

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

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

Submission to the Justice, Integrity and Community
Safety Committee

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Contents

Who we are	4
Introduction	5
Scope and operation of proposed s29AA	6
Mandatory Minimum Sentencing	7
Plea Bargaining & Downstream Impact	8
Jurisdiction and procedural operation.....	9
Impact on marginalised groups	11
Human Rights Concerns	13
Conclusion.....	14

Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The Australian Lawyers Alliance (ALA) welcomes the opportunity to comment on the *Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026* (Bill).
2. This submission reflects feedback from ALA members in QLD, who bring substantial practical experience in bail applications, summary and indictable criminal proceedings, youth justice, human rights and regional service delivery.
3. The ALA recognises the Government's legitimate objective of protecting the community, supporting victims and responding to offending committed while a person is on bail. The ALA is supportive of this aim and sympathetic to the complex balancing act inherent in weighing the protection of the rights of the individual with that of the community.
4. The ALA is not disputing the importance of this objective; rather the ALA's concerns are as to whether the Bill's provisions are sufficiently clear, proportionate and workable to advance them without avoidable consequences for court efficiency, detention capacity and individual justice.
5. In this respect, the Bill marks a significant departure from established Queensland sentencing and bail law. It creates a separate offence with a minimum of one year's actual custody, extends that offence to children, makes the offence available in circumstances unrelated to a grant or breach of bail, introduces a demanding and uncertain bail threshold, reduces statutory requirements to consider diversion and alternatives to arrest, and expands or extends provisions that disapply or override the Human Rights Act 2019 (Qld).²
6. The Explanatory Notes accompanying the introduction of the Bill identify Victoria as the only other Australian jurisdiction with a broadly comparable offence, while noting that the Victorian offence has a maximum penalty of three months and no mandatory minimum. The Queensland model, which is more severe in both respects, would thus deeply benefit from a clear evidence base explaining why that departure is necessary and how its expected effects will be managed.
7. Those said effects must be considered in the context of existing pressure prevalent in the youth justice system. The Bill is very likely to increase remand, contested hearings, full briefs of evidence, custodial sentences and pressure on watch houses and detention centres. The Queensland Family and Child Commission has reported that Queensland detains children at a

² Breach Bail, Go to Jail and Other Legislation Amendment Bill 2026 (Qld), cls 9, 12, 19, 24, 31–32 and 36–40; Queensland Legislation, <<https://www.legislation.qld.gov.au/view/whole/pdf/bill.first/bill-2026-036>>

higher rate than any other state, that youth detention centres have operated at or above safe capacity, and that prolonged watch-house detention is harmful and traumatic.³

8. On this basis, the ALA does not support the Bill in its current form. It respectfully recommends substantial amendment before passage, directed particularly to the mandatory minimum sentence, the application to children, the scope and procedural operation of proposed s29AA, the new bail threshold and the removal of existing statutory safeguards.

Scope and operation of proposed s29AA

9. Firstly, it is important to consider that breaching a bail condition does not, by itself engage the Bill's newly proposed s 29AA offence. If a person, adult or child, breaches a condition of bail (ie curfew for example) and nothing else, s 29AA is not enlivened. The offence requires the person to commit (and under s 29AA(3) to be convicted of) a Schedule 1 prescribed offence (adults) or a s 175A significant offence (children).
10. Notably a 'technical breach' such as a missed curfew can still have serious consequences through arrest or revocation, particularly because clauses 31 and 32 reduce or remove statutory prompts to consider alternatives to arrest, but it does not alone satisfy the conditions for the proposed s 29AA offence.
11. The Bill also extends beyond that framing, with the inclusion of a person who failed to appear on a summons or notice to appear is especially concerning. Such a person may never have sought or received bail and yet be captured by s 29AA(2). Proposed s 29AB requires notice or warning when bail is granted in specified circumstances, yet the Bill creates no equivalent mechanism for a person served with a summons or notice to appear. There is no warning mechanism for that limb, because s 29AB is triggered by a grant of bail. The result is that a person may be exposed to the additional offence and mandatory custodial penalty without ever having been granted bail or expressly warned that a failure to appear could produce that consequence if they subsequently commit a prescribed or significant offence.
12. The ALA recommends removing the summons and notice-to-appear limb. If it is retained, the prosecution should be required to prove that the person received and understood an effective

³ Queensland Family and Child Commission, Who's responsible: Understanding why young people are being held longer in Queensland watch houses (November 2023), pp 8–13, 24–31, <<https://www.qfcc.qld.gov.au/sites/default/files/report-whos-responsible-understanding-why-young-people-are-being-held-longer-in-queensland-watch-houses-2023.pdf>>

warning and knowingly failed to appear without reasonable excuse. A court should be able to determine that issue before the mandatory offence is engaged

Mandatory Minimum Sentencing

13. Proposed s 29AA carries a maximum penalty of three years and a minimum sentence of one year, to be served wholly in a corrective services facility or detention centre. The minimum is therefore one-third of the statutory maximum. It is unusually severe as a proportion of the maximum penalty and prevents the court from calibrating the additional punishment to the culpability of the conduct and the circumstances of the individual.
 - a. For instance, one might compare with the existing mandatory minimums under the *Weapons Act 1990* (Qld). In that case the unlawful possession by an adult of a short firearm in a public place without reasonable excuse attracts a minimum of one year's imprisonment against a maximum of up to 14 years, while certain unlawful trafficking offences attract a minimum of three and a half years against a maximum of life imprisonment. Further, the *Weapons Act* minimums are expressly confined to adults, whereas proposed s 29AA would also apply to children as young as 10.⁴
14. Ordinarily a child must be released after serving 70% of the period of detention (s 227(1)). Where a child is sentenced under s 175A, s 227(4) instead requires the court to order the child to be released from detention after serving the proportion of the period of detention that the court considers appropriate subject to any requirement under s 175A(5).. The proposed clause 38 would make that discretion subject to the requirement in proposed s 175A(5A): being that the one-year minimum penalty for an offence against proposed s 29AA be served wholly in a detention centre. Accordingly, where a child receives the minimum sentence, the entire sentence will be custodial, leaving no balance to be served in the community under a supervised release order pursuant to s 228. The child will therefore be released at the conclusion of the sentence without the structured period of supervision, reporting and program participation that would otherwise support a staged transition back into the community.
15. For these reasons, the ALA's view is that the mandatory minimum should be removed. Failing this, the ALA urges, at a minimum, the exclusion of children, a judicial safety valve for exceptional circumstances and preservation of supervised transition under s 228.

⁴ [*Weapons Act 1990* \(Qld\), ss 50\(1\)\(c\)\(i\), 50\(1\)\(d\)\(iii\) and 65\(1\)\(b\)](#)

Plea Bargaining & Downstream Impact

16. The Bill is also likely to materially weaken the incentive for early resolution. Conviction for the substantive offence is a necessary element of proposed s 29AA and, where the provision applies, results in an additional mandatory 12 months in custody. An accused person who might otherwise have resolved the substantive charge by an early guilty plea may therefore have a strong incentive to seek full disclosure and contest the charge. Irrespective of the extent to which matters are presently resolved for reasons of expediency, the practical consequence is likely to be fewer early pleas and more contested proceedings.
17. This will not mean that every matter will be contested. It does, however, create a reasonable prospect of more defended matters, longer case duration, additional remand time and increased demand on prosecutions, courts and publicly funded legal assistance, thereby placing further pressure upon a criminal justice system already under significant demand..
18. These changes will have foreseeable downstream implications for access to legal representation. If matters that presently resolve within one or two mentions instead now require full preparation and a contested hearing, the work required may substantially exceed that contemplated by the available grant of legal aid. ALA members practising in this area have expressed concern that this could reduce the willingness of preferred suppliers to accept youth justice matters, particularly if children accumulate multiple charges under the proposed s 29AA.
 - a. The risk is especially acute in regional and remote Queensland, where the number of practitioners accepting legally aided youth justice matters is already limited. ALA members currently advise that, in Cairns, only one private preferred supplier, aside from Legal Aid Queensland, currently accepts these matters. If local providers become unable or unwilling to continue doing so, files may increasingly be allocated to practitioners based in metropolitan areas. This may result in children having limited opportunity to meet their lawyer in person before their matter is finalised. Given the particular communication needs and vulnerabilities of children involved in the youth justice system, that outcome would create a significant access-to-justice concern.
19. The ALA again notes the statement in the Explanatory Notes that impacts on legal assistance and criminal justice agencies will be managed through normal government processes.⁵ Given

⁵ Explanatory Notes, above n 2, 'Estimated cost for government implementation'.

the likely increase in contested proceedings and the resulting demands on courts, legal assistance providers and detention facilities, the ALA is concerned that this statement may materially underestimate the Bill's operational and financial consequences.

20. The ALA recommends that the Committee seek detailed demand and capacity modelling addressing anticipated charge volumes, early-plea and defended-hearing rates, remand days, detention capacity and impacts on regional legal services, together with details of the funding proposed to meet that demand. This information would assist the Committee to assess the Bill's practical feasibility and whether the necessary services and infrastructure will be in place before commencement.

Jurisdiction and procedural operation

21. The ALA refers to the Queensland Criminal Code, which classifies offences as crimes, misdemeanours or simple offences. A misdemeanour is indictable. Indictable offences reach the District or Supreme Court by committal under Part 5 of the *Justices Act 1886*, or by ex officio indictment under s 561 of the Code. Some indictable offences are dealt with summarily in the Magistrates Court under ss 552A, 552B and 552BA.
22. For children, most matters stay before a Children's Court magistrate; a "*serious offence*" (being one where an equivalent adult would be liable to imprisonment of 14 years or more) must go to a Children's Court judge by committal under s 81 of the Youth Justice Act or ex officio under s 561 of the Code, applied by s 101 of the Youth Justice Act 1992. A child may currently elect summary disposition or committal for an indictable offence that is not a serious offence and once committed to a Children's Court judge may elect trial with or without a jury under s 98. The existing breach of bail offence in s 29 of the Bail Act is a simple offence, dealt with summarily.
23. This Bill would depart from that position. The proposed s 29AA expressly creates a misdemeanour and therefore an indictable offence. Clause 13 excludes a prosecution for a s 29AA offence from the ordinary summary procedure under s 35 of the *Bail Act*.
24. Proposed s 29AD then links jurisdiction over the new offence to jurisdiction over the prescribed or significant offence on which liability under s 29AA depends (the substantive offence). It provides that a court may determine the s 29AA charge if it has jurisdiction over, or has already dealt with, the substantive offence. Section 29AD(2) specifically confirms that a Magistrates Court may determine the s 29AA charge where it is to hear and decide the substantive charge.

Proposed s 29AC(5) also contemplates the two charges being joined in the same complaint or indictment.

25. These provisions identify the courts capable of exercising jurisdiction. However, they do not clearly prescribe the procedural mechanism by which a s 29AA charge is to accompany the substantive charge when that charge moves from the Magistrates Court to another jurisdiction. This distinction is particularly important where the s 29AA charge is contested.
26. Further, section 651 of the *Criminal Code* does not appear to resolve this difficulty. That provision permits a court before which an indictment has been presented to determine certain summary charges where, among other requirements, the accused intends to plead guilty. A s 29AA offence is not a summary offence for the purposes of that provision. Further, proposed s 29AC(6) prevents the accused from being asked to plead to the s 29AA charge unless and until the accused has been convicted of the substantive offence.
27. The Bill also does not establish a specific committal pathway for the s 29AA charge or amend the existing committal provisions of the *Justices Act*, the *Criminal Code* or the *Youth Justice Act*. This creates a practical sequencing difficulty. Proposed s 29AA(3) makes conviction for the substantive offence a prerequisite to liability for the s 29AA offence, but that conviction will not ordinarily exist when a committal proceeding is conducted. Although an ex officio indictment may theoretically provide a pathway, the Bill does not state whether this is intended or how that process is to operate for a charge carrying a mandatory custodial sentence.
28. The position is especially unclear for children. Proposed s 29AD(4) appears to contemplate that the procedure applying to the substantive charge will also apply to the s 29AA charge. However, the Bill does not expressly address whether an election made by a child in relation to the substantive charge also determines the mode of disposition or trial for the s 29AA charge, whether the child may make a separate election for that charge, or how any election is to operate alongside the sequencing requirement in s 29AC(6).
29. In the absence of an express procedural pathway, there is a risk that the s 29AA charge may remain before the Magistrates Court after the substantive charge has proceeded to another court, require separate determination after the substantive proceedings, or become subject to repeated adjournments and transfers. This would create avoidable delay, additional cost and the potential for inconsistent practices between courts, as well as issues offending against the principle of totality in criminal sentencing more broadly.

30. The ALA recommends that the Bill be amended to establish a clear mechanism by which a s 29AA charge accompanies the substantive charge to the court that will determine it. The amendment should specify:
- a. when the charge is to be determined summarily or on indictment;
 - b. how the charge is to be transferred, committed or joined when the substantive charge proceeds to another court;
 - c. whether a committal proceeding is required or expressly dispensed with; and
 - d. how the existing election rights of children apply to the charge.

Impact on marginalised groups

31. Although the Bill's provisions are expressed generally, their practical effects are unlikely to be evenly distributed. Circumstances relevant to their operation, including unstable accommodation, homelessness, limited adult supervision, disability, difficulty understanding court processes, missed court dates and discontinuity in legal representation, may reflect disadvantage and perpetuate rather than an increased risk to community safety.
32. This is particularly relevant to the proposed "*high degree of confidence*" tests in ss 16AA of the *Bail Act 1980* and 48AF of the *Youth Justice Act 1992*. A person's ability to satisfy that test is likely to depend substantially upon access to stable accommodation, family or other adult support, and services that can assist with compliance. The ALA is concerned that, without appropriate safeguards, the test may operate as a proxy for access to those resources. The United Nations Working Group on Arbitrary Detention has similarly observed that people may be remanded because of underlying disadvantage, including homelessness, rather than because a risk cannot be safely managed in the community.⁶
33. The Bill must also be considered in the context of existing pressure upon custodial facilities. The Explanatory Notes acknowledge operational and financial impacts across corrective services, youth justice, police, courts, prosecutions and legal assistance services, but state only that these will be addressed through normal government processes. ALA members in Far North Queensland have recently received reports from clients at Lotus Glen Correctional Centre of

⁶ United Nations Working Group on Arbitrary Detention, *Preliminary Findings from its Visit to Australia*, December 2025, section 2.1.2.

highly restricted out-of-cell time and regular lockdowns. While these accounts are not presented as system-wide data, they illustrate the practical consequences of existing capacity and staffing pressures. The Queensland Ombudsman has identified comparable concerns in youth detention, including that access to education, programs, a structured day and time in the open air may depend upon sufficient staff being available.⁷ Any anticipated increase in detention should therefore be assessed against facilities' actual staffing, infrastructure and service capacity, rather than nominal bed capacity alone.

34. The position of children warrants particular attention. The Productivity Commission reports that, between 2018–19 and 2024–25, unsentenced children constituted between 80.6 and 90.9 per cent of Queensland's youth detention population. In 2024–25, Aboriginal and Torres Strait Islander young people in Queensland spent an average of 96.3 days in unsentenced detention—the highest average of any Australian jurisdiction and well above the national average of 57.2 days.⁸
35. The Queensland Family and Child Commission has also reported that Aboriginal and Torres Strait Islander children are less likely to receive a diversion decision and less likely to be granted bail, and has identified unstable accommodation and fractured family relationships as factors contributing directly to unsentenced detention.⁹ Against that background, clause 24 would replace the existing requirement for police to consider alternatives to commencing proceedings for a non-serious offence with a broader discretion to consider alternatives. Although diversion would remain available, removing the statutory requirement to consider it risks less consistent decision-making for children who are already less likely to be diverted.
36. Children with disability, children in residential care and children experiencing homelessness are also likely to be disproportionately affected. Department of Youth Justice data indicates that 44 per cent of children in youth justice custody had an assessed or suspected disability.¹⁰ Cognitive, intellectual and communication disabilities may affect a child's ability to understand court dates, comply with bail conditions or explain the supports they require. Similarly, a child in

⁷ Queensland Ombudsman, [Combined inspection report for youth detention centres](#) (2026), pp 54, 58, 64 and 74.

⁸ Productivity Commission, [Closing the Gap Annual Data Compilation Report July 2026](#), p 122.

⁹ Queensland Family and Child Commission, [Who's responsible: Understanding why young people are being held longer in Queensland watch houses](#) (2023), p 5.

¹⁰ Department of Youth Justice, [Youth Justice Pocket Stats 2023–2024](#).

residential care or without stable accommodation may be unable to identify an adult willing and able to provide ongoing supervision. In those circumstances, refusal of bail may reflect the absence of appropriate accommodation or support services, rather than a conclusion that detention is necessary.

37. The prescribed offences for adults include choking, suffocation or strangulation in a domestic setting under s 315A of the *Criminal Code*, and coercive control under s 334C. The ALA recognises the seriousness of those offences. However, the Women’s Safety and Justice Taskforce has documented systemic concerns about victim-survivors being misidentified as the person using violence, with Aboriginal and Torres Strait Islander women particularly affected.¹¹ Where misidentification occurs, it may affect a person’s bail position and, if the statutory criteria are otherwise met, expose them to the Bill’s more restrictive bail test and mandatory custodial consequences.
38. These matters reinforce the ALA’s earlier recommendation that the Committee obtain detailed demand and capacity modelling before the Bill proceeds.

Human Rights Concerns

39. The ALA acknowledges that the Statement of Compatibility identifies significant limitations upon the right to liberty under s 29 of the *Human Rights Act 2019* (HR Act) and the protection of children’s best interests under s 26(2). However, it does not expressly address the right to a fair hearing under s 31 or the rights of children in the criminal process under s 33.
40. Those rights are engaged by the unusual procedural framework in proposed ss 29AC and 29AD and, for children, by the application of the adult sentencing framework, the mandatory period of actual detention and the restriction of diversion and conditional release. Although these matters are addressed elsewhere in this submission, their omission from the Statement leaves the Committee without a complete assessment of the Bill’s human rights implications.
41. There is also an apparent tension concerning double punishment. The Explanatory Notes acknowledge a “high likelihood” that a person will be convicted and punished twice for the same conduct, once for the substantive offence and again under s 29AA, and that the Bill

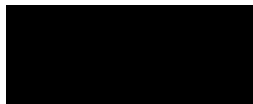
¹¹ Women’s Safety and Justice Taskforce, [Hear her voice—Report One, Volume One](#).

displaces established principles against double punishment. The Statement nevertheless concludes that s 34 of the HR Act is not limited because the offences are legally distinct.

42. The ALA recognises that s 34 is framed by reference to punishment for the same *offence*. However, the formal distinction between the offences does not fully address their cumulative operation. Offending while on bail may already aggravate the sentence imposed for the substantive offence. The same circumstance then gives rise to a further mandatory 12 months' actual custody, without allowing the court to account for the extent to which it has already been reflected in the substantive sentence.
43. The ALA therefore invites the Committee to seek further analysis of the Bill's compatibility with ss 31, 33 and 34 of the HR Act, including its cumulative sentencing effect and its particular application to children. Given that the Government's accompanying Statement about Exceptional Circumstances describes the override as an "exceptional step", express consideration of these matters would assist the Committee in its scrutiny of the Bill.

Conclusion

44. The ALA shares the Government's objective of improving community safety and confidence in the justice system. That objective is best supported by laws that are clear, proportionate, workable and capable of producing just outcomes in individual cases.
45. The principal concerns identified in this submission can be addressed while preserving firm accountability for serious offending.
46. The ALA would welcome the opportunity to appear before the Committee and to assist with any targeted redrafting.



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