



11 March 2021

Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

By email: lasc@parliament.qld.gov.au

Dear Committee Members,

Youth Justice and other Legislation Amendment Bill 2021 ('the Bill')

Thank you for the opportunity to provide feedback on the Bill.

QCROSS' submission responds to the proposed amendments to the *Youth Justice Act 1992 (Qld)*. We make no comment about amendments relating to knife crime and hooning offences.

About QCROSS

QCROSS (Queensland Council of Social Service) is the peak body for the social service sector in Queensland. Our vision is to achieve equality, opportunity and wellbeing for every person, in every community.

QCROSS' position

QCROSS does not support the Bill. Our position is clearly articulated in a joint media release¹ that we countersigned with our members the Youth Advocacy Centre, Save the Children Australia, the Aboriginal and Torres Strait Islander Legal Service, Act for Kids and Young People Ahead. The collective voice of these organisations reveals clear and deep concern about this proposed law reform.

Our position is also informed by the broader community services sector. On Tuesday 9 March, we convened a webinar about the Bill that was attended by participants across Queensland who work in youth justice and who, like the general public, hold legitimate concerns about public and community safety. During the webinar we conducted a human rights assessment of the Bill and sought feedback from participants about the Bill.

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<https://www.qcooss.org.au/joint-media-release-services-not-sentences/>

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Core principles

- **The Bill responds to children who are vulnerable**

We ask the Committee to consider neuroscience when making laws to address the behaviour of young people. This is crucial in determining measures that are age appropriate. The human brain is not fully developed until adulthood. The frontal lobe which is the part of the brain responsible for executive function (regulation of decision-making, planning, judgment, emotions and impulse) matures last and this typically occurs at about 25 years of age.² Children therefore do not have fully developed brain capacity to understand or take responsibility for their actions. This is especially so for children who have experienced trauma, known to further disrupt and delay brain development.³

The target group for this law reform proposal are ‘the most serious recidivist youth offenders’ - the 10% - nearly 400 children who persistently offend in Queensland. Research consistently shows that these children experience profound social disadvantage including extreme poverty, histories of familial offending, exposure to family violence, unstable accommodation or homelessness, alcohol and substance misuse and disrupted education. Many are ‘cross-over kids’ who enter the youth justice system after first having contact with the child protection system.⁴ A disproportionate number are Indigenous. These are *the most vulnerable* of all Queensland children caught up in the juvenile justice system.

The children who are targeted by the Bill should not be treated as hardened criminals. They should be provided with specific, targeted, intense and sustained services and supports to help to address the underlying causes of their behaviour.

- **The Human Rights Act has not been properly applied to the Bill**

In the Statement of Compatibility the Minister overlooked key human rights engaged by the Bill. The requirement for children to wear GPS electronic monitoring devices clearly engages:

- Protection from treatment or punishment in a cruel, inhuman or degrading way ⁵
- Children charged with a criminal offence have the right to a procedure that takes account of their age and the desirability of promoting their rehabilitation ⁶
- Children in the criminal process who have been convicted of an offence must be treated in a way that is age appropriate. ⁷

² Anderson, Anderson, Northam et al. Development of executive functions through late childhood and adolescence in an Australian sample. (2001) 20 *Dev Neuropsychol*.385–406.

³ Sara McLean, ‘The effect of trauma on the brain development of children: Evidence-based principles for supporting the recovery of children in care’ (2016) CFA Practice Resource, available online: <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca-practice-brain-development-v6-040618.pdf>

⁴ Clancey, Wang and Lin, ‘Youth justice in Australia: Themes from recent inquiries’ (October 2016) *AIC Trends and issues in Crime and criminal justice* No. 605, 6.

⁵ s17(b) *Human Rights Act 2019*

⁶ s32(3) *Human Rights Act 2019*

⁷ s33(3) *Human Rights Act 2019*

The proposed reform to create a presumption against bail also engages sections 32(3) and 33(3), listed above.

The Statement of Compatibility does acknowledge that the Bill engages and limits a range of human rights.⁸ In order for the Bill to be compatible with the *Human Rights Act 2019*, once it is established that human rights have been engaged and limited, it must then be demonstrated that the limitations are reasonable and justified.⁹

Limitations can be reasonable and justified where there is evidence to establish a connection between the limitation and the purpose and where the limitation is necessary because there is no other less restrictive way of achieving the purpose.

Our view is that the Statement of Compatibility:

- Fails to reference recent and compelling evidence to establish that the Bill will achieve the aim of making the community safer
- Makes incorrect statements, without referencing any evidence, that services would not be effective and that the strategy of providing additional supports is complementary rather than an alternative.¹⁰

Investing in services, supports and primary prevention is a rights-respecting measure, which our members know to be effective in reducing youth crime and keeping communities safe.

Putting GPS trackers on children

The Statement of Compatibility provides limited evidence about the effectiveness of GPS trackers in helping to reduce the rate of youth reoffending. The evidence presented does not address the negative psychological impacts that other studies have identified. For example, a major American study in 2015 found that electronic monitoring:

- Risks hyper-criminalisation
- Fails to achieve the goal of reducing the rate of reoffending
- Can amplify stress and anxiety in homes where children live in poverty
- Leads to increased stigma, shame and marginalisation.
- Presents a profound cognitive and psychological burden for children with mental health disorders and impairments.¹¹

The author of the 2015 study concludes:

*“Far from deterring youth from making poor decisions, electronic monitoring simply confirms what we already know about adolescent behavior: youth make impulsive, peer-driven decisions that are often not in their long-term best interest. Electronic monitoring does not, because it cannot, change these immutable characteristics of adolescents. Electronic monitoring, without more, does little other than expose youth to more punishment for typical adolescent behavior.”*¹²

⁸ The right to privacy, protection of children, right to family, freedom of movement, cultural rights, right to liberty, presumption of innocence.

⁹ Section 13.

¹⁰ See pages 9, 12 and 14.

¹¹ Kate Weisburd, ‘Monitoring Youth: The collision of rights and rehabilitation’ (2015) 101 *Iowa Law Review*, 297-341, 327.

¹² Weisburd, 327.

There are other examples. A pilot electronic monitoring program in 2019 by the Center for Court Innovation in (New York City) for 16- to 18-year-olds was labelled a failure.¹³

In a major combined paper, Australia's expert Children's Commissioners and Guardians argue that the use of humiliating punishments is contrary to international human rights instruments – not least because it so often leads to the re-traumatising of an already vulnerable group.¹⁴

GPS trackers – what our sector says

Our sector rejects the use of GPS trackers due to their stigmatising and humiliating effect on young people. There is also a widely held view that trackers simply will not achieve the intended result of reducing reoffending. The provision of well-funded, targeted primary prevention services is an effective rights-respecting alternative; our sector maintains that services are the solution, not punitive measures such as GPS trackers. Services put the dignity and worth of young people at the centre of solutions to issues of community safety.

Presumption against bail departs from a cornerstone of our justice system

Reversing the onus for bail is a significant departure from usual criminal law procedure. It engages the human right to a procedure that takes into account a child's age and the desirability of promoting their rehabilitation, as well as the right to be treated in a way that is age appropriate. Neither of these rights are addressed in the Statement of Compatibility.

Presumption against bail – what our sector says

Existing, effective alternatives to introducing a presumption against bail include the numerous dedicated bail support programs that currently operate across Queensland. One example is the Bail Support Program operated by community legal centres and specialist youth services throughout the state. Our sector delivers these programs, which are proven to be effective. These programs achieve the intended legislative purpose of the Bill. In stark contrast, reversing the presumption of bail is a measure that punitively holds children as young as 10 years old in the system, labels them as hardened criminals and fails to promote rehabilitation.

Conclusion

Aspects of this Bill are incompatible with the Human Rights Act and will not prevent recidivism by our most vulnerable young people in Queensland.

QCROSS and the social service sector in Queensland are committed to working with the Queensland government to ensure that children and our communities are safe. Progress is being made through evidence-based, community-led programs and services that we know to be effective. The Queensland government's focus must be to prioritise services rather than push through laws as a knee-jerk reaction to the complex problem of youth offending.

The Human Rights Act should be used as a framework so that human dignity, equality and freedom are the measure for whether a solution is the best available option to issues, such as community safety.

¹³ Balasubramanyam and Antoine, 'Young Offenders, Electronic Monitoring, Cell Phones and Battery Life' (2019) Civic Research Institute, *The Journal of Offender Monitoring* 4-8.

¹⁴ Australia's Children's Commissioners and Guardians, *Human Rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (April 2016)

Thank you again for the opportunity to provide our submission to the Committee.

Sincerely

A handwritten signature in black ink, appearing to read 'A McVeigh'.

Aimee McVeigh
Chief Executive Officer