QUEENSLAND PARLIAMENT
COMMITTEES

Making Queensland Safer Bill 2024

Justice, Integrity and Community Safety Committee

Report No. 1

58TH Parliament, December 2024

Justice, Integrity and Community Safety Committee

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Acknowledgements

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Chair's Foreword

This report presents a summary of the Justice, Integrity and Community Safety Committee's examination of the Making Queensland Safer Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

The committee held public hearings in Brisbane and Townsville. The committee felt that it was important to travel to regional Queensland during the examination of this Bill to hear from the Townsville community where youth crime and community safety has been a growing concern over the last decade.

During the inquiry the committee heard distressing evidence from many victims of youth crime and I commend those who came forward to tell their stories in both Brisbane and Townsville hearings. Trauma experienced by these victims of crime was often still evident as they gave evidence and on behalf of the committee we thank those brave individuals who participated.

I'm proud to be part of a committee that listens to victims and supports legislative change that seeks to improve our youth justice system to better reflect community expectations, ensure there are consequences for actions for our most serious offences and reduce the number of victims of crime.

Whilst there were concerns expressed by some witnesses about the Bill, the committee considers that the rights and concerns of victims are paramount and that action needs to be taken to address the growing numbers of serious crimes being perpetrated by young offenders.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and the Department of Justice and Department of Youth Justice and Victim Support.

I commend this report to the House.

Mr Marty Hunt MP

Chair

Executive Summary

On 28 November 2024, the Hon David Crisafulli MP, Premier and Minister for Veterans, introduced the Making Queensland Safer Bill 2024 (Bill) into the Queensland Parliament. The Bill was referred to the Justice, Integrity and Community Safety Committee (the committee) for urgent consideration.

The primary objective of the Bill is 'to hold young offenders who commit offences (particularly serious offences) to account by ensuring that courts are considering the impacts of offending on victims and can impose appropriate penalties that meet community expectations'.[1]

Stakeholders were invited to make written submissions on the Bill and the committee received and accepted 176 submissions including 7 submissions which were confidential (and not published on the committee's webpage).

The committee received a written briefing on 29 November 2024 and public briefing on 2 December 2024 from the Department of Justice and the Department of Youth Justice and Victim Support.

The committee also heard from stakeholders at public hearings in Brisbane on 2 December 2024 and Townsville on 3 December 2024.

The key issues raised during the committee's examination of the Bill included:

- impacts of the wider 'opening' of Childrens Court proceedings on young offenders and victims
- how the removal of the principle of 'detention as a last resort' from the *Youth Justice Act 1992* (YJ Act) will change how children are sentenced and the number of children in detention
- implementation of the new sentencing regime for children who commit prescribed serious offences (known as 'adult crime, adult time')
- elevation of the impact on victims as the primary consideration when sentencing children under the YJ Act
- expansion of the historical information included in a child's criminal history and the use of such history when making sentencing decisions for adult offending
- amendment to the 'status quo' process for the transfer of young offenders from youth detention centres to adult correctional facilities when they reach the age of 18 years old
- the significance of the change to an 'opt out' system for victims to receive updates regarding the young person who committed an offence against them.

The committee is satisfied that the Bill gives sufficient regard to the rights and liberties of individuals and the institution of Parliament as required by the *Legislative Standards Act 1992*.

Further, the committee is satisfied that:

- limitations of human rights, as set out in the *Human Rights Act 2019* (HRA), are reasonable and justifiable
- exceptional circumstances give rise for the HRA to be overridden as the following provisions are incompatible with human rights:

[1] Department, written briefing, 29 November 2024, p 1.

- the sentencing principles outlined in amended section 150 of the YJ Act
- the new adult sentencing regime for prescribed serious offences in new section 175A of the YJ Act.

The committee made 1 recommendation, found at page 16 of this report, which recommended that the Bill be passed.

Recommendations

Glossary

Short name	Definition, full name or explanation
BAQ	means the Bar Association of Queensland.
Beijing Rules	means the United Nations' *Standard Minimum Rules for the Administration of Juvenile Justice*.
Charter of Youth Justice Principles	means the charter of youth justice principles contained in Schedule 1 of the YJ Act.
CC Act	means the *Childrens Court Act 1992*.
Criminal Code	means the Criminal Code as contained in Schedule 1 of the *Criminal Code Act 1899*.
the department	means the Department of Justice in consultation with the Department of Youth Justice and Victim Support.
HRA	means *Human Rights Act 2019*
LSA	means *Legislative Standards Act 1992*
QATSICPP	means the Queensland Aboriginal and Torres Strait Islander Child Protection Peak.
QCOSS	means the Queensland Council of Social Service.
QLS	means the Queensland Law Society.
YAC	means the Youth Advocacy Centre.
YDC	means youth detention centre.
YJ Act	means *Youth Justice Act 1992*.

1. Overview of the Bill

The Making Queensland Safer Bill 2024 (Bill) was introduced by the Honourable David Crisafulli MP, Premier and Minister for Veterans, and was referred to the Justice, Integrity and Community Safety Committee (the committee) by the Legislative Assembly on 28 November 2024.

1.1. Aims of the Bill

Explanatory Notes of the Bill[2]

> *The Bill aims to hold young offenders who commit offences (particularly serious offences) to account by ensuring that courts are having primary regard to the impact of youth offending on victims and can impose appropriate penalties that meet community expectations.*

The Bill intends to achieve its overarching policy objectives by:

- amending the *Childrens Court Act 1992* (CC Act) to further 'open' proceedings in the Childrens Court by removing the ability of the court to make 'exclusion orders' to exclude the victim, relatives of a victim, persons with a proper interest in the proceedings and accredited media from viewing proceedings
- making various amendments to the *Youth Justice Act 1992* (YJ Act) to:
    - introduce a new sentencing regime for prescribed serious, violent offences so that youth offenders are able to be sentenced as though the offence was committed by an adult
    - remove the principle of 'detention as a last resort' from various provisions
    - include consideration of the impacts of offending on victims in the Charter of Youth Justice Principles and when sentencing a child as a primary factor
    - amend the contents of a child's criminal history to include cautions, entry into restorative justice agreements, contraventions of supervised release orders and actions taken by police for a child's failure to comply with a restorative justice agreement
    - enable a person's criminal history as a juvenile to be admitted when sentenced as an adult in particular circumstances
    - default to an 'opt out' mechanism for victims on the victim information register
    - amend the process relating to the transfer of 18 year olds from youth detention centres to adult correctional centres
- making other consequential amendments to the YJ Act, CC Act, Criminal Code, *Corrective Services Act 2006, Dangerous Prisoners (Sexual Offenders) Act 2003, Evidence Act 1977, Penalties and Sentences Act 1992, Police Powers and Responsibilities Act 2000* and *Youth Justice Regulation 2016*.[3]

[2] Explanatory notes, p 1.
[3] Explanatory notes, pp 1-2.

1.2. Context of this Bill

1.2.1. Urgency

Under the provisions of Standing Order 137, the House declared the Bill urgent and referred it to the committee for consideration with a report due by Friday, 6 December 2024.[4]

1.2.2. Overview of sentencing of children in Queensland

Children are treated differently to adults in the criminal justice system in Queensland.[5] This is premised on the fact that children and adults have different maturity levels and different levels of ability to control their behaviour.[6]

In accordance with the YJ Act, where any criminally responsible child is charged and then convicted of (or pleads guilty to) a criminal offence:

- they are, in the first instance, diverted away from the criminal justice system, or
- if it is inappropriate in the circumstances for diversionary action to be taken, they must be sentenced by a court (either the Childrens Court, District Court or Supreme Court of Queensland depending on the seriousness of the offence). [7]

The YJ Act is underpinned by the Charter of Youth Justice Principles (see Schedule 1 in the YJ Act) which inform the ways in which children are to be dealt with criminal justice system.[8]

1.2.3. Making our Community Safer Plan

On 7 July 2024, prior to its election, the Queensland Government released its *Making our Community Safer Plan* (Plan). The Plan outlines several prevention and intervention initiatives (including the introduction of the Bill) with the aim to 'restore consequences for actions with youth offenders held accountable for their crimes'.[9]

The following key issues were raised during the committee's examination of the Bill,[10] which are discussed in Section 2 of this Report:

- amendment to access to proceedings in the Childrens Court (section 2.1)
- removal of the principle of 'detention as a last resort' (section 2.2)
- application of adult penalties for prescribed serious offences (section 2.3)
- primary regard to the impact on victims on sentencing of young offenders (section 2.4)
- amendment to contents and admissibility of a child's criminal history (section 2.5)
- update to the process for the transfer of 18 years olds from youth detention centres to adult correctional facilities (section 2.6)

[4] Queensland Parliament, Record of Proceedings, 28 November 2024, p 80.
[5] YJ Act, s 134.
[6] Queensland Sentencing Advisory Council (QSAC), Sentencing children, https://www.sentencingcouncil.qld.gov.au/about-sentencing/sentencing-children.
[7] YJ Act, ss 149(1), sch 1 (Charter of Youth Justice Principles).
[8] YJ Act, s 3(2).
[9] Liberal National Party of Queensland, *Making our Community Safer Plan*, 7 July 2024, https://online.lnp.org.au/news/making-our-community-safer-plan.
[10] Note that this section does not discuss all consequential, minor, or technical amendments.

- change to the regime for the access to information contained in the 'eligible persons register' (section 2.7).

1.3. Inquiry Process

During its inquiry into the Bill, the committee received and considered a variety of evidence. This included:

- 176 written submissions accepted from stakeholders (with 169 published on the committee's webpage and 7 being kept confidential)
- a written briefing provided by the Department of Justice in consultation with the Department of Youth Justice and Victim Support on Friday, 29 November 2024
- evidence provided by witnesses at a public hearing in Brisbane on Monday, 2 December 2024
- an oral briefing provided by the department on Monday, 2 December 2024
- evidence provided by witnesses at a public hearing in Townsville on Tuesday, 3 December 2024.

Due to time constraints, not all submissions to the inquiry are reflected in the committee's report or recorded in the list of submitters at Appendix A.

1.4. Consultation

It is noted that no external consultation was undertaken regarding the contents of the Bill prior to its introduction.[11] This was highlighted by some submitters in the evidence provided to the committee.[12]

1.5. Legislative Compliance

The committee's deliberations included assessing whether the Bill complies with the requirements for legislation as contained in the *Parliament of Queensland Act 2001*, the *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

1.5.1. Legislative Standards Act 1992

Assessment of the Bill's compliance with the LSA identified the following issues analysed in Section 2 of this Report regarding whether the Bill has sufficient regard to the rights and liberties of individuals:

- the impingement on particular rights of the child (both under Queensland and international law) concerning the further 'opening' of the Childrens Court, removing 'detention as a last resort', elevating the impact on victims as the primary consideration on sentencing and the new process for the transfer of 18 year olds from youth detention centres to adult correctional centres
- the proportionality of the new sentencing regime for children to the prescribed offences
- the retrospective application of expanded contents of a child's criminal history and its admissibility for sentencing decision for offences committed as an adult

[11] Explanatory notes, p 11; Department, written briefing, 29 November 2024, p 9.

[12] QATSICPP, public hearing transcript, Brisbane, 2 December 2024, p 12; Kate Galloway, submission 42, p 2; Jo and Alison Grant, submission 73, p 2.

- the exercise of administrative power subject to appropriate review in the new process for the transfer of 18 year olds from youth detention centres to adult correctional centres.

1.5.2. Human Rights Act 2019

Assessment of the Bill's compatibility with the HRA identified issues with the following, which are analysed further in Section 2:

- the right to recognition and equality before the law (section 15, HRA)
- the right to life (section 16, HRA)
- the right to protection from torture and cruel, inhuman or degrading treatment (section 17, HRA)
- the right to privacy and reputation (section 25, HRA)
- a child's right to protection that is needed by the child, and is in the child's best interests, without discrimination, because of being a child (section 26(2), HRA)
- the right to liberty and security of the person (section 29(1), HRA)
- the right to humane treatment when deprived of liberty (section 30(1), HRA)
- a child's right to a procedure that takes into account of the child's age and the desirability of promoting the child's rehabilitation (section 32(3), HRA)
- the right to education (section 36, HRA).

Committee Comment

The committee found that the Bill is not compatible with the HRA. Some committee members raised concerns regarding the extent of the impact on the rights of children. However, the committee considers the incompatibility is justified in the circumstances.

Considering the evidence heard by the committee in relation to the impact of youth crime on victims, the committee acknowledges the broader need to ensure the safety and human rights of the Queensland population, which is the primary aim of this Bill.

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the HRA. The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

Due to certain provisions of the Bill being incompatible with human rights, the Attorney-General, as the responsible Minister, has also made a statement about exceptional circumstances with respect to the Bill under section 44 of the HRA. The relevant sections the subject of this statement are:

- amended section 150 (Sentencing principles) of the YJ Act
- new section 175A (Sentence orders – significant offences to which adult penalties apply) of the YJ Act.[13]

In relation to these sections, the HRA is being overridden and its application is entirely excluded from

[13] Statement about exceptional circumstances, p 1.

the operation of these new provisions. The stated purpose for including provisions incompatible with human rights is 'to create a safer community by holding child offenders accountable'.[14]

The Attorney-General notes that:

> In the Government's view, the current situation with respect to youth crime in Queensland presents an exceptional crisis situation constituting a threat to public safety such that amendments being made to amended section 150 of the *Youth Justice Act 1992* and new section 175A of the *Youth Justice Act 1992* must contain override declarations.[15]

The statement about exceptional circumstances also provides the following data, and justification for override declarations, concerning youth crime in Queensland:

- [T]here were 46,130 finalised proven offences by young people in 2023-24, committed by a smaller number of young people.
- Of significant concern is the increase in the rate and volume of violent offending committed by young offenders. The rate of violent offending has increased by 8.3% since 2019, with the number of proven violent offences increasing by 553 or 21% from 2,616 to 3,169.
- This violent offending includes murder, manslaughter, serious assault, and robbery.
- While the rate per population of young people offending since 2019 has decreased, there has been an increase in victims with the average number of proven offences per young person rising to 14.1 in 2023-24, compared with 7.8 in 2019.
- [I]n 2023-24 there was a 12% increase in proven offences over the previous 12 months (an additional 4,975 offences), a 51% increase over the last 5 years (+15,649 offences), and a 98% increase over the last 10 years (an additional 22,866 offences).
- Contributing to the overall increase in proven offences were increases in unlawful use of a motor vehicle offences (an additional 3,672 offences over 5 years).[16]

These override declarations are considered further in Section 2 of this Report.

1.6. Should the Bill be passed?

The committee is required to determine whether or not to recommend that the Bill be passed.

Recommendation 1 — That the Bill be passed.

[14] Statement about exceptional circumstances, p 1.
[15] Statement about exceptional circumstances, p 1.
[16] Statement about exceptional circumstances, pp 1-2.

2. Examination of the Bill

This section discusses key themes which were raised during the committee's examination of the Bill.

2.1. Amendments to access to Childrens Court proceedings

2.1.1. Current legislative framework

As recently amended by the *Queensland Community Safety Act 2024*, criminal proceedings in the Childrens Court which are not heard on indictment are largely closed to parties who are not otherwise directly involved in the administration of the proceedings with the exception of several defined categories of persons including:

1. the victim, or a relative of the deceased victim
2. the representative of a victim, or of a relative of a deceased victim
3. persons who, in the court's opinion, have a proper interest in the proceeding
4. accredited media entities.[17]

However, in respect of the categories of persons noted above in points 2-4, a party to the proceeding (usually the plaintiff child) is able to make an application to the court to exclude those persons from accessing the proceedings if the court is satisfied that the order is necessary (referred to as an 'exclusion order'):

- for the proper administration of justice (the Justice Ground), or
- the safety of those involved in the proceedings (including the young offender) (the Safety Ground).[18]

There are particular matters, including the 'primacy of the principle of open justice', that the court must consider when deciding whether to make the exclusion order on either the Justice Ground or the Safety Ground.[19]

2.1.2. Proposed amendments in the Bill

Clause 4 of the Bill proposes to:

- include relatives of the victim as persons able to be present in the courtroom during 'criminal proceedings' in the Childrens Court without being subject to an exclusion order[20]
- remove the ability for a party to Childrens Court proceedings to apply to the court for an exclusion order in respect of victims' representatives and accredited media entities from any 'criminal proceedings' in the Childrens Court.[21]

[17] CC Act, s 20(1).
[18] CC Act, s 20(2).
[19] CC Act, s 20(3).
[20] Bill, cl 4(1) (amends s 20(1)(c), CC Act); Department, written briefing, 29 November 2024, p 8.
[21] Bill, cl 4(2) (deletes ss 20(2)-(4), CC Act); Department, written briefing, 29 November 2024, p 8; Public briefing transcript, Brisbane, 2 December 2024, pp 9-10.

Further, it is proposed that the definition of the following terms be amended for the purpose of the provision:

- 'criminal proceedings' including appeal proceedings, a sentence review or a proceeding for the sentencing of a child
- 'relative' encompassing relatives in prescribed categories of both victims who are deceased and living.[22]

The amendments to section 20 of the CC Act will apply immediately upon commencement (regardless of whether the proceedings are already on foot).[23] If an exclusion order has already been made in a proceeding, the party subject to the order may apply for it to be set aside following commencement of the amendment.[24]

The explanatory notes advise that restrictions on the publication of certain information regarding youth offenders, the court's general powers to deal with contempt or exclude persons when a special witness is giving evidence and persons required to be excluded for proceedings under the *Mental Health Act 2016* will continue to have effect despite the amendments in the Bill.[25]

It was highlighted at the public briefing by the department that the changes to access to the Childrens Court have a 'victim focus'.[26]

2.1.3. Stakeholder views

Voice for Victims supported the amendments and raised the potential that the further inclusion of victims and their families into the criminal justice system could improve understanding regarding the operation of the criminal justice system and provide 'closure' to victims and their families.[27]

Conversely, various submitters noted that the current ability of the court to exclude media entities from Childrens Court proceedings on the basis of either the Justice Ground or the Safety Ground should be maintained.[28] In particular, one submitter noted the following potential impacts of increased media access:

> This decision could lead to further harm, increasing the likelihood of sensationalised media coverage that could create unnecessary noise on social media and intensify the stigma surrounding these children.[29]

Professor Tamara Walsh of the TC Beirne School of Law at the University of Queensland also noted other unintended consequences of the proposed amendments include an increase in unruly behaviour in the courtroom due to the presence of emotive parties and plaintiff children being unwilling to disclose personal or sensitive information relevant to their circumstances due to the

[22] Bill, cls 4(4)-(5) (amends s 20(9), CC Act).
[23] Department, written briefing, 29 November 2024, p 8.
[24] Bill, cl 5 (inserts new pt 7, div 7, CC Act); Department, written briefing, 29 November 2024, p 8.
[25] Explanatory notes, p 7.
[26] Public briefing transcript, Brisbane, 2 December 2024, p 5.
[27] Public hearing transcript, Brisbane, 2 December 2024, p 15; Natalie Merlehan, submission 19, p 2.
[28] Name withheld, submission 9, p 5; Name withheld, submission 12, p 1; Hon Matthew Foley, submission 17, p 2; Project Paradigm, submission 78, pp 4-7.
[29] Name withheld, submission 24.

potential that their privacy may be breached and the information would become public.[30] These were similar to the concerns outlined by academics and researchers from the School of Nursing, Midwifery and Social Work at the University of Queensland and PeakCare regarding the long term impacts on children who may find it difficult to reintegrate into the community following their court appearance.[31]

2.1.4. Consistency with fundamental legislative principles

To have sufficient regard for the rights and liberties of individuals, the Bill must appropriately deal with the potential that the further 'opening' of the Childrens Court would impinge on the rights of children in respect of their privacy throughout the course of their criminal proceedings.[32] This individual right is entrenched in both the HRA and the United Nations' Beijing Rules.[33]

The expansion of the categories of persons who may be present in criminal proceedings, and the removal of the ability of the court to exclude persons on application, will widen the scope of persons who have direct knowledge of the youth offender's identity, their personal circumstances and the nature of their offending.

However, the Bill otherwise maintains several safeguards already included in the CC Act to minimise any abrogation of the child's right to privacy including:

- media entities who are able to access proceedings are those who are accredited with the Queensland Courts
- the court's general powers to deal with contempt or exclude persons when a special witness is giving evidence
- exclusionary rules for proceedings under the *Mental Health Act 2016*
- criminal proceedings heard on indictment are closed to the public
- restriction on publication of particular identifying information of a child under the YJ Act.[34]

On this basis, the explanatory notes state:

> These amendments are accordingly justified on the basis that they protect and promote the rights of victims in the process, along with the benefits of informed and transparent reporting on court processes involving children.[35]

2.1.5. Compatibility with human rights

Every person has the right:

- to life and not to be arbitrarily deprived of life[36]

[30] Submission 21, p 1.
[31] Submission 68, p 2; Submission 71, p 15.
[32] Office of Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC Notebook* (Notebook), p 113.
[33] HRA, s 25(a); United Nations, Beijing Rules, rules 8.1, 8.2.
[34] Explanatory notes, p 10.
[35] Explanatory notes, p 10.
[36] HRA, s 16

- not to have their privacy unlawfully or arbitrarily interfered with, and not have their reputation unlawfully attacked[37]
- liberty and security of their person.[38]

As noted above in section 2.1.4, the changes to access to the Childrens Court proposed in the Bill will both increase the number of people presumed to be granted access to observe criminal proceedings in the Childrens Court and remove the ability to exclude such persons on the Justice or Safety Ground.

Due to the increased of risk that a child's identifying information may become publicly known, the above rights are likely to be impinged. This risk, and its adverse impact on the safety and wellbeing of the child, is acknowledged in the statement of compatibility.[39]

In relation to the human rights relating to discrimination, the statement of compatibility notes that it is likely that Aboriginal and Torres Strait Islander children, who represent a significant proportion of children in the youth justice system, will be impacted to a greater extent by the further 'opening' of the Childrens Court to additional parties and the media. In this regard, the Attorney-General stated that the amendments 'would not directly or indirectly discriminate based on race and therefore that the rights to equality and non-discrimination in section 15 will not be engaged on that basis'.[40]

The statement of compatibility proposes that such limitations on the rights are necessary to the extent that the seek to achieve the objective of the provision being:

> [T]o support the rights of victims of crime and their families to access to, and understanding of, the criminal justice system, as well as to support open justice and transparency.[41]

In relation to these various human rights issues raised, the statement of compatibility concludes:

> The importance of protecting and promoting the rights of victims in the process, along with the benefits of informed and transparent reporting on court processes involving children, outweighs the limitations imposed by the amendments, especially taking into account that the court will still have power to remove people from the courtroom where necessary if the person commits a contempt in the face of the court.[42]

Committee Comment

The committee acknowledges the views from stakeholders that the court should continue to have the discretion to, upon application, exclude particular parties from the Childrens Court proceedings in the interests of justice and the safety and wellbeing of the child. The committee is also mindful of the

[37] HRA, s 25.
[38] HRA, s 29(1).
[39] Statement of compatibility, pp 13-14.
[40] Statement of compatibility, p 13.
[41] Statement of compatibility, p 14.
[42] Statement of compatibility, p 14.

overarching expectation of the community that court proceedings are conducted in an open, transparent way.

Some committee members noted their concerns regarding the adverse impact of the wider 'opening' of Childrens Court proceedings on a child's right to privacy and their ability to reintegrate into the community following the end of their criminal proceedings.

However, as the Bill otherwise maintains the court's existing powers to exclude individuals from proceedings for contempt or when a witness is giving particularly sensitive evidence, the committee considers this clause strikes the appropriate balance between the rights of the child and the rights of victims, and the wider public, to engage meaningfully in criminal proceedings involving young offenders.

Therefore, the committee is satisfied that clause 4 of the Bill:

- limits the rights of the child to the extent that is both reasonable and demonstrably justifiable, and
- gives sufficient regard to the rights and liberties of the child as required in the LSA.

2.2. Removal of principle of 'detention as a last resort'

2.2.1. Current legislative framework

2.2.1.1. Sentencing young offenders under the YJ Act

The YJ Act contains the sentencing principles which must be considered by the court when sentencing children for convicted offences.[43] In particular, such sentencing principles require that the court consider principle 18 of the Youth Justice Principles when ordering custodial sentences.[44] The YJ Act further dictates the maximum term for custodial sentences that may be ordered by the court for youth offenders.[45]

In most cases, unless the offence is particularly serious or violent, the Childrens Court will sentence children convicted of criminal offences.[46]

[43] YJ Act, s 150.
[44] YJ Act, s 150(2)(e).
[45] YJ Act, ss 175-176.
[46] QSAC, Guide to the sentencing of children in Queensland, June 2024, p 12.

In particular, section 150(1) of the YJ Act contains the general sentencing principles which the court must take account of when sentencing a child:

Section 150(1) of the YJ Act

In sentencing a child for an offence, a court must have regard to:

- subject to this Act, the general principles applying to the sentencing of all persons; and
- the youth justice principles; and
- the special considerations stated in subsection (2); and
- the nature and seriousness of the offence; and
- the child's previous offending history; and
- the hardship that any sentence imposed would have on the child, having regard to the child's characteristics, including disability, gender identity, parental status, race, religion, sex, sex characteristics and sexuality; and
- regardless of whether there are exceptional circumstances, the probable effect that any sentence imposed would have on—
    - a person with whom the child is in a family relationship and for whom the child is the primary caregiver; and
    - a person with whom the child is in an informal care relationship; and
    - if the child is pregnant—the child of the pregnancy; and
- the presence of any aggravating or mitigating factor concerning the child; and
- whether the child committed the offence—
    - while released into the custody of a parent, or at large with or without bail, for another offence; or
    - after being committed for trial, or awaiting trial or sentencing, for another offence; and
- the following matters—
    - whether the child is a victim of, or has been exposed to, domestic violence;
    - whether the commission of the offence is wholly or partly attributable to the effect of domestic violence, or exposure to domestic violence, on the child;
    - the child's history of being abused or victimised; and
- any information about the child, including a pre-sentence report and bail history, provided to assist the court in making a determination; and
- if the child is an Aboriginal or Torres Strait Islander person—any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child; and
- if the child is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the child's community that are relevant to sentencing the child, including, for example—
    - the child's connection with the child's community, family or kin; or
    - any cultural considerations, including the effect of systemic disadvantage and intergenerational trauma on the child; or

- any considerations relating to programs and services established for offenders in which the community justice group participates; and

- any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under the Penalties and Sentences Act 1992, section 179K; and
- a sentence imposed on the child that has not been completed; and
- a sentence that the child is liable to have imposed because of the revocation of any order under this Act for the breach of conditions by the child; and
- the fitting proportion between the sentence and the offence.[47]

The court must also have regard to prescribed 'special considerations' in section 150(2) of the YJ Act regarding each child's relevant circumstance.[48] In the context of the Bill, the special considerations of particular note include:

- a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community
- a detention order should be imposed having regard to principle 18 of the youth justice principles.[49]

2.2.1.2. History of principle 'detention as a last resort' in Queensland

There have been recent amendments made to application of the principle of 'detention as a last resort' in Queensland. Prior to the commencement of the *Queensland Community Safety Act 2024,* which made several amendments to the YJ Act*,* it was widely held that a detention order could only be imposed by a court as a 'last resort' where no other penalties would be appropriate in the circumstances.[50] However, the explanatory notes to the Queensland Community Safety Bill 2024 stated that this was a 'misrepresentation' and 'not correct'.[51] Accordingly, the amendment to principle 18 was proposed as a clarification to its operation.[52]

It was noted by the former Community Safety and Legal Affairs Committee in its Report No. 15, 57th Parliament – Queensland Community Safety Bill 2024:

> Whether it is clarifying the law or changing the law, there appears to be agreement that the effect of the amendment may allow for detention to be ordered in circumstances other than where there are no other reasonable options available.[53]

[47] YJ Act, s 150(1).
[48] QSAC, Guide to the sentencing of children in Queensland, June 2024, p 9.
[49] YJ Act, ss 150(2)(a)-(b), (e).
[50] QSAC, Guide to the sentencing of children in Queensland, June 2024, pp 34, 51.
[51] Queensland Community Safety Bill 2024, explanatory notes, p 12.
[52] Queensland Community Safety Bill 2024, explanatory notes, pp 12, 36, 100.
[53] Community Safety and Legal Affairs Committee, Report No. 15, 57th Parliament – Queensland Community Safety Bill 2024, p 13.

The following table outlines the recent changes to the YJ Act:

	Immediately prior to Queensland Community Safety Act 2024	*Current (after 30 August 2024)*
Section 150(2)(e)	In sentencing a child, a court must have regard to special considerations, including: 'a detention order should be imposed only as a last resort and for the shortest appropriate period.'[54]	In sentencing a child, a court must have regard to special considerations, including: 'a detention order should be imposed having regard to principle 18 of the youth justice principles.'[55]
Principle 18 – Youth Justice Principles	'A child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.'[56]	'A child should be detained in custody: a) where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient; and b) for no longer than necessary to meet the purpose of detention.'[57]

2.2.1.3. Principle in other Australian jurisdictions

There is disparity amongst the other Australian states and territories in terms of their adoption of the principle of 'detention as a last resort'. A table summarising the status of other Australian jurisdictions' adoption of the principle (as adapted from that contained in the Youth Justice Reform Select Committee's interim report)[58] is contained in Appendix E.

[54] YJ Act, s 150(2)(e), as at 1 July 2024.
[55] YJ Act, s 150(2)(e).
[56] YJ Act, sch 1 (Charter of Youth Justice Principles), as at 1 July 2024.
[57] YJ Act, sch 1 (Charter of Youth Justice Principles).
[58] Youth Justice Reform Select Committee, Report No. 1, 57th Parliament – Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime, p 199. NB: the table is current as of November 2024.

2.2.2. Amendments proposed in the Bill

Clause 15 of the Bill proposes to insert a requirement for the court, when sentencing a child for a criminal offence, not to have regard to:

- any principle that a detention order should only be imposed as a last resort, or
- any principle that a sentence that allows the child to stay in the community is preferable.[59]

Further, the Bill intends to remove the following considerations from the sentencing principles in section 150 of the YJ Act for all relevant offences:

- a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community, and
- a detention order should be imposed having regard to principle 18 of the Charter of Youth Justice Principles.[60]

Finally, clauses 24 and 37(2) of the Bill intend to remove all other reference to the principle of 'detention as a last resort' from the YJ Act. In particular, the following sections be omitted:

- principle 18 of the Youth Justice Principles[61]
- section 208 which requires that the court is only able to make a detention order against a child if they are satisfied that no other sentence would be appropriate in the circumstances after considered all other available sentences and the desirability of not holding the child in detention.[62]

The Department of Youth Justice and Victim Support highlighted the following research to support the impact of detention on rates of reoffending by young offenders:

> One example is in the University of Maryland's Journal of Law & Economics—a very well-regarded journal… That study looked at Washington state where there was no lack of crime and they specifically looked at juvenile justice systems. The results indicated that incarcerated individuals—juveniles—have lower propensity to be reconvicted of a crime. This deterrent effect is also observed in older, criminally experienced and/or violent youths.
>
> In Queensland, our data is very clear: as a percentage the reoffending rate for young people when they leave detention has been in the high 90s for many years, most notably 95 and 93 per cent. However, if you look at the frequency and severity of young people offending post detention, and if you compare the 12 months before they move into detention with the 12 months afterwards, what we have seen up to 31 August 2023 is a 21 per cent decrease in the average number of offences per month. Over a year, the frequency of offending is essentially 15 fewer offences. In terms of the severity, there was a 21 per cent decrease in the average number of serious offences per month. Over a year, it is about one fewer serious offence per year.
>
> … The general orthodoxy is to say that detention does not work. It would be my preference that we have no young people in detention in this state and there are no victims, but the question was: how do we

[59] Bill, cl 15(1) (inserts new s 150(1), YJ Act).
[60] Bill, cl 15(5) (deletes s 150(2)(b),(e), YJ Act).
[61] Bill, cl 37(2) (deletes principle 18, Charter of Youth Justice Principles).
[62] Bill, cl 24 (deletes s 208, YJ Act).

> reduce the number of victims of crime? It is very clear that while young people are in detention there are far fewer victims of crime in the community. Also whilst those young people who leave detention may continue to reoffend, the evidence is clear in this state and in Washington and other places that the severity and frequency of that offending reduces.[63]

This was extrapolated further in advice provided by the Department of Youth Justice and Victim Support regarding the frequency and severity of young offenders post detention:

1. For young people exiting detention between 1 September 2022 to 31 August 2023, there was a **21% decrease** in the average number of offences, per month when out of custody when comparing the 12-month period before starting custody to the 12-month period after exiting a youth detention centre. This equates to a reduction of 15 offences over a year on average.
2. For young people exiting detention between 1 September 2022 to 31 August 2023 there was a **21% decrease** in the average number of **serious** offences*, per month when out of custody when comparing the 12-month period before starting custody (to the 12-month period after exiting a youth detention centre. This equates to one less serious offence per year on average. (*Serious offending refers to offences with a National Offence Index score less than or equal to 42).[64]

In respect of the ability of the Department of Youth Justice and Victim Support to deliver the service required by a potential increase in the number of children in detention due to removal of the principle, it was highlighted that additional beds at existing youth detention centres and new detentions centres would become operational in the coming years.[65]

2.2.3. Stakeholder views

Various submitters raised concerns that the removal of the principle of 'detention as a last resort' would result in:

- more children being incarcerated
- an increase risk of recidivism[66]
- little or no positive impact on community safety.[67]

In particular, the Queensland Law Society (QLS) opposed the removal of the principle on the basis that it 'will not reduce youth offending and will, in fact, escalate the activity of recidivist offenders while unfairly punishing children at their first point of contact with the youth justice system'.[68] This

[63] Public briefing transcript, Brisbane, 2 December 2024, pp 3-4.
[64] Department of Youth Justice and Victim Support, correspondence, 4 December 2024, pp 4-5.
[65] Department, written briefing, 29 November 2024, p 11.
[66] Ella Vickery, submission 8; Name withheld, submission 9; Peter Dick, submission 10; School of Nursing, Midwifery and Social Work (University of Queensland), submission 68, p 1; Project Paradigm, submission 78, p 9; Save the Children & 54 Reasons, submission 81, p 1.
[67] Katrina Schultz, submission 7; Queensland Network of Alcohol and Other Drug Agencies (QNADA), submission 57, p 3; PeakCare, submission 71, p 9; Fearless Towards Success, public hearing transcript, Brisbane, 2 December 2024, p 7; Queensland Family and Child Commission, public hearing transcript, Brisbane, 3 December 2024, pp 31-32.
[68] Public hearing transcript, Brisbane, 2 December 2024, p 25.

was also supported by the research outlined in the submission from Dr Anita Mackay, Senior Lecturer from La Trobe Law School.[69]

The Bar Association of Queensland (BAQ) also highlighted that the removal of the principle in the YJ Act 'creates the perverse situation where the new section 150(1AA) makes the sentencing regime for youth offenders more punitive than the scheme that applies to adults'.[70] This issue of potential discrimination was also raised by both the Queensland Human Rights Commission and the Queensland Family and Child Commission at the public hearing.[71]

More broadly, it was noted by various submitters that the socioeconomic drivers of youth offending and the personal circumstances of young people which increase their risk of contact with the criminal justice system do not appear to be addressed by the Bill.[72] While supportive of the Bill's intent and the implementation of its key reforms, Voice for Victims highlighted the continued need for additional education, early intervention and other programs for families to break the cycle for reoffending beyond increasing the ordering of custodial sentences.[73]

In respect of these concerns, the department noted at the public briefing:

> These new laws sit alongside a whole range of other commitments to early intervention which are critical. There will be a very significant investment in dollar terms by the current government in new programs. Moving forward, a panel of experts will be established to advise on future strategies of this scheme.[74]

Queensland Advocacy for Inclusion also noted the feedback that they had received from children who were distressed by the prospect that they will be incarcerated, and this has impacted their participation in rehabilitation programs while their criminal proceedings are pending.[75]

The disproportionate impact of the removal of the principle on Aboriginal and Torres Strait Islander children was also raised by multiple submitters, who noted that pre-existing high incarceration rates would be exacerbated without addressing the root causes of overrepresentation.[76]

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSCIPP) recommended that the removal of the principle of 'detention as a last resort' not apply to children under the age of 14 years on the basis that '[t]here is significant evidence that shows the younger a person comes into contact with the youth justice system and the harsher they are treated the more likely it is that they will become entrenched in the criminal justice system'.[77]

[69] Submission 25, pp 4-7.
[70] Public hearing transcript, Brisbane, 2 December 2024, p 25.
[71] Public hearing transcript, Brisbane, 2 December 2024, p 34.
[72] Ending Violence Against Women Queensland, submission 62, p 2; Queensland Indigenous Family Violence Legal Service, submission 64, p 2; Save the Children & 54 Reasons, submission 81, pp 2-3; QCOSS, public hearing transcript, Brisbane, 2 December 2024, p 20.
[73] Submission 37, p 3.
[74] Public briefing transcript, Brisbane, 2 December 2024, p 2.
[75] Submission 37, p 9-10.
[76] PeakCare, submission 71, p 12; QCOSS, submission 77, p 5; Legal Aid Queensland, submission 46, p 2; Lamberr Wungarch Justice Group, submission 86, p 6; Amnesty International Australia, submission 87, p 6; Sisters Inside Inc, public hearing transcript, Brisbane, 2 December 2024, p 10.
[77] Public hearing transcript, Brisbane, 2 December 2024, p 9.

The Queensland Police Union (QPU) supported the amendments proposed in the Bill but highlighted the likelihood that increased numbers of young people being detained as a result of the removal of the principle of detention as a last resort may exacerbate capacity issues in youth detention centres and police watchhouses. For this reason, the union urged 'close oversight' of the implementation of the Bill to identify risks to watchhouses.[78]

These concerns were also raised by the Queensland Ombudsman who noted, in light of his findings in the *Cairns and Murgon watch-houses inspection report: Focus on detention of children*:

- watchhouses are not suitable for detaining children due to the risk of harm that children may face
- the amendments proposed in the Bill 'will increase the risk of prolonged detention of children in watch-houses'
- his recommendation that the commencement of the Bill be delayed until the Wacol Youth Remand Centre is operational so children may be detained in this facility as opposed to watchhouses.[79]

In respect of these concerns regarding capacity of youth detention centres in the near future, the Department of Youth Justice and Victim Support advised:

> [W]e think that it will take time for these laws to be implemented and for the courts to make decisions around sentencing, so our expectation is that changes will be incremental over time. We do not expect, although we plan for every contingency, a dramatic increase in numbers that we will not be able to handle in the first few months.
>
> … In terms of the assets the government currently owns, I am confident—whether it was because of these laws or whether it was a natural disaster, a fire or some other event—that we can keep young people safe to the best of our ability and, most importantly, keep the community and staff safe.[80]

2.2.4. Consistency with fundamental legislative principles

It is a fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals, including children.[81]

The explanatory notes acknowledge that the removal of the principle of 'detention as a last resort' from the YJ Act is in conflict with the requirement under the United Nations Convention on the Rights of the Child (to which Australia is a signatory) that:

- children should only be detained as a last resort, and
- children should be detained for the shortest possible period of time

on the basis that the detention of children is inherently harmful to children.[82]

[78] Submission 2, p 3.
[79] Submission 26, p 1.
[80] Public briefing transcript, Brisbane, 2 December 2024, p 8.
[81] LSA, s 4(2)(a).
[82] Explanatory notes, p 9; United Nations, *Convention on the Rights of the Child*, art 37.

However explanatory notes state that the Bill maintains the ability of the court to consider other factors when sentencing children and the removal of the principle is justified to the extent that it achieves the objective of the amendment 'to impose sentences that reflect the seriousness of offences and holding young offenders more accountable'.[83]

2.2.5. Compatibility with human rights

Every person has the right to:

- equal recognition before, and protection of, the law and that these rights are enjoyed by the person without discrimination[84]
- liberty and security.[85]

Relevantly, the consideration of the principle of 'detention as a last resort' is part of the sentencing principles for adult offenders under the *Penalties and Sentences Act 1992*.[86] As highlighted in the statement of compatibility, the removal of this principle of the YJ Act 'will, in essence, create a sentencing system where adults are better protected from arbitrary detention than children'.[87] On this basis, the rights of children to equal protection under the law without discrimination on the basis of their age and to be free from incarceration would be compromised.

In respect of the rights of children specifically, children have the right to protection that is needed and in their best interests 'because of being a child'.[88] The application of the YJ Act, as proposed to be amended by the Bill, would likely result in more children being sentenced to detention and therefore not 'protected' in their best interests.

It was also highlighted that the amendments are expected to have a greater impact on Aboriginal and Torres Strait Islander children who are already disproportionally represented in the criminal justice system. The removal of the principle of 'detention as a last resort' will accordingly likely result in more Aboriginal and Torres Strait Islander children being detained. However, in this regard, the Attorney-General stated that the amendments would not directly or indirectly discriminate on the basis of race.[89]

The statement of compatibility notes that the 'legitimate purpose' of the removal of the principle is 'to make child offenders more accountable for their offending'.[90] However, the Attorney-General also notes:

> I also acknowledge that, according to international human rights standards, the negative impact on the rights of children likely outweighs the legitimate aim of making children more accountable for their crimes. That is particularly because the principle that children should only be detained as a last resort is deeply ingrained in the common law as well as international law.

[83] Explanatory notes, p 9.
[84] HRA, s 15.
[85] HRA, s 29(1).
[86] Penalties and Sentences Act 1992, s 9(2)(a).
[87] Statement of compatibility, p 6.
[88] HRA, s 26(2).
[89] Statement of compatibility, p 6.
[90] Statement of compatibility, p 6.

I therefore acknowledge that the amendments are incompatible with human rights.[91]

On this basis, the Bill includes the insertion of an override declaration which notes that the express removal of the principle when considering the sentence to be imposed on a young offender has legislative effect despite its incompatibility with human rights.[92] This declaration is supported by the statement about exceptional circumstances which contains data regarding the current rates of youth offending in Queensland and 'highlights that youth crime continues to be a serious issue for Queensland'.[93]

At the public hearing in Brisbane, the Youth Advocacy Centre (YAC) voiced its opposition to the existence of 'exceptional circumstances' (as outlined in the statement about exception circumstances) giving rise to the ability for the HRA to be overridden.[94] This was a concern raised by other submitters regarding the incompatibility of the removal of the principle with human rights.[95]

Committee Comment

The removal of the principle of 'detention as a last resort' from the YJ Act is a contentious issue amongst stakeholders and the wider community. The significance of its impact on the lives of young offenders is reflected in the committee's careful consideration of how this amendment will achieve its policy objective 'to make child offenders more accountable for their offending'.[96]

The committee notes that the removal of the principle of 'detention as a last resort' when sentencing young offenders does not mean that all children who come before the courts will be subject to a detention order. It will allow for the courts to make such an order in appropriate circumstances depending on the nature of the offence and the circumstances of the offender, even for a first offence.

Some committee members and stakeholders raised particular concern with the prospect that children would be treated 'less favourably' in criminal sentencing than adults due to the continued application of the principle of 'detention as a last resort' for adult offenders under the *Penalties and Sentences Act 1992*.

However, on balance, the committee is satisfied that:

- the information contained in the statement about exceptional circumstances tabled with the Bill is an adequate basis for the declaration that the HRA be overridden in respect of new section 150(1) of the YJ Act

[91] Statement of compatibility, p 6.
[92] Bill, cl 15(7) (inserts new s 150(5), YJ Act).
[93] Statement about exceptional circumstances, p 2.
[94] Public hearing transcript, Brisbane, 2 December 2024, p 19.
[95] Kate Galloway, submission 42, p 1; Queensland Human Rights Commission, public hearing transcript, 2 December 2024, p 30.
[96] Statement of compatibility, p 6.

- otherwise the rights of the child are limited to the extent that is both reasonable and demonstrably justifiable, and
- sufficient regard is given to the rights and liberties of the child as required in the LSA.

2.3. Application of adult penalties to prescribed serious offences

2.3.1. Current legislative framework

Currently in Queensland, when a child is convicted or pleads guilty to a criminal offence, the following sentencing options may be available to the court:

- reprimand (which is a formal warning recorded on a child's criminal history)[97]
- good behaviour order (being an order that a child cannot commit another offence for a period of up to 1 year)[98]
- fine[99]
- restorative justice process (which could involve a conference resulting in a restorative justice agreement where a child will agree to take responsibility for their conduct and a program to address their behaviour)[100]
- restorative justice supervision order for a period up to 12 months[101]
- probation order[102]
- community service order[103]
- detention order.[104]

The court will also consider whether diversionary action would be more appropriate in the circumstances where the child is agreeable to participating in the process.[105]

2.3.2. Proposed amendments in the Bill

Clause 19 of the Bill proposes to introduce a new sentencing regime (referred to as 'adult crime, adult time') for the following prescribed offences under the Criminal Code:

- Murder (sections 302, 305)
- Manslaughter (section 303, 310)
- Unlawful striking causing death (section 314A)

[97] YJ Act, s 175(1)(a).
[98] YJ Act, s 175(1)(b).
[99] YJ Act, s 175(1)(c).
[100] YJ Act, s 31; QSAC, Guide to the sentencing of children in Queensland, June 2024, p 49.
[101] YJ Act, ss 175(1)(db), 192B, 192D.
[102] The maximum duration of a probation order is 1 year if made by a magistrate, 2 years if made by a judge and 3 years for a relevant serious offence: YJ Act, ss 175(1)(d), 176(1).
[103] YJ Act, s 175(1)(e).
[104] YJ Act, ss 175(1)(g). Note, the prerequisites for the making of a detention order include consideration of a 'pre-sentence report' and all other available sentences and the desirability of not holding a child in detention: YJ Act, s 208.
[105] YJ Act, s 162.

- Acts intended to cause grievous bodily harm and other malicious acts (section 317)
- Grievous bodily harm (section 320)
- Wounding (section 323)
- Dangerous operation of a vehicle (section 328A)
- Serious assault (section 340)
- Unlawful use or possession of motor vehicles, aircraft or vessels (section 408A)
- Robbery (section 409, 411)
- Burglary (section 419)
- Entering or being in premises and committing indictable offences (section 421)
- Unlawful entry of vehicle for committing indictable offence (section 427).

The department also provided a table (as contained in Appendix F) which sets out for the above prescribed offences, the existing maximum penalties for young offenders and the new minimum, mandatory and maximum penalties under the Bill.

The applicable mandatory and minimum penalties include:

- mandatory life detention with a minimum non-parole period of 20 years for murder (or 25 years for murder of a police officer or 30 years for murder of more than one person or by a person with a previous murder conviction)
- if a child is sentenced to life detention (other than for murder), the child will be eligible for release after serving 15 years
- if a child is sentenced to serve a period of detention for unlawful striking causing death, unless a conditional release order is made, the child must serve the lesser of 80% of the sentence or 15 years
- detention must form whole or part of the punishment for dangerous operation of a vehicle with a circumstance of aggravation relating to previous conviction under section 328A(3) of the Criminal Code
- if a child is sentenced for an offence of grievous bodily harm, serious assault (in certain circumstances) or wounding committed in a public place while adversely affected by an intoxicating substance, they must be sentenced to a community service order. Consistent with what occurs for adults, there is no requirement for the child to consent to the community service order. [106]

According to the explanatory notes:

- other than for murder, the court may still make a conditional release order[107] for any child sentenced for a specified offence, even where a mandatory sentence applies[108]

[106] Department, written briefing, 29 November 2024, p 3.
[107] YJ Act, s 220.
[108] Explanatory notes, p 4.

- the Bill provides for the sentencing considerations for a court sentencing a child for a specified offence[109]
- although the court may still sentence the child to a sentencing order,[110] the court will not be able to sentence the child to a restorative justice order,[111] as this sentencing order is not available for adults
- because adult restorative justice conferencing is available for adult defendants, the court must still consider whether to make a court diversion referral or a pre-sentence referral to a restorative justice process[112]
- before a court can impose a period of detention for a detention order, a pre-sentence report must still be ordered and considered[113]
- the Bill provides that, other than for murder,[114] where a child is sentenced for one of the specified offences, the court may order that the child be released from detention after serving whatever period of detention that the court considers appropriate[115]
- the *Penalties and Sentences Act 1992*, including the Serious Violent Offence scheme and certain indefinite sentence provisions, will not apply when sentencing a child for one of the specified offences[116]
- where a Childrens Court magistrate sentences a child for one of the specified offences, the order may still be subject to a sentence review.[117]

It was highlighted by the Director-General of the Department of Youth Justice and Victim Support at the public briefing:

> The bill holds young offenders to account who commit offences, particularly those prescribed offences, obviously—the serious offences—by ensuring that courts can … impose appropriate penalties that meet community expectations. As well as implementing a range of measures to deter young people from committing serious crimes in the community, the government has committed to reducing the number of victims who have been caused harm by these young offenders.[118]

[109] Namely, that the court will apply the sentencing considerations under the YJ Act, s 150 (as proposed to be amended by the Bill), and under the YJ Act, ss 150A and 150B (if the child is or has been declared a serious repeat offender): Explanatory notes, p 4.
[110] YJ Act, s 175.
[111] YJ Act, ss 175(1)(da), (1)(db).
[112] Having regard to the nature of the offence, the harm suffered by anyone because of the offence and whether the interests of the community and the child would be served by having the offence dealt with under a restorative justice process: YJ Act, s 163; Explanatory notes, p 4.
[113] YJ Act, s 207.
[114] And subject to any other minimum period of detention which must be served prior to release.
[115] The requirement in s 227 of the YJ Act (that the child must serve 70 per cent of the detention, unless the court orders they be released after serving 50 per cent or more) will not apply, as the court has discretion in setting the release date: Explanatory notes, p 4.
[116] Explanatory notes, p 4.
[117] YJ Act, s 118.
[118] Public briefing transcript, Brisbane, 2 December 2024, p 3.

2.3.3. Stakeholder views

The QPU was supportive of the 'adult crime, adult time' proposal under the Bill:

> The QPS acknowledges the mandate Queenslanders provided the LNP Government at the 2024 State Election to restore safety in our communities and make Queenslanders feel safe. Adult Crime, Adult Time was the centrepiece of the LNP's law and order platform.
>
> The QPU acknowledges the 13 prescribed offences comprising the Adult Crime, Adult Time framework, including murder, manslaughter, wounding, robbery and unlawfully entering or using vehicles and notes young offenders who commit these serious offences will face adult consequences for their actions, notably the same minimum, maximum and mandatory penalties applying to adults under the Criminal Code.
>
> Despite numerous police enforcement strategies, motor vehicle theft remains a major issue for the Queensland community with over 13,000 reported thefts in 2022-23. The majority of these thefts were committee by young people aged between 10 and 17 years. The inclusion of unlawfully entering or using vehicles in the Adult Time Adult Crime framework is therefore welcomed by the QPU.[119]

Similarly, the National Retail Association was supportive of stricter penalties for youth offenders:

> The Making Queensland Safer Bill 2024 takes significant steps to address public safety concerns, particularly through stricter penalties for youth offenders and expanded victim rights. We understand the proposed measures aim to deter crime, enhance accountability, and create safer communities.
>
> The introduction of mandatory life sentences for youth criminals who commit murder, as well as increased penalties for other serious offenses, is a necessary step towards ensuring justice and deterring potential offenders. The "adult crime, adult time" pledge reflects a necessary shift in our approach to handling severe crimes, particularly those committed by repeat offenders.
>
> Moreover, the proposed legislation to double the maximum sentences for assaults, break-ins, and dangerous operations of vehicles demonstrates a strong commitment to protecting law-abiding citizens. The proposed, harsher penalties will not only serve as a deterrent but also ensure that offenders who commit such crimes are held accountable for their actions.[120]

Conversely, a number of submitters opposed the 'adult crime, adult time' amendments with a myriad of reasons.[121]

Queensland Advocacy for Inclusion also opposed these amendments based on the ineffectiveness of such provisions:

> Decades of research shows that a punitive approach as embodied by this Bill does not reduce youth crime. A punitive approach fails to address the root causes of young people's behaviour and causes additional harm to children, families and the broader community. Indeed, evidence shows that a punitive approach leads to increased rates of reoffending and fails to increase community safety. For example, the Australian Institute of Health and Welfare found that 80% of children who were released from detention between 2017 to 2018 returned to the criminal justice system within twelve months of

[119] Submission 2, p 2.
[120] Submission 40, p 2.
[121] Queensland Ombudsman, submission 26, p 1; Queensland Advocacy for Inclusion, submission 37, p 4; QCOSS, submission 77, p 2; Professor Tamara Walsh, submission 21, p 2; PeakCare, submission 71, p 4.

> their release. Further, the earlier a child is engaged in the criminal justice system, the greater their chance of becoming enmeshed in the system.[122]

The Queensland Council of Social Service (QCOSS) submitted that children should be treated differently from adults in the criminal justice system:

> Children do not have the same decision-making capacity as adults, are at a different developmental stage of their lives, and experience different vulnerabilities. This is why it's important to have different approaches for young people in contact with the criminal justice system compared to adults, including different approaches to rehabilitation that incorporate therapeutic supports to meet their specific needs.[123]

This was further extrapolated in the evidence provided by the BAQ in terms of the impact of mandatory sentences on the youngest, criminally responsible offenders regardless of their involvement in the offence:

> Further, the parties provisions of the code will capture such children even though they do not do the act that causes the person's death—a lookout to a robbery that results in a death or a passenger in a stolen car that is involved in a fatal accident. To be clear, this means that children as young as 10 years old will be liable to life imprisonment with a mandatory minimum sentence of 20 years regardless of the extent of their involvement or culpability. A 10-year-old would be imprisoned for two times as long as that 10-year-old has even been alive.[124]

Professor Tamara Walsh raised concerns about the nature of the offences which are subject to the amendments:

> The list of offences to which adult penalties apply is arbitrary, and bears no reference to crime statistics, research or any other evidence base.
>
> If the intent is to apply adult penalties to very serious crimes, then this list is overbroad. In particular, offences such as dangerous operation of a motor vehicle, unlawful use or possession of a motor vehicle, entering premises with intent to commit indictable offences and unlawful entry of a vehicle are well-known to be offences that children commonly commit. There is no objective reason they should be referred to as 'adult crimes'.[125]

PeakCare also raised concerns about how the proposed legislative amendments would impose longer sentences on children and how these changes could have significant negative implications for long-term community safety.[126] This was further considered in evidence provided by the Aboriginal and Torres Strait Islander Legal Service:

> Community safety is better served by putting more options on the table for judicial decision-makers, not taking them away. A well-crafted bail order will do more to protect the community than throwing an excessive number of kids into detention or watch houses because of presumptions against bail and a well-crafted sentencing order would do more to protect the community. The courts need more

[122] Submission 37, p 4.
[123] Submission 77, p 2.
[124] Public hearing transcript, Brisbane, 2 December 2024, p 25.
[125] Submission 21, p 2.
[126] Submission 71, p 4.

> discretion. At the moment, a lot of the changes have been starving them of that. That is the first place. That is the engine room of coming up with solutions.[127]

A number of submitters raised concerns about the proposed amendments being contrary to international human rights.[128] In this context, QCOSS submitted that:

> It is distressing to see another Bill that disregards the human rights of children in Queensland. We express our concern that in the Statement of Compatibility the Government has acknowledged that amendments in the Bill "...will lead to sentences for children that are more punitive than necessary to achieve community safety."[129]

The submission by members of the School of Nursing, Midwifery and Social Work at the University of Queensland highlighted how the amendments do not accord with the age threshold for criminal responsibility as established under international human rights laws and supported by scientific evidence:

> Introducing 'adult crime, adult time' Queensland already defies the recommendation of the United Nations Committee on the Rights of the Child (UNCRC) that the minimum age of criminal responsibility should be 14-years, by holding children as young as 10-years criminally responsible. The UNCRC's recommendation is based on significant evidence that children do not have the same capacity and decision-making skills as adults and therefore should not be treated the same as adults who offend. Indeed, evidence indicates that a child's immature decision-making capacity and risk-taking behaviour is developmentally typical during adolescence with full brain development not achieved until the age of 25 years.[130]

Redcliffe Area Youth Space (RAYS) recommended 2 changes to the 'adult crime, adult time' amendments:

- That restorative justice orders remain an available option for non-violent offences on the basis that the removal of restorative justice as an option for these offences, as proposed in the Bill, undermines established evidence-based practices that have proven effective in reducing reoffending and fostering rehabilitation.
- That the proposed new maximum penalties for the 'Adult Crime, Adult Time' offences apply only to individuals aged 14 and over on the basis that research consistently shows that early interaction with the criminal justice system significantly increases the likelihood of long-term system entrenchment.[131]

These recommendations were also supported by QATSICPP.[132]

[127] Public hearing transcript, Brisbane, 2 December 2024, p 12.
[128] School of Nursing, Midwifery and Social Work (University of Queensland), submission 68, p 1; Joseph Lelliott (et al), submission 76, p 3; PeakCare, submission 71, p 4; Townsville Amnesty International Action Group, submission 66, pp 1-2; Natasha Hays, submission 2, p 1.
[129] Submission 77, p 2.
[130] Submission 68, p 1.
[131] Submission 69, p 1.
[132] Public hearing transcript, Brisbane, 2 December 2024, p 10.

2.3.4. Consistency with fundamental legislative principles

To have sufficient regard for the rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.[133]

Under the Bill's proposed amendments the maximum, minimum and mandatory penalties available for adults would be available for children who are found guilty of the specified offences.[134]

A child who is sentenced for the specified offences will be liable to the following mandatory sentences:[135]

- mandatory life detention with a minimum non-parole period of 20 years for murder[136]
- if a child is sentenced to life detention (other than for murder), the child will be eligible for release after serving 15 years
- if a child is sentenced to serve a period of detention for unlawful striking causing death, unless a conditional release order is made, the child must serve the lesser of 80 per cent of the sentence or 15 years
- detention must form whole or part of the punishment for dangerous operation of a vehicle with a circumstance of aggravation relating to previous conviction[137]
- if a child is sentenced for an offence of grievous bodily harm, serious assault[138] or wounding committed in a public place while adversely affected by an intoxicating substance, they must be sentenced to a community service order.[139]

These changes represent a potentially significant increase in existing penalties.

Under the existing provisions of the YJ Act,[140] if a child is found guilty of a 'relevant offence',[141] the court, may:

- order the child to be placed on probation for a period not longer than 3 years, or
- make a detention order against the child:

[133] OQPC, Notebook, p 120; LSA, s 4(2)(a).
[134] Explanatory notes, p 9.
[135] Explanatory notes, pp 3-4.
[136] Or 25 years for murder of a police officer or 30 years for murder of more than one person or by a person with a previous murder conviction.
[137] Criminal Code, s 328A(3).
[138] In certain circumstances.
[139] The minimum and maximum period of the community service order will still be governed by the YJ Act. There is no requirement for the child to consent to the community service order.
[140] YJ Act, s 176.
[141] Under the existing law, a 'relevant offence' means a 'life offence', or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more, but excludes certain offences: YJ Act, s 176(10).

- for a relevant offence other than a 'life offence',[142] the court may order the child to be detained for a period not more than 7 years
- for a relevant offence that is a life offence, the court may order that the child be detained for:
  - a period not more than 10 years, or
  - a period up to and including the maximum of life in certain circumstances.[143]

Therefore, for murder, a court may currently order that a child be detained for a period not more than 10 years, or, for offences the court considers to be particularly heinous, a period up to and including the maximum of life in certain circumstances. The Bill's proposed sentence for children who commit murder is mandatory life detention. In that regard, the Bill's proposed removal of existing restrictions on minimum, mandatory and maximum sentences for children would result in increased terms of imprisonment.

As an example of a relevant offence that is not a life offence - a serious assault of a police officer in the specified circumstances[144] - the court may currently order the child be detained for a period not more than 7 years. The Bill's proposed sentence for children who commit the specified serious assault offence would be subject to the existing adult penalty, which is a maximum penalty of 14 years. In that regard, the Bill may double the existing penalty.

In considering the Bill's consistency with fundamental legislative principles and its impact on children, the explanatory notes state:

> While a child's liberty may be impacted by imposing minimum and mandatory penalties for certain offences, it is limited to specific serious offences in order to achieve the policy intent of holding young offenders accountable for their actions.[145]

Given that only 'specific serious offences' are affected by the proposed amendments, the explanatory notes conclude that 'the consequences imposed by the amendments are reasonable to achieve the policy intent'.[146]

[142] A 'life offence' means an offence for which a person sentenced as an adult would be liable to life imprisonment: YJ Act, sch 4. Offences attracting life imprisonment under the Criminal Code include: taking part in a riot, if the offender causes grievous bodily harm to a person, causes an explosive substance to explode or destroys or starts to destroy a building, vehicle or machinery (s 61); piracy (s 80); life imprisonment repeated sexual conduct with a child (s 229B); unlawful striking causing death (s 314A); endangering the safety of a person in a vehicle with intent (s 319); rape (s 349); aggravated sexual assault (s 352(3)); extortion (in certain circumstances) (s 415); endangering the safe use of vehicles and related transport infrastructure (s 467); wilful damage (in certain special cases) (s 469); attempts to commit an indictable offence punishable by mandatory life imprisonment (if no other punishment is provided) (s 535); and an accessory after the fact to an indictable offence punishable by mandatory life imprisonment (if no other punishment is provided) (s 545).

[143] Those circumstances being if the offence involves the commission of violence against a person; and the court considers the offence to be a particularly heinous offence having regard to all the circumstances.

[144] Criminal Code, s 340.

[145] Explanatory notes, p 9.

[146] Explanatory notes, p 9.

Committee Comment

The committee is satisfied that the sentencing provisions proposed by the Bill are relevant and proportionate in the circumstances to achieve the policy intent as they are limited to certain serious offences, and as such they have sufficient regard to the rights and liberties of individuals, including children.

2.3.5. Compatibility with human rights

The statement of compatibility provides that the amendments regarding the application of adult penalties to children for prescribed serious offences will limit the following rights under the HRA:

- the rights of a child to protection in their best interests (section 26(2))
- the right to liberty (section 29(1))
- the right to protection from cruel, inhuman or degrading treatment (section 17(b))
- the right to humane treatment when deprived of liberty (section 30), having regard to the fact that it is widely accepted that watchhouses are not appropriate or humane places in which to detain children (particularly for any lengthy period of time).[147]

The statement of compatibility acknowledges that the proposed changes under the Bill 'will result in more children who are found guilty of these serious crimes being sentenced to, and spending more time in, detention'.[148]

The statement of compatibility states that the amendments 'will expose some young offenders to mandatory minimum sentences of life detention, meaning the considerations of a child's best interest will not form part of the court's consideration of an appropriate sentence'.[149]

The statement of compatibility also highlighted that:

> The government is committed to ensuring that young offenders who commit serious criminal offences are liable to be held accountable for their actions and the harm that they cause to others, to the same extent as an adult offender, and that courts are properly considering the impacts of offending on victims and can impose appropriate penalties that meet community expectations.[150]

The amendments are expected to have a greater impact on Aboriginal and Torres Strait Islander children, who are already disproportionately represented in the criminal justice system, as the amendments could result in more Aboriginal and Torres Strait Islander children being imprisoned for periods of time. However, the Attorney-General stated that amendments do not directly or indirectly discriminate on the basis of race.[151]

The Attorney-General accepts that 'the amendments are in conflict with international standards regarding the best interests of the child with respect to children in the justice system, and are

[147] Statement of compatibility, p 4.
[148] Statement of compatibility, p 4.
[149] Statement of compatibility, p 4.
[150] Statement of compatibility, p 5.
[151] Statement of compatibility, p 5.

therefore incompatible with human rights'.[152] On this basis, the statement about exceptional circumstance was tabled with the Bill to support the amendments to the YJ Act to allow operation of this provision despite its incompatibility with human rights.

Committee Comment

The committee has considered the various views of stakeholders regarding the inclusion of the new sentencing regime for prescribed serious offences contained in the Bill.

It is acknowledged in the statement of compatibility and the statement about exceptional circumstances that these amendments are incompatible with the HRA. There is also data, and personal experiences shared with the committee, which indicate that the community is feeling unsafe and current sentences for young offenders committing serious offences are not meeting community expectations.

Some committee members noted their concerns that this amendment would result in more children being detained for longer periods in contravention with domestic and international human rights law.

However, on balance, the committee is satisfied that:

- the information contained in the statement about exceptional circumstances tabled with the Bill is an adequate basis for the declaration that the HRA be overridden in respect of new section 150(1) of the YJ Act, and
- otherwise the rights of the child are limited to the extent that is both reasonable and demonstrably justifiable.

2.4. Primary regard to impact on victims in sentencing of young offenders

2.4.1. Current legislative framework

As currently contained in the sentencing principles noted above in section 2.2.1, the court must have regard to 'any impact of the offence on a victim, including harm mentioned in information relating to the victim given to the court under the *Penalties and Sentences Act 1992*, section 179K' when sentencing a child under the YJ Act.[153] This is just one of the many factors that the court must consider with equal weight, and balance, when ordering a sentence for a young offender.[154]

2.4.2. Amendments proposed in the Bill

The Bill also proposes to elevate the impact of the offence on the victim as the primary consideration for the court on sentencing.[155]

[152] The relevant international standards referred to in the statement of compatibility are the United Nations *Convention on the Rights of the Child* and the Beijing Rules; Explanatory notes, p 4.
[153] YJ Act, s 150(1)(j).
[154] Department, written briefing, 29 November 2024, p 4.
[155] Bill, cls 15(1),(4) (inserts new s 150(2), deletes s 150(1)(j) YJ Act).

This is also reflected in a change to the Charter of Youth Justice Principles to include the following new principle:

> A child who commits an offence should be held accountable in a way that recognises the impact of the child's offending on any victim of that offending.[156]

The department highlighted that while the amendment provides that the impact on the victim be considered over and above that of the rights of the offender, 'the court will still be able to consider relevant mitigating factors and impose a proportionate, appropriate penalty'.[157]

2.4.3. Stakeholder views

The QPU highlighted that '[p]utting victims at the centre of youth justice is necessary to restore community confidence'.[158] Similarly, Voice for Victims noted their support for the rights of victims being central to decisions regarding sentencing for young offenders.[159]

However, Professor Tamara Walsh raised concerns that the elevation of the impact on a victim in sentencing considerations:

- 'goes against centuries of common law development'
- 'is not consistent with the principles of sentencing that apply to adults'
- 'is not consistent with international research', and
- 'ignores the fact that the vast majority of children who commit offences were first victims themselves'.[160]

This was echoed by other researchers and academics from the TC Beirne School of Law at the University of Queensland who noted:

> Sentencing is a complex process that requires careful consideration of a range of relevant factors. There is a longstanding commitment to individualised justice in Australian law (underpinned by appropriately regulated judicial discretion) to ensure that factors can be adequately weighed and to safeguard against injustice. As it stands, the existing sentencing regime and established precedent already places weight on the circumstances of the offence, including its seriousness, the harm it causes, and the impacts on victims.[161]

QCOSS also raised the potential for the Victims' Commissioner to have a greater role in the elevation and promotion of victims' rights throughout the criminal justice process (as opposed to the legislative changes proposed in the Bill insofar as the sentencing principles).[162]

The Queensland Homicide Victims' Support Group raised concerns that victims could be subject to cross-examination or be required to give evidence about the impact of the offence with third parties present in the courtroom.[163]

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[156] Bill, cl 37(1) (inserts new principle 1A, Charter of Youth Justice Principles).
[157] Department, written briefing, 29 November 2024, p 5.
[158] Submission 2, p 3.
[159] Public hearing transcript, Brisbane, 2 December 2024, p 15.
[160] Submission 21, p 3.
[161] Joseph Lelliott (et al), submission 76, p 4.
[162] Submission 77, pp 4-5.
[163] Public hearing transcript, Brisbane, 2 December 2024, p 4.

The department clarified at the public briefing that this would not be the case:

> Nothing in the bill changes process relating to victim impact statements. Part 10B of the Penalties and Sentences Act governs those statements and the providing of information. Those statements are given for therapeutic benefit, they are not read under oath and they do not need to be read out but they can be by the person who wrote it, so this bill does not change anything around victim impact statements or any of those processes. For clarity, where there are also vulnerable victims who may be giving evidence in the court, the court still has the capacity to close the court for that purpose, so that does not change either, but there is no change around victim impact statements.[164]

2.4.4. Consistency with fundamental legislative principles

The explanatory notes acknowledge that the primacy of the consideration of victims in sentencing decisions 'may limit judicial discretion to the extent that they require certain sentencing considerations to be given primary regard'.[165] On this basis, more detention-based orders may be made for longer periods than otherwise under the existing YJ Act.

Similar to that outlined above in section 2.2.4, this amendment to the Bill conflicts with international legal principles concerning the detention of children.[166] However, the explanatory notes highlight that the limitation on the rights of children is justifiable on the basis that the amendment proposed in the Bill is consistent with its objective of 'putting victims at the heart of the youth justice process and promoting the rights of victims'.[167]

2.4.5. Compatibility with human rights

The HRA provides:

- children have the right to protection that is needed and in their best interests 'because of being a child'[168]
- all persons have the right to liberty and security.[169]

The amendments proposed in the Bill will limit the above rights to the extent that more young offenders will be sentenced to orders of detention (and be deprived of their liberty) due to the elevation of 'the impacts on the victim of the crime above the best interests of the child'.[170]

The statement of compatibility notes that the purpose of such limitations is 'to ensure the rights of victims of young offenders are put 'front and centre' in the youth justice process'.[171] It is acknowledged in the statement of compatibility that:

- maintenance of the 'status quo', or an alternative amendment where the impact on victims is not afforded primacy in sentencing decisions, would not be effective to achieve this purpose

[164] Public briefing transcript, Brisbane, 2 December 2024, p 9.
[165] Explanatory notes, p 9.
[166] Explanatory notes, p 9; United Nations, *Convention on the Rights of the Child*, art 37.
[167] Explanatory notes, p 9.
[168] HRA, s 26(2).
[169] HRA, s 29(1).
[170] Statement of compatibility, p 12.
[171] Statement of compatibility, p 11.

- the primary regard to victims in sentencing does not otherwise prevent the court from considering other relevant sentencing factors 'which allow for the proper exercise of judicial discretion about what is a just and fair sentence'.[172]

An appropriate balance must be struck between the rights of victims and the rights of young offenders to achieve this purpose.

Committee Comment

The committee acknowledges the devastating and complex ways criminal offending affects victims and their families. For this reason, it is paramount that the impacts of an offence on victims is part of the court's assessment of what sentence appropriately befits the offence.

Victim survivors have made submissions to the committee's inquiry which highlight their feelings of displacement in sentencing proceedings where their experience has not been afforded the weight it deserves.

Some committee members raised concerns that this amendment may result in detrimental sentencing decisions being made where the child's best interest is not the paramount consideration.

While young offenders need to be dealt with in a way that considers their human rights, on balance, the committee considers that the policy objective of the amendments proposed in the Bill (to put victims 'front and centre' in the sentencing process) is legitimate and limitations to the rights of children to achieve this purpose are justifiable in the circumstances.

2.5. Contents and admissibility of a child's criminal history

2.5.1. Current legislative framework

Currently, a child's previous 'offending history' is considered in sentencing and the making of a 'serious repeat offender' declaration under section 150A of the YJ Act. This offending history does not include matters where a child is cautioned,[173] although there is currently no definition in the YJ Act regarding what this offending history is to contain.

Further, where a person is charged with a criminal offence as an adult, evidence regarding their offending as a child cannot be admitted against them where a conviction was not recorded for that offence.[174]

[172] Statement of compatibility, p 12.
[173] QSAC, Guide to the sentencing of children in Queensland, June 2024, p 30.
[174] YJ Act, s 148(1).

2.5.2. Amendments proposed in the Bill

The Bill proposes to amend the YJ Act to:

- provide a new definition of a criminal history of a child, which includes cautions, restorative justice agreements and contraventions of a supervised release order[175]
- remove existing prohibitions against cautions and contraventions of a supervised release order from appearing on the criminal history of a child[176]
- require that, when a police officer is administering a caution or making a restorative justice referral, they must explain to the child that the caution and any restorative justice agreement will appear on their criminal history[177]
- provide that a person's childhood criminal history[178] is admissible when the court is sentencing an adult for an offence and remains admissible for a period of five years from the date of the outcome for the last childhood offence.[179]

Additionally, the Bill proposes to enable childhood findings of guilt to be admissible in certain circumstances[180] for a circumstance of aggravation under the specified sections of the Criminal Code.[181] The explanatory notes state that the admissible childhood findings of guilt are limited to those made in respect of relevant offences and that are within 5 years of the adult committing an offence of dangerous operation of a vehicle.[182]

Under the Bill, the existing offence prohibiting the publication of identifying information about a child,[183] will apply in respect of child criminal histories admitted in criminal proceedings when the person is an adult.[184]

The department advised that limiting the admissibility of a child's criminal history when the person is sentenced for any offence as an adult for a period of up to five years after the outcome for the last childhood offence will ensure that young adults with a youth criminal history are not treated as having no criminal history. This will enable the court to accurately contextualise the offender's recent criminal history. The older an adult is however, the less relevant their childhood criminal history is

[175] Bill, cl 39 (inserts s 6, YJ Act); Explanatory notes, p 5.
[176] Bill, cls 41, 44, 53 (deletes ss 15(3) 21(4), 52G(3) YJ Act); Explanatory notes, p 5.
[177] Bill, cls 42, 45 (amends ss 15, 22, YJ Act); Explanatory notes, pp 5-6.
[178] Inclusive of police cautions, restorative justice agreements and contraventions of a supervised release order.
[179] Bill, cl 48 (amends s 148 and inserts s 148AA, YJ Act); Explanatory notes, p 6.
[180] Bill, cls 7 and 48 (amends s 328A, Criminal Code; inserts s 148AB, YJ Act).
[181] Criminal Code, ss 328A(2)(c) or (3) (offence provisions for dangerous operation of a vehicle). These existing provisions apply if the offender has been previously convicted either upon indictment or summarily of an offence against the specified section (s 328A(2)(c)); or if the offender has been previously convicted either upon indictment or summarily of an offence against s 328A(3) committed while the offender was adversely affected by an intoxicating substance; or if the offender has been twice previously convicted either upon indictment or summarily (or once upon indictment and once summarily) of the same prescribed offence or different prescribed offences (s 328A(3)).
[182] Explanatory notes, p 6.
[183] YJ Act, s 301.
[184] This proposed amendment will be subject to a publication order under YJ Act, s 234.

likely to be at sentence.[185]

It was also clarified at the public briefing that in relation to cautions (or other matters regarding restorative justice agreements) administered before the commencement of the amendments, these would not be captured by the amendments and presented to the court upon sentencing.[186]

2.5.3. Stakeholder views

The QPU supported the new definition of a criminal history of a child, which includes cautions, restorative justice agreements and contraventions of a supervised release order.[187] Natalie Merlehan, victim survivor and member of Voice for Victims, submitted that it was important to ensure that a child's criminal history be representative of their full history, including information that operates both positively and negatively, to 'give a thorough and fulsome background' to assist in the sentencing of a child offender.[188]

However, there were a number of submitters who raised concerns about these proposals and were opposed to the disclosure of children's criminal history information.[189] Specifically Professor Tamara Walsh noted the following unintended adverse consequences of these provisions:

- Increased alienation from society for those who have committed offences as children – It is universally accepted that effective punishment of children is that which is swift and allows children to move forward with their lives. Children's mistakes should not affect the rest of their lives, and the creation of a 'criminal identity' should be avoided if we truly want them to desist from offending.
- Additional barriers to rehabilitation and reintegration – Adults with an irrelevant criminal record are often discriminated against by potential employers, and may be unable to obtain a Blue Card. This limits their capacity to live as productive citizens and desist from offending.
- Criminal history information may be taken out of context – Many children obtain a criminal record whilst they are under the care of the state. Individuals may be effectively punished for their own victimisation if criminal history information is considered in the absence of child safety information.[190]

Queensland Network of Alcohol and Other Drug Agencies (QNADA) also raised concerns about allowing cautions and restorative justice agreements to appear on the criminal history of a child:

> We do not support the proposed removal of sections 15(3), 21(4), and 252G(3) of the Youth Justice Act, which currently prohibit cautions and contraventions of a supervised release order from appearing on the criminal history of a child. We are concerned that the removal of these protections would have the effect of further criminalising young people's drug use. Earlier this year, the expanded Police Drug Diversion Program (PDDP) was introduced with the intention of diverting people away from the criminal justice system and this aspect of the proposed Act will directly undermine the programs stated intention. Allowing drug diversions and cautions to form part of a child's admissible criminal history has the effect of criminalising their drug use.[191]

[185] Department, written briefing, 29 November 2024, p 6.
[186] Public briefing transcript, Brisbane, 2 December 2024, p 3.
[187] Submission 2, p 3; Submission 19, p 2.
[188] Submission 19, p 2.
[189] Professor Tamara Walsh, submission 21, p 2; QNADA, submission 57, p 5.
[190] Submission 21, p 2.
[191] Submission 57, p 5.

The Queensland Human Rights Commissioner also noted the impact of the disclosure of a child's 'full' criminal history on a sentencing judge's ability to give that individual the 'benefit of the doubt' and sentencing more young adults to custodial sentences 'increases the likelihood of them coming out and doing more crime'.[192]

2.5.4. Consistency with fundamental legislative principles

Legislation must have sufficient regard to the rights and liberties of individuals.[193] Whether a Bill has sufficient regard to the rights and liberties of individuals depends on whether, for example the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.[194]

The Bill's provisions expand the type of information to be included in a criminal history of a child, provide that a person's child criminal history is admissible when the court is sentencing an adult for an offence,[195] and, in certain circumstances, enable childhood findings of guilt to be admissible for a circumstance of aggravation under the specified sections of the Criminal Code.

According to the explanatory notes:

> By providing for the recording, and consideration, of police cautions, restorative justice agreements and contraventions of supervised release orders in a child's criminal history, sentencing courts will be provided all relevant information about an offender's interaction with the justice system or previous history of offending.[196]

The explanatory notes assert that this information would 'assist the court in determining an appropriate sentence as these factors might potentially be of relevance'[197] and that the court would have discretion to determine what weight to give it.[198]

The explanatory notes confirm that the amendments to capture police cautions, restorative justice agreements and contraventions of a supervised release order on a child's criminal history would only apply to these outcomes that occur after commencement of the proposed Making Queensland Safer Act. However, the changes to the contents and admissibility of child criminal histories could result in a higher penalty being imposed on a child or on an adult because of actions taken by them when they were a child.

Further, the provisions may have retrospective effect in that:

- childhood findings of guilt which occur prior to the commencement of the provisions would be made admissible when sentencing as an adult for an offence committed after the commencement of the provisions[199]

[192] Public hearing transcript, Brisbane, 2 December 2024, p 34.
[193] LSA, s 4(2)(a).
[194] LSA, s 4(3)(g).
[195] For up to 5 years from the date of the outcome for the last childhood offence: Explanatory notes, p 6.
[196] Explanatory notes, p 6.
[197] Explanatory notes, p 6.
[198] Explanatory notes, p 6.
[199] The amendments to include police cautions, restorative justice agreements and contraventions of a supervised release order on a child's history 'will only apply to these outcomes that occur after commencement': Explanatory notes, p 6.

- a person may be made liable to circumstances of aggravation relating to previous convictions where childhood findings of guilt committed before the commencement are admissible to prove the circumstance of aggravation for an offence committed after the commencement.[200]

This means that a person may receive a higher penalty because of something they did prior to the commencement of the proposed legislation. The retrospective nature of the provisions would mean that the person did not have an opportunity to know that their actions could result in them being penalised more severely at a later stage.

Committee Comment

Although the explanatory notes state that the proposed amendments relating to the contents and admissibility of child criminal histories are consistent with fundamental legislative principles,[201] the committee has noted some potential breaches of fundamental legislative principles issues, particularly in relation to the retrospective operation of the proposed amendments relating to the contents and admissibility of child criminal histories.

Nevertheless, on balance, the committee is satisfied that the retrospectivity of the Bill's proposed amendments is justified in the circumstances and that these provisions are consistent with fundamental legislative principles.

2.5.5. Compatibility with human rights

The statement of compatibility provides that the amendments regarding the contents and admissibility of a child's criminal history will limit the following rights under the HRA:

- the right to enjoy liberty without discrimination (section 15(2)), the right to equal protection of the law without discrimination (section 15(3)) and the right to equal and effective protection against discrimination (section 15(4))
- the right to privacy (section 25(a))
- the rights of a child to protection in their best interests (section 26(2))
- the right to liberty (section 29(1)).[202]

In relation to the human rights relating to discrimination, the statement of compatibility notes that it is likely that Aboriginal and Torres Strait Islander children, who represent a significant proportion of children in the youth justice system, will be impacted to a greater extent by the changes to the contents and admissibility of child criminal histories. However, the Attorney-General stated that the amendments will not directly or indirectly discriminate on the basis of race.[203]

Considering the right to privacy, the statement of compatibility notes that this right is engaged in the sense of protection of private and personal information and data collection relating to the child

[200] Explanatory notes, p 6.
[201] Explanatory notes, p 10.
[202] Statement of compatibility, p 7.
[203] Statement of compatibility, p 7.

offender. However, the right to privacy only protects against unlawful or arbitrary interferences, and an interference with privacy will not be unlawful or arbitrary if it is a proportionate response to the achievement of a legitimate purpose.[204]

In relation to the rights of a child to protection in their best interests, for children in the justice system, the United Nations' Beijing Rules[205] provide guidance on what may be considered in a child's best interest. Specifically, rules 21.1 and 21.2 which relate to records of juvenile offenders which are required to be kept strictly confidential and not used in adult proceedings in subsequent cases involving the same offender. As the proposed amendments will make child records available to be considered in the sentencing of adults, this right will be limited.

Concerning the right to liberty, the proposed amendments may increase the chance that a person will be subject to higher sentences as a result of the court being aware of the full extent of their interaction with the justice system.

In relation to the various human rights issues raised in this context discussed above, the statement of compatibility concludes:

> Ensuring that courts are fully informed when sentencing is of critical importance to ensuring that sentences are appropriate and proportionate. While it is acknowledged that these amendments will impose limitations on human rights, the nature of the limitations are minor in scope, and arise within a broader exercise of judicial discretion. Critically, the information cannot be used for any purpose other than sentencing. For these reasons, the amendments represent a fair balance between the limitations identified and the achievement of the purpose.[206]

Committee Comment

The committee acknowledges the concerns raised by particular stakeholders that amendments to the content of children's criminal histories, and then the admissibility of these histories when sentencing a person for offences committed while an adult, may be prejudicial to the interests of the person.

However, the committee also notes the views from stakeholders, particularly victims, regarding the importance of a child's 'full' history to be put before the court on sentencing to ensure the decision made is informed by all relevant information and more reflective of community expectations.

In terms of the human rights issues engaged by these amendments, the committee notes the consideration of the child's criminal history is one of many factors utilised by the court when determining an appropriate sentence and its inclusion is for the purpose of assisting the court to better assess the appropriate and proportionate sentence for an offence.

[204] Statement of compatibility, pp 7-8.
[205] United Nations, *Convention on the Rights of the Child*; United Nations, Beijing Rules.
[206] Statement of compatibility, p 10.

Some committee members highlighted their concerns that these amendments would lead to harsher, more punitive sentences for young offenders based on a history of minor, non-violent offences.

However, on balance, the committee considers the limitations on the rights of the child imposed by the proposed amendments to the Bill are reasonable and demonstrably justifiable.

2.6. Transfer of 18 year olds from youth detention centres to adult correctional facilities

2.6.1. Current legislative framework

As recently amended by the *Queensland Community Safety Act 2024,* the procedure for transferring 18 year old detainees from youth detention centres to adult custody under the YJ Act currently operates as follows:

- young persons can be considered for transfer on the date at least one month after they turn 18 years old if they are:
  - 18 years old before beginning detention
  - turn 18 years old while in detention
  - are at least 17 years and 10 months old and will turn 18 while in detention[207]
- in making a determination whether to issue the transfer notice (or delay the notice), the chief executive may have regard to the 'special circumstances' of the detainee and other relevant factors[208]
- a person subject to a transfer notice may apply to review the chief executive's decision or apply to the court for a delay to the transfer for a maximum period of 6 months.[209]

2.6.2. Amendments proposed in the Bill

Clauses 47 and 48 of the Bill propose to introduce a new regime for the automatic transfer of offenders detained in youth detention centres to adult corrective facilities within one month after they turn 18 years old.[210]

A decision as to whether a person ought to remain in a youth detention centre (as opposed to being transferred by default within one month after turning 18 years old) is made at the chief executive's discretion and is not subject to its own appeal or review mechanisms (other than judicial review in accordance with the *Judicial Review Act 1991*).[211]

Further, this transfer procedure would apply to detainees sentenced, those on remand and those in custody in a watchhouse.[212]

The department advises that youth detention centres are not designed to detain adults, although,

[207] YJ Act, ss 276B(1), 276C(1).
[208] YJ Act, ss 276C(2)-(4).
[209] YJ Act, ss 276J, 276P, 276T.
[210] Bill, cl 33 (inserts s 276C, YJ Act).
[211] Bill, cl 33 (inserts s 276D, YJ Act).
[212] Bill, cl 33 (inserts ss 276A, 276C(1), YJ Act).

currently it is not uncommon for inmates (both on remand and sentenced) to continue to be detained in a youth detention centre beyond their 18th birthday. The department further advised that, in 2023, on average there were 23 people 18 years of age each day in youth detention centres, of a total population of 309 detainees on an average day. The department further advised that the proposed changes are modelled on the Western Australian approach.[213]

2.6.3. Stakeholder views

The QPU supported the policy outlined in the Bill to enable more 18 year olds to be transferred to adult custody and for the process to be automatic and efficient.[214]

However, RAYS raised concerns about this aspect of the Bill and recommended that the automatic transfer provision be reconsidered 'as it fails to account for individual circumstances critical to a young person's rehabilitation'. Specifically, RAYS was concerned about 'the impact on young detainees who may lose access to essential rehabilitative programs, therapeutic supports, and services available in youth detention but not in adult facilities'. RAYS recommends:

> ... a more flexible, case-by-case approach to transitioning detainees to adult facilities, ensuring that young individuals continue to receive the support they need to reintegrate successfully into society.[215]

In respect of concerns about the rehabilitation of young offenders throughout the transfer process, the Director-General of the Department of Youth Justice and Victim Support highlighted at the public briefing:

> While sentencing reform and streamlined provisions to transfer 18-year-olds to adult corrective services on the basis that they are adults—not children—and adults should not be detained with children will ensure that time spent in detention is focused on rehabilitation and education, we are also conducting further work to shift the detention operating framework. That is work that has occurred whilst I have been director-general. We want to better target cohort needs and remove negative peer influences. For example, education and program contact options are going to be expanded through realigned program timetabling to reflect community-based school expectations. We intend to expand homework clubs, weekend delivery options and the broader use of self-paced education packs.[216]

2.6.4. Consistency with fundamental legislative principles

Under sections 4(2)(a) and 4(3)(a) of the LSA, legislation must have sufficient regard to the rights and liberties of individuals and ensure that the exercise of administrative power is subject to appropriate review under of the LSA.

The explanatory notes provide:

> The amendments are inconsistent with fundamental legislative principles, to the extent that the chief executive's decision to transfer a detainee to a corrective services facility is not subject to review, other than judicial review, and procedural fairness is not required. However, the proposed arrangements enable the prompt transition of 18 year olds to adult custody, to

[213] Department, written briefing, 29 November 2024, p 9.
[214] Submission 2, p 4.
[215] Submission 69, p 4.
[216] Public briefing transcript, Brisbane, 2 December 2024, p 5.

enhance and protect the rights of younger children in YDCs.[217]

2.6.5. Compatibility with human rights

The statement of compatibility acknowledges that the amendments will limit:

- the right to humane treatment when deprived of liberty (section 30, HRA), and
- the right to have access to vocational education and training (section 36(2), HRA).[218]

The right to humane treatment when deprived of liberty is limited by the amendments because the automatic transfer does not take into account circumstances conducive to rehabilitation. For example, that the detainees may lose access to beneficial programs, therapeutic supports and services, and rehabilitative interventions that they were accessing in the youth detention centre that are either not available, or not available to the same extent, in an adult correctional facility.[219]

The amendments will also limit the right to access vocational education and training given the restricted availability of these services in adult correctional facilities.[220]

The statement of compatibility further provides that the prompt transfer of 18 year olds out of youth detention centres will minimise the extent to which adult detainees (i.e. detainees who have turned 18) and children are housed together in youth detention centres. This will achieve the purpose of protecting the safe custody and wellbeing of children.[221]

Committee Comment

On balance, the committee is satisfied that the protection afforded to younger children in youth detention centres by the prompt transfer to 18 year olds to adult correctional facilities outweighs:

- any potential breach of fundamental legislative principles
- any potential limitations on human rights.

2.7. Access to information on the eligible persons register

2.7.1. Current legislative framework

The YJ Act establishes the 'eligible persons register' which contains information about particular youth offenders who have committed violent or sexual offences.[222] The information contained on the register includes, amongst other things, the offender's movements while in custody and future release dates.[223]

[217] Explanatory notes, p 11.
[218] Statement of compatibility, p 15.
[219] Statement of compatibility, p 15.
[220] Statement of compatibility, p 15.
[221] Statement of compatibility, p 15.
[222] YJ Act, s 282A(1).
[223] YJ Act, s 282F(1).

Currently, the following categories of persons are able to apply to the chief executive to be registered as an 'eligible person' to receive updates as information on the register becomes available:

- a victim of the offence
- if a victim is deceased because of the offence, an immediate family member of the deceased victim
- if a victim is a child or has a legal incapacity, the victim's parent
- another person who satisfies the chief executive that the person's life or physical safety could reasonably be expected to be endangered because of the child's history of violence against the person or a connection between the person and the offence.[224]

The chief executive may refuse a person's application to be an 'eligible person' to receive such updates if they are satisfied that the release of the relevant information may endanger the security of a detention centre, the safe custody or welfare of a child detained in a detention centre, or the safety or welfare of another person.[225]

2.7.2. Amendments proposed in the Bill

Clause 54 of the Bill proposes to reverse the current regime where victims are required to 'opt in' to receive updates via the eligible persons register for victims of particular youth offenders.[226]

Under the new procedure, victims (or immediate family members of deceased victims) will automatically receive updates regarding the relevant offender's movements (as opposed to requiring them to submit an application to the chief executive for this information).[227]

The Bill intends to retain the ability to refuse the registration of particular victims (or immediate family members of deceased victims) in particular circumstances where there are safety or security concerns.[228]

The department explained that the amendments move to an 'opt out' model for direct victims and immediate family members of deceased victims. Under this new model, those persons do not need to apply to be placed on the register. In terms of the practical operation of these provisions, '[o]nce the necessary information is received by DYJVS [Department of Youth Justice and Victim Support], registration will be automatic, subject to specified safeguards'. The department also advised that the amendments to default to an opt-out requirement for victims on the eligible persons register are unique to Queensland.[229]

The department noted that the implementation of these amendments will commence at a later date as 'there are implementation activities that need to be done before those amendments can commence'.[230]

[224] YJ Act, s 282A(2).
[225] YJ Act, s 282D(1).
[226] Bill, cl 54 (inserts s 282A(3), YJ Act).
[227] Explanatory notes, p 8.
[228] Bill, cl 54 (inserts s 282A(6), YJ Act).
[229] Department, written briefing, 29 November 2024, p 8.
[230] Public briefing transcript, Brisbane, 2 December 2024, p 2.

2.7.3. Stakeholder views

The proposed 'opt out' model regarding access to information on the eligible persons register was supported by Natalie Merlehan who submitted:

> The 'opt out' model allows victims to access limited but relevant information and gives them the power to make a decision which suits them with respect to receiving this information.[231]

2.7.4. Consistency with fundamental legislative principles

The explanatory notes provide that the amendments are consistent with fundamental legislative principles.[232]

2.7.5. Compatibility with human rights

The proposed 'opt out' changes to the victim impact register may impact:

- the right to privacy and reputation of young offenders (section 25 of the HRA)
- the right of a child to protection in their best interest (section 26(2) of the HRA).

However, the statement of compatibility states that the provisions do allow for more victims and immediate family members of deceased victims to have access to information regarding an offender's custody movements. The provisions also include protective factors such as the opportunity to 'opt out' and retaining the need for parents of victims who have a legal incapacity or another person who satisfied the chief executive that their life or physical safety could be endangered to make an application to enter the register.[233]

The statement of compatibility further provides that this proposal 'reflects a fair balance between the right to privacy and reputation of offenders and the interests of victims in being informed about the custody movements of offenders responsible for their victimisation and the limitations to privacy and the best interests of the child'.[234]

Committee Comment

On balance, the committee is satisfied that the amendments in the Bill relating to access to information on the eligible persons register are:

- consistent with fundamental legislative principles
- reasonable and justifiable to the extent that they potentially limit the rights of children.

[231] Submission 19, p 2.
[232] Explanatory notes, p 11.
[233] Statement of compatibility, p 17.
[234] Statement of compatibility, p 17.

Appendix A – Submitters

No.	Name / Organisation
1	Ken Cunliffe
2	Queensland Police Union
3	Susan Prince
4	Susan Morris
5	knowmore
6	Drug Free Australia
7	Katrina Schultz
8	Ella Vickery
9	Name Withheld
10	Peter Dick
11	Don Eccleston
12	Name Withheld
13	Salvatore Costanzo
14	Confidential
15	LC Distributors
16	Don Willis
17	Matthew Foley
18	Alethea Blackler
19	Natalie Merlehan
20	Change the Record
21	Professor Tamara Walsh
22	Form A
23	Name Withheld
24	Name Withheld
25	Anita Mackay
26	Office of the Queensland Ombudsman
27	Name Withheld

28	Raminder Singh Sandhu
29	Alison Merridew
30	Anthony Castles
31	Peter Barrett
32	Name Withheld
33	Alexandria Voss
34	Name Withheld
35	ISBS Consulting
36	Australians for Native Title and Reconciliation, Qld (ANTaR Qld)
37	Queensland Advocacy for Inclusion
38	Shane Cuthbert
39	Confidential
40	National Retail Association
41	Confidential
42	Kate Galloway
43	Sarah McLeod
44	David Jones
45	Thrive and Connect Pty Ltd
46	Legal Aid Queensland
47	Elizabeth Cage
48	Name Withheld
49	Craig Masterson
50	Name Withheld
51	Name Withheld
52	Confidential
53	Name Withheld
54	Name Withheld
55	Name Withheld
56	Jennifer Brown

57	QNADA
58	Name Withheld
59	Name Withheld
60	Nicola Stevens
61	Kerrie Collings-Silvey
62	Ending Violence Against Women QLD
63	QuIVAA
64	Queensland Indigenous Family Violence Legal Service
65	Murri Watch Aboriginal and Torres Strait Islander Corporation
66	Townsville Amnesty International Action Group
67	West End Community Association
68	School of Nursing, Midwifery and Social Work, The University of Queensland
69	Redcliffe Area Youth Space
70	Mission Australia
71	PeakCare Qld
72	Reuben Richardson
73	Jo and Alison Grant
74	Frances Long
75	Quan Ly
76	Joseph Lelliott
77	Queensland Council of Social Service
78	Project Paradigm – IFYS
79	Griffith Criminology Institute
80	Queer & Trans Workers Against Violence
81	Save the Children and 54 Reasons
82	Australian Association of Research in Education
83	A Curious Tractor
84	Green Fox Training Studio
85	Queensland Youth Policy Collective

86	The Lamberr Wungarch Justice Group
87	Amnesty International Australia
88	Dr Emma Antrobus
89	Dr Michael Rubenach
90	Griffith University Innocence Project
91	YFS Ltd
92	Queensland Family and Child Commission
93	Queensland Teachers' Union
94	Queensland Council for Civil Liberties
95	Justice Reform initiative
96	Victims Commissioner
97	Aureole McAlpine
98	SNAICC - National Voice for our Children
99	Cape York Partnership Group
100	Queensland Program of Assistance to Survivors of Torture and Trauma
101	Uniting Church in Australia, Queensland Synod
102	Helping Our Mob Everywhere (HOME) Pty Ltd
103	First Nations Non-Government Alliance, OzChild, Mackillop, Act for Kids, Key Assets and Life Without Barriers
104	Catholic Justice and Peace Commission of the Archdiocese of Brisbane
105	Institute of Public Affairs
106	The EMU Files
107	Yoora Maltha
108	Queensland Sentencing Advisory Council
109	African Youth Support Council of the Queensland African Communities Council
110	Anti-Poverty Week
111	Youth Empowered Towards Independence
112	Act for Kids Limited
113	Australians for Native Title and Reconciliation (ANTAR)
114	Queensland Law Society

115	The National Network of Incarcerated and Formerly Incarcerated Women and Girls and Sisters Inside Inc
116	The Australian Workers' Union of Employees, Queensland
117	Deadly Inspiring Youth Doing Good Aboriginal & Torres Strait Islander Corporation
118	Community legal centres
119	Confidential
120	Queensland Youth Housing Coalition
121	Professor Jason Payne and Associate Professor Danielle Harris, Griffith Criminology Institute
122	Professor Kate Fitz-Gibbon and Dr Hayley Boxall
123	Cygnet Centre for Peacebuilding & Transformation Ltd
124	Name Withheld
125	LawRight
126	Public Health Association of Australia
127	Name Withheld
128	Carine Visschers
129	Queensland Mental Health Commission
130	Sisters Inside Inc & the National Network of Incarcerated and Formerly Incarcerated Women and Girls
131	Professor Sarah Joseph, Law Futures Centre, Griffith Law School
132	Judith Andrews
133	Naomi Hull and Ashleigh Hull
134	Barbara Lawler
135	Name Withheld
136	Open Doors Youth Service
137	Youth Advocacy Centre
138	Australian Lawyers Alliance
139	yourtown
140	Anglicare Southern Queensland and the Anglican Church Southern Queensland Social Responsibilities Committee
141	Bravehearts Foundation

142	Zig Zag Young Women's Resource Centre Inc
143	Gold Coast Youth Service Inc
144	Independent Ministerial Advisory Council
145	Dr Nadia Hasan and other child health specialists, trainees, nurses and paediatric allied health professionals
146	Queensland Youth Connections Indigenous Corporation
147	Australian Human Rights Commission
148	Anne Connell
149	Arethusa College
150	Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited
151	Confidential
152	Name Withheld
153	Associate Professor Terry Goldsworthy, Bond University
154	Q Shelter
155	Commissioner Natalie Lewis, Queensland Family Child Commission
156	Queensland Homicide Victims' Support Group
157	Confidential
158	Office of the Public Guardian
159	Change the Record and the Human Rights Law Centre
160	Townsville Chamber of Commerce
161	Community Living Association Inc
162	Cherie Burge
163	Name Withheld
164	Name Withheld
165	Bar Association of Queensland
166	Prisoners' Legal Service
167	Emma Oosthuysen
168	Institute for Collaborative Race Research
169	Michael McKeon
170	Name Withheld

171	Gold Coast Centre Against Sexual Violence
172	Lew Johnson
173	Marilyn Rushby
174	Bridget Jones
175	Name Withheld
176	Queensland Human Rights Commission

Appendix B – Representatives at Public Briefing, 2 December 2024

Department of Justice

Kate Connors	Deputy Director-General, Justice Policy and Reform
Leanne Robertson	Assistant Director-General, Strategic Policy and Legislation
Kate McMahon	Director, Strategic Policy and Legislation
Myrella-Jane Byron	Principal Legal Officer, Strategic Policy and Legislation

Department of Youth Justice and Victim Support

Robert Gee	Director-General
Michael Drane	Deputy Director-General

Appendix C – Witnesses at Public Hearing, Brisbane, 2 December 2024

Organisations

Aboriginal and Torres Strait Islander Legal Service

Pree Sharma	Legal Practitioner, Law Reform and Community Legal Education
Kate Greenwood	Senior Policy Lawyer, Closing the Gap

Fearless Towards Success

Selena Walters	CEO

Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP)

Garth Morgan	CEO
Murray Benton	Deputy CEO
Helena Wright	Deputy CEO, Policy and Strategy

Queensland Bar Association

Cate Heyworth-Smith KC	President
Andrew Hoare KC	Chair, Criminal Law Committee

Queensland Council of Social Service (QCOSS)

Aimee McVeigh	CEO

Queensland Family and Child Commission

Luke Twyford	Principal Commissioner and CEO
Natalie Lewis	Commissioner

Queensland Homicide Victims' Support Group

Brett Thompson	CEO

Queensland Human Rights Commission	
Scott McDougall	Queensland Human Rights Commissioner
Sarah Fulton	Principal Lawyer
Queensland Law Society	
Genevieve Dee	Deputy President
Damian Bartholomew	Chair, Children's Law Committee
Julia Jasper	Member, Criminal Law Subcommittee
Sisters Inside Inc.	
Zofia Wasiak	Director of Programs
Neta Mabo	Statement Manager of Youth Programs
Ruby Wharton	Community Development Officer
VictimConnect	
Rhea Mohenoa	Director of Client Services (Recovery and Healing)
Gemma Sammon	Service Delivery Manager (Recovery and Healing)
Voice for Victims	
Natalie Merlehan	Representative
Chris Sanders	Representative
Youth Advocacy Centre	
Katherine Hayes	CEO

Appendix D – Witnesses at Public Hearing, Townsville, 3 December 2024

Individuals

Arthur Burchett

Brendan Carter

Emma Dobbins

Harvey Walters

Jillian Joyce

Madonna Simmons

Nick Attam

Peter Hanley

Reuben Richardson

Ross Crosbie

Salvatore Costanzo

Sandra Wylie

Sarah Leah Kleinman

Timothy Lindley

Organisations

Helping Our Mob Everywhere	
Alfred Junior Smallwood	Representative
Irene Leard	Representative
Lee-Toya Sirriss	Representative
Townsville Chamber of Commerce	
Heidi Turner	President

Appendix E – Adoption of principle of 'detention as a last resort' around Australia[235]

	Expressly adopts principle	Average detention rate[236]	Relevant legislative provisions
New South Wales	No	1.9	Children's Court cannot impose a sentence of detention 'unless it is satisfied that it would be wholly inappropriate' to impose a less serious penalty. *Children (Criminal Proceedings) Act 1987 (NSW),* s 33(2) A higher court must only impose a sentence of imprisonment 'unless it is satisfied, having considered all possible alternatives, that no penalty other than imprisonment is appropriate' *Crimes (Sentencing Procedures) Act 1999 (NSW),* s 5(1) [Note: this Act applies to children sentenced for very serious offences, such as murder]
Victoria	No	1.2	Courts must only impose sentences of detention if satisfied that less serious sentences are not appropriate *Children, Youth and Family Act 2005 (Vic),* ss 361, 410, 412
South Australia	No	1.8	Courts can only impose a sentence of detention on a young offender if: • they have been declared to be a 'recidivist youth offender' • they are a serious firearm offender • the Court is satisfied that a non-custodial sentence would be inadequate because of the gravity/circumstances of the offence, or because of a pattern of repeated offending *Young Offenders Act 1993 (SA),* s23(4)
Western Australia	Yes	3.9	General principles of juvenile justice include: 'detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary' *Young Offenders Act 1994 (WA),* s 7(h)
Tasmania	Yes	1.5	General principles of youth justice include: 'detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary' *Youth Justice Act 1997,* s 5(1)(g)
Australian Capital Territory	Yes	2.5	Youth justice principles include: 'a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary' *Children and Young People Act 2008 (ACT)*, s 94(1)(f) The principle is restated, in relation to the sentencing of young offenders, in s 133G(2) of the *Crimes (Sentencing) Act 2005 (ACT).*
Northern Territory	Yes	19.8	Principles to be taken into account in administration of the Act include: 'a youth should only be kept in custody for an offence (whether on arrest, in remand or under sentence) as a last resort and for the shortest appropriate period of time' *Youth Justice Act 2005 (NT),* s 4(c)

[235] As adapted from the Youth Justice Reform Select Committee, Report No. 1, 57th Parliament – Interim Report: Inquiry into ongoing reforms to the youth justice system and support for victims of crime, p 199.

[236] Per 10,000 young people aged 10-17 years who were supervised in the community and in detention centres in January 2023: Productivity Commission, 'Youth Justice Services' in *Report on Government Services 2023* (released 24 January 2023). Available at: https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice

Appendix F – 'Adult crime, adult time': Existing and proposed minimum, mandatory and maximum penalties[237]

Criminal Code section	Offence	Current maximum / non-parole periods for young offenders	Adult crime, adult time maximum / mandatory sentence
302, 305	Murder	Maximum of 10 years detention or up to life detention if 'particularly heinous in all the circumstances', with a minimum non-parole period of 20 years if sentenced to life detention	Mandatory life detention with a non-parole period of 20 years. This means that a 16 year old young offender who is convicted of murder will not be eligible for consideration of release on parole until they are 36 years old.
303, 310	Manslaughter	Maximum of 10 years detention or up to life detention if 'particularly heinous in all the circumstances', with minimum non-parole period of 15 years if sentenced to life detention	Maximum of life detention, with minimum non-parole period of 15 years if sentenced to life detention
317	Acts intended to cause grievous bodily harm and other malicious acts		
314A	Unlawful striking causing death	Maximum of 10 years detention or up to life detention if 'particularly heinous in all the circumstances', with minimum non-parole period of 15 years if sentenced to life detention	Maximum of life detention, with minimum non-parole period of 15 years if sentenced to life detention. If ordered to serve a period of detention less than life, the child must serve the lesser of 80% of sentence or 15 years detention before being released on parole. This means that if a young offender who unlawfully strikes another person in the head or neck and causes the death of another person and is sentenced to a term of 10 years detention, they must serve 8 years before they are released on parole.
320	Grievous bodily harm	7 years detention maximum	14 years detention maximum
	Grievous bodily harm committed in a public place while adversely affected by an intoxicating substance	7 years detention maximum	14 years detention maximum Mandatory community service order
323	Wounding	3.5 years detention maximum	7 years detention maximum

[237] Department, written briefing, 29 November 2024, pp 14-18.

Criminal Code section	Offence	Current maximum / non-parole periods for young offenders	Adult crime, adult time maximum / mandatory sentence
	Wounding committed in a public place while adversely affected by an intoxicating substance	3.5 years detention maximum	7 years detention maximum Mandatory community service order
340	**Serious assault**	3.5 years detention maximum	7 years detention maximum
	Serious assaults that assaults, resists, or wilfully obstructs, a police officer in course of duties or person aiding police officer or corrective service officer or public officer and: • bites or spits on the person or throws at, or in any way applies to, person a bodily fluid or faeces, • causes bodily harm to the person, or • is, or pretends to be, armed with a dangerous or offensive weapon or instrument	7 years detention maximum	14 years detention maximum
	Serious assault that assaults, resists or wilfully obstructs a police officer in course of duties or person aiding police officer or a public officer in course of duties and: • committed in a public place while adversely affected by an intoxicating substance	3.5 years detention maximum	7 years detention maximum Mandatory community service order
409, 411	**Robbery**	7 years detention maximum	14 years detention maximum
	Robbery: • while armed, in company, with personal violence, or with wounding	Maximum of 10 years detention or up to life detention if 'particularly heinous', with minimum non-parole period of 15 years if sentenced to life detention	Maximum of life detention, with minimum non-parole period of 15 years if sentenced to life detention
419	**Burglary**	7 years detention maximum If certain circumstances[2] apply, 3.5 years	14 years detention maximum
	Burglary:	7 years detention maximum	16 years detention maximum

Criminal Code section	Offence	Current maximum / non-parole periods for young offenders	Adult crime, adult time maximum / mandatory sentence
	• with particular publication of material	If certain circumstances[3] apply, 3.5 years	
	Burglary and: • entry was by means of a break, • committed in the night, with violence, while armed, in company, with property damage, or • commits indictable offence	Maximum of 10 years detention or up to life detention if 'particularly heinous', with minimum non-parole period of 15 years if sentenced to life detention If certain circumstances[4] apply, 3.5 years	Maximum of life detention, with minimum non-parole period of 15 years if sentenced to life detention
421	**Entering or being in premises and committing indictable offences**	5 years detention maximum	10 years detention maximum
	Entering or being in premises and committing indictable offences and: • commits an indictable offence	7 years detention maximum If certain circumstances[5] apply, 3.5 years	14 years detention maximum
	Entering or being in premises and committing indictable offences and: • gains entry to the premises by a break and commits an indictable offence	Maximum of 10 years detention or up to life detention if 'particularly heinous', with minimum non-parole period of 15 years if sentenced to life detention If certain circumstances[6] apply, 3.5 years	Maximum of life detention, with minimum non-parole period of 15 years if sentenced to life detention
328A	**Dangerous operation of a vehicle**	1.5 years detention maximum	Maximum of 200 penalty units or 3 years detention
	Dangerous operation of a vehicle and: • with particular publication of material	2.5 years detention maximum	Maximum of 400 penalty units or 5 years detention
	Dangerous operation of a vehicle and: • adversely affected by intoxicating substance, or		

Criminal Code section	Offence	Current maximum / non-parole periods for young offenders	Adult crime, adult time maximum / mandatory sentence
	• excessively speeding/racing, or • previously convicted of offence		
	Dangerous operation of a vehicle and: • previous convictions for relevant offences	2.5 years detention maximum	Maximum of 400 penalty units or 5 years detention Mandatory detention as whole or part of the penalty
	Dangerous operation of a vehicle and: • causes the death of or grievous bodily harm to another person	7 years detention maximum	14 years detention maximum
	Dangerous operation of a vehicle, causing death or grievous bodily harm to another person and: • offender is adversely affected by intoxicating substance, was excessively speeding or racing; • knows the other person has been killed or injured, and leaves before a police officer arrives; or • commits an evasion offence before or while committing the offence	7 years detention maximum	20 years detention maximum
408A	**Unlawful use or possession of motor vehicles, aircraft or vessels**	5 years detention maximum	10 years detention maximum
	Unlawful use of a motor vehicle and: • for the purpose of committing an indictable offence; or • with particular publication of material	5 years detention maximum	12 years detention maximum
	Unlawful use of a motor vehicle and: • committed in the night • while armed, in company, with violence, with property damage	7 years detention maximum	14 years detention maximum

Criminal Code section	Offence	Current maximum / non-parole periods for young offenders	Adult crime, adult time maximum / mandatory sentence
	• using an emergency vehicle		
427	**Unlawful entry of a vehicle for committing an indictable offence**	5 years detention maximum	10 years detention maximum
	Unlawful entry of a vehicle and: • committed in the night; or • while armed, in company, with violence, with property damage; or • using an emergency vehicle	7 years detention maximum	14 years detention maximum

Statement of Reservation

STATEMENT OF RESERVATION
MAKING QUEENSLAND SAFER BILL 2024

Everyone deserves to feel safe and must be safe – in their home, their workplace, their community and as they go about their daily lives.

The Labor Opposition acknowledges that community safety is of paramount concern, and that youth crime in particular is on the minds of many Queenslanders and indeed many Australians, as this is not a problem unique to Queensland.

We especially acknowledge the impact of crime on victims and the need for there to be a stronger focus on their needs, and a broader range of measures that reflect the individual experiences of victims.

At the October general election, Queenslanders had their say. Crime is unacceptably high, and an evidence-based approach is needed to turn the corner.

The Labor Opposition supports strong action and tough laws to protect Queenslanders.

We have heard Queenslanders' views and will continue to work constructively with the Government to ensure that the best possible laws are enacted to support all Queenslanders. At the same time, we will hold the government accountable for delivering on their promises and ensure that the best possible evidence-based prevention and early intervention programs are continued or are implemented, to either prevent young people from entering the youth justice system in the first place, or to divert them from crime.

"Everyone deserves a life free from violence and fear".

That is what drives Queensland's first Victims' Commissioner Ms Beck O'Connor and what underpins the Labor Opposition's determination to improve community safety in Queensland. We want to see fewer victims, but we must provide greater support for those who unfortunately have been or will be impacted by crime.

Premier David Crisafulli has promised that, year on year, he will reduce victim numbers. The Labor Opposition will hold the Premier and the LNP Government to account on this, based on the public ABS data which is what Mr Crisafulli was using during the general election.

The Government took to the general election a policy to implement *"adult crime, adult time"* and to have this in place before Christmas 2024. However, it is clear from many stakeholders that there is no evidence to support the premise that this approach will result in a reduction in victim numbers.

In fact, almost every expert who made a submission to the Justice, Integrity and Community Safety Committee's inquiry into the *Making Queensland Safer Bill* reinforced the evidence that in fact it is likely to increase offending. For example:

> ***Bar Association of Queensland:*** *"There is no evidence that the Bill will fulfil its titular object of "making Queensland safer". In the statement of compatibility the purposes of the Bill are said to be "punishment and denunciation". There is no evidence that either of these sentencing philosophies will have a correlative positive effect on public safety."*
>
> ***Queensland Council of Social Services****: "However, the amendments in the Bill do not deliver evidence based initiatives that effectively empower victims and reduce reoffending."*
>
> ***Bravehearts:*** *"Adopting policies that are not based on evidence and careful scrutiny of their impact on our children and young people, would be a grave error."*
>
> ***Queensland Law Society:*** *"There is no evidence that lengthier custodial sentences deter young offenders."*

Nevertheless, the Labor Opposition recognises that the Queensland community wanted a change in approach; accepts that this approach, in slogan form, was made clear; and that this is what the majority of Queenslanders voted for.

However, the proposed bill makes substantial other changes to the justice and youth justice landscape in Queensland which were not canvassed during the general election.

The Liberal National Party took a four-word slogan to the election, and turned it into 52 pages of legislation, which the parliamentary committee has had less than a week to scrutinise, due to a motion moved by Premier David Crisafulli to limit the committee's time for scrutiny.

We understand, via the many stakeholders that the legislation may have a number of unintended negative consequences, if implemented in full.

CONSULTATION

During the general election, the laws themselves were not circulated to Queenslanders for their views.

It is noted that during a leaders debate during the general election period, the Leader of the Liberal National Party (former Leader of the Opposition) stated that the laws were drafted. Mr Crisafulli stated: *"I've written the legislation, by the end of the year it will be law"* and then when elected, the LNP Crisafulli Government put out a media release saying that the laws were being drafted.

It is clear that Mr Crisafulli was not fulsome with the truth during the election regarding the drafting of the laws.

If it is true that the laws had been drafted, and in the form we now see which proposes a wide range of previously unheralded measures, then these should have been canvassed as early as possible.

This is raised because the Labor Opposition wrote to the LNP Crisafulli Government prior to the parliament recommencing and asked for a briefing on the laws or to see the draft. We did this in good faith, to work cooperatively with the government on this matter. We wrote again once the bill was introduced, seeking what is accepted convention regarding a government providing departmental briefings to an Opposition.

However, despite these two pieces of correspondence to the LNP Crisafulli Government, the Labor Opposition has not heard from them. It did not take the LNP Crisafulli Government long to bring out the same playbook of the Newman LNP Government, which also didn't value proper consultation.

While it is understood that the LNP Crisafulli Government took their "adult crime, adult time" policy to the election with a promise to implement it before Christmas, it is obvious from looking at the calendar, that this commitment could have still been realised if the Legislative Assembly sat a week later and thus allowing the committee two weeks consultation. The laws would have still been considered before Christmas.

It is not just the Labor Opposition calling out the inadequate length of consultation, but many stakeholders too, as outlined below from some individuals who attended the public hearing on Monday, 2 December 2024 and/or submitted to the Committee.

> ***VictimsConnect:*** *We note that we would like greater detail of the bill for VictimsConnect and the community, especially those who are impacted by crime, to provide the nuanced consideration and consultation necessary to satisfy all questions about how proposed changes can safely and effectively keep Queenslanders safe …*
>
> ***Sisters Inside Inc.*** *We object to the way in which the government has rushed through this legislation, providing little time for consultation.*
>
> ***Queensland Aboriginal and Torres Strait Islander Child Protection Peak:*** *So I would like to have seen a significant consultation process prior to the bill being drafted—for the bill to be drafted, for an exposure draft to be circulated, maybe in confidence, to folk in the sector that are working with kids followed by a committee process that is longer than a week.*

Queensland Council of Social Service: *Thank you for the question, member, and of course more time to consider the bill would have been useful.*

Queensland Law Society: *I think that we are yet to explore all of the unintended consequences because of the shortness of the period in consultation.*

Dr Terry Goldsworthy: *"It is disappointing that such a tight timeframe was imposed on submissions in relation to this bill. It would have been much more prudent to allow sufficient time for comprehensive submissions to be made. The last time legislation was rushed through the parliamentary process like this it resulted in the ill-conceived and problematic VLAD anti-bikie laws that were a dismal failure in terms of combating organised crime."*

Bar Association of Queensland: *"The short period provided for the Association to make submissions is noted. While the broad policy intention of the 'Adult Crime, Adult Time' election commitment was well known, the way it was to be executed was not known until Thursday last week."*

Queensland Victims Commissioner: *I note the short timeframe to provide a submission - only 3 business days. This timeframe for consultation is unrealistic for stakeholders - particularly victims, their families, communities, legal advocates, and service providers who will have very significant contributions to make. We must adopt a balanced, evidence-based approach to community safety for all, and this is done through open, transparent and accessible consultation."*

LIMITED BRIEFINGS FROM KEY STAKEHOLDERS

Due to the lack of time afforded to the committee to undertake its work, due to the truncated timeframe put forward by Premier David Crisafulli in a motion to the Legislative Assembly of the Queensland Parliament, it was not possible for a number of important stakeholders to be provided an opportunity to brief the committee.

Two notable absences were the Queensland Police Service and the Queensland Victims' Commissioner. It is clear from the legislation that the Queensland Police Service will be involved in implementing the proposed laws, however, the committee did not hear from the Queensland Police Service to question them about how they intend to operationalise the laws.

In addition, the Queensland's Victims' Commissioner did not give verbal evidence to the committee.

This is despite the Liberal National Party, when in Opposition supporting the Victims' Commissioner's role, with the LNP Member for Whitsunday's saying to the Legislative Assembly *"the LNP has shown our support for the Victims' Commissioner …"*

The Victim's Commissioner position in Queensland is important, it is a role that promotes and protects the needs of victims and determines the most appropriate model for Queensland. Not hearing directly from the Victims' Commissioner through the committee process to provide evidence, when the needs of victims is such a central focus of the bill is not only disappointing but counterintuitive.

Queensland's public sector do an amazing job providing frank and fearless advice to government and work to implement government policy. Their input is critical, and the written briefing by the relevant departments was of great assistance.

However, the respect the public servants deserve was not extended to them, with only one hour provided to answer questions and provide information regarding the wide-ranging and far-reaching proposed legislation.

The Committee did not hear from departmental officers again after the more than 170 submissions were received, with numerous further issues raised. It was also extremely disappointing that the submissions that were received by Queenslanders were not considered and published in a timely

manner, for all stakeholders to see. This is a result of the rushed stakeholder engagement afforded to the committee by Premier David Crisafulli.

UNINTENDED NEGATIVE CONSEQUENCES

As previously outlined, the bill in its current form substantially changes the justice and youth justice legislative landscape in Queensland – more so than was canvassed during the general election.

Many stakeholders raised issues in respect of the "unintended consequences", which some of the legislation could have, due to the rushed nature of the committee process. Some examples of stakeholder views below:

> ***Bar Association of Queensland*** stated in the hearing *"... we are yet to explore all of the unintended consequences because of the shortness of the period in consultation."*
>
> ***Queensland Mental Health Commissioner:*** *The Bill does not align with current evidence. It may result in unintended consequences resulting in longitudinal harm.*
>
> ***Independent Ministerial Advisory Council:*** *"It is the view of the IMAC that the fast-tracked process for developing this legislation has not allowed for an appropriate and evidence-based consideration of complex issues and any potential unintended consequences of the Bill."*
>
> ***Justice Reform Initiative:*** *The JRI urges the QLD Govt to reconsider the rushed introduction and implementation of this legislation, which could have dire and catastrophic unintended consequences not just for the children who will be impacted by the legislative changes but also for victims of crime, govt workers (including police and watch house staff) and the community more broadly.*
>
> ***Queensland Law Society:*** *Due to the limited time to review the legislation, there may be unintended consequences that we have not identified.*
>
> ***Homicide Victims Support Group:*** *"Firstly we urge the Government not to rush through key pieces of legislation. We recognise that the Government did state it would be a priority, but victims of crime have had a lifetime of Governments doing things to them and when legislation like this is rushed it can have unintended consequences and it can also trigger victims who already distrust Government."*

Some of the unintended negative consequences raised by stakeholders during the committee process include, but are not limited to:

- Potential negative impacts on victims during the court process, including the potential for victims to be cross-examined.
- The likelihood that victims who are less articulate seeing lighter sentences for their offenders than those who are more articulate.
- Delays in the court process time due to fewer plea deals occurring.
- A change in the pattern of guilty pleas being entered resulting in more contested trial proceedings which would in turn create delays in the court system – which would mean a longer time for victims to have their matters resolved.
- Capacity issues in detention centres and watchhouses.
- Potential workplace health and safety issues for people working in youth detention centres and watchhouses.
- Admissibility of information in relation to cautions and restorative justice and diversions may stop young people from engaging in these processes – processes that are broadly acknowledged as being highly effective.
- Potential contravention of federal racial discrimination laws.
- Potential for children to receive harsher penalties than adults for the same offence.
- The proposed amendments may make crime worse.

It is clear that a number of the issues in the bill warrant further exploring to ensure they are effective and actually result in reducing crime in Queensland and supporting victims.

VICTIM NUMBERS

Premier David Crisafulli has clearly stated that he will resign if victim numbers do not fall.

During a leaders debate the Leader of the Liberal National Party (former Leader of the Opposition) answered *"You bet"* to a question from a respected and considered television journalist who asked *"Opposition Leader, your biggest campaign promise is that crime will be lower under the LNP, and there will be fewer victims year on year. If you're elected, if you fail to do that, will you resign as Premier?"* Mr Crisafulli then went on to quote statistics from the ABS data.

However, it was revealed during the hearing by the current Director-General of the Department of Youth Justice and Victim Support that the government is looking at how to count victims. The transcript shows that the Director-General said *"I know that government will announce how it intends to count the number of victims in the near future. That is a matter for whole-of-government consideration".*

The ABS statistics which Premier David Crisafulli quoted during the election are used by the ABS to analyse victim rates state by state and the Labor Opposition will hold Premier David Crisafulli and the LNP to account to their promise based on this data.

It is clear, if you are a victim of crime in Queensland you are a victim and you should be heard and counted.

INVESTMENT

As we have heard from stakeholders, tougher penalties are not a silver bullet.

A multifaceted approach is required to tackle this issue. While it is noted that the government is implementing additional programs and "Gold Standard Early Intervention", further information is required from government regarding these programs, including where they will be, how they will work etc. so the Queensland community and stakeholders can better understand the full package of measures.

A number of stakeholders in fact stated that, although they applaud the Government's intentions around early intervention and prevention, the measures being proposed in this bill are likely to render those measures ineffective.

> ***Act for Kids:*** *"We applaud the Queensland Government's stated intention to invest in prevention and early intervention and an evidence-based approach to children and families and see this Bill as opposite to that intention and likely to negate all evidence-based interventions with the result of increasing crime in Queensland."*

Further information is also required from Government on the impacts of the proposed legislation on watchhouse and youth detention centre numbers, and on the workplace health and safety of staff and young people in those facilities. Queensland workers expect to be kept safe in their workplaces.

The Government has not provided modelling on how many young people are likely to enter those facilities, and for how long – and therefore on how they will provide appropriate accommodation and meet the legislated ratio of staff to young people, nor how they will provide the appropriate training.

Although, we do know that modelling has been done and it has been seen by government as it was referenced in a recent press conference by Premier David Crisafulli. As such the Labor Opposition calls on the Crisafulli LNP Government to immediately release the modelling data that has been provided to them.

CONCLUSION

The Labor Opposition acknowledges that Queenslanders had their say during the general election and the government is implementing their "adult crime, adult time" policy before Christmas.

However, it is clear from reading the legislation and stakeholder feedback that this bill substantially changes the justice and youth justice legislative landscape in Queensland – more so than was canvassed during the general election.

The government has a duty to do everything possible to protect Queenslanders from becoming victims and provide support to those impacted by crime.

The evidence shows us there is no silver bullet – instead, targeted prevention, intervention and detention is required.

The Labor Opposition supports strong action and tough laws to protect Queenslanders and will continue to work with the government and all stakeholders to ensure that our society has the laws and the investment needed to curb crime, regardless of if they are committed by an adult and a child.

It was clear during the hearings that the legislation should contain a review provision. This is important - as parliamentarians, we should pause, review the legislation and see if it is working and if possible what enhancements can occur.

Further views will be provided by the Labor Opposition during the debate of the *Making Queensland Safer Bill 2024* in the Legislative Assembly of the Queensland Parliament after further scrutiny and review of the submissions and stakeholder views has occurred.

It is the hope of the Labor Opposition that the Crisafulli LNP Government provides adequate time for debate of this important legislation in the Legislative Assembly of the Queensland Parliament and not rush it through, like the rushed committee process of this bill, or the rushed nature of significant legislation during their first day of parliament.

PETER RUSSO MP
MEMBER FOR TOOHEY
DEPUTY CHAIR OF THE COMMITTEE
SHADOW ASSISTANT MINISTER FOR JUSTICE

DI FARMER MP
MEMBER FOR BULIMBA
SHADOW MINISTER FOR EDUCATION AND THE EARLY YEARS
SHADOW MINISTER FOR YOUTH JUSTICE
(SUBSTITUTE MEMBER ON THE COMMITTEE)

Dissenting Report

5 December 2024

Dissenting report - Justice, Integrity and Community Safety Committee Report No. 1
Inquiry into the Making Queensland Safer Bill 2024

At the outset, I want to distance myself from the 'committee comment' scattered throughout the report since I substantially or completely disagree with each such comment, and I do not agree with the committee's sole recommendation. This Bill should not be passed.

The new LNP Government has put forward this Bill as the first to progress through Committee, albeit with an obscene reporting deadline of 8 days from its introduction and only 5 days for submissions.

The LNP's glib, 4 word slogan certainly played an outsized role in the recent election. It generated and amplified existing fear and division in the community, and no doubt played some role in the LNP's election to government. But whatever 'mandate' the LNP claims for this Bill (and the absurdly truncated reporting timeframe for this committee's inquiry) cannot justify the passage of such ill-conceived, counterproductive legislation as this Bill. The evidence given at the public hearing by Katherine Hayes, CEO at the Youth Advocacy Centre (YAC), goes to this point:

> "...the mandate has not been provided on an informed, honest debate. All of the statistics show that since the 1990s youth crime has been going down. There are always blips; there are always statistics that can be cherrypicked to show that particular situations arise, but if you take a step back and look at the big picture, youth crime and youth offending is going down.

The LNP election campaign was a masterclass in scaremongering, misinformation and political opportunism.

Despite the very title of this Bill, "Adult crime, adult time" will not make Queensland safer, nor is it intended to. In the words of the Attorney-General:

> "The purposes of the [Adult crime, adult time] amendments are punishment and denunciation", not community safety.

To the contrary, and as detailed below, the credible expert witnesses in the inquiry made clear that this Bill will, in fact, ultimately make Queensland **less** safe.

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Before elaborating on my concerns or considering the serious issues raised by the relevant experts or submitters, the most offensive and regressive elements of the Bill can be reasonably well understood simply by reading the Attorney-General's characterisation of the Bill in the Statement of Compatibility (SoC). According to the AG, this Bill:

- is "in conflict with international standards regarding the best interests of the child";
- "will result in more children who are found guilty of [certain 'adult'] crimes being sentenced to, and spending more time in, detention";
- "will further strain capacity in youth detention centres in Queensland, and may result in children being held in watchhouses for extended periods of time";
- is "expected to have a greater impact on Aboriginal and Torres Strait Islander children, who are already disproportionately represented in the criminal justice system";
- "will lead to sentences for children that are more punitive than necessary to achieve community safety";
- "will, in essence, create a sentencing system where adults are better protected from arbitrary detention than children."[1]

While accepting that these are the consequences of the legislation, the explanatory note to the Bill also acknowledges "that detention is inherently harmful for children and, by extension, the community as a whole." In light of the extrinsic material tabled by the AG, this legislation is self-evidently counterproductive legislation that will harm children, disproportionately impact Indigenous children, take Queensland backwards and ultimately make our community less safe.

"Adult crime, adult time" will make Queensland less safe

As suggested above, the Bill's title is a complete misnomer - the AG even concedes that the ultimate purpose of the Bill is punishment and denunciation, and the LNP Government's intention that more children will be incarcerated for longer.

A number of submitters with various expertise provided evidence on the detrimental impacts of detention on young people, reflecting the long-standing evidence that it causes harm, increases reoffending, and impacts community safety as a whole.

The following four excerpts from submitters make the point clearly:

[1] Statement of Compatibility, Making Queensland Safer Bill 2024, pp4, 5 and 6.

1. ***Dr Joseph Lelliott and others from the TC Beirne School of law, School of Social Science, and Institute of Social Science Research, University of Queensland***

   "There is overwhelming evidence that imposing harsher penalties on offenders, including children, does little to reduce offending. On the contrary, interaction with the criminal justice system is criminogenic: it makes it more likely that children will commit offences. In particular, the use of detention on children does not deter them from future offending. Youth offending is driven by a range of complex factors (individual, societal, environmental etc). Overly lenient judges are not key contributors to youth offending, nor are the numerical penalties attached to offences in the Criminal Code or the length of detention that follows a criminal conviction the key means by which offending is reduced."[2]

2. ***Professor Tamara Walsh, TC Beirne School of law, University of Queensland***

   "The international evidence overwhelmingly shows that punitive responses to children's offending will not improve community safety. Children will not desist from offending unless they have a pathway out of crime. They need to be safe, housed and nurtured. Many of them require mental health treatment and disability support services. These should be the priorities of a government that truly wishes to address 'youth crime'."[3]

3. ***Queensland Indigenous Family Violence Legal Service***

   "We believe that exposing children to greater risks of serving custodial terms of imprisonment will not ensure community safety but rather entrench children in the criminal justice system and exacerbate the risks of recidivism amongst serious repeat offenders, especially. This will only serve to work against the need for these children to be rehabilitated."[4]

4. ***Peakcare***

   "Effective youth justice strategies must be grounded in evidence, not punitive measures that have consistently shown to be ineffective in addressing the causes of youth offending. Research clearly indicates the threat of tougher punishments and punitive approaches does not deter young people from criminal activities. Longer sentences often result in higher recidivism rates as young people are placed in environments that may reinforce and further encourage criminal behaviour, leading to institutionalisation and further detachment from positive social networks. There is also a lack of evidence to support the efficacy of mandatory minimum sentencing in deterring or reducing youth crime."[5]

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[2] Submission 76, p2.
[3] Submission 21, p3.
[4] Submission 64, p2.
[5] Submission 71, p4.

> Global examples highlight the potential of systemic change. In the United Kingdom, the number of children in youth detention decreased from 2,800 young people to 750 between 2010 to 2020. There has also been a reduction in arrests of children every year for the past ten years, a reduction in knife crime and the lowest recidivism rates following a period in youth detention in 20 years. These successes are attributed to preventative policing, early intervention programs and non-custodial alternatives to youth detention. Queensland has the opportunity to learn/draw from these proven strategies, prioritising prevention and early intervention to achieve sustainable reductions in youth crime and build safer communities.[6]

Included as an Annexure is a selection of additional excerpts from submissions that further reinforce this body of research. There are countless other excerpts that I would include if this inquiry afforded sufficient time.

Alternative evidence in support of detention?

The Department gave evidence at the public briefing (albeit very limited evidence) in an apparent attempt to contradict this long-standing and well understood research.[7]

What was described to the Committee as "high-end literature" ultimately proved to be a fifteen year old publication, based on 3 years' worth of data from the US state of Washington that was collected around the turn of the century. To suggest this is in any way comparable to, or a substantial counter to, the decades of contrary research would be farcical, and it would be of grave concern if this signals a broader willingness on the part of the LNP to simply ignore the overwhelming view of experts, or an intention to cherry-pick convenient data to seek to justify ill-founded policy.

In the very limited time available, the YAC provided the following response:

> "27. In the public hearing on 2 December 2024 before this Committee, the Director-General of Youth Justice, Mr Bob Gee, presented data regarding re-offending rates post detention which is inconsistent with research confirming the ineffectiveness of detention to reduce recidivism for children. At best, the purported improvement to offending is too insubstantial to justify the abrogation of human rights of the most vulnerable, abused and disadvantaged children in Queensland, and cannot justify the anticipated expenditure of up to $1 billion for a new detention centre required to support these new laws. Without greater scrutiny, it would be dangerous to rely upon this information as the basis for overturning well-established and internationally recognised principles of detaining young people as a last resort. YAC would welcome the opportunity to review this data alongside comparative data for other interventions.

[6] Submission 71, p10.
[7] See testimony from Mr Gee, Public Briefing in Brisbane on 2 December 2024, p3.

28. In the meantime, YAC makes the following comments in relation to the paper cited by Mr Gee, "Juvenile Jails: A Path to the Straight and Narrow or to Hardened Criminality?"

a. The paper assesses the juvenile justice system in Washington State for the years 1998 to 2000. Current Queensland data showing Queensland recidivism rates of around 90% post detention should clearly be preferred over American data, some of which is over a quarter of a century old.
b. The paper does not address in any way the condition inside the Washington juvenile detention centres. We therefore cannot ascertain whether the results are comparable to Queensland.
c. The results may justify detention over diversion (but we question this conclusion in any event),but cannot be used to justify increasing the current Queensland sentences as proposed because the Washington sentencing guidelines use a 'grid' from which a sentence is determined once data (age, criminal history etc) is entered. Importantly, the sentence lengths appear to be much lower than is being proposed in this Bill, with class A felonies including arson, assault, rape, robbery having an upper limit of around 2.5 years of detention, and car theft having an upper limit of 1.25 years.
d. The paper has difficulty accounting for whether offenders who turn 18 go on to offend. This is a significant limitation.[8]

The Department provided one further piece of correspondence on 4 December 2024, attaching a journal article[9] that was again presented as apparent evidence of "need to continue to question existing orthodoxy or approaches" around the rehabilitative function of youth detention. This paper examines mainly American research from the last 40 years on the effect of intervention programs on recidivism for juvenile offenders. It does not in any meaningful way contradict the evidence of submitters, and makes a significant number of findings that are entirely consistent with the conventional wisdom that quality supports and interventions are the key to reducing recidivism:

- "…intervention programs are associated with a significant reduction in recidivism for juvenile offenders, suggesting that the rehabilitative mode is more promising in this regard than the punitive model alone. Overall, programs that target a response to the micro- and meso-level needs of the offender (eg, multisystemic treatment, family based treatment) combining rehabilitative and deterrence-based strategies show the strongest impact on recidivism for juvenile offenders. " (page 26)
- "…participating in an intervention program has the strongest association with a reduction in recidivism for sexual offenders and serious of violent offenders… suggesting that policymakers

[8] Submission 137, p7.
[9] Pappas and Dent (2023) "The 40-year debate: a meta-review on what works for juvenile offenders", *Journal of Experimental Criminology* (2023) 19:1-30.

and practitioners should include those who are traditionally labelled as "high-risk", "serious" or "violent in early release policies and work-release programs". (page 21)

- "Increasing the quality and quantity of treatment services that focus more on support rather than surveillance may provide more positive options for youth and help them avoid the behaviours and environmental factors that may have initially led them to delinquency" (page 22)

While this article does suggest that participating in an intervention is much more effective in an institutionalised setting (page 22), this surely relies on the adequacy and efficacy of the interventions being provided. Clearly, the detention centres in Queensland are nowhere near adequately providing effective interventions due to overcrowding, staffing issues and the limitations of the built environment.

Additionally, the recidivism rate in Queensland is simply inconsistent with this finding. Queensland's very high numbers of young people in detention, and the very high recidivism rates, demonstrates that the interventions being undertaken in Queensland's detention centres are simply not as effective as those in the studies. This supports the view, as suggested by other submitters, that the operation of Queensland's detention centres (both current and proposed) should be subject to an urgent review.

Proceeding with a detention facility that costs around $1 billion in Woodford without a proper consideration of the available evidence is a failure of policy. Clearly the best option is to improve community-based interventions and programs which are much more cost-effective and less disruptive.

Process and timing

I support the position of the many, many submitters and witnesses that the process for this inquiry is completely unacceptable. Such a short inquiry for changes as significant as this are simply unjustifiable and, no matter what election commitments were made, it is completely unacceptable that the Department undertook no external consultation before introducing such consequential changes.

This is especially the case given that the changes to sentencing and penalties will substantially increase the number of children detained (including in watch houses) over the summer months, as intended, while the finalisation of the new remand facility has been pushed back to at least April.

Early intervention and prevention programs that the LNP has now committed to are clearly welcome, and will likely be supported by far more stakeholders than these legislative changes. If the Government had any regard for the evidence, these programs should have been funded, developed and implemented before any legislative changes begin to drive more children into the youth justice system. Sadly, it appears that these programs are far from ready.

Breach of human rights

Finally, like countless submitters to the Bill, I have grave concerns about the ways in which this Bill will breach the Queensland Human Rights Act (issues are identified in respect of nine separate human rights, as set out in section 1.5.2 of the report) and our international human rights obligations.

It is a disgraceful indictment on the LNP that it has so little hesitation in suspending the Human Rights Act to ensure more children - and predominantly vulnerable Aboriginal and Torres Strait Islander children - are incarcerated, and for longer. But we shouldn't forget that the former Labor Government paved the way for this to happen, by **twice** suspending the Human Rights Act for similar purposes.

I note the committee comment in s1.5.2 of the report indicates that only "some" committee members raised concerns about the extent of the impacts on the rights of children. This is perhaps not surprising, given the context of this report, but it is a damning indictment on the LNP members that they can't even bring themselves to express concern about such severe potential impacts on children, and the evidence about the harm this will cause.

The LNP has wasted no time in showing its complete disregard for the human rights of some of Queensland's most vulnerable children, and history will reflect poorly on them.

This dissenting report has been completed in the few hours available between adopting the committee report and the deadline to provide a dissenting report in accordance with Standing Orders, which further highlights how unreasonably brief this inquiry is because of the urgency motion moved by the Premier. There is much else I would like to say that will have to go unsaid.

But again, this Bill and the inquiry process is clearly about claiming some kind of political win, not improving community safety.

Michael Berkman MP

Annexure - selected extracts from submissions

ANTAR:

> "Queensland detains more children each day and overall than any other state or territory and has the highest youth recidivism rate in Australia. This alone is evidence of the fact that the largely punitive responses of the criminal legal system in Queensland are not addressing the root causes of crime and recidivism. Doubling down on this broken system, as the Bill proposes, will not produce better results. So what does work?
>
> We know that children are less likely to engage in reoffending behaviours if they are given access to long term, flexible, holistic, trauma-informed and culturally responsive early intervention programs, as well as to system responses that prioritise maximum diversion and minimal intervention.[10]

YFS Legal:

> "Given the extensive evidence linking early justice system involvement to lifelong criminalisation, YFS strongly opposes applying the Bill's measures to children under 14. Research shows that early system contact increases the likelihood of reoffending, violent offending, and ongoing justice involvement. Children are better served by interventions that prioritise diversion, minimal intervention, and restorative practices.[11]

Queensland Law Society:

> "The Society believes that the Bill will have an inimical effect on community safety. The provisions will entrench children in the youth justice system. The punitive effects of the legislation will far outweigh attempts to address the underlying causes of crime. Our longstanding position is that community safety is best served by investment, and expansion of early intervention initiatives, diversionary options, restorative justice and rehabilitation programs.[12]

Justice Reform Initiative:

> "Studies show **recidivism and re-incarceration rates are higher when children spend longer periods incarcerated**. Increasing the number of children incarcerated and the length of sentences for children incarcerated is also likely to increase (re)offending and fail to meet the rehabilitation aims set out by the Queensland Government. Australian Institute of Health and

[10] Submission 113, p11.
[11] Submission 91, p3.
[12] Submission 114, p1.

Welfare (AIIHW) data shows 9 in 10 children (91.26%) who are released from sentenced detention in Queensland return within 12 months. This tells us detention is not working to break the cycle.[13]

There are a number of reasons why 'deterrence' in the form of the threat of harsher penalties is unsuccessful when it comes to improving community safety. Research has consistently shown that individuals who commit crime are rarely thinking of the consequences of their actions. This is because the context in which most crime is committed often does not lend itself to someone rationally weighing up the consequences of their actions. This is further exacerbated for children and adolescents given the evidence noted earlier in this submission with regards to brain development and developmental crime prevention.39 The threat of harsher penalties or longer sentences is not something that most people who engage in offending, especially children, are considering at the moment they are committing crime.[14]

Public Health Association Australia:

"There is abundant evidence that the impact of incarceration is extremely negative. Commencement of justice system entanglement often begins when the detainee is a child, and the earlier that entanglement with the criminal justice system begins, the worse long-term outcomes become. The individuals in question become less economically productive and secure, less capable of contributing to society financially, and in many other ways are more prone to a variety of physical and mental harms. These consequences create a greater cost burden on public services including the justice system, the health system, and social security.

The involvement of young people in the child justice system is also tragically self-perpetuating. Children who first encounter the justice system at age 10-13 are more likely than other justice-involved children to experience future criminal justice involvement. [1, pg.19] Placing young people, especially those under 14, into detention greatly increases the likelihood of further criminal offending, and much more serious offending, over the individuals' lifetimes.

Rates of re-offending once involved in the Australian criminal justice system are astonishingly high, with 42% of incarcerated people returning to prison within two years in Australia. [5] The recent Safety through support [6] report explored recidivism, finding that of children sentenced to detention 80% return to youth justice supervision within 12 months, and of children aged 10 to 12 years who receive a supervised sentence, 94% will return to youth justice at some point.

The future conduct of repeat offenders impacts victims of crime in many ways, including higher rates of physical violence, and causes other forms of property and financial damage. The administration of the law in respect of future activities needlessly expands the demands on the

[13] Submission 95, p6.
[14] Submission 95, p10.

justice system including law and order services, legal processes, and repeated incarceration. The cycle perpetuates its harms.[15]

knowmore:

> "In some cases, the evidence has suggested that the laws and policies being pursued will harm victims and survivors and make the community less safe.
>
> ...
>
> Reforms that lack an evidence base are often ineffective and harmful, and not respectful of children or victims and survivors of crime. As an overarching recommendation, knowmore considers that the Queensland Government should prioritise reforms that are evidence based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.[16]

QNADA:

> "Evidence domestically and internationally is clear, incarcerating young people who use drugs is associated with a host of negative outcomes including recidivism with the experience of being in a youth detention facility increasing the likelihood of future offending. Incarcerating young people who use alcohol and other drugs is also certain to negatively impact long term health outcomes.[17]

Australian Association of Research in Education:

> "AARE members strongly oppose the amendment to the Youth Justice Act 1992 to include adult time for adult crimes. Education research provides evidence that punitive and exclusionary approaches should not be supported because of the immediate and longer term impact on children, with vulnerable and marginalised children disproportionately affected by zero tolerance policies. The research also indicates that effective early intervention supports positive pathways for young people at risk of offending. Association member Professor Andrew Hickey and colleagues' (2024) Queensland Government funded research into young peoples' pathways shows how setting the right conditions for young peoples' success represents a more feasible way of circumventing youth crime and anti-social behaviour. As Professor Ross Homel (2024) identifies 'expensive, punitive youth crime policies do not make the community safer'.[18]

[15] Submission 126, p3.
[16] Submission 5, pp10-11.
[17] Submission 57, p5.
[18] Submission 82, pp1-2.