail accommodation and support, cultural plans prepared with children, families and communities, cultural input before diversion is rejected, formal roles in oversight and evaluation, and long-term funding for effective programs determined with communities.

Self-determination requires more than culturally adapted mainstream services. It requires Aboriginal and Torres Strait Islander peoples and community-controlled organisations to have meaningful authority in the design, delivery and evaluation of responses affecting their children.

5. Conclusion

The Bill should be rejected. It will operate within a structurally unequal system and predictably deepen the detention of Aboriginal and Torres Strait Islander children. It mandates detention, makes pre-conviction release harder, weakens diversion, excludes restorative justice, permits cumulative conviction and punishment, will increase watchhouse detention and reduces human rights accountability.

⁴⁵ Queensland Family and Child Commission 2024, *Exiting youth detention: Preventing crime by improving post-release support*, viewed 3 September 2026, <<https://www.qfcc.qld.gov.au/publication/exiting-youth-detention>>.

⁴⁶ Queensland Audit Office 2024, *Reducing serious youth crime*, Queensland Government, viewed 3 September 2026, <<https://www.qao.qld.gov.au/reports-resources/reports-parliament/reducing-serious-youth-crime>>.



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The central question is not whether Queensland should protect communities from serious offending. It must. The question is whether these measures are evidence-based, necessary and proportionate, and whether they comply with the distinct rights owed to children and to Aboriginal and Torres Strait Islander peoples. On the material presently available, that case has not been made.

If Parliament is not prepared to reject the Bill, it must remove the mandatory sentence, restrictive child bail test, weakening of diversion, exclusion of restorative justice and human-rights overrides, and prohibit the detention of children in watchhouses other than for a strictly limited emergency transfer period. Queensland should not legislate first and measure predictable harm later.



Appendix A

Table 2. Human rights and implementation framework

Source	Right or measure	Application
UNCRC art 2	Substantive equality	Formally equal provisions may deepen Aboriginal and Torres Strait Islander overrepresentation.
UNCRC art 3; GC 14	Best interests	Mandatory detention prevents best interests from affecting whether custody is imposed.
UNCRC arts 6, 19, 24	Development, protection, health	Expanded detention risks violence, trauma and disrupted treatment.
UNCRC arts 8, 30; GC 11	Identity and culture	Detention can separate children from family, culture, community and Country.
UNCRC art 12; GC 12	Participation	Children must understand and participate in bail, diversion and detention decisions, and affected children must inform legislative design and review.
UNCRC art 37; GC 24	Liberty and last resort	Mandatory detention and restrictive bail conflict with last-resort detention.
UNCRC art 40; GC 24	Child justice and diversion	Mandatory sentencing and weaker diversion undermine proportionality and reintegration.
GC 9; GC 20	Disability and adolescence	Procedures must reflect disability, development and evolving capacities.
Draft GC 27	Access to justice	Accessible information, legal assistance, participation and effective remedies are required.
UNDRIP arts 1–3	Equality and self-determination	Indigenous peoples must shape responses affecting their children.
UNDRIP arts 5, 34	Indigenous institutions	Community-controlled justice and healing structures should be recognised.
UNDRIP arts 7, 22	Liberty and Indigenous children	Expanded remand and detention engage liberty and special protection.



Source	Right or measure	Application
UNDRIP arts 18–19	Participation and consultation	Participation must occur through chosen representatives and institutions.
UNDRIP arts 21–23	Conditions and programs	Housing, health, disability and education require Aboriginal- or Torres Strait Islander-designed responses.
UNDRIP art 40	Fair procedures and remedies	Processes and remedies must be culturally appropriate.
UNCRC art 4; GC 5	Implementation and impact assessment	A public child rights and racial equity impact assessment, coordination, implementation plan and adequate resources are required.
GC 5	Data, monitoring, training	Disaggregated data, independent monitoring and workforce capability are required.
GC 19	Child-rights budgeting	Publish the cost of detention and the investment required to make less restrictive alternatives operational statewide before commencement.
General measures	Evaluation and accountability	Independent evaluation, child participation and public reporting should measure victim and community safety, diversion, remand, racial disparity, wellbeing, education, reintegration and reoffending, with a sunset mechanism.



Appendix B

Table 3. Clause-by-clause recommendations

Provision	Recommended action	Reason
Overall Bill and implementation	Require independent child-rights, racial-equity and disability impact assessment before commencement.	Foreseeable impacts on Aboriginal and Torres Strait Islander children and children with disability must be identified and mitigated before implementation.
Clause 9 Proposed <i>Bail Act 1980</i> (Qld) s 16AA Clause 28 Proposed <i>Youth Justice Act 1992</i> (Qld) s 48AG	Do not apply to children.	Predictive reverse burden will increase pre-trial detention and unequal outcomes.
Clause 12 Proposed <i>Bail Act 1980</i> (Qld) s 29AA	Exclude children or remove the mandatory minimum.	Incompatible with proportionality, best interests and last-resort detention.
Clause 12 Proposed <i>Bail Act 1980</i> (Qld) s 29AA(5)–(6)	Do not apply to children.	Authorises cumulative criminal liability and punishment arising from the same underlying offending conduct and removes an existing protection against cumulative punishment.
Clause 12 Proposed <i>Bail Act 1980</i> (Qld) s 29AB	Require child-accessible explanation, confirmation of understanding, access to legal advice and an effective remedy where the warning requirements are not met.	The present warning does not ensure understanding or access to justice.
Clause 24 Proposed <i>Youth Justice Act 1992</i> (Qld) s 11	Omit amendment.	Preserve mandatory consideration of diversion.



Provision	Recommended action	Reason
Clauses 31 and 32	Omit amendments.	Preserve duties to consider responses other than arrest.
Clauses 34 and 35	Omit exclusions.	Preserve individualised judicial assessment.
Clause 36 Proposed <i>Youth Justice Act 1992</i> (Qld) s 175A	Do not add s 29AA to the adult-penalty framework for children.	Prevent mandatory adult-style punishment.
Clauses 19, 20, 30, 37, 39 and 40	Omit overrides and s 58 exclusions.	Preserve accountability for decisions affecting children in custody.
Watchhouse provisions	Insert prohibition subject only to a tightly limited emergency transfer period.	Watchhouses are not appropriate child detention facilities.
Review provisions	Insert independent review, child participation, disaggregated reporting and sunset clause.	Ensure accountability for community and victim safety, racial impact, diversion, remand, wellbeing, education, reintegration and reoffending.