



Submission to the

Legal Affairs and Community Safety Committee

## **Youth Justice and Other Legislation Amendment Bill 2021**

15 March 2021

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## INTRODUCTION

PeakCare Queensland Incorporated (PeakCare) welcomes the opportunity to provide information in response to the *Queensland Parliament's Legal Affairs and Community Safety Committee's* invitation calling for submissions in response to the *Youth Justice and Other Legislation Amendment Bill 2021*.

## ABOUT PEAKCARE

PeakCare is a not-for-profit peak body for child and family services in Queensland, providing an independent and impartial voice representing and promoting matters of interest to the non-government sector.

Across Queensland, PeakCare has approximately 50 member organisations which include small, medium and large, local and state-wide non-government organisations which provide prevention and early intervention, generic, targeted, and intensive family support to children, young people, adults and families. Member organisations also provide child protection services, foster and kinship care and residential care services for children and young people and their families who are at risk of entry to, or who are in the statutory child protection system.

A network of registered supporters also subscribe to PeakCare. Supporters include individuals and other entities with an interest in child protection and related services, and who are supportive of PeakCare's policy platform around the rights and entitlements of children, young people and their families to safety, wellbeing and equitable access to life opportunities.

## ABOUT PEAKCARE'S SUBMISSION

Given the overlap of children and young people at risk of entry to, or in the youth justice system, with those engaged with the child protection system, PeakCare has a strong interest in youth justice reform including appropriate, proportionate, effective, timely, and holistic responses and interventions for children, young people and their families. With a longstanding history in advocating for better understanding and management of the complex intersection between the child protection and youth justice systems, PeakCare's motivation in lodging this submission reflects the following:

- the need to address both the welfare and justice needs of young people who have been or who are in contact with the child protection system and the youth justice system, particularly young people subject to dual (interim or finalised) orders
- ensuring local access to prevention and early intervention services, responses and programs for children, young people and families to 'nip problems in the bud' or 'turn their lives around' – the right service at the right time from the right provider for the right amount of time

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- young people's rights and entitlements (and that of their families) to understand and to participate in administrative and judicial decision-making
- congruence in legislative frameworks and the administration of youth justice, child protection, and intersecting service systems (e.g., education and training, youth development, family support, housing and homelessness, legal services and legal aid, health, drugs and alcohol misuse) directly or indirectly delivered across Queensland Government departments and their agents
- the impacts and opportunities presented by adopting specialist and other reforms to court processes and policing practices across Queensland
- developing specific strategies to address the disproportionate representation of Aboriginal and Torres Strait Islander young people in the youth justice system, and
- the importance of underpinning policy directions and reforms with research evidence, undertaking appropriate evaluation and acting on evaluation findings in a progressive and transparent manner

Consistent with these areas of interest, PeakCare wishes to express its disappointment with the proposed amendments which we suggest could detract from the Government's progressive work undertaken in recent years to improve the youth justice system within Queensland. We consider the proposed amendments prioritise the offender status of children and do not appropriately consider the fact that children who offend are first and foremost still children - children who are still developing physically, psychologically, socially, and emotionally and already have a relative powerlessness and lack of voice in our society. We consider, in alignment to the findings of the recent report into the evidence-base for the Child First Justice Initiative in the United Kingdom, the prioritisation of a child or young person's offender status in youth justice responses can lead to further criminalisation within and by the youth justice system, increased marginalisation by society, and further disengagement by the child or young person.

PeakCare strongly supports appropriate diversionary interventions and addressing the causes of offending by young people to take priority over punitive and inappropriate punishments, and ensuring offending is considered only one part of a much more complex identity for these young people.

PeakCare appreciates that the *Bill* has, at least in part, arisen in response to the tragic deaths of Kate Leadbetter, Matt Field and their unborn baby Miles. Their deaths, along with the death of Jennifer Board in Townsville, the innocent victim of alleged vigilantism, prompted immeasurable grief and an outpouring of public concern about youth crime widely reported on by the media. PeakCare also appreciates that the Government, as commented upon within the Explanatory Notes, has attempted to confine and target the policy objectives of the *Bill* towards the "small cohort of recidivist youth offenders who engage in persistent and serious offending", whilst preserving the 'Four Pillars' for youth justice reform as expounded within the *Working Together Changing the Story: Youth Justice Strategy 2019-2023* (the Youth Justice Strategy).

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PeakCare's concerns are that:

- some young people additional to those who constitute the targeted cohort may inadvertently become 'swept up' in the heightened responses, thereby reducing benefits of other elements of the Youth Justice Strategy in diverting these young people from continuing on a trajectory into the adult criminal justice system, and
- assumptions stated in the Explanatory Notes about the value of a number of the proposed amendments in deterring young people from committing further alleged offences are not sufficiently supported by research or an evidence-base

## PEAKCARE'S RESPONSE TO THE PROPOSED AMENDMENTS

The following responds to the proposed legislative amendments and their apparent intentions.

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

PeakCare does not support the proposed amendment to remove the blanket restriction imposed on courts which prevents electronic monitoring devices being used as a condition of bail for a young person alleged to have committed an offence.

PeakCare, has previously strongly supported the exclusion of electronic monitoring devices being used for young people. Considering the characteristics and behaviours of young people during this stage of their development, and that most young people in the justice system are themselves victims of trauma, abuse and/or neglect, and children in contact with the youth justice system are often victims of crime themselves, use of these devices is likely to:

- prompt many young people to impulsively attempt to 'fool', 'test out' and/or remove the device which may result in physical or psychological harm, and unnecessarily escalate their engagement in the youth justice system through incorrect perceptions being formed about their 'non-compliance'
- embarrass and humiliate young people with the visibility of the device further criminalising and estranging them from their communities, thereby countering efforts which should be in place to promote their positive connection or re-connection with their families, communities and culture, and
- elicit responses often borne out of youthful bravado which superficially (albeit erroneously) suggest young people are wearing the device as a 'badge of attainment' that earns the respect of peers, thereby further criminalising them and making their constructive engagement in pro-social behaviours, activities and networks more difficult

PeakCare recommends the Committee seeks further information from the department demonstrating the commencement of a trial is underpinned by a clear and relevant evidence-base. PeakCare further recommends the Committee seek clarity on the evaluation criteria that would be used to measure the potential impact of the proposed trial.

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## **Parental or other support associated with youth bail**

PeakCare supports, in principle, the proposed amendment to include an additional consideration into section 48AA relating to the indication of willingness by a parent or another person, however, recommends the Committee seek clarification on how the proposed operationalisation of this additional consideration is intended to be realised by agencies and organisations that have a statutory obligation to act in the best interests of children. This includes statutory obligations on government organisations and service providers with responsibility for children and young people subject to child protection orders.

## **Presumption against bail and clarifying section 48AA(7) of the Youth Justice Act**

PeakCare supports, in principle, the proposed amendment to clarify this provision without altering its policy intent and continues to strongly support the position of making it explicit that police and courts are not able to detain a young person solely because they lack appropriate accommodation or have no apparent family support.

PeakCare notes that homelessness and lack of appropriate (safe and supported) accommodation for some young people being considered for bail continues to be a very real issue which requires further coordinated work and greater resource investment by government. PeakCare contends it is 'not the job' of the youth justice system to address issues of concern such as a young person's homelessness or lack of safe accommodation within their family home or other living arrangement, nor is it the responsibility of the youth justice system to ensure young people are receiving appropriate support and assistance in relation to other aspects of their safety and well-being. We consider this would be a misuse of the youth justice system and inadvertently create a 'net-widening' effect where young people are inappropriately drawn into the youth justice system in order to have their needs met. There is however a clear responsibility on the youth justice system to operate collaboratively with other services systems (such as those with explicit responsibilities to address matters of concern in relation to child protection, health and mental health, education, disability support, housing etc.) to ensure when young people encounter the youth justice system, this triggers an appropriate level of engagement by these other service systems. Considering this, the youth justice system must not be administered in a manner that impedes or detracts from the support and services provided by these other systems.

## **Aggravating factor when determining the appropriate sentence**

PeakCare supports, in principle, the proposed amendment to codify existing judicial practice when determining an appropriate sentence for a young person who has committed an offence.

With respect to aggravating factors associated with bail, PeakCare does continue to share stakeholder concerns about onerous and unsustainable bail conditions which are often not specific to the individual circumstances of a young person's alleged offending and can lead to a higher likelihood of them breaching bail conditions.

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## **Amending the Charter of Youth Justice Principles**

PeakCare does not support the proposed amendment of the first principle of the Charter of Youth Principles to include specific reference to recidivist high-risk offenders. As articulated above, PeakCare considers, in alignment to the findings of the recent report into the evidence-base for the Child First Justice Initiative in the United Kingdom, the prioritisation of a child or young person's offender status in youth justice responses can lead to further criminalisation within and by the youth justice system, increased marginalisation by society, and further disengagement by the child or young person. We also consider this amendment would be detrimental to the clarity of the existing principle and could lead to future interpretive confusion given its reductive nature.

## **Providing powers for police to stop a person and use a handheld scanner to scan for knives**

PeakCare defers to other agencies with more specialist knowledge in relation to this topic, however encourages strong consideration be given to the human rights and civil rights implications associated with the proposed amendments.

## **Enhancing the existing owner onus deeming provisions for hooning offences**

PeakCare defers to other agencies with more specialist knowledge in relation to this topic, however as a general concept, PeakCare supports enhancing the existing owner onus deeming provisions for hooning offences.

## **Concluding remarks**

Most children and young people involved in the youth justice system have faced multiple layers of complex disadvantage in their young lives, in circumstances beyond their control. Many have had contact with child protection services, experience poverty and homelessness, have mental health problems, or experience cognitive difficulties. Most young people in the justice system are themselves victims of trauma, abuse and/or neglect, and children in contact with the youth justice system are often themselves the victims of crimes against them that are far more serious than any they have allegedly committed.

Now more than ever, it is critical for the Queensland Government, with bi-partisan support, to develop a well-articulated and cohesive social policy framework that places children's rights and entitlements to safety, well-being and equitable access to life opportunities and the support of their families at the centre of all government-led decisions and activities. This is a framework which should not be driven by piecemeal child protection or youth justice policies, but rather, child protection and youth justice policies need to be located within and remain responsive to this overarching framework. It is a framework that should be used to powerfully influence financial investment and decision-making across all areas of Government activity and used to hold all government agencies and the non-government sector to account. Without a bi-partisan supported overarching framework of this type, Queensland children and families are at risk of becoming victims of reactive and fractured policy decisions that place greater importance on expediency and

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politics than on an evidence-based and values-driven vision for Queensland's greatest resource - our children.

Thank you for the opportunity to provide a submission on aspects of the Youth Justice and Other Legislation Amendment Bill 2021.

Yours sincerely,



**Lindsay Wegener**  
Executive Director  
PeakCare Queensland Incorporated