

Making Queensland Safer Bill 2024

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Submitted by: Greg Jones
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From: [REDACTED]
To: [Justice, Integrity and Community Safety Committee](#)
Cc: [Michael Cope](#)
Subject: Making Queensland Safer Bill
Date: Friday, 6 December 2024 12:02:54 AM

The Secretary,
Justice, Integrity and Community Safety Committee,
Parliament House,
George Street,
Brisbane, QLD
By email only: jicsc@parliament.qld.gov.au
Attention: Dr Amanda Cavill

Dear Madam,

Re: Making Queensland Safer Bill:

I am an executive director of the Queensland Council of Civil Liberties (QCCL). I am making this submission on my own behalf. I understand from speaking with one of your staff members, [REDACTED], this morning, that the Committee has resolved to accept submissions after the deadline and that the Committee intends submitting a report to Parliament on the 6th instant. However, I would appreciate your considering my submission and circulating my submission to members of the Committee for their consideration. Thank you.

I refer to QCCL's letter of the 3rd instant containing their submissions regarding the abovementioned Bill. Please note my concerns about the legislative proposals contained in Making Queensland Safer Bill upon being enacted will significantly interfere with, and contravene certain rights outlined in the Human Rights Act 2019 and the Youth Justice principles embodied in the Youth Justice Act 1992 made to protect the rights of children in the criminal justice system and the likely harm the amendments will cause to children subject to these, along with the repercussions that the Queensland society will unnecessarily endure.

In considering the Bill, Parliament is obliged to take into account the fundamental legislative principles which are:

1. Should have regard to fundamental legislative principles which are described in subsection 4 (1) of the Legislative Standards Act 1992 as being principles relating to legislation that underlie a parliamentary democracy based on the rule of law. This provision further stipulates that under section 7 a function of the Office of the Queensland Parliamentary Counsel is to advise on the application of the fundamental legislative principles to proposed legislation. Section 4 (2) set outs the principles requiring legislation has sufficient regard to include:
 - (a) rights and liberties of individuals; and

(b) the institution of Parliament.

Section 4 (3) states: Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation:

(g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and...

One relevant principle of the Rule of Law which the Law Council of Australia has enunciated is that: "No person shall be subject to treatment or punishment which is inconsistent with the inherent dignity of every human being." This principle is echoed in s.17 (b) of the Human Rights Act 2019 (which mandates that a person must not be treated or punished in a cruel or degrading way) and provision 3(a) of the Youth Justice principles which stipulates that a child being dealt with under the Youth Justice Act 1992 should be treated with respect and dignity including while the child is in custody.

In reviewing the Bill, I further request Parliament accepts that certain provisions of the Bill, which QCCL submissions, which I refer to below have identified, operate in relation to facts and events that have happened. Such provisions retrospectively interfere with the rights and liberties of a child under the section 4 (3) (g) of the Legislative Standards Act 1992, and as they have an adverse affect on the rights and liberties of a child then their impact cannot be justified. Please note I assisted QCCL in making submissions in relation to **Clauses 4 , 5 and 7.**

1. **Clauses 4 and 5**

QCCL have mentioned clause 5 gives the provisions in clause 4 retrospective effect to provide for existing exclusion orders to be set aside as of right . The making of an exclusion order can be regarded as a measure to protect a child from being subject to the risk of the unnecessary and intrusive attention of the media which may harm the child, and thereby contravene the right contained s.17(b) of the Human Rights Act 2019. As the exclusion order can be perceived in the above way it can be considered to be an associated right to protect a child. As existing exclusion orders can be set aside of right in circumstances where a court's hands are tied, this constitutes an unjustified interference with the notion that in a parliamentary democracy there should be a functioning separation of powers. The Judiciary is independent. Their decisions are impartial. Judicial decisions should be made without the influence of those who make the law (the Parliament) or those whose actions are being challenged in a court (the Executive). In this way the Parliament and Executive can't gain too much power. This helps protect citizens from the arbitrary – unrestrained or autocratic – exercise of power by the Parliament and the Executive.

2. **Clause 7**

In the last paragraph of page 3 through to the first line of page 4 of QCCL's submission it is contended: " The above proposed amendment (the insertion of" previously convicted" in s.328(A) (6) means that if such insertion is enacted it will now effectively repeal the operation of s.148 of the Youth Justices Act 1992) retrospectively and prospectively erodes the therapeutic benefit provided by provision (9 (d) of the Youth Justice principles) which when considered in conjunction with s.148 of the Youth Justices Act 1992 would justify a Children's Court not recording a conviction for an offence." Furthermore s.148 of the above Act when considered in conjunction with 9 (d) of the Youth Justice principles upholds the human right in 17 (b) of the Human Rights Act 2019 and by so doing creates a right for an adult who is subject to proceedings for an offence, and who under the under s.148 of the above Act was found guilty of an offence where a conviction was not recorded, that currently such finding of guilty is not admissible against him or her in these proceedings.

Clauses 14 and 24

These clauses by adopting an approach to administer sentencing by a blunt instrument rather than a rehabilitative and therapeutic jurisprudence approach, clearly not only contravenes the Human Rights Act, but unjustifiably interferes with a court's exercise of its important sentencing discretion and in so doing diminishes the role of separation of powers in a parliamentary democracy and thereby undermines the Rule of Law .

Clause 28

The naming and shaming of children has no place in a civilised society. Of further concern, would be the risk, that misreporting by both the electronic and mass media of the facts of the offence upon which the child has been sentenced and his or her antecedents would exacerbate the harm done to a child and further prejudice attempts to rehabilitate him or her. Manifestly as the proposed legislative provision is an egregious contravention of the following Human Rights Act provisions viz.ss. 26(2), 32(3) and 33(3) which have been devised to protect the interests of children, Parliament must in accordance with the fundamental legislative principles reject the legislative amendment proposed in Clause 28.

Clause 48

The retrospective effect of the proposed amendments to ss. 148 -148A of the Youth Justice Act, along with the concerns QCCL have previously raised where the fundamental legislative principles described in subsection 4(1) of the Legislative standards Act 1992 are pertinent for Parliament to take into account when considering these amendments. Respectfully it is submitted that since the proposed amendments do not have sufficient regard to the rights and liberties of individuals especially as they adversely affect the rights and liberties of individuals retrospectively then Parliament is

obliged according to the principles of the Rule of Law to reject these amendments.

Again, I thank the Committee for resolving to extending the deadline for submissions. Thank you for taking the time to consider my submission and I have forwarded a copy of these to Michael Cope President of the QCCL. Please acknowledge receipt of this email.

Yours faithfully,

Greg Jones

Solicitor,

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