Making Queensland Safer Bill 2024

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Mr Martin Hunt MP
Chair
Justice, Integrity and Community Safety Committee
Parliament House
Cnr George and Alice Streets
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By email: JICSC@parliament.qld.gov.au

Dear Chair

Making Queensland Safer Bill 2024

The following submission is made following the appearance of Cate Heyworth-Smith KC, President of the Bar Association of Queensland (**the Association**), and Andrew Hoare KC, Chair of the Criminal Law Sub-Committee of the Association, before the Committee on 2 December 2024 in respect of the *Making Queensland Safer Bill 2024* (**the Bill**).

The Association recognizes the pain that has been caused to the community, including members of the Committee, by the consequences of youth crime. It makes these submissions without wishing to diminish the harm caused by those terrible events and its respect for those who have survived them and are, through their actions, serving the community.

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.

In this submission, the Association has identified the operation of the proposed legislation and a number of what it presumes were unintended consequences of the Bill. With more time, it may have been able to offer more assistance to the Committee, but it has been as comprehensive as the time available has permitted.

Introduction

The changes proposed by the Bill are profound. They fundamentally rewrite the sentencing of children in this State. The Bill will place Queensland as an outlier in respect of our dealing with child offenders in comparison to all Australian jurisdictions. (This is acknowledged in the Explanatory Memorandum at p.11 and *et seq*.)

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Departure from Principle and Recognised Norms

The proposed amendments constitute a clear departure from the principles of the international *Convention on the Rights of the Child,* principles which underpinned the drafting of the *Youth Justice Act* in 1992.

Those principles reflect a body of evidence about child development (in particular in relation to decision making and consequential thinking) and the important role for rehabilitative measures to improve the life of a child and the community that child lives in.

The Bill also involves numerous measures which are incompatible with the *Human Rights Act* 2019.

The Association has previously raised concerns about the use of exceptional powers under the *Human Rights Act* 2019 (Qld) to declare that amendments to the *Bail Act* 1980 (Qld) and *Youth Justice Act* 1992(Qld) will apply despite being incompatible with human rights.

The statement of compatibility with the *Human Rights Act* which accompanies the Bill includes the following passages:

> *The amendments will lead to sentences for children that are more punitive than necessary to achieve community safety. This is in direct conflict with international law standards, set out above, which provides* ***that sentences for a child should always be proportionate to the circumstances of both the child and the offence – mandatory sentencing prevents the application of this principle****.* [Bold added for emphasis.]

It is also noted, at page 4 of that statement:

> *…… In addition, it is likely at least in the short term that the increase in custodial sentences will further strain capacity in youth detention centres in Queensland, and may result in children being held in watchhouses for extended periods of time. This impact results in limitations to the protection from cruel, inhumane or degrading treatment (section 17(b) of the HR Act) and the right to humane treatment when deprived of liberty (section 30 of the HR Act), 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).*

The Association has consistently denounced the practice of holding children in watchhouses. That position has not changed.

The Association notes with concern the acknowledgement in the statement of compatibility that these 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. In the context of existing concerns relating to over-representation, the introduction of measures which are clearly anticipated to negatively affect Aboriginal and Torres Strait Islander children is a significant regression.

Evidence-based Reform

The Association maintains its position that any reform to the criminal law should be evidence-based. 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.

This creates the spectre of a new sentencing regime which will achieve the stated aim of punishing children more harshly, but will do no more than that.

Judicial Discretion

The Association also supports the maintenance and protection of judicial discretion in sentencing. It is a foundation stone of the rule of law. That discretion allows for a balancing process involving the objective seriousness of the offending and its impact on victims, and the relative moral culpability of the individual child, mitigating features of their presentation and their prospects for rehabilitation.

The Bill removes any such discretion in the sentencing of children convicted of murder. It will render children liable to mandatory life imprisonment for murder – including convictions under the extended definition of murder - that includes reckless indifference (302(1)(aa)) and felony murder (302(1)(b)).

Further, the party provisions of the Code will capture such children even though they do not do the act that causes a person's death; for instance, a lookout to a robbery that results in a death or a passenger in a stolen car that is involved in a fatal accident.

This means that children as young as 10 years old will be liable to life imprisonment, with a mandatory minimum sentence of twenty years, regardless of the extent of their involvement or culpability.

Existing Upward Trend in Sentences for Murder

It is important to note that this change comes in the context of a trend in the sentencing of children for murder which has been on an upward trajectory in recent years, with sentences of 14 and 15 years' imprisonment recently imposed by the Supreme Court on young people for murder.

More Trials

The Association notes that one unintended consequence of the Bill is that any incentive for young people to enter pleas of guilty to serious offences will be either completely removed (in the case of murder) or significantly reduced.

It is the experience of the Association's members that children plead guilty to murder with greater frequency than their adult counterparts. This is due to the ability at sentence for judges to reflect their relative culpability and mitigating features in the length and nature of the sentence.

The prospect of life imprisonment will reduce drastically the number of young people willing to enter pleas of guilty. The same effect will be felt as a result of the imposition of a harsher sentencing regime (the increase in maximum penalties) for non-murder offences, even with the maintenance (but upward-shifted) judicial discretion.

The consequences will be profound for:

- victims of crime who will not only have the outcomes of their matters delayed pending trials and appeals, but will also have to give evidence;
- the family members of victims of crime; and
- the witnesses to the crimes

There will be increased delays due to the increased numbers of trials, as opposed to sentences. This will make the delay in achieving a just outcome even worse for the victims, their families and witnesses, but also have the effect of keeping more children on remand (potentially in watchhouses) for lengthy periods.

There will be a higher cost to the State in terms of legal expenses as both the prosecution and the defence will require greater resourcing for the additional trials.

There will also be the flow-on effect on the judicial system more broadly: judicial officers hearing the additional criminal trials will not be available to hear other matters, pushing the judicial resolution of civil disputes well into the future.

Removal of Detention as a Last Resort

The removal of the principle of detention as a sentence of last resort is another key feature of this Bill, and one which applies to all young people in this State.

The Association notes that this 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. This can be contrasted with section 9(2) of the *Penalties and Sentences Act*, which preserves that sentencing principle for adults across a wide range of offences.

The Association anticipates that the effect of this change will be an increase in the number of children sentenced to detention, and for longer periods.

Primacy of Impact on Victims

The Association is keenly aware of the dual challenges facing our contemporary youth justice system: to protect and maintain community safety while providing a just response to children, and one which fosters their rehabilitation.

The impact on victims has always held a place in the consideration of the court. Giving it primacy is another fundamental change to sentencing practice in this State. The balance struck by the Act in its current form is appropriate, and that the primary principle of sentencing of children should be rehabilitation.

It is the Association's view that the emphasis on rehabilitation in the *Youth Justice Act* 1992 (Qld) (as currently drafted) serves both of those purposes, and our society is safer if we help young people to rehabilitate.

Conclusion

While the Association appreciates and supports the legislative desire to protect the people of Queensland, we observe that the mandatory minimum sentences proposed for murder (on the primary and extended definitions) are not only a bar to this objective, but may in fact make the problem of violent young offenders a more serious one for the *next* generation of

Queenslanders: a child imprisoned at 10 years of age is unlikely to turn out, newly-released into the community as a 30 year old, as anything other than a hardened, more dangerous criminal.

The Association submits that community safety and just penalties for youth offenders are not mutually exclusive. It is concerned that this Bill achieves neither.

The Association would be pleased to assist further, and wishes to be a resource to Government on issues of law reform.

Yours faithfully,

[redacted]

Cate Heyworth-Smith KC
President