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Office of the President

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Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary

Youth Justice and Other Legislation Amendment Bill

Thank you for the opportunity to provide feedback on the Youth Justice and Other Legislation Amendment Bill (**the Bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation. Thank you for also providing an extension of time in which to provide our submission.

Our submission has the benefit of contributions from the QLS Children's Law, First Nations Legal Policy, Human Rights and Public Law and Criminal Law Committees, whose members have substantial expertise in this area.

1. Executive Summary/Key Points

1. QLS submits that the proposed amendments in the Bill are not appropriately adapted to the aim of reducing youth offending. While QLS appreciates that protection of the community is of vital importance, youth offending would be better addressed by investing in prevention and early intervention initiatives that provide a systemic response to address the drivers of crime.
2. QLS submits that electronic monitoring devices should not be applied broadly to youth justice offenders. GPS tracking for youth offenders presents numerous practical challenges, interferes significantly with rights to privacy, risks stigmatising and alienating youth offenders from their community and does not address the underlying drivers of youth offending. If GPS tracking is introduced, it must be strictly limited and only applied as an alternative to detention for children who would otherwise have been detained.
3. If GPS tracking is introduced, QLS submits that further protections around the use of data should be inserted into the Bill and monitoring of youth offenders should not be conducted by third party organisations.
4. QLS does not support the proposed presumption against bail. The presumption will create delays in court and may result in an influx of young people into already

overburdened watch houses and Youth Detention facilities. The selection of prescribed offences to which the presumption applies is broad, and not appropriately justified.

5. QLS does not support the inclusion of additional considerations regarding undertakings of support into section 48AA of the *Youth Justice Act 1992* (Qld) when making decisions about bail. These considerations risk creating additional tensions among families and disadvantaging children with dysfunctional family or home environments or children in State care.
6. If the additional considerations in section 48AA are inserted into the Act, QLS recommends that the Bill is amended to clarify the obligations and implications for persons who undertake to provide support and inform police or courts of breaches of bail.
7. QLS does not support the retrospective application of the proposed sections 48AA and 48AF and recommends that these provisions be amended to only apply prospectively.
8. QLS recommends that the proposed amendments to the *Police Powers and Responsibilities Act 2000* (Qld) granting police officers greater powers to use hand held scanners on persons in prescribed areas without a warrant be amended to ensure these powers are not engaged unless an authorising officer holds a 'reasonable suspicion' that the person has a knife or dangerous weapon. This will mitigate the risk that these powers will be exercised arbitrarily and discriminatorily.
9. QLS does not support amendments to the *Police Powers and Responsibilities Act 2000* with respect to 'type 1 vehicle related offences'. The amendments in effect reverse the onus of proof and interfere unreasonably with the right to be presumed innocent until proven guilty.

2. Introductory comments

QLS acknowledges that youth justice has a broad impact on our community and we recognise the grief of victims and their families, as well as community expectation for steps to be taken to address youth crime.

QLS has been a long standing advocate for reform in the youth justice and criminal justice systems. In our advocacy, QLS has always been mindful to balance the need to protect children in the youth justice process and to protect the community from harm.

Children occupy a very vulnerable space in our society. In recognition of their age and vulnerability, QLS has advocated for children and young people in our legal system through systems advocacy and our policy position paper on children and young people's issues.

QLS Committee members have raised concerns regarding the proposed law reform, including the potentially disproportionate impact on at risk young people. Young people and children who come into repeated contact with the criminal justice system are extremely vulnerable: they tend to have high rates of trauma, abuse and neglect, poorer health and are more likely to have a history of alcohol and drug use and dependence.[1] There is a strong correlation between out-of-home care, youth detention and adult incarceration.[2]

[1] Law Council of Australia, *The Justice Project: Children and Young People* (Final Report, August 2018) 7, 13-14.
[2] Ibid 5, 12; Law Council of Australia, *The Justice Project: Prisoners and Detainees* (Final Report, August 2018) 18.

QLS also draws attention to the over-representation of Aboriginal and Torres Strait Islander children and young people in the child protection and youth justice systems. We must be mindful that any amendment to the bail laws would have a disproportionate effect on Aboriginal and Torres Strait Island children and young people who are overrepresented in the youth justice system.[3]

According to the Australian Institute of Health and Welfare's *Youth detention population in Australia 2020* report, among young people aged 10-17, about 52% of those in detention in the June quarter 2020 were Indigenous.[4]

When compared to non-Indigenous Australians, young Indigenous Australians aged 10-17 were 17 times more likely than young non-Indigenous Australian to be in detention in the June quarter 2020. For unsentenced detention, young Indigenous Australians were 17 times more likely to be detained than non-Indigenous Australians, and for sentenced detention the rate was 19 times higher for young Indigenous Australians. [5]

Addressing offending by this vulnerable cohort requires significant and sustained early intervention services to address the pervasive social and economic causes of offending and divert high-risk young people from the criminal justice system. The Queensland Government's *Working Together, Changing the Sentence* report recognises that prevention, early intervention, increased support services and restorative justice reduce youth offending and reoffending, while detention increases the risk of children and young people reoffending.[6] The Bill's measures are punitive and likely to increase the number of children in detention. This ultimately fails to address the underlying drivers of youth crime, and is consequently unlikely to provide an effective and enduring solution.

3. GPS tracking

Clause 26 of the Bill proposes to insert a new section 52AA into the *Youth Justice Act 1992* (Qld) (***Youth Justice Act***), granting courts powers to impose tracking device conditions on the grant of bail for a class of 16 and 17 year old offenders in certain geographic areas.

QLS notes that the 'geographic areas' are prescribed by regulation and there is nothing in the Bill to guide how the area will be determined. While the Statement of Compatibility indicates that a trial will be carried out only in Townsville, North Brisbane/Moreton and Logan/Gold Coast in the first 12 months, there is nothing in the Bill to prevent the area being extended by Regulation.[7] Given the impact of the amendments on individual rights, it should be clear on the face of the Act which geographic areas the amendments apply to. This would ensure transparency and prevent the area being arbitrarily expanded without due consultation.

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[3] Childrens Court of Queensland, *Annual Report 2019-2020* <https://www.courts.qld.gov.au/__data/assets/pdf_file/0020/661322/cc-ar-2019-2020.pdf>

[4] Australian Institute of Health and Welfare, *Youth detention population in Australia 2020* (Report, 26 February 2021) <https://www.aihw.gov.au/getmedia/37646dc9-dc6f-4259-812d-1b2fc5ad4314/aihw-juv-135.pdf.aspx?inline=true> See pages 10-12.

[5] Ibid.

[6] Queensland Government, *Working Together, Changing the Sentence,* Youth Justice Strategy 2019-2023 (Report) <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>

[7] Statement of Compatibility, Youth Justice and Other Legislation Amendment Bill 2021, 3.

Youth Justice and Other Legislation Amendment Bill 2021

The imposition of GPS tracking on children is highly invasive and represents a significant incursion on the child's human rights, including the right to privacy.[8] It also interferes with the principle that processes in the criminal justice system should take into account the child's age and the desirability of promoting the child's rehabilitation.[9] The Explanatory Notes and Human Rights Compatibility Statement to the Bill propose that the incursion into human rights is justified because electronic monitoring will deter young persons from committing offences and there are no less restrictive alternatives that would achieve this purpose.

The efficacy of GPS tracking in reducing recidivism

The Statement of Compatibility cites a New Zealand evaluation of electronic monitoring on bail that found the rate of reoffending was 19 percent for those detained at home with electronic monitoring compared to 42 percent for those imprisoned (within 12 months of date of release).[10] QLS notes that this evaluation compares home detention generally against the outcomes of detention in custody. Research suggests that imprisonment can have criminogenic effects leading to increased reoffending after the prisoner is released.[11] Therefore, the extent to which the decrease in reoffending can be attributed to electronic monitoring or simply the removal of individuals from the prison environment is unclear.

Further, while electronic monitoring is a sentencing option for youth offenders in New Zealand, this report does not distinguish outcomes across different age brackets and so does not provide conclusive evidence demonstrating that electronic monitoring is effective for youth offenders in particular. This is an important distinction given that youth offenders do not have the same level of cognitive maturity as adult offenders and are unlikely to exercise the same levels of self-responsibility.[12] Measures that effectively deter adults may have different outcomes when applied to youth offenders. QLS also notes that the report explicitly states that 'rehabilitation programmes and services must be provided and adequately funded, otherwise these sanctions only impose "mere surveillance" and do not deliver the desired outcomes'.[13] Given that the Bill applies to a different demographic (namely, youth offenders) and does not introduce

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[8] *Human Rights Act 2019* (Qld) s 25(a).
[9] Ibid s 32(3).
[10] Dr Martinovec, 'New Zealand's extensive electronic monitoring application: "Out on a limb" or "leading the world"? (2017) 5(1) *The New Zealand Corrections Journal* <https://www.corrections.govt.nz/resources/newsletters_and_brochures/journal/volume_5_issue_1_july_2017/new_zealands_extensive_electronic_monitoring_application_out_on_a_limb_or_leading_the_world>
[11] David Brown, 'Contemporary Comments: The limited Benefit of Prison in Controlling Crime' 22(1) *Current Issues in Criminal Justice* 137, 141-142; Queensland Productivity Commission, *Imprisonment and Recidivism* (Summary Report, August 2019) 14 <https://qpc.blob.core.windows.net/wordpress/2020/01/SUMMARY-REPORT-Imprisonment-.pdf>; Queensland Government, *Working Together, Changing the Sentence,* Youth Justice Strategy 2019-2023 (Report) 8 <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>.
[12] Mariam Arain et al, 'Maturation of the adolescent brain' (2013) 9 *Neuropsychiatric Disease and Treatment* 449; Ross Homel et al, 'Preventing the onset of youth offending: the impact of the Pathways to Prevention Project on child behaviour and wellbeing' (2015) 481 *Trends & Issues in Crime and Criminal Justice* 1, 2.
[13] Dr Martinovec, 'New Zealand's extensive electronic monitoring application: "Out on a limb" or "leading the world"? (2017) 5(1) *The New Zealand Corrections Journal* <https://www.corrections.govt.nz/resources/newsletters_and_brochures/journal/volume_5_issue_1_july_2017/new_zealands_extensive_electronic_monitoring_application_out_on_a_limb_or_leading_the_world>

complementary support measures, it is unlikely to enjoy the same success as the New Zealand program.

QLS therefore maintains that electronic monitoring devices should not be applied broadly to youth offenders. If electronic monitoring is to be applied to youth offenders at all, it should only be used as an alternative to detention for offenders who would ordinarily be detained and not those who would otherwise be granted bail.

Privacy and data security

Section 25 of the *Human Rights Act 2019* (Qld) provides that a person has a right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.[14] As noted in the article, 'New Zealand's extensive electronic monitoring application: "Out on a limb" or "leading the world"' (cited in the Statement of Compatibility) electronic monitoring of offenders in the absence of other support programs is "mere surveillance".[15]

The Bill raises privacy concerns that are not addressed. In particular, it is unclear from the Bill and explanatory materials whether monitoring will be conducted exclusively by Queensland Corrective Services, or whether it will involve third parties. QLS has significant reservations about any third party monitoring children and young people, and the potential this presents for misuse of data and information.

GPS tracking will also impact on the privacy of occupants of the child's home, including family members, by placing monitoring equipment in the residence and subjecting the residence to police visits to ensure compliance. The interference with the rights of residents, including the right to privacy, are not adequately addressed and justified by the Explanatory Notes or the Statement of Compatibility.

Other concerns

QLS notes that GPS tracking for young offenders presents a number of additional issues, including:

1. GPS tracking risks stigmatising and alienating already vulnerable individuals from their community and families. GPS tracking devices are bulky and prominent. Committee members observed that adult defendants with GPS trackers have faced challenges obtaining employment because of the visibility of the trackers. Youth offenders with visible GPS tracking devices will face similar barriers to obtaining work, attending school or vocational education and attempting to engage with their communities generally. In this context, GPS trackers could hinder rehabilitation by deterring youth offenders from engaging in work and education.
2. Young people's executive functioning continues to develop until around 25 years of age, so youth offenders typically do not have the cognitive maturity to consider consequences, regulate their behaviour and problem-solve rationally to the same extent

[14] See also art 16 of the Convention on the Rights of the Child.

[15] Dr Martinovec, 'New Zealand's extensive electronic monitoring application: "Out on a limb" or "leading the world"? (2017) 5(1) *The New Zealand Corrections Journal* <https://www.corrections.govt.nz/resources/newsletters_and_brochures/journal/volume_5_issue_1_july_2017/new_zealands_extensive_electronic_monitoring_application_out_on_a_limb_or_leading_the_world>

as adults.[16] Trauma, socioeconomic disadvantage and conflictual home and neighbourhood environments compound this issue, further limiting children's cognitive, social, emotional and behavioural development.[17] Consequently, youth offenders are more likely to engage in risk taking behaviour and have a more limited capacity to comprehend and abide by stringent conditions of bail, including maintaining and not tampering with tracking devices. GPS tracking in this context risks further criminalising young offenders.

3. In imposing a tracking device condition, the court may require the child to take steps to ensure the tracking device and equipment necessary for the operation of the tracking device are, or remain, in good working order (see proposed notes to section 52AA(2)). Committee members have observed that adults with trackers spend significant time (reportedly up to hours a day) charging the device. The requirement that a child spend significant time, potentially hours, a day attached to a charging port presents inherent and significant challenges. Further, youth offenders with tracking devices would need to be supported by stable accommodation and parental or caregiver support to meet these demands. This is problematic given that many youth offenders experience unstable or transient living arrangements and may have inconsistent access to charging facilities and support.
4. The Bill and explanatory material indicate that Queensland Corrective Services may contact the child on a mobile phone in relation to an alert or notification from the tracking device, and as such, when considering whether to impose the tracking device condition the decision-maker should have regard to whether the child has access to a mobile phone. Youth offenders from low socio-economic backgrounds may not have access to mobile phones. By making this a consideration, the Bill risks further disadvantaging young people experiencing poverty or economic disadvantage.
5. Committee members observed that GPS tracking devices are typically fitted in custody, requiring the defendant to submit themselves to watch houses after they are granted bail. This is particularly complicated for youth offenders who may face added barriers attending watch houses, including limited transportation.

Given the practical difficulties associated with charging, general maintenance and phone access and the elevated risk of stigma, the cohort of youth offenders for which GPS tracking is appropriate is likely to be very small and the utility of GPS tracking for youth offenders extremely limited. This was noted in the *Report on Youth Justice* (the **Atkinson Report**) which stated that 'caution must be exercised in extending this technology to children' and 'there may be very few children for whom this is a suitable option'.[18]

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[16] Mariam Arain et al, 'Maturation of the adolescent brain' (2013) 9 *Neuropsychiatr Dis Treat* 449; Queensland Government, *Working Together, Changing the Sentence,* Youth Justice Strategy 2019-2023 (Report) <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>.

[17] Ross Homel et al, 'Preventing the onset of youth offending: the impact of the Pathways to Prevention Project on child behaviour and wellbeing' (2015) 481 *Trends & Issues in Crime and Criminal Justice* 1, 2.

[18] B Atkinson, *Report on Your Justice* (Final report, 2018) 66-67.

Recommendations

QLS advocates for evidence-based law reform, and does not support the introduction of GPS tracking due to the absence of definitive and compelling evidence that GPS tracking will in fact deter young people from reoffending.

If, however, GPS tracking is introduced, it must be strictly limited, including by:

- Using GPS tracking only as an alternative for children who would otherwise be placed in detention;
- Supplementing GPS tracking with substantial investment in support programs and rehabilitative services designed to address underlying drivers of youth offending;
- Applying GPS tracking only to children supported by stable accommodation and caregiver support to assist the child with compliance (noting that the lack of stable accommodation and caregiver support should not be considered a reason to avoid releasing a child from detention);
- Limiting GPS tracking to children who:
    - Are not attending school, vocational education or training, or work;
    - Do not have physical, psychological or behavioural disabilities;
    - Demonstrate sufficient capability and maturity to comply with the conditions of GPS tracking;
- Ensuring monitoring of children is not conducted by third party organisations;
- Including a definition of 'geographic area' in the Act itself, so it is transparent and cannot be broadened by regulation.

QLS also calls for a comprehensive evaluation and review of the scheme with the results to be made publicly available.

4. Presumption against bail

The Bill proposes to insert a new section 48AF into the *Youth Justice Act* which creates a presumption against bail for young persons charged with a prescribed indictable offence where 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. In these circumstances, the child is required to show cause why their detention is not justified.

The consequence of this amendment will be longer days in court (including lengthier Childrens Court callovers) because of longer bail applications. This will have significant resource implications for both the courts and those providing service in the courts. It is therefore essential for additional duty lawyers to be funded and assigned to the Childrens Court.

Practically, the presumption may have negative consequences for both the youth offender and the community generally. A presumption against bail is likely to result in an influx of young people into detention facilities, including in cases where alternatives to detention may have been appropriate. Children and young people who have been in detention are at a higher risk of committing offences when they return to the community.[19] There is a correlation between youth detention and recidivism, therefore, a presumption in favour of detention risks increasing the

[19] Queensland Government, *Working Together, Changing the Sentence,* Youth Justice Strategy 2019-2023 (Report) 8 <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>.

number of youth detainees. This result is contrary to the objective of the Bill to protect the community.

Youth Detention facilities already struggle with challenges of overcrowding and under-resourcing. An increase in the population in these facilities will place further strain on already overburdened youth detention facilities

The amendments also risk increasing the number of children held in watch houses for prolonged periods. The detention of children in watch houses on remand is problematic and of significant concern to the Society and its members. Police watch houses are designed to hold adults for short periods of time and are not equipped to meet the needs of children and young people. Prolonged detention in watch houses can have significant negative effects on the wellbeing of children,[20] particularly where it involves invasive and humiliating strip searches, solitary confinement and limits the child's access to their family, health care and support services. The practical consequences of the Bill are likely to include subjecting more children to prolonged detention in watch houses while on remand, undermining the protective principles in the *Youth Justice Act* and the right to humane treatment while deprived of liberty.[21]

The proposed amendment sets a rule in favour of detention that is contrary to charter of youth justice principles in Schedule 1 of the *Youth Justice Act*. The proposed amendment intrudes significantly on the right to liberty,[22] and contravenes core principles in the *Human Rights Act 2019* (Qld), including the right not to be automatically detained in custody,[23] and the principle that every child has a right to protection on the basis of being a child.[24] Additionally, this amendment does not accord with international human rights standards, which provide that depriving children of their liberty must be reserved as a last resort, limited to exceptional cases, and for the shortest appropriate period of time.[25]

Selection of prescribed offences

The Statement of Compatibility does not identify why certain offences were subject to the presumption against bail. Without providing clear explanation supporting how the presumption against bail for the select offences is rationally connected to the purpose of reducing youth crime and protecting the community, the Bill risks imposing a presumption arbitrarily and in a manner incompatible with human rights.[26]

For example, 'prescribed indictable offences' include offences ranging in severity from offences carrying a penalty of life imprisonment to lesser offences such as dangerous operation of a vehicle (*Criminal Code 1899* (Qld) section 328A(1)) which carries a maximum penalty of 3 years' imprisonment. Attaching the presumption against bail to such a broad range of offences with

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[20] Office of the Public Guardian, 'There are immediate solutions available to remove children from watch houses' (Media Release, 14 May 2019) < https://www.publicguardian.qld.gov.au/about-us/news-and-information/news-and-media/there-are-immediate-solutions-available-to-remove-children-from-watch-houses>

[21] *Human Rights Act 2019* (Qld) s 30.

[22] Ibid s 29.

[23] Ibid s 29(6)

[24] Ibid s 26.

[25] Convention on the Rights of the Child, art 37(b).

[26] *Re application for bail by Islam* (2010) 175 ACTR 30, [357].

significantly varying penalties is not reasonable and proportionate without justification for the selection of the 'prescribed indictable offences'.

Recommendations

QLS recommends removing the presumption against bail in the Bill.

If the presumption against bail is enacted, it is QLS' view that it should be limited to a very narrow category of offences and only applied to offences involving actual violence and weapons.

5. Parental and other support associated with youth bail

Section 48AA of the *Youth Justice Act* contains considerations a decision-maker may take into account when making decisions about release and bail. The Bill proposes to insert additional considerations into s 48AA, permitting the court or police officer to take into account whether a parent or another person has indicated willingness to:

- Support the child to comply with the conditions imposed on a grant of bail;
- Notify the chief executive or a police officer of a change in the child's personal circumstances that may affect their ability to comply with the bail conditions;
- Notify the chief executive or a police officer of a breach of the conditions imposed on a grant of bail.

QLS notes that under the Bill, the fact that a child has no apparent family support or will not have adequate accommodation on release from custody cannot be the sole reason for denying bail. The Society has concerns for children and young people who are on child protection orders. It is our firm view that a policy statement concerning the Department of Child Safety's obligations and duties be published. Nevertheless, adding to the list of considerations particularly disadvantages children with a dysfunctional family or home environments or children in State care, unfairly increasing the likelihood of such children being denied bail.

The purpose of the amendment is to increase the involvement of parents, guardians or other persons in the child's life to support compliance with bail conditions. However, the amendments may have the opposite effect of creating increased tensions within families, particularly if parents, family members or caregivers are under an obligation to inform on young people to the police for breaches of bail.

Problematically, the amendments do not clarify whether there will be any consequences for the person providing the assurance in the event that the person fails to inform the police that a child has breached a condition of bail.

Recommendations

QLS recommends removing the amendment from the Bill.

If the amendment is not removed, QLS recommend that the Bill is amended to clarify the obligations and implications for family members and caregivers who undertake to provide support and inform police or courts of breaches of bail.

6. Retrospective Application

The Bill proposes that the new considerations inserted into section 48AA and the presumption against bail in section 48AF will apply to children charged with an offence, whether the offence was allegedly committed or the child was charged before or after the commencement of those provisions.

This has a retrospective impact and interferes with the fundamental legislative principle that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.[27] Retrospective legislation, particularly in the context of criminal law, sits uneasily with the rule of law, which requires that the law is capable of being known to everyone. For this reason, QLS does not support the retrospective application of these provisions.

Recommendations

QLS recommends that any retrospective application of law within the Bill is removed so that any amendments only apply prospectively.

7. Police powers to use hand held scanners in public places without warrant

The Bill proposes to amend the *Police Powers and Responsibilities Act 2000* (Qld) (**PPRA**) to allow police officers greater powers to use hand held scanners on persons in prescribed areas, without a warrant. QLS has concerns about the extended powers to use scanners, along with the power to require the production of objects which may contain metal without a warrant.

QLS notes that a senior officer must authorise the use of the hand held scanner, however, the legislation does not provide for any criteria to guide decision-making about such authorisation. Committee members raised concerns that there does not appear to be any requirement that an authorising officer holds a 'reasonable suspicion' before engaging these powers.

This raises the risk that the power will be exercised arbitrarily.

Recommendations

QLS recommends that any expansion on police powers to use hand held scanners should incorporate clear, prescribed criteria that dictate the circumstances in which the powers may be authorised.

8. Hooning offences

The Bill proposes to amend the PPRA to expand existing powers relating to 'type 1 vehicle related offences'. The amended provisions will empower police to issue a notice to a car owner requiring the owner to provide certain information. Failure to respond to the notice results in the person being deemed to have been the driver of the vehicle involved in an offence and they may be prosecuted for the offence. If a person does not respond to the notice, they will not be able to rely on the information that would have been provided in such a notice in their defence, unless they provide 21 business days' notice to the prosecuting authority and the court grants the person leave to rely on the evidence. The purpose of the amendment is to assist police to investigate offences leading to the reduction of crime and improve community safety.

QLS has particular concerns about:

- The preclusion of the owner from relying on evidence in the person's defence unless they have given the prosecutorial authority 21 business days' notice and sought the court's leave;
- The onerous evidentiary burden placed on an owner of a motor vehicle particularly in circumstances where failing to give a statutory declaration will be an offence with a penalty of up to 100 penalty units;

[27] See *Legislative Standards Act 1992* (Qld) s 4(3)(h).

- The deeming provision, which provides that where an owner does not provide a declaration as required the onus of proof is reversed (which does not accord with section 4(3)(d) of the *Legislative Standards Act 1992*).

Perhaps most problematically, the deeming provisions and reversal of onus interferes with the right to be presumed innocent until proven guilty.[28] The Statement of Compatibility states that the amendment will assist police investigate offences leading to the reduction of crime and improving community safety.[29] However, the Statement does not provide evidence to demonstrate how the expansion of the 'evasion offences notice' schemes will in fact impact unsafe driving behaviours. Rather, the reversal of onus risks increasing the probability that a person will be found guilty of an offence, notwithstanding that there may be exculpatory evidence.

The Society also questions what programs currently exist in community and youth detention centres to address this offending behaviour. We consider that young people should complete vehicle offender programs that can be completed both in the detention context and also in the community. These effectiveness of these programs should also be evaluated.

Conclusion

It is QLS' position that the proposed amendments are not appropriately adapted to the aim of reducing youth reoffending. While QLS appreciates that protection of the community is of vital importance, evidence indicates that youth offending is best addressed via prevention and early intervention initiatives that provide a systemic response to the drivers of youth crime. The *Working Together, Changing the Sentence* report notes that prevention programs that improve parenting, strengthen community, support families at risk, address mental illness, disability and substance abuse and respond to childhood delay and education programs are both effective and cost-effective.[30] Such programs are likely to be less restrictive than the amendments in the Bill and more likely to produce enduring solutions.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) [redacted].

Yours faithfully

Elizabeth Shearer
President

[28] *Human Rights Act 2019* (Qld) s 32(1).
[29] Statement of Compatibility, Youth Justice and Other Legislation Amendment Bill 2021, 19.
[30] Queensland Government, *Working Together, Changing the Sentence,* Youth Justice Strategy 2019-2023 (Report) 8 <https://www.youthjustice.qld.gov.au/resources/youthjustice/reform/strategy.pdf>.