



Youth Justice and Other Legislation Amendment Bill 2021

Submission to Queensland Parliament Legal Affairs and
Community Safety Committee

8 March 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the review of the Queensland Parliament Legal Affairs and Community Safety Committee ('the Committee') review of the Youth Justice and Other Legislation Amendment Bill 2021 ('the Bill').
2. The ALA submits that the provisions which create a presumption against bail for young people committing further indictable offences contradicts all effective youth justice principles that promote diversion away from detention and the criminal justice system.² The ALA submits that the proposal will not reduce youth offending on bail and will not have the desired deterrent effect.
3. The ALA is also concerned that the proposal will have a particularly disproportionate effect on young Aboriginal and Torres Strait Islander people who are already disproportionately represented in youth detention.

Electronic monitoring devices as a condition of bail for offenders aged 16 and 17 years old in certain circumstances

4. The proposed new section 52AA of the *Youth Justice Act 1992* ('YJA') will permit a court to impose on a grant of bail, a condition that the child must wear a tracking device when released on bail. The new section will provide the necessary legislative framework to implement a 12-month trial of the use of electronic monitoring devices on recidivist youth offenders aged 16 or 17 years old to enable monitoring of the whereabouts of this cohort of offenders on bail.
5. The electronic monitoring conditions will only be permitted to be imposed on recidivist youth offenders charged with 'prescribed indictable offences'. The threshold for a tracking device condition is that the young person must be charged with a prescribed indictable offence (defined in the Bill) and have been previously found guilty for one or more indictable offences. The previous conviction need not be a prescribed indictable offence.

² Principles found in Schedule 1 of *Youth Justice Act 1992* that these proposals would offend: two, three, four, five, twelve, sixteen and seventeen.

6. The ALA notes recent comments from the Queensland Human Rights Commissioner that electronic monitoring devices are not appropriate for young people charged with offences and released on bail.³
7. The ALA is concerned that requiring some young people on bail to wear electronic monitoring devices creates a significant level of stigma for that young person making it difficult for her/him to attend school, find employment, or secure safe accommodation. Such a young person will need significant family support for the desired effect of electronic monitoring to be achieved. For many young people in this cohort such family support will not be available. This is particularly the case for Aboriginal and Torres Strait Islander young people who make up a disproportionate number of young people under child protection orders, for whom the parent is the state.
8. The ALA is further concerned that the requirement for some young people on bail to wear electronic monitoring devices will inflame the already present concerns of the growing vigilante responses to youth crime.⁴ The devices may make it easier for this group to identify the children on bail making them more vulnerable when in public.
9. A recent UK systematic review of the effectiveness of the electronic monitoring of offenders in several countries found that electronic monitoring works best with just one category of offenders: sex offenders; but when extended to broader “high-risk” offenders of all ages, there was no significant positive effect compared to non-monitoring.⁵
10. The ALA submits that there is very little benefit in incurring the substantial cost of introducing electronic monitoring of young people on bail, given the evidence that there is no significant positive effect in terms of crime reduction, and the substantial risk that young

³ <https://www.abc.net.au/news/2021-02-05/youth-crime-justice-couple-killed-brisbane-gps-human-rights/13117336>

⁴ <https://www.abc.net.au/news/2021-03-02/townsville-youth-crime-vigilantes-worry-indigenous-community/13192838>. <https://www.abc.net.au/news/2016-12-13/townsville-police-vigilante-warning-youth-crime-rates-soar/8115002>

⁵ Jyoti Belur, Amy Thornton, Lisa Thomson, Matthew Manning, Aiden Sidebottom, Katie Bowers. 2017. *What Works Crime Reduction Systematic review Series – No 13 A Systematic Review of the Effectiveness of the Electronic Monitoring of Offenders*. UCL Department of Security and Crime Series, University of London. 2017, available online at <https://whatworks.college.police.uk/Research/Systematic_Review_Series/Documents/Electronic_monitoring_SR.pdf>

people required to wear such a device are being set up to fail, resulting in increased incarceration for this vulnerable cohort.

Presumption against bail for some young people charged with an offence

11. The Bill inserts a new section 48AF into the *YJA*, to create a presumption against bail for a limited class of youth offenders. The presumption against bail will apply to bail by both courts and police officers. New section 48AF operates to require police or a court to refuse to release the child from custody unless the child can show cause why their detention in custody is not justified when the young person is charged with a prescribed indictable offence and that offence was alleged to have been committed while the child was released into the custody of a parent, or at large with or without bail, or awaiting trial or sentencing, in relation to an existing charge for an indictable offence.
12. The ALA is strongly opposed to this proposal. The ALA notes that a presumption in favour of depriving children of their liberty, without reference to their individual circumstances is contrary to Australia's obligations under international human rights conventions, which emphasise that depriving children of their liberty must be reserved as a 'last resort', and 'limited to exceptional cases'.⁶
13. The ALA further notes that increasing the risk of detention represents a serious incursion into the right of children to protection in their best interests, given that 'the use of

⁶ Human Rights Committee, General comment No 35: Article 9 (Liberty and security of the person), 112th sess, UN Doc CCPR/C/GC/35 (16 December 2014) 12 [38]; Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37(b); Committee on the Rights of the Child, General comment No 24 (2019) on children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) 14 [86]-[88]; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA Res 40/33 (adopted 29 November 1985) ('the Beijing Rules') r 13; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA Res 45/113 (adopted 14 December 1990) ('the Havana Rules') rr 2, 17. 31 *Certain Children v Minister for Families and Children* [No 2] (2017) 52 VR 441, 522 [262](c), quoting UN Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice, 44th sess, UN Doc No CRC/C/GC/10 (25 April 2007) 5 [11].

deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration into society.⁷

14. The ALA is also concerned that creating a presumption against bail thus increasing the likelihood of incarceration, will be a major contributing factor in causing children to become further entrenched in the criminal justice system. Several studies confirm that when children are drawn into the criminal justice system at a young age, there is a significantly higher likelihood of subsequent reoffending, and a lower likelihood of that child completing her/his education or securing employment.⁸

Disproportionate effect on Aboriginal and Torres Strait Islander young people

15. The ALA submits that the proposed amendments to the *YJA* will disproportionately affect Aboriginal and Torres Strait Islander young people.
16. The ALA notes that currently Aboriginal and Torres Strait Islander young people are disproportionately represented in the total number of young people in detention in Queensland. According to statistics from the Queensland Youth Justice annual survey, over 70 per cent of young people in detention in Queensland are Aboriginal or Torres Strait Islander.⁹ An Aboriginal/Torres Strait Islander young person was 32 times more likely to be in detention than a non-Aboriginal/Torres Strait Islander young person.¹⁰

⁷ *Certain Children v Minister for Families and Children* [No 2] (2017) 52 VR 441, 522 [262](c), quoting UN Committee on the Rights of the Child, General Comment No 10: Children's rights in juvenile justice, 44th sess, UN Doc No CRC/C/GC/10 (25 April 2007) 5 [11].

⁸ Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision*, 2014–15, Juvenile justice series no. 20, June 2017; Australian Institute of Health and Welfare, *Young People Aged 10–14 in the Youth Justice System, 2011–2012*, July 2013.

⁹ <https://www.youthjustice.qld.gov.au/resources/youthjustice/resources/yj-annual-summary-stats-detention.pdf>

¹⁰ Australian Institute of Health and Welfare. 2018. *Youth Justice in Queensland 2017-18*, available online at: <https://www.aihw.gov.au/getmedia/29525c16-7dbd-458f-8458-6baf491305ad/Factsheet-YJ_2017-18_Qld.pdf.aspx#:~:text=88%25%20were%20supervised%20in%20the,rest%20were%20serving%20a%20sentence.>>

17. There are reports that 80 per cent of criminalised young people in Townsville are Aboriginal or Torres Strait Islander.¹¹ This would suggest that the proposals in the Bill will disproportionately affect Aboriginal and Torres Strait Islander young people, further increasing their incarceration.
18. As noted above, the Bill seeks to introduce a presumption against bail when a young person is charged with a prescribed indictable offence and that offence was alleged to have been committed while the child was released into the custody of a parent. This will particularly disadvantage Aboriginal and Torres Strait Islander young people who make up a disproportionate number of young people under child protection orders, for whom the parent is the state.

Conclusion

19. The ALA appreciates the opportunity to provide this submission in relation to the Youth Justice and Other Legislation Amendment Bill 2021. In our view several provisions in the Bill contradict effective youth justice principles that promote diversion away from detention and the criminal justice system. The ALA submits that the proposals contained in the Bill will not reduce youth offending on bail and will not have the desired deterrent effect.
20. The ALA submits that a more effective, long-term strategy to target offending by young people is to focus on early, community-level intervention and restorative justice techniques. These will create better outcomes, safer communities and be a more effective use of taxpayer money.
21. The ALA submits that the Bill should not proceed.

Greg Spinda



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¹¹ <https://www.theguardian.com/australia-news/2021/feb/10/queensland-crackdown-on-youth-unlikely-to-work-and-will-target-indigenous-kids-experts>