

Our Ref: BNE3417145

Legal Affairs and Community Safety Committee

**Sent by email only to:** [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Committee

**Re: Question on Notice**

I refer to a question taken on notice from Mr Michael Berkman MP during the Legal Affairs and Community Safety Committee's public hearing on 22 March 2021 inquiring into the Youth Justice and other Legislation Amendment Bill 2021 (**the Bill**).

Question:

Referring to the response to questions on notice taken at the Bill's public briefing, dated 15 March 2021, and published on the Committee website on 22 March 2021,<sup>1</sup> whether the Queensland Human Rights Commission (**the Commission**) is able to, given the very recent publication of that information, share with the Committee its views on anything arising from that?

Response:

As detailed in our submission to this inquiry,<sup>2</sup> the Commission is concerned that inadequate justification has been provided by the government to demonstrate the limitation on rights imposed by the Bill are reasonable. In particular, it is unclear how the Bill will achieve its objective of making the community safer and protect the rights of victims of crime and the broader community.

This further information does not provide greater justification for these limitations. For example, it does not define the 'serious recidivist offenders', whose offending behaviour the Bill aims to address. The data provides information on the numbers of young people who commit the most offences, although it is unclear if the children

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<sup>1</sup> Letter from the Commissioner, Queensland Police Service, dated 15 March 2021, providing the Joint Departmental Response to Questions Taken on Notice at the Departmental Briefing on the Youth Justice and Other Legislation Amendment Bill 2021 held on Monday 8 March 2021.

<sup>2</sup> Queensland Human Rights Commission, Submission No 48 to the Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (12 March 2021).

identified are recidivist offenders in the sense they have been previously convicted of a serious offence, and then have re-offended. Further, the information is not broken down by the type of offences committed (for example, to explain what is meant by “serious”) or the prevalence of each offence. Such information might also further explain how the government chose these prescribed indictable offences which are subject to the proposed presumption against bail.

### *Watch house detention*

In answering a question taken on notice regarding modelling on the impact of the proposed presumption against bail, the department gives further historic data on the number of young people on bail for the prescribed indictable offences in 2020. It does not however model the likely increase in young people remanded in custody should the Bill be passed.

Nonetheless, based on the point in time data provided and the current limited capacity of youth detention centres, it seems unavoidable that even a small increase in the numbers of children on remand caused by a presumption against bail would require the government to again detain children in police watch houses. For example, the information refers to 16 additional beds coming online at West Moreton Youth Detention Centre. Yet if only one in four children were remanded because of the reversal of the onus on bail, this would mean that between 53 and 75 additional children would be detained in custody at any point in time – well beyond the current or predicted capacity of youth detention centres.

The Commission is concerned about the government’s cited approach to simply ‘monitor the impacts of the Bill closely to determine its effect on the custody population’. The significant risk of this approach is that that by the time solutions are being considered, it is already too late. A lack of proper planning for the transition of 17-year-olds into the youth justice system in 2019 resulted in vulnerable children spending too long detained in adult watch houses. There is a strong argument that it is an unreasonable and disproportionate limitation on the rights of at-risk children to detain them in police watch houses, particularly when this results from poor planning. The Public Guardian has previously observed that watch house detention undermines the physiological wellbeing of children.<sup>3</sup> This further likely limitation on rights must be properly considered and justified.

### *Electronic monitoring*

The efficacy of electronic monitoring on bail (**EM bail**) remains in question. The Commission notes that, contrary to the original statement in the Statement of Compatibility,<sup>4</sup> the Departmental response to submissions (dated 19 March 2021)

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<sup>3</sup> Office of the Public Guardian, ‘There are immediate solutions available to remove children from watch houses’ (Media Release, 14 May 2019).

<sup>4</sup> Statement of Compatibility, Youth Justice and Other Legislation Amendment Bill 2021, 8.

concedes that there is a 'lack of evidence of the efficacy of electronic monitoring for children on bail...' but nonetheless recommends that a 2 year trial proceed.<sup>5</sup>

In response to a question taken on notice the government has restated the jurisdictions that have electronic monitoring schemes, including other states and New Zealand, but has failed to answer how GPS devices are likely to reduce offending behaviour. As noted in the Commission's submission, the data from New Zealand is unreliable because the cited reduction in recidivism is across the whole of the justice system where the vast majority of those on electronic monitoring are adults post-sentence. While the Commission understands that some children aged 14-17 have been placed on EM bail (this age group appears in the Youth Court<sup>6</sup>), this is likely a small cohort.<sup>7</sup> To the Commission's knowledge, the impact on this group has not been measured.

The context of the youth justice system in New Zealand must be taken into account when drawing a comparison with Queensland. In the Commission's view, New Zealand's focus on early intervention and diversion, youth justice family group conferencing and intensive bail support<sup>8</sup> might be more significant contributing factors to the reduction in recidivism and incarceration rates in New Zealand.

The reference to electronic monitoring in New Zealand fails to provide any comprehensive analysis or nuanced understanding of how EM bail applies for young people in that jurisdiction. The Commission's understanding of the application of EM bail in New Zealand is based on research and informal discussions with an experienced lawyer working in both defence and as a prosecutor in New Zealand Youth and Family Courts. We understand that EM bail will only be imposed in New Zealand when surrounded by a comprehensive support structure including an intensive bail plan developed through a youth justice family group conference<sup>9</sup>. Even then, the EM condition is applied through a nuanced approach based on the needs of the particular child – for example, if a child is known to abscond at night, he or she might be required to wear a tracker only at night. The New Zealand system is predicated on the understanding that fitting an ankle bracelet to a child alone will not address or prevent their offending behaviour.

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<sup>5</sup> Joint Departmental Response from the Queensland Police Service and the Department of Children, Youth Justice and Multicultural Affairs, to submissions 1 to 53 received for the Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021, 12.

<sup>6</sup> The jurisdiction of the Youth Court is set out in sections 272-280A of the *Oranga Tamariki Act 1989*

<sup>7</sup> As previously noted in the Commission's submission to this inquiry, only data for "under 19" is retained by the New Zealand Department of Corrections and to the exact figures are unknown.

<sup>8</sup> See for example the Reconnect Supported Bail program  
<<https://reconnect.org.nz/service/supported-bail/>>

<sup>9</sup> Oranga Tamariki Ministry for Children, *Youth justice family group conferences* (Web Page)  
<<https://www.orangatamariki.govt.nz/youth-justice/family-group-conferences/>>

As previously noted in the Commission's submission to the inquiry, the New Zealand bail legislation also contains a number of safeguards not currently present in the Bill.<sup>10</sup>

In addition, the information in the responses to questions taken on notice does not provide the estimated costs of electronic monitoring. As many organisations provided in evidence to the Committee, re-investing these resources in early intervention and diversion programs and intensive bail support is likely to be a more effective, less restrictive limitation on human rights.

If you require any further information, please contact [REDACTED]  
[REDACTED]

Yours sincerely



**Scott McDougall**  
**Queensland Human Rights Commissioner**

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<sup>10</sup> Queensland Human Rights Commission, Submission No 48 to the Legal Affairs and Safety Committee, Parliament of Queensland, *Inquiry into the Youth Justice and Other Legislation Amendment Bill 2021* (12 March 2021), 2.